

SUBMISSION TO THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA
Draft Regulations on Rapid Deployment of Electronic Communications Networks and Facilities,
2026

Published in Government Gazette No. 54484, General Notice 7364 of 10 April 2026

1. Introduction

1.1 Maziv (Pty)Ltd (“Maziv”) welcomes the opportunity to comment on the Draft Regulations on Rapid Deployment of Electronic Communications Networks and Facilities, 2026 (the “Draft Regulations”) published by the Independent Communications Authority of South Africa (the “Authority” or “ICASA”) in Government Gazette No. 54484 of 10 April 2026. We believe that the Draft Regulations should aim to assist in accelerating deployment of broadband infrastructure by removing bottlenecks in the rapid deployment process. We also note that the Draft Regulations come more than nine years since the National Integrated ICT Policy White Paper (2016) (the “ICT White Paper”) was published, where detailed guidelines were given on the envisaged Rapid Deployment Guidelines/Regulations.

1.2 Maziv is an individual electronic communications services (ECS) and electronic communications network services (ECNS) licensee that, through its subsidiaries including Vumatel (Pty) Ltd and Dark Fibre Africa (Pty) Ltd, builds, operates and maintains electronic communications networks and facilities across South Africa. Like other licensees, Maziv’s day-to-day deployment is hampered by inconsistent, opaque and frequently obstructive wayleave processes by public utilities such as SANRAL and municipal service providers. Application fees, deposits, processing times and documentation requirements vary dramatically across municipalities and result in project pipelines being routinely delayed for lengthy time periods, with knock-on effects on attempts to roll out infrastructure, connect South Africans and meet the country’s broader broadband targets. Public utility and municipal service providers bottlenecks were precisely the bottlenecks that the ICT White Paper, the Rapid Deployment Policy and the Policy Direction on the Rapid Deployment of electronic communications networks and facilities of 2023, highlighted and sought to address.

1.3 We note the contents of paragraph 1.5 in the Explanatory Memorandum attached to the Draft Regulations, wherein the Authority explains the findings of the internal research commissioned by the Council Committee on Rapid Deployment. We agree with the findings which highlight

several recurring challenges. However, it is unclear whether the Draft Regulations in its current form, is capable of addressing the highlighted challenges. For example, there is nothing in the Draft Regulations which seem to address the inconsistent and unpredictable municipal wayleave process or long approval timelines across state entities.

- 1.4 Nevertheless, Maziv's overarching concern is that the Draft Regulations, as currently formulated, will not materially address the bottlenecks hampering rapid deployment and in fact adds procedures and compliance burdens which will slow down rapid deployment. The Draft Regulations are largely a codification of obligations on licensees (consultation, notice, GIS submissions, compensation, removal of obsolete facilities, penalties) without any corresponding, enforceable obligations on the relevant authorities whose conduct is the principal source of delay.
- 1.5 The Draft Regulations also do not give full effect to the Minister's draft Policy Direction on Rapid Deployment of March 2026, which expressly contemplates a stronger framework. Without significant amendment, the Draft Regulations will therefore add procedural burden to licensees while leaving the underlying failures, namely municipal and state-entity non-performance, unaddressed.

2. Comments

2.1 The ICT White Paper, 2016

- 2.1.1 Chapter 9 of the ICT White Paper sets out the rapid deployment policy that should inform any regulatory intervention by the Authority. Of particular relevance to the Draft Regulations, the ICT White Paper states (at page 98) that:

In the case of deployment of electronic communications facilities, where possible, notification and application procedures for rapid deployment should take no more than a month from date of submission of all relevant documents, to date of final decision by the relevant entities. Entities must communicate with applicants, as soon as possible and certainly within a month, if any delay beyond a month is expected – in the latter case they should indicate reasons for the delay.

- 2.1.2 Every notice obligation prescribed in the Draft Regulations runs against the licensee; no equivalent timeline binds the relevant authority (defined in the regulations as municipal, provincial or national entities with jurisdiction over the land or property in question) that is

asked to decide on a wayleave or other approval. Regulation must give effect to the ICT White Paper policy considerations.

2.2 The 2023 Rapid Deployment Policy and the 2026 Draft Policy Direction

- 2.2.1 The 2023 Rapid Deployment Policy, which the Authority refers to in its explanatory memorandum, expressly recognises broadband as key socio-economic infrastructure and directs the Authority to develop regulations that materially reduce avoidable administrative burdens, improve predictability, enable coordinated planning and infrastructure sharing, and provide effective dispute resolution.
- 2.2.2 The Minister's draft Policy Direction on matters relevant to Electronic Communications Network Deployment, published on 12 March 2026, reinforces and extends this mandate by directing the Authority to, among other things, develop clearer access processes and dispute-resolution pathways. The Authority's regulatory response must give effect to the Minister's policy direction.
- 2.2.3 Section 151(4) of the Constitution provides that national or provincial government "may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions". This must be read with section 151(3), which provides that "[a] municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution". Section 156(3) provides that "[s]ubject to section 151(4), a by-law that conflicts with national or provincial legislation is invalid".
- 2.2.4 However, the Constitutional Court in *Link Africa* (as detailed below) made it clear that while municipal bylaws may regulate the mode of access to public property, they are limited to the extent that they may not thwart the purpose of the statute by requiring the municipality's consent. Maziv submits that where bylaws thwart the purpose of the Electronic Communications Act ("ECA") in ensuring roll-out of electronic communications infrastructure in the public interest, such bylaws should not stand.

2.3 Section 21(2) of the ECA

- 2.3.1 Section 21(2) of the ECA obliges the Authority to prescribe the procedures and processes applicable to (i) obtaining permits, authorisations and approvals required for the deployment of electronic communications networks and facilities and (ii) the resolution of disputes arising from the exercise of section 22 rights. The section empowers the Authority to prescribe procedures for obtaining *any* approvals /governmental authority and does not focus solely on licensees. The singular focus on licensees in the Draft Regulations does not improve rapid

deployment of broadband infrastructure, as licensees are not the cause for delays in most instances.

2.4 City of Tshwane v Link Africa¹

- 2.4.1 In *Link Africa*, the Constitutional Court confirmed that sections 22 and 24 of the ECA are constitutionally valid and that they permit ECNS licensees to enter and use land for the purpose of deploying communications infrastructure without the consent of the landowner, subject to the obligation to act *civilliter modo* - respectfully and with due caution.
- 2.4.2 The majority decision held that section 22(1) does not amount to arbitrary expropriation of property and that compensation in the expropriatory sense is therefore not engaged; rather, what arises is a statutory limitation analogous to a servitude, with attendant duties of care and reasonable conduct. Compensation is not payable for deprivation, but is paid for expropriation.
- 2.4.3 The Link Africa judgment made it clear that there must be interference with property that is significant enough to “have a legally relevant impact on the rights of the affected party before deprivation of property under section 25 is established. Deprivation authorised by section 22(1) entails only the use of another person’s land for constructing and maintaining an electronic communications facility or network. This constitutes nothing more than a diminished enjoyment of the property, whereas in the case of expropriation there is a complete loss of the expropriated right, hence the need for compensation. Furthermore, fibre-optic cables, unlike large structures such as mobile base stations, are installed using (often existing) underground infrastructure. This does not amount to a significant intrusion in the property concerned or limitation of its use or enjoyment.
- 2.4.4 The Draft Regulations should be interpreted and amended to align with the *Link Africa* framework. Specifically, regulation 6 in its current form risks reintroducing, by regulatory backdoor, an expropriation-style compensation regime that is not envisaged by section 22(1). This risks creating a parallel, regulator-mandated compensation pathway that is inconsistent with the ECA and that, in practice, will invite a proliferation of speculative claims and obstructive litigation against licensees. Maziv’s specific concerns and proposed amendments are set out in Part 3 below.

¹ **City of Tshwane Metropolitan Municipality v Link Africa (Pty) Ltd and Others** (CCT184/14) [2015] ZACC 29; 2015 (6) SA 440 (CC); 2015 (11) BCLR 1265 (CC) (23 September 2015)

2.5 The Standard Draft By-laws on Deployment of Electronic Communications Facilities

- 2.5.1 The Minister of Cooperative Governance and Traditional Affairs published Standard Draft By-laws for the Deployment of Electronic Communications Facilities. As the Authority will be aware, those Standard By-laws have no force or effect at municipal level until adopted, and adoption to date has been patchy.
- 2.5.2 The Draft Regulations should expressly require relevant authorities to align their by-laws with the Standard By-laws. If there are inconsistencies between the Draft Regulations and the Standard Draft By-laws, we recommend that the Draft Regulations should take precedence.

2.6 Cost recovery for alterations

- 2.6.1 Regulation 5 deals with the recovery of costs incurred by a Licensee when its networks must be altered or moved at the instance of a local authority or other person under section 25(1) or 25(6) of the ECA. The regulation requires the licensee to submit an itemised invoice within 30 days of completion of the works and provides for disputes about the quantum to be resolved by agreement or by a court. The Draft Regulations say nothing about when the responsible local authority or other person must pay.
- 2.6.2 This is a one-sided obligation. In practice, licensees are routinely required to move infrastructure to accommodate municipal, regional or national roads, water or sanitation projects, often at substantial cost. The current draft does not even recommend that the requesting party confirms receipt of the invoice. The financial consequences for licensees, particularly those operating in metropolitan areas with active capital programmes, are material and undermine the very purpose of section 25, which is to ensure that the cost of relocations is properly allocated. We propose that Regulation 5 should be redrafted to allow for a speedy recovery for alterations costs from municipal authority, public utilities or other persons.

2.7 GIS database

- 2.7.1 Maziv supports, in principle, the establishment of a national infrastructure GIS database. Accurate, interoperable infrastructure information is an enabler of coordinated planning, infrastructure sharing and the reduction of duplication and accidental damage.
- 2.7.2 That said, regulation 7 in its current form raises significant competition and confidentiality concerns, particularly in respect of forward-looking rollout information. Mandating the bi-annual disclosure to ICASA of “areas designated for new or upgraded network rollouts”, projected start and completion dates and the specific technologies to be deployed, with a six-month transition period, will require licensees to disclose information that goes to the heart of their commercial strategy. Even where ICASA holds the data confidentially, the prospect of



subsequent access requests under the Promotion of Access to Information Act, 2000, or of disclosure pursuant to a competition inquiry, creates real risk. In addition to this, Maziv is bound to comply with the conditions imposed by the Competition Commission in the Maziv/Vodacom merger, which prohibits the sharing of future roll-out plans with Vodacom.

- 2.7.3 Maziv proposes that the appropriate regulatory balance be maintained to differentiate between (i) infrastructure information that supports the public-good objectives of coordination and shared planning, which can and should be shared on an aggregated or appropriately abstracted basis, and (ii) commercially sensitive, forward-looking strategic information that should either not be required or should be held under strict confidentiality and access protocols. As an example, the GIS database does not need to inform licensees where Company A intends to build its next 5G site or share information such as location of Points of Presence. Regarding geolocation of infrastructure, not all components are geolocated (specifically FTTH), which could prevent reporting on the type of detail, but can possibly be shared based on for example, the type of infrastructure per geolocated route).
- 2.7.4 The public sharing of very detailed information could also lead to organised sabotage and vandalism. It should further be noted that unlike base station sites that have physical security, fibre routes and handholes/manholes have limited security (due to volumes, costs associated and impracticality of being able to secure them).
- 2.7.5 In general, available capacity should also take into account capacity for an operator's own growth requirements vs. available capacity.
- 2.7.7 Finally, on the format of the information, not all information is currently in the requested format and would require reformatting and re-documentation at a significant cost. It should be considered that should the regulations be promulgated, operators submit information in the format they have available and subject to non-submission of detailed information due to the commercial and operational risks, as well as risks of contravention of the Maziv/Vodacom merger conditions and competition law, as indicated.

2.8 Wayleave certificate

- 2.8.1 Regulation 4(1)(e) requires a licensee to obtain a wayleave certificate "following the by-laws of the relevant authority". This effectively preserves the regime of inconsistent application requirements; fees that are not cost-based and that vary widely across municipalities; inconsistent deposit and surety regimes that lock up working capital; and processing times that bear no relationship to any defensible administrative timeline. Regulations should provide an efficient and reliable mechanism to compel a recalcitrant authority to comply with

the required timelines. In addition, a wayleave certificate is subject to compliance with applicable bylaws – while it is those bylaws which are at issue.

2.9 Contravention and Penalties

- 2.9.1 Regulation 9 provides for fines of up to R150 000 for contraventions of regulations 3 and 4 (licensee responsibilities and the process for entry onto land) and R1 000 000 for contraventions of regulations 6 (Compensation) and 7 (GIS Database). The amounts appear arbitrary and punitive. There is no equivalent sanction for relevant authorities that fail to perform their statutory functions, charge fees that bear no relationship to cost, take wayleave decisions outside any reasonable timeframe (or fail to take any decision at all). In addition, the penalties relating to the GIS database will have a major impact on licensees and particularly smaller licensees. We therefore recommend a review of these penalties and for regulation 9 not to be focused on licensees only.
- 2.9.2 Although Maziv appreciates that the Authority's jurisdiction in respect of relevant authorities differs from its jurisdiction over licensees, the Draft Regulations unnecessarily compounds this asymmetry by attaching significant penalties to compliance failures by licensees while remaining silent on the conduct of public utilities and state entities that are the principal drivers of slow deployment. At a minimum, the Authority should create a database and publish an annual report on the relevant authority's performance as regards the processing of wayleave applications and provide remedial measures/recommendations to improve rapid deployment.

2.10 Dispute Resolution

- 2.10.1 Regulation 8 envisages negotiation, voluntary mediation, referral of inter-licensee disputes to the CCC, arbitration by agreement, or recourse to a court of competent jurisdiction. The regulation says nothing about timelines for each step of the process or a fast-track dispute resolution process.

3. Conclusion

- 3.1 Maziv supports a transparent, predictable and time-bound regulatory framework that supports the rapid rollout of broadband infrastructure while protecting the legitimate interests of landowners, relevant Authorities and public utilities.
- 3.2 However, as currently drafted, the Draft Regulations risk entrenching the status quo and disincentivise rapid roll out of broadband infrastructure. Unequivocally, the largest obstacle to the rapid deployment of electronic communication networks has been delays occasioned by local authorities. The regulations impose obligations singularly on licensees, codify a broad compensation right that seems inconsistent with the Constitutional Court's judgment in *Link*



Africa, mandates disclosure of forward-looking commercial information that raises competition concerns, and add processes which do not seem to address or improve the rapid deployment. The regulations also do not address the Council Committee research findings contained in the Explanatory Memorandum.

- 3.3 Maziv urges the Authority to consider the concerns raised in this submission and amend the regulations so as to support national policy objections and rapid deployment. Maziv welcomes further engagement on the matters raised in this submission, including by participating in any public hearings that may be convened.