



Chairperson: Rapid Deployment Council Committee
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Dear Sir,

DRAFT REGULATIONS ON RAPID DEPLOYMENT OF ELECTRONIC COMMUNICATIONS NETWORKS AND FACILITIES, 2026 - PUBLIC COMMENTS

1. Introduction

- 1.1. rain (Pty) Ltd ("rain") welcomes the publication of the draft regulations and supports the objective of accelerating the rollout of affordable, high-speed broadband infrastructure across South Africa. A workable rapid deployment framework can materially reduce rollout delays, lower deployment costs and support continued private investment in national communications infrastructure.
- 1.2. At the same time, rain is concerned that the regulatory process is becoming layered and potentially premature. As we understand it, the Minister has extended the deadline for submissions on the draft policy direction on rapid deployment, yet ICASA has already published detailed draft regulations. In rain's view, there is a real risk that detailed operational rules are being proposed before the broader policy process has fully run its course and before key underlying policy issues have been properly settled.
- 1.3. rain's comments below draw on the concerns already raised in its submission on the draft policy direction as of the most material issues remain the same. rain also shares the broader concerns that have now been raised publicly by the Association of Comms and Technology, particularly in relation to the proposed GIS database, the protection of commercially sensitive infrastructure information, national security implications, the absence of stronger measures to address municipal wayleave bottlenecks, and the risk that the framework becomes so complex causing further operational delays.
- 1.4. In rain's view, the central concern is that the framework, in its current form, may introduce additional process, cost and compliance burden without adequately addressing the principal external causes of rollout delay. A rapid deployment regime should remove friction from deployment. It should not add layers of operational complexity while leaving the main blockers substantially intact.

2. Key Recommendations

rain's key recommendations are:

- 2.1. The final regulations should be aligned with, and not effectively pre-empt, the still-open policy process on rapid deployment.
- 2.2. The framework should focus on the real deployment bottlenecks, namely fragmented and unpredictable municipal approvals, inconsistent by-laws, excessive or opaque fees and long approval periods.
- 2.3. The final regulations should not place disproportionate new compliance burdens on licensees while leaving the principal external blockers largely untouched.
- 2.4. The regulations should expressly recognise the role of non-licensee infrastructure providers, including tower companies, landlords and passive infrastructure owners, whose conduct materially affects deployment timelines and costs.
- 2.5. The GIS framework should be substantially narrowed and made proportionate, secure and purpose-limited, with clear restrictions on access, use, onward disclosure and retention of information.
- 2.6. The penalty and implementation framework should be proportionate to the complexity of the obligations and should allow a realistic implementation period, especially for GIS compliance.
- 2.7. The framework should preserve operators' ability to self-provision infrastructure, where justified by resilience, security, capacity, quality of service, timing or dependency-risk considerations.

3. Sequencing and Regulatory Coherence

- 3.1. The draft policy direction expressly contemplated that ICASA would consider amendments to the Facilities Leasing Regulations and develop Rapid Deployment Regulations as part of a broader policy process. rain is therefore concerned that the publication of detailed draft regulations before the policy process has been finalised may result in misalignment between policy and regulation, duplication between frameworks and avoidable uncertainty for licensees.
- 3.2. rain respectfully submits that the final regulations should be expressly sequenced and calibrated against the final policy position. At a minimum, ICASA should acknowledge the overlap between the still-open policy process and the present draft regulations and should avoid locking in detailed obligations on issues that remain under active policy consideration.

4. Primary Deployment Constraints Remain

- 4.1. rain agrees with ICASA's diagnosis that inconsistent municipal processes, excessive fees, long approval timelines and fragmented approvals materially slow network deployment. However, the draft regulations do not yet adequately solve these practical bottlenecks.
- 4.2. In practice, the most significant problem remains the absence of standardised municipal wayleave processes, binding turnaround times and meaningful consequences for delay. The regulations require licensees to obtain all necessary approvals, including wayleaves, but do not impose equivalent obligations on municipalities or create a sufficiently effective mechanism to deal with municipal inaction.
- 4.3. If the rapid deployment framework is to be effective, it should include stronger measures directed at the actual point of delay, including nationally consistent application requirements, standardised processes and documentation, clear decision timelines, deemed approval or escalation mechanisms where deadlines are missed, fee discipline and coordinated engagement with the Department of Cooperative Governance and Traditional Affairs and the South African Local Government Association (SALGA) on uniform implementation of municipal by-laws. rain proposes that the final regulations include the following specific mechanisms to address municipal delay: (a) a deemed-approval provision whereby a wayleave application is treated as approved if the relevant municipal authority has not issued a decision within 30 business days of receipt of a complete application, subject to any prescribed notice

requirements; (b) a fee cap limiting municipal wayleave fees to the documented reasonable administrative cost of processing the application, with ICASA empowered to investigate and set aside fees that exceed that cap; (c) a prescribed escalation pathway to COGTA and SALGA where a municipality repeatedly fails to process applications within the prescribed period; and (d) standardised national application forms and supporting documentation requirements, to be prescribed by ICASA, so that operators are not required to comply with inconsistent municipal documentation demands. These mechanisms are proportionate, legally grounded in section 21 of the ECA, and directly address the principal external causes of rollout delay that the draft regulations otherwise leave unresolved.

5. Scope of the Framework: Non-Licensee Infrastructure Providers

- 5.1. A further structural gap is that the draft regulations remain focused primarily on licensees, landowners and authorities, while much of the real bottleneck sits with entities outside that framework. Tower companies, neutral host providers, landlords, passive fibre and duct owners and other infrastructure holders frequently control access to critical sites and assets, influence deployment sequencing and materially affect rollout cost and timing.
- 5.2. A rapid deployment regime that does not adequately address these actors will remain incomplete. The final regulations, or a parallel framework, should therefore recognise non-licensee infrastructure providers and consider appropriate measures dealing with access terms, co-location processes, response timeframes, core charge transparency and effective dispute escalation.
- 5.3. Where a non-licensee infrastructure provider is the wayleave applicant or otherwise controls the physical infrastructure record, the regulatory framework should also distinguish between the entity that owns or controls the physical asset and the downstream operator that merely leases or occupies capacity on that asset.

6. Regulation 4: Entry, Consultation and Access Arrangements

- 6.1. rain supports lawful and respectful engagement with landowners and affected parties. However, certain aspects of regulation 4 require refinement to ensure that the framework remains proportionate and does not inadvertently convert procedural requirements into an effective veto over deployment.
- 6.2. First, regulation 4(1) appears to conflate statutory approvals with approvals from "affected parties". To the extent that this provision is read as requiring private approval or consent as a precondition to deployment, it risks going beyond a procedural framework and undermining the statutory scheme in Chapter 4 of the ECA. The regulations should distinguish clearly between governmental approvals required by law and private engagement or access arrangements.
- 6.3. Secondly, regulation 4(2) and 4(3) introduce broad consultation obligations, including community consultation, without adequately distinguishing between high-impact deployments and routine, low-impact works. These requirements should be more targeted and proportionate, especially for maintenance, repair, upgrades, deviations and minor network changes.
- 6.4. Thirdly, regulation 4(4)(e), read with regulation 4(6), may be interpreted as making the conclusion of an access agreement a mandatory condition for deployment, failing which deployment is effectively suspended pending dispute resolution. That should be clarified. The regulations should preserve a structured process for engagement and dispute management without creating a *de facto* consent requirement or a mechanism that allows deployment to be delayed indefinitely.
- 6.5. rain also submits that the prescribed notice periods should be calibrated more carefully to the nature of the activity in question. A uniform approach may be workable for certain greenfield or high-impact deployments, but is less appropriate for routine maintenance, network upgrades,

deviations within existing corridors or other low-impact works. The final framework should allow for a more proportionate approach that preserves fairness to affected parties without introducing avoidable delay into ordinary deployment activity.

7. Duplication, Coordination and Self-Provision

- 7.1. rain supports measures aimed at avoiding unnecessary duplication where suitable infrastructure is genuinely available on reasonable terms. However, the final regulations should not create an implicit lease-before-build framework or otherwise curtail legitimate self-provision.
- 7.2. Operators must retain the ability to build their own infrastructure where justified by resilience, security, timing, quality of service, capacity constraints, technology choices, dependency risk or other legitimate technical and commercial considerations. Regulation 4(15) and 4(16) should therefore be interpreted and refined in a manner that supports efficient coordination without undermining investment incentives or operational flexibility.
- 7.3. In particular, trench-sharing or co-build arrangements should remain subject to commercial agreement, technical feasibility, capacity availability and legitimate operational requirements. Coordination should be encouraged where it improves efficiency, but it should not operate as a de facto obligation that constrains network strategy or compels operators to accept dependency on infrastructure arrangements that are not fit for purpose.

8. Regulation 7: GIS Database, proportionality and Confidentiality

- 8.1. rain supports the principle of better coordination of infrastructure deployment. However, regulation 7 and Appendix A raise the most serious concerns in the draft regulations and, in their present form, require substantial reconsideration.
- 8.2. The proposed GIS obligations are exceptionally broad. They would require licensees to submit georeferenced information on passive infrastructure, service availability mapped to the address level, available space or capacity, and forward-looking planned investments, including rollout areas, timelines and technologies. Combined, these requirements may reveal network design, resilience architecture, deployment sequencing, investment priorities and commercially sensitive strategy. Centralisation of this level of infrastructure intelligence also raises obvious security concerns if the data is compromised, misused or accessed by unauthorised parties.
- 8.3. These concerns are amplified by the current lack of detail in the draft regulations on who will have access to the information, what granularity will apply in practice, what security controls and audit mechanisms will be imposed, whether other state entities or third parties will have access, how long the information will be retained, how requests for access will be handled and what remedies will apply in the event of misuse or unauthorised disclosure.
- 8.4. Therefore, the final framework should adopt a significantly more proportionate and secure model. At a minimum:
 - 8.4.1. data fields should be narrowly and exhaustively defined in advance and limited to what is strictly necessary for a clearly articulated regulatory purpose;
 - 8.4.2. granular operator-specific data should be accessible only to designated officials for authorised regulatory use and should not be publicly available, competitor-facing or shared more broadly without a lawful, necessary and tightly controlled basis;
 - 8.4.3. the framework should differentiate between physical infrastructure ownership records, wayleave records and licensee occupancy or use records, so that tenant operators are not treated as the authoritative source for third-party assets outside their ownership or control;

- 8.4.4.any public or cross-government outputs should be aggregated, anonymised or de-identified;
- 8.4.5.particularly sensitive information, including forward-looking rollout plans, capacity information and resilience-sensitive infrastructure details, should either be excluded altogether or subject to heightened confidentiality treatment and strict access controls;
- 8.4.6.ICASA should set out a clear security governance framework, including role-based access, technical security standards, logging, incident notification, audit requirements and consequences for misuse;
- 8.4.7.operators should be afforded a clear and practical process to claim confidentiality over specified data fields and, where confidentiality is rejected, an opportunity to withdraw the affected information before disclosure.
- 8.5. rain is particularly concerned by the inclusion of forward-looking rollout information and address-level service availability in the minimum dataset. Those categories go beyond what is reasonably necessary for many coordination purposes and materially heightens both security and competitive risk. They should be reconsidered, substantially narrowed or removed.
- 8.6. rain also notes that the technical format requirements in Appendix A appear demanding and prescriptive, including detailed GIS standards and data-structure requirements. Those requirements should be finalised only after deeper technical consultation with industry and after sufficient implementation lead time has been allowed.
- 8.7. In addition to the confidentiality and security concerns set out above, the proposed GIS regime is likely to impose a significant operational burden on licensees. The scale, granularity, format and frequency of the required submissions will require substantial system development, data validation, governance controls and ongoing operational resource. That burden should be carefully weighed against the actual regulatory purpose served by each data field and reporting requirement.

9. Dispute resolution

- 9.1. rain welcomes the fact that the draft regulations do not adopt the most extreme formulation contained in the draft policy direction, which contemplated that deployment may not continue while a dispute is pending. Even so, the present framework still needs refinement to ensure that disputes do not become another practical source of deployment delay.
- 9.2. The dispute process should be structured, time-bound and proportionate. It should encourage good-faith engagement and mediation but should not permit procedural disputes, unresolved access-agreement negotiations or tactical objections to operate as an effective moratorium on rollout. The final regulations should make clear that dispute procedures are intended to resolve genuine issues efficiently, not to create leverage for delay.
- 9.3. In addition, the interaction between the consultation, access agreement and dispute provisions should be clarified so that the mere existence of an unresolved negotiation does not, on its own, suspend deployment indefinitely. The framework should distinguish between genuine disputes requiring escalation and ordinary commercial engagement that can continue in parallel with lawful deployment steps.

10. Penalties and Implementation Timeframes

- 10.1. rain is concerned that the penalty framework, particularly the fine of up to R1 million for non-compliance with regulations 6 and 7, is disproportionate in light of the breadth and complexity of the GIS and compensation-related obligations. Enforcement should encourage workable

compliance, not deter investment or penalise operators for reasonable implementation challenges arising from an untested and technically demanding regime.

10.2. rain is also concerned that the six-month implementation period for regulation 7 may be insufficient for licensees to design, test, validate and operationalise the necessary systems, governance and security processes, especially where the final scope of the data fields and format requirements is still uncertain. ICASA should consider a longer implementation window, phased compliance and further technical engagement before finalising the GIS obligations.

10.3. rain is also concerned that the compensation framework in regulation 6 is expressed at a high level and may create uncertainty if left without further guidance. In particular, compensation for restrictions on the use of land should be framed carefully and tied to demonstrable and objectively assessed loss. Absent clearer parameters, there is a risk of inflated or inconsistent claims, avoidable disputes and increased deployment cost. The final regulations should provide greater clarity on compensable loss and ensure that the framework remains workable, predictable and aligned with established legal principles.

10.4. In addition, regulation 5 should allow sufficient flexibility in relation to the removal of decommissioned infrastructure. A fixed 60-day removal period may be unduly rigid in circumstances where infrastructure is being retained for future use, remains safe and forms part of broader network planning. A more flexible, risk-based approach would better reflect operational reality while still addressing genuine safety or land-use.

11. Conclusion

rain supports the objective of rapid deployment and agrees that South Africa requires a clearer and more effective regulatory framework to support broadband rollout. However, the final regulations should be properly sequenced, focused on the real causes of delay and calibrated so that they remove friction rather than add it.

In particular, the final framework should address municipal and wayleave bottlenecks more directly, recognise the role of non-licensee infrastructure providers, preserve operators' ability to self-provision, ensure that disputes do not delay deployment unnecessarily, and substantially narrow and secure the proposed GIS regime to protect sensitive infrastructure and commercial information.

rain would welcome the opportunity to expand on these comments in oral representations should ICASA decide to hold public hearings.

Sincerely,

rain legal