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Chairperson: Rapid Deployment Council Committee
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Per email: RapidDeployment@icasa.org.za

Dear Chairperson,

RE: DRAFT REGULATIONS ON RAPID DEPLOYMENT OF ELECTRONIC COMMUNICATIONS NETWORKS AND FACILITIES, 2026

Telkom SA SOC LTD ("**Telkom**") thanks the Independent Communications Authority of South Africa for the opportunity to provide written comments on the draft Rapid Deployment Regulations, as published on 10 April 2026 in Government Gazette 54484, under Notice No. 7364 of 2026 ("**draft Regulations**").

Please find herewith Telkom's written comments on the draft Regulations.

Should the Authority decide to hold public hearings in relation to the draft Regulations, Telkom would like an opportunity to make an oral presentation at such public hearings.

Yours Sincerely



Nozipho Mngomezulu
Group Executive: Regulatory and Legal Affairs

Telkom Submission

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

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1 EXECUTIVE SUMMARY

On 10 April 2026, the Independent Communications Authority of South Africa (“**the Authority**” or “**ICASA**”) published for comment the draft Rapid Deployment Regulations in Government Gazette 54484, under Notice No. 7364 of 2026 (“**draft Regulations**”). The draft Regulations propose to introduce, amongst other things:

- processes and procedures for entry upon public and private land or property,
- a dispute resolution mechanism for disputes between electronic communications network service (“**ECNS**”) licensees, landowners, and/or other affected parties,
- a compensation framework for landowners, and
- a Geographic Information System (“**GIS**”) database and the responsibilities of ECNS licensees in relation thereto.

Telkom’s submission addresses mainly three key matters, which we elaborate on in the section 2 of this submission:

- a) the need for a harmonised policy/regulatory framework between all stakeholders governing access to public and private land and property;
- b) the importance of stakeholder coordination and standardisation of processes and procedures; and
- c) the implementation and use of the GIS data, including the use of Open Fibre Data Standard (“**OFDS**”).

Harmonised policy/regulatory framework

The draft Regulations have been developed within an existing and rapidly evolving legal and regulatory framework. Of particular concern to Telkom is the timing of publishing the draft Regulations. While the Minister of Communications and Digital Technology (“**Communications Minister**”) is in the process of consulting on the new Rapid Deployment Policy Direction (“**draft RDP Direction**”), the Authority has gone ahead and published the draft Regulations, this despite the fact that the ministerial process is still ongoing. Moreover, we note that the Communications Minister has also published the Electronic Communication Act Amendment Bill, 2026 (“**the Bill**”), which purports to amend the Electronic Communications Act, 2005 (“**ECA**”).

The Bill proposes, amongst other things, the insertion of section 21A relating to the Minister of Cooperative Governance and Traditional Affairs’ (“**COGTA**”) power to publish regulations that will apply to municipalities. It goes without saying that the draft RDP Direction and the Bill will have a material impact on legislative framework governing rapid deployment. As such, it is Telkom’s submission that proceeding with the development of the draft Regulations, while the engagements relating to the draft RDP Direction and the Bill are ongoing, may be premature and may ultimately create unnecessary duplication and/or contradictions in the legislative framework governing rapid deployment.

Better coordination amongst stakeholders

Lack of coordination amongst various affected stakeholders across different sectors was identified in the ICT Policy White Paper as the one of the core reasons for the duplication of infrastructure and the delay in electronic communication network (“**ECN**”) deployment (section 9.3.1.2). The Policy White Paper identified ECNS licensees, municipalities, the Department of

Public Works, as well as public utility networks like Eskom, Transnet etc. as the stakeholders amongst whom coordination is required to minimise delays in infrastructure deployment and unnecessary duplication.

The speed of deployment of ECNs and facilities on private and public land are influenced by the success of multi-stakeholder coordination and exchange of data. The most notable stakeholder is government, through its various government structures e.g. municipalities and departments that control access to public land. To ensure better coordination, it will be necessary for the Authority to ensure that the draft Regulations are aligned with the Standard Draft By-laws. The Authority must also avoid creating duplicate processes and procedures for landowners (particularly municipalities) and ECNS licensees, as this will inevitably result in further delays and regulatory uncertainty.

Use of GIS data

There remains a need to define a clear standard interface between ECNS licensees and municipalities (and other stakeholders) to exchange spatial information. This is one area where much greater efficiency could be obtained. If municipalities also align with the OFDS proposed by the Authority, the speed of exchange, accuracy and verification should dramatically improve. However, municipalities and other stakeholders need to also align with this standard to reap this benefit.

Telkom supports the use of GIS data, as well as the adoption of the OFDS, for spatial data sharing. However, this must be managed carefully as the acquisition of GIS data or spatial information may not necessarily come without its own complexities, including, without limitation, security risks and competition concerns where co-build is being undertaken between competitors. In particular, (i) the co-build parties could face accusations of dividing the market, (ii) the disclosure of GIS spatial information to the public, including to competitors, could compromise network security, and (iii) the submission of complete and accurate data relating to legacy networks may not be possible in certain instances as this information may not be readily available. Compiling this data will require a substantial number of resources, including funds, people and time.

Infrastructure sharing and co-build (i.e. mandatory trench-sharing) may be impractical and commercially distortive. Telkom recommends that single-trench sharing and co-build be driven by commercial imperatives and not made compulsory. In this regard, it is our submission that OFDS-enabled spatial information coordination will encourage commercially driven co-build.

Telkom supports modernisation through OFDS and improved spatial information coordination but warns that the draft Regulations, if finalised in the current form, risk adding complexity, duplicating municipal processes, and creating legal uncertainty. A single, harmonised national framework supported by phased OFDS adoption is essential to unlock faster, more efficient network deployment.

2 GENERAL COMMENTS

2.1 Need for harmonised policy and regulatory framework

In terms of section 21 of the ECA, the Authority must prescribe regulations governing rapid deployment. Telkom submits that, to ensure effective alignment, any action by the Authority in terms of section 21 must be done within the broader legislative and policy context. The draft Regulations follow in the wake of, amongst other things, the National Integrated ICT Policy White Paper, 2016¹ ("**Policy White Paper**"), the National Policy on Rapid Deployment, 2023² ("**2023 RDP**"), and the Standard Draft Municipal By-laws, 2023³ ("**Standard Draft By-laws**") (which set out, *inter alia*, the processes and procedures for accessing municipal property), as published by the Minister of COGTA for adoption by municipalities. The National Spatial Planning and Land-use Management Act of 2013⁴ ("**SPLUMA**") and the Infrastructure Development Act, 2014⁵ ("**IDA**") also form part of the broader legislative framework impacting rapid deployment.

As stated above, in parallel with the process relating to the publication of the draft Regulations, the Communications Minister has published the draft RDP Direction (published prior to the publication of the draft Regulations) and the Amendment Bill (published post publication of the draft Regulations). It goes without saying that these developments have a direct impact on formulation and implementation of the draft Regulations. In this context, Telkom is of the view that it is indeed appropriate for the process of formulating the draft Regulations to be paused pending at least the completion of the Amendment Bill.

In addition, the Authority engaged the industry on the adoption of the OFDS as a standard for spatial information sharing. At the engagement workshop held on 23 April 2026, the Authority advocated for the adoption of the OFDS (as a voluntary standard). If adopted by all stakeholders, the OFDS could assist with planning, coordination, and seamless information exchange. This could of course increase efficiencies for all parties involved. However, in order to reap the full benefit of the OFDS, it will be necessary for all stakeholders, including municipalities, to adopt this this standard. This will require collaboration between the Authority and various government departments, including the Department of Communications and Digital Technologies ("**DCDT**") and the and Department of Cooperative Government and Traditional Affairs ("**COGTA**").

There are a number of laws, policies and regulations that govern access to private and/or public land that may impact the rapid deployment of networks and facilities. To ensure alignment, these instruments (as listed below) must be considered in the development of the draft Regulations. .

- The SPLUMA:
 - o Provides a national framework for spatial planning, land use management, and development applications across all spheres of government. It provides a framework for policies, principles, norms and standards for spatial development planning and land use management and promotes greater consistency and uniformity in the application

¹ GG 40325, Notice No. 1212, 3 October 2016

² GG48346, Notice No. 3236, 31 March 2023

³ GG 48113, Notice No. 3087, 24 February 2023

⁴ GG 36730, Notice No. 559, 5 August 2013

⁵ GG 37712, Notice No. 447, 2 June 2014

procedures and decision-making by authorities responsible for land use decisions and development applications.

- IDA:
 - Prioritises, facilitates, and coordinates public infrastructure projects of high economic or social importance to South Africa. It ensures these projects are fast-tracked through planning and approval phases while promoting the state's broader development goals. Additionally, the IDA improves infrastructure management across its entire lifecycle and coordinates Strategic Integrated Projects (“**SIP**”), such as SIP 15 for expanding communication technology.
- Policy White Paper:
 - Identifies coordination failures and duplication amongst government as core barriers to infrastructure deployment and points towards the importance of inclusive planning of new infrastructure projects by government by including ICT infrastructure in the planning phase, which could minimise duplication and disruption of infrastructure.
 - Points towards the lengthy periods it takes for ECNS licensees to secure authorisations from numerous government bodies and landowners before being able to commence with network deployment projects and the consequential escalating cost impact on them.
 - Highlights the value of coordination amongst multiple stakeholders to minimise duplication, which can accelerate deployment of ICT infrastructure while ECNS licensees benefit from higher network deployment efficiency.
 - Coordination requires exchange of geographic information, which underpins the value of using GIS, which could assist in the acceleration of ECN deployment. The GIS system could be a centralised or a decentralised system.
- Standard Draft By-laws:
 - Aims to facilitate the rapid deployment of electronic communications infrastructure and apply to all persons seeking to deploy or operate electronic communications facilities on, under, or above municipal property.
 - Municipalities should adopt the Standard Draft By-laws into their existing municipal by-laws and define a standard application interface framework between ECNS licensees and municipalities to access municipal land. According to Telkom’s information, these by-laws have been adopted by a mere four municipalities.
- RDP:
 - Recognised red tape across government spheres as a major cause for delays in the deployment of broadband infrastructure and directs the Authority to prescribe rapid deployment regulations. The regulations must include procedures and processes for resolving disputes that may arise between a licensee and a property owner or any affected person whose rights or legitimate expectations may be materially and adversely affected when a licensee enters upon and uses public and private land for the deployment of broadband infrastructure.
 - The RDP was preceded by consultation between the Minister of DCDT and several Ministers including the Minister of COGTA, the Minister of Rural Development and Land Reform, the Minister of Water and Environmental Affairs, the Authority and other relevant institutions on matters relevant to ECN and facilities deployment. It is noted

- in the draft policy direction that the Competition Commission have also been consulted.
- The RDP guides the Authority in preparing the draft Regulations. Key policy issues included confirmation of the right to deploy network on private and public land and ownership, access to government servitudes, access to government infrastructure, conditions of access to land, compensation and fees, dispute resolution mechanisms, geographic information system, environmental impact assessments. The RDP directs the Authority to develop rapid deployment regulations which must include procedures and processes for resolving disputes.
 - Policy Colloquium:
 - The Minister of DCDT hosted an industry, government and civil society stakeholders Policy Colloquium on 17 October 2025. The Policy Colloquium report states: *“The pace of infrastructure rollout is too slow... the primary deterrents are inefficient municipal processes, rent seeking behaviours, vandalism, and uncoordinated public infrastructure investments.”* The Policy Colloquium Feedback Report (**“the Report”**) was published in December 2025.
 - In summary, one message as contained in the Report remains consistent: *“The pace of infrastructure rollout is too slow, and the primary deterrents are inefficient municipal processes, rent seeking behaviours, vandalism, and uncoordinated public infrastructure investments.”* The Report further states: *“Coordination failures and the pervasive silo-effect in government increase the cost to communicate. Too often, departments are making decisions that not only lead to duplication of efforts but actively undermine the work of other departments”.*
 - Solutions proposed in the Report relating to rapid deployment include *“Enforce a standardised digital municipal process and model by-law for ICT infrastructure deployment, with set standards for turnaround times and transparent pricing. This requires a joint effort between DCDT, SALGA and COGTA, but will make it infrastructure planning and roll-out significantly easier and less costly.”*
 - Draft Policy Direction:
 - On 12 March 2026 the Minister published the draft Policy Direction which aims to provides further clarification and guidance to the Authority with respect to the RDP and the rapid deployment regulations which the Authority is required to prescribe. It adds new regulatory duties (e.g., wayleave oversight, essential facilities pricing, open access), expands the Authority’s role from implementer to active enforcer and verifier of wayleaves, introduces mandatory filings, data verification, and criteria-based assessments and requires ICASA to review and strengthen the Facilities Leasing Regulations.
 - Amendment Bill:
 - On 20 April 2026, the Minister of DCDT introduced the Amendment Bill in the National Assembly. The Amendment Bill deals with, amongst others, the role of the Minister responsible for Local Government in terms of standard draft by-laws, the wayleave application process, and the sharing of municipal property.
 - Open Fibre Data Standard:

- The Authority held an industry workshop on 23 April 2026 on OFDS (after the publication of the draft Regulations), to discuss the possible use, on a voluntary basis, of this standard, which could be used for exchanging spatial information of various data elements pertaining to ECNs and facilities.
- The Authority advocated for voluntary adoption of this standard to promote the standardised exchange of geospatial information between stakeholders to promote efficient infrastructure build. Presenters at the workshop indicated how much geospatial information they are willing to share about their network to enable coordination with other stakeholders.
- The standard and tools (Graphical User Interface (“**GUI**”), etc.) are freely available at no cost and is used globally. The Authority seemed to promote the use of a set of linked databases through which coordination and planning of infrastructure can be done, rather than using a centralised GIS database.
- The OFDS may be a valuable tool for dealing with geospatial information, which could promote coordination of infrastructure development projects. However, there was insufficient time to analyse its benefits in detail for purposes of this submission.

2.2 Rapid deployment regulations vs Standard Draft By-laws

There appears to be a lack of coordination or alignment between the Authority’s draft Regulations and the Standard Draft By-laws published by COGTA. Both seek to achieve the same objective namely access to municipal land. This duplication should be addressed to avoid additional burden on licensees and further delays in the deployment of ECN and facilities.

Municipalities control access to their land-use through their defined processes, procedures and conditions. In turn, the Authority’s draft Regulations seek to grant the Authority an oversight role for wayleave motivations, potentially encroaching on municipal jurisdiction and processes. Similarly, municipalities have their own dispute resolutions processes, whereas the Authority also seeks to define a dispute resolution mechanism as required in section 21(2) of the ECA. This is bound to create confusion for ECNS licensees when seeking access to public land and must be addressed.

The Authority’s powers extend to ECNS licensees, not landowners, while the Minister of COGTA’s powers extend to municipalities (and their land). Telkom is therefore of the view that rules governing access to public land (i.e. municipal property) would be better placed under the jurisdiction of the Minister of COGTA. The Standard Draft By-laws, which already addresses access to municipal land, should be expanded to address all public land at local, provincial and national level. Unfortunately, very few municipalities adopted the Standard Draft By-laws. One of the biggest challenges for ECNS licensees remains securing of wayleaves from municipalities, which have not adopted the Standard Draft By-laws.

For disputes, the Standard Draft By-laws contemplate that the municipality handle the dispute, failing which it may be referred to the DCDT’s Rapid Deployment Coordination Centre (“**RDCC**”) for resolution. The draft Regulations, however, contemplate that a land access dispute (seemingly applies to both public and private land) be referred to an independent mediator to facilitate voluntary mediation, or ICASA or any other industry representative may act as a mediator, subject to agreement between parties. Section 21(2)(b) of the ECA provides that the Authority prescribes dispute resolution procedures and processes between licensees and any landowner, which

includes both private and public land. It would therefore seem that all disputes should be handled by ICASA and therefore contained in the draft Regulations.

The Authority's rapid deployment regulations must define procedures and processes which ECNS licensees must follow to obtain any necessary permit, authorisation, approval or other governmental authority including the criteria necessary to qualify for such permit, authorisation, approval or other governmental authority. The Standard Draft By-laws only focus on municipal land but exclude provincial and national land and private land, while the draft Regulations extend to both public and private land.

The proposed section 21A in the Amendment Bill, requires the Minister of COGTA to make specific regulations under the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) for access to public land (municipal land, etc). The proposed changes could expand the Standard Draft By-laws, creating further uncertainty.

The Authority should not duplicate a framework that has been developed by the Minister of COGTA, or which may be developed under the Bill. .

Telkom advises the Authority to await the outcome of the Amendment Bill process, which should bring greater certainty on this matter. If the Authority proceeds prior to the finalisation of the Amendment Bill process, the Authority must ensure alignment with the Standard Draft By-laws. The Authority should also work with the Ministers of DCDT and COGTA to force the adoption of the Standard Draft By-laws by all Municipalities.

2.3 The need for policy harmonisation

2.3.1 The RDP versus the draft Policy Directions

The draft Policy Directions, although not yet concluded, proposes several new considerations for the Authority, which must be considered if finalised., such as:

- wayleave oversight, including the adjudication of leasing requests, which expands ICASA's role to verify and enforce wayleave applications.
- Introduces mandatory GIS filings, data and network verification.
- Requires ICASA to review and strengthen Facilities Leasing Regulations, which are absent from the 2023 RDP.
- Imposes a research and development obligation on ICASA.

The concern with the above is that the Authority will share responsibility for wayleave applications with local government., This will result in even more delays (and confusion) in securing wayleaves from municipalities. Considering that there are 257 municipalities whose wayleave applications would need to be screened by the Authority, it is doubtful whether the Authority has the necessary resources to handle the volume of wayleave applications, risking the Authority becoming a greater bottleneck for wayleave applications, which will defeat the principle of rapid deployment. It also risks undermining any commercially led co-build initiatives, which deters such initiatives.

2.3.2 Standard Draft By-laws vs the draft Regulations

Telkom assessed the draft Regulations and the Standard Draft By-laws, which reveals several divergent approaches. It is evident that these processes are not harmonised and creates duplicate work for ECNS licensees. Some key differences are indicated in Table 1 below:

Table 1 - Comparison between draft Regulations and Standard Draft By-laws

Issue	Draft Rapid Deployment Regulations	Standard Draft Municipal By-laws
Coordination between authorities and stakeholders	Requires consultation with landowners, affected parties, and communities; mandates cooperation with other licensees to avoid duplication. <i>"A Licensee must... promote cooperation with other Licensees..."</i> (Reg 4(15))	Municipality must coordinate all users of municipal property and notify wayleave holders of overlapping works. <i>"The Municipality will co-ordinate all users of Municipal Property..."</i> (By-law 10(6))
Public participation / consultation obligations	Mandatory consultation with landowners and communities before deployment. <i>"A Licensee... must consult the landowner and affected person(s)..."</i> (Reg 4(3))	Municipality may require public participation for standard works unless exempted. <i>"The Municipality may... require that the applicant conducts a public participation process..."</i> (By-law 6(6))
Protection of property and reinstatement obligations	Licensees must prevent damage, repair damage, and restore property. <i>"A Licensee must... repair damages... restore property to its former state..."</i> (Reg 3(1)(b)-(c))	Wayleave holders must reinstate municipal property and comply with standards. <i>"Standards and specifications... must be set out in the Wayleave..."</i> (By-law 12)
Compensation for damages or loss	Provides a framework for compensation for damages, land-use restrictions, and patrimonial loss. <i>"A Licensee must pay compensation... for incident damages..."</i> (Reg 6(5))	Municipality may recover costs for remedial work; wayleave holders indemnify municipality. <i>"Tariffs... remedial work where there has been non-compliance..."</i> (By-law 13(1)(c))
Dispute resolution mechanisms	Provides negotiation → mediation → arbitration/court pathway. <i>"A Licensee must first attempt to resolve the dispute through negotiation..."</i> (Reg 8(1))	Disputes escalated to negotiation and the Rapid Deployment Coordinating Committee (RDCC). <i>"The Municipality will seek to resolve disputes... through negotiation... escalation to the RDCC..."</i> (By-law 21)
Removal or relocation of infrastructure	Requires removal of obsolete facilities within 60 days; cost recovery rules. <i>"A Licensee must decommission and remove... within sixty (60) days..."</i> (Reg 5(5))	Sets rules for removal/relocation of facilities and cost responsibilities. <i>"The Municipality is required to bear the cost... necessary due to work undertaken by the Municipality..."</i> (By-law 19(1))
Emergency works and maintenance procedures	Requires 14-day notice for maintenance; emergency procedures must be included in access agreements. <i>"The Licensee must include a clause on emergency maintenance..."</i> (Reg 4(13))	Defines Emergency Works and provides fast-track wayleave processing. <i>"Processing of Wayleaves for Emergency Works ranks higher in priority..."</i> (By-law 7(1))
Infrastructure sharing / avoiding duplication	Requires trench-sharing, co-builds, and cooperation to minimise duplication. <i>"A Licensee must... promote cooperation... minimise duplication..."</i> (Reg 4(15))	Municipality may require additional ducting or dark fibre for future sharing. <i>"The Municipality may include a requirement... deploy additional duct space..."</i> (By-law 11(4))
GIS data obligations	Requires bi-annual GIS submissions with detailed infrastructure and service availability data. <i>"A Licensee must submit accurate and complete GIS data..."</i> (Reg 7(1))	Requires as-built drawings and GIS information after completion of works. <i>"...provide the Municipality with as-built drawings and GIS information..."</i> (By-law 9(8))
Enforcement and penalties	Fines up to R150k for entry violations and R1m for GIS non-compliance. <i>"A</i>	Sanctions for non-compliance, including refusal of future wayleave

Issue	Draft Rapid Deployment Regulations	Standard Draft Municipal By-laws
	<i>Licensee... is liable to a fine...</i> (Reg 9)	applications. <i>"The Municipality... reserves the right not to accept any further Wayleave applications..."</i> (By-law 16(3))

The two regulatory instruments are clearly not aligned on several key matters. This create confusion and duplication of work for ECNS licensees. Failure to harmonise these matters will negatively impact access to land by licensees, which must be avoided.

2.4 Coordination and the adoption of a GIS standard

ECN licensees must coordinate with other stakeholders to deploy their networks and the exchange of spatial information in this process is vital. This coordination happens at various levels:

1. Between government departments.
2. Between licensees and government (national, provincial and local municipal level) and utility providers (e.g. Eskom, Transnet, etc.) to obtain access to public land.
3. Between ECNS licensees and persons identified in section 29 of the ECA (e.g. any person who constructs, equips or carries on any railway or works for the supply of light, heat or power by means of electricity).
4. Between ECNS licensees.

If all parties involved in the exchange of spatial information for coordination adopt a single standard, this could dramatically reduce the speed and accuracy of coordination amongst parties. However, this is no small task as there are numerous factors that will impact the adoption and harmonisation of a common GIS standard.

Telkom supports coordination of infrastructure development through the exchange of spatial information. This can only be achieved if coordination is done through the exchange of standardised, interoperable spatial information across all stakeholders, not only ECNS licensees. Coordination will also require frameworks such as procedures and processes amongst parties. This must also take place within the confines of competition law amongst competitors.

The GIS database proposed in the draft Regulations, assumingly to be administered by the Authority, would require licensees including Telkom to exchange spatial information with the Authority. The draft Regulations however do not refer to the use of OFDS, which was advanced at the Authority's workshop held on 23 April 2026. Telkom in principle supports the voluntary adoption of OFDS for the exchange of spatial information, recognising the benefits that it may bring in support of planning, coordination, and the avoidance of duplication of infrastructure. The use of OFDS will also support the Policy White Paper's call for the interconnection (linking) of various sets of GIS systems.

The draft Regulations prescribe a specific format and data file types, which licensees are required to submit to the Authority for purposes of entry into the GIS database. It is however not clear if the draft Regulations aligns with OFDS, which requires further examination. Also, the Authority proposed at the workshop that OFDS should remain a voluntary standard, which must be reflected in the regulations.

Notwithstanding the anticipated benefits, Telkom is cautious on acquiring data for older and legacy ECNs and facilities, which may require substantial time and resources. Also, as indicated above, sensitive spatial data relating to ECNs and facilities must be secured and disclosure to 3rd parties should occur only under strict and agreed controlled conditions and in compliance with competition law. Sufficient time is needed for stakeholders to align on the use and implementation of such standard. Since government, regulators, utilities and ECNS licensees need to migrate to this standard, it requires a phased implementation approach.

Telkom also cautions against the misuse of data. The necessary security systems will have to be in place to ensure that data, especially confidential data, is protected against unauthorised access and use. Telkom is very concerned that the draft Regulations doesn't address the use and access of the GIS data. It is therefore not clear how this data will be use and which parties will have access to the data and for what purposes. Furthermore, as indicated above, compliance with competition law must be always ensured.

Lastly, whereas the draft Regulations addresses the GIS data to be supplied, it is completely silent on how this data will be used and with whom it will be shared. This is a fundamental gap in the draft Regulations that must be addressed.

3 SPECIFIC COMMENTS

3.1 Definitions

3.1.1 “Affected Parties”

The draft Regulations propose a definition of Affected Parties as follows:

“Affected Parties” means any person, including the landowner, with a registered or recognised legal interest in the land or property affected by the deployment activities, including but not limited to usufructuaries, leaseholders, holders of servitude rights, and occupiers as defined in the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997), or persons in possession of land in terms of the Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996). [underline – our emphasis]

Regulation 4 requires licensees to obtain necessary approvals from relevant authorities and Affected Parties, including environmental approvals where required by law, civil aviation approval, town planning or rezoning, traditional land rights approvals where applicable, and a wayleave certificate obtained in accordance with the by-laws of the relevant authority/municipality.

Regulation 8 gives effect to section 21(2)(b) of the ECA by establishing a structured dispute-resolution pathway for disputes arising during the exercise of section 22 rights.

An occupier is defined in the Extension of Security of Tenure Act, 1997 (“**ESTA**”) as “a person residing on land which belongs to another person and who has on 4 February 1997 or thereafter had consent, or another right in law to do so, but excludes (a) labour tenant; (b) a person using or intending to use the land for industrial, mining, commercial or commercial farming purposes; and a person who has income in excess of a specified amount.

An occupier, as contemplated in the definitions of ESTA, does not have a registered or legal claim to the land other than a right to live on the land. Given the obligation placed on licensees to, amongst other things, obtain necessary approvals from Affected Parties, it is Telkom’s view that the inclusion of “occupiers” within the definition of Affected Parties is unnecessary and may create delays in so far as approvals to deploy electronic communications facilities is concerned. In this regard, Telkom notes that it would also be improper for the Authority to handle disputes between licensees and occupiers (given that occupiers have limited rights over the affected land). It is Telkom’s view that the Authority’s rights to handle disputes should be limited to disputes that may arise between the ECNS licensee and a landowner.

3.1.2 “Complaints and Compliance Committee (CCC)”

“Complaints and Compliance Committee (CCC)” means the Committee established by the Authority in terms of section 17A of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) (“**ICASA Act**”).

Observations:

1. The CCC must investigate, and hear if appropriate, and make a finding on – all matters referred to it by the Authority, or complaints received by it, and allegations of non-compliance with the ICASA Act or underlying statutes. The CCC may also make any

recommendation to the Authority in terms of the ICASA Act or the underlying statutes, or the achieving of the objects of the ICASA Act.

However, nowhere does it specifically address landowners, neither does the ECA prescribe any conditions or regulations that are applicable to landowners, or which landowners might be in violation of, which questions the need for disputes between licensees and landowners to be referred to the Authority or CCC. Complaints from landowners relating to violations by licensees, could be heard as they deal with direct violations of legislation and regulations applicable to licensees.

3.1.3 “Compensation”

“Compensation” means a monetary remedy payable to a landowner or affected party for direct, reasonable and demonstrable patrimonial loss, determined by agreement between the parties or in accordance with applicable law, arising from the deployment of electronic communications networks or facilities, including, where applicable, physical damage to property or depreciation in property value, physical damage, and other patrimonial loss.

Observation:

1. This definition can be deleted. Looking at the context in which the word “compensation” is used and given that compensation is only ever referred to in small caps in the draft Regulations, it is sufficient to rely on the English dictionary meaning of the word “compensation”, or common understanding, of the term. Section 6 also provides guidance on how compensation should be determined.

3.1.4 “GIS Database”

“GIS Database” means the Geographical Information System Information as specified by the Authority about the type and location of Electronic Communications Network Service deployed.

Telkom proposes the following amendment:

“GIS Database” means the Geographical Information System ~~Information~~ managed by the Authority, which stores spatial information provided by electronic communication network service licensees according to a common standard and schema, as specified by the Authority, which can assist to facilitate efficient coordination, planning and delivery of infrastructure development projects. ~~about the type and location of Electronic Communications Network Service deployed.~~

Telkom’s motivation for the proposed changes:

1. See section 2.6.1 above on GIS.
2. The Authority must be the custodian of this sector GIS database.
3. Lack of proper planning and coordination within government and between infrastructure developers (i.e. municipalities, utilities (Eskom, Transnet, etc) and ECNS licensees, etc.) is identified in the Policy White Paper as the primary issue that requires attention to accelerate deployment of infrastructure development and to avoid unnecessary duplication. Planning and coordination amongst these stakeholders require consultation and exchange of spatial information between them to achieve this. The exchange of spatial information between government and ECNS licensees under a common schema can promote a seamless exchange which would enable good planning and efficient build

amongst stakeholders. Each stakeholder should have its own GIS and be willing to share spatial information with other stakeholders. The essential ingredient here is for stakeholders to align to a common standard and schema, which defines the format of the spatial information to be exchanged amongst coordinating parties, and this requires the Authority's guidance.

3.2 Purpose of the regulations (Regulation 2)

- Regulation 2(1)(a) – although the criteria of landowners could be largely harmonised for public land access, this may not always be possible, and in the case of private land the Authority may not know the criteria of every private landowner. This provision comes directly from the wording in section 21 of the ECA but may be impractical to fulfil.
- Regulation 2(1)(c) – same comment as above.
- Regulation 2(1)(e) – see Telkom comments under definition of CCC. Although a mechanism is provided, it may serve limited use with regards to landowners' recourse options in the case of a dispute.
- Regulation 2(1)(f) – see Telkom's comments under OFDS above, and the definition of "GIS Database". It should be made clear that the Authority will be the custodian of this GIS database. In addition, moving towards a GIS standard, and agreed schema are the real catalysts for improved coordination and planning amongst stakeholders. The Authority must define the GIS Standard and schema to be used for the GIS Database. Considering that this is a matter of national importance, and that the Authority could also assist government with coordination of other stakeholders, the GIS standard and schema should also be adopted/used by government. This is not a short-term endeavour but holds many benefits in terms of efficiency for all stakeholders.

3.3 Responsibilities of Licensees (Regulation 3)

- Regulation 3(1)(d) – reference to regulation 6 should be changed to regulation 7.

3.4 The Process and Procedures for entry onto land or property (Regulation 4)

3.4.1 Approval and entry requirements for deployment

- Regulation 4(1)(b) – add "where required by law" at the end (in line with (a))
- Regulation 4(1)(e) – what happens in the case where no wayleave certificate was issued by the municipality, despite the by-laws being in place? This should not be held against ECNS licensees or delay network deployment.
- Regulation 4(2) – Telkom supports this approach and has been following it for several years.

3.4.2 Mandatory consultation

- Regulation 4(5) - While Telkom agrees with the Authority's reasoning behind sub-regulation 5, which is "... to reduce duplication, minimise inconvenience, and manage the consequences of alteration, deviation and redundancy of facilities" it is concerned that compensation for disturbance may lead to unintended interpretation. Telkom therefore proposes that the word "disturbance" be removed from the sub-regulation. "Disturbance" is not defined and is very vague and could be exploited.

3.4.3 Notice of entry for scheduled maintenance, or alteration of an electronic communications network and facilities

- Regulation 4(9) – this regulation must expressly exclude emergency maintenance and should refer to regulation 4(13) pertaining to emergency maintenance.

3.4.4 Duplication and coordination of deployments

- Regulation 4(15) – This regulation cuts across the concept of a single trench, which is advanced by some municipalities. Municipalities impose wayleave conditions on the wayleave recipient to notify other licensees that it could share the trench. This requirement must be left to the municipality as they would know best what the circumstances and motivation is for imposing a cooperation condition on the wayleave recipient. Regulation 4(16) acknowledges this.

Telkom has investigated the technical and commercial considerations associated with a single trench policy applied by municipalities. The scenarios below show Telkom's high-level consideration of the single trench policy considering various key aspects. These scenarios are from an Openserve perspective but could equally apply to other licensees.

Scenario 1: Openserve is awarded a wayleave and invites other licensed Fibre Network Operators ("**FNOs**") to deploy their infrastructure in the same trench. This scenario is subdivided into three sub-scenarios:

- i. Openserve will trench and allow the other licensed FNOs to supply and install their own ducts and manholes within a period specified by Openserve. A cost sharing model must be negotiated and contracted. Ownership of the infrastructure will reside with the respective FNO(s).
- ii. Openserve allows the other licensed FNOs to supply their own ducts within a period specified by Openserve. Trenching and installation of ducts will be done by Openserve. A cost sharing model must be negotiated and contracted. Ownership will reside with the respective FNO(s).
- iii. Openserve will do the full engineering and build, trenching, excavation, provision and installation of ducts and manholes, and offer leasing of passive infrastructure on the passive infrastructure sharing model to other licensed FNOs. Only Openserve approved material will be deployed. Maintenance of the infrastructure will be done by Openserve at a cost to other licensed FNOs. Ownership of the infrastructure will reside with Openserve. A passive infrastructure sharing agreement with other FNO must be signed following due process.

Scenario 2: Wayleave to trench is granted to another licensed FNO and Openserve is invited to deploy its infrastructure in the same trench.

Scenario 3: Wayleave is granted to another party (i.e. non-licensee) where trench sharing includes more than just fibre optic cables. It may also involve electrical cables, gas, petroleum, water or sewerage pipes and other utility services in the same trench. Sections 9.3.5.7 (Access to infrastructure) and 9.3.5.8 (Deploying electronic communications facilities in new developments) in the Policy White Paper may also be relevant to this scenario.

Where municipalities mandate a single trench policy through the condition of the issued wayleave, including co-build, this should be done on a voluntary and commercial basis between parties.

- Regulation 4(16) – Telkom does not support this regulation in its current form. Trench-sharing and co-built projects must always remain free for participation and by commercial agreement between all parties. Even if a relevant authority does impose a wayleave condition that seeks to achieve single trench sharing/co-build due to multiple requests from various parties along the same route, participation must remain voluntary and must remain commercially driven to avoid inadvertent planning and budget shocks on parties. Ensuring all interested parties are invited to participate in a trench sharing project remains the critical enabler, which should not be compromised, failing which gives rise to inefficient network deployment and disruption of good planning across the board to all participants. Thus, “reasonable terms” should be left to parties to negotiate. Notwithstanding, Telkom agrees that safety and technical feasibility must not be compromised where trench-sharing or co-build is undertaken. However, “competition” is a critical element to be added as all co-build exercises must conform with competition law principles. Telkom also notes rent seeking behaviour in cases where wayleaves have been allocated to non-licensees who then seek to exploit ECNS licensees.

Telkom proposed amendment of regulation 4(16):

4(16) Where ~~directed by the~~ a relevant authority identifies demand for the same wayleave route based on received applications from several ECNS licensees and where the wayleave issued to the successful wayleave applicant contains a condition that it should notify all other interested parties that the trench may be shared, that Licensee must notify all interested Licensees upon award of the wayleave that it is available for sharing together with draft terms and conditions for co-build and request interested Licensees to signal their interest within 30-days or not less than 14-days before build must commence as stipulated in the wayleave conditions. The Licensee awarded the wayleave will participate in trench-sharing or co-build arrangements on reasonable terms, subject to safety and technical feasibility.

3.4.5 Removal of obsolete and redundant facilities

- Regulation 5(5) – Removal of any decommissioned electronic communication network or facilities may not always be practical or economical. In some instances, despite being decommissioned, the network or facility is simply left there due to the technical complexity

and/or risk of service disruption i.e. copper removal from ducts and manholes may disrupt new fibre services already provisioned or a large, constructed building can't simply be removed. Telkom recommends this regulation be amended to accommodate such variations.

Telkom proposed amendment to sub-regulation 5(5):

A Licensee must decommission and remove electronic communications networks or facilities that have been ~~formally~~ decommissioned and removed from its operational network records, within sixty (60) days of such decommissioning, where it is technically and economically feasible or practical to do so. This sub-regulation does not apply retrospectively.

- Regulation 5(6) – Telkom supports the essence of this regulation but recommends the inclusion of a reference to an “asset register”.

Telkom proposed amendment:

5(6) Electronic communications networks and facilities that are not actively in use but remain part of a Licensee's registered operational network or asset register and are maintained in a safe condition shall not have to be removed ~~regarded as obsolete or redundant~~ for purposes of sub-regulation (5).

- Regulation 5(7) – It is unclear to Telkom why the Authority would want a Licensee to demonstrate that infrastructure retained would be for future use. Telkom is well within its right to hold assets as part of its investment strategy and is subject to health and safety legislation etc. Furthermore, Telkom may elect to upgrade or remove such infrastructure, whether it be for future investment purposes or for expansion of its network. Telkom recommends that this regulation be deleted.

3.5 Compensation (Regulation 6)

- Regulation 6(1) – This regulation must not apply retrospectively.
- Regulation 6(3)(a) – Telkom recommends that this clause be amended to refer to the last market value of the affected land or property within 1 year of the claim or if no such market value is available then as determined by a registered and independent valuer. This is important to avoid speculation by property owners.
- Regulation 6(3)(b) – correct the numbering, it should be 6(3)(b).

3.5.1 Compensation for use of land

- Regulation 6(7) – supported, subject to including an additional wording as indicated below.

Telkom's proposed amendment of 6(7):

6(7) The Licensee must pay compensation where the installation of an electronic communications networks and facilities restricts or inhibits the owner's ability to use the land or any part thereof for its intended purpose, if no other suitable location, which avoids inconveniencing of the landowner could be found;

3.6 Rapid deployment GIS database (Regulation 7)

- Regulation 7(1) – The terms “accurate and complete” need to be clarified. Telkom notes that it will always endeavour to provide accurate information, based on the available information (noting that accuracy has not been specified), but it is unable to always provide complete information due to the legacy nature of its systems and paper record keeping systems. In several instances Telkom has had to prove ownership by physical inspection of infrastructure or alternative means. However, providing this type of information, where it is available, would currently require a substantial amount of manual work by various people e.g. exporting/importing/cleaning/converting data which will requires time.
- Telkom is also concerned that the level of detailed information requested in these regulations will compromises the security of Telkom’s network if exposed in the public where construction mafia associates, anarchists and spies could use it in nefarious ways. Telkom is willing to make this information available as confidential information to the Authority where it can. Disclosing planned areas, which Telkom considers to be competitively sensitive information, could be submitted to the Authority upon request for confidentiality. However, this type of request would need to be soundly motivated.
- It also raises several questions around what happens if planned deployment is delayed due to funding etc. Is the planned area still valid? What if the cut-off time before it is consider invalid? Overall, the question remains as to what the Authority will do with the data and to whom will it be made available and under what conditions. Telkom remains of the firm view that data provided to the Authority can under no circumstances be provided to any 3rd party unless agreement has been obtained from Telkom. Adherence to competition law also remains a critical consideration.
- Telkom does not have a problem to provide the information required in Appendix A in the formats requested, but providing this type of information, where it is available, would currently require a substantial amount of manual work by various people e.g. exporting/importing/cleaning/converting data which will requires time. The proposed 6-months is completely unrealistic. Any date should be discussed and agreed with the licensee and may differ based on area, technology, etc.
- Regulation 7(2)(a) – This information may not always be available. See response to regulation 7(1) above.
- Regulation 7(2)(a)(i) – Telkom does not have complete data on copper and never will, so can't comply for copper data. The term "Base stations" needs to be defined, noting that radio equipment could be fixed to buildings, rooftops, etc. It must also be noted that not all towers that Telkom uses are its own.
- Regulation 7(2)(a)(ii) – This requirement is not clear noting that a licensee is usually the owner or operator of its infrastructure. The intend behind this clause must be clarify.
- Regulation 7(2)(a)(iii) – Capacity/space data for passive infrastructure is very problematic in some cases, depending on what was historically captured. Defining and quantifying physical space poses several challenges. For example, quantifying the size of available capacity, guaranteeing that space is available throughout the length of a duct, assessing underground infrastructure, etc. Practical challenges also exist for example where an

underground duct has collapsed at an unknown location. In such cases, records will indicate that space is available; however, in practice, there is no space available due the blockage. Added to this is the importance of network provisioning, which caters for future deployments to allow network growth. If this “available” space is shared, it compromises the infrastructure provider’s future expansion prospects.

- Regulation 7(2)(b) – See preceding response on regulation 7. The intention behind the provisioning of information of service availability on a granular basis must be clarified noting that this requirement will be difficult to fulfil in practice.
- Regulation 7(2)(c) – See preceding response on regulation 7. Providing information of planned network investments will be very intrusive and extends beyond the primary purpose of accelerating network deployment. Providing such information could only be considered under a confidentiality agreement and with the understanding that information will not be shared with 3rd parties.
- Regulation 7(3)(a) to (f) – Telkom supports providing the information required in the formats requested, provided that the information is available. It must also be noted that it will require a substantial amount of manual work by various people e.g. exporting/importing/cleaning/converting data which will require time.

3.7 Contraventions and penalties (Regulation 9)

- The draft Regulations proposes penalties if an ECNS licensee does not provide the information as requested in regulation 7. However, it is not explicitly mentioned that the Authority is the custodian of the GIS Database, which must be addressed. Also, as indicted above, obtaining the stipulated data will be a major challenge and, in some cases, impossible. The penalty approach is therefore unwarranted.
- Regulation 9(1) refers to regulation 3 (and regulation 4), which in turn reference regulation 6. It is however assumed that the reference to regulation 6 is incorrect (deals with compensation) and that the reference should be to regulation 7, which deals with the GIS database. The penalty for non-compliance to regulation 3 is set at R150,000 whereas the penalty for non-compliance of regulation 7 is R1,000,000. This should be clarified.
- Regulation 9(2) – Regulation 6 deals with various matters pertaining to compensation. Telkom requests the Authority to clearly stipulate which matters as contained in regulation 6 could lead to the stipulated penalty, noting that, for example, failure to negotiate compensation with landowners should not justify a penalty.

The End