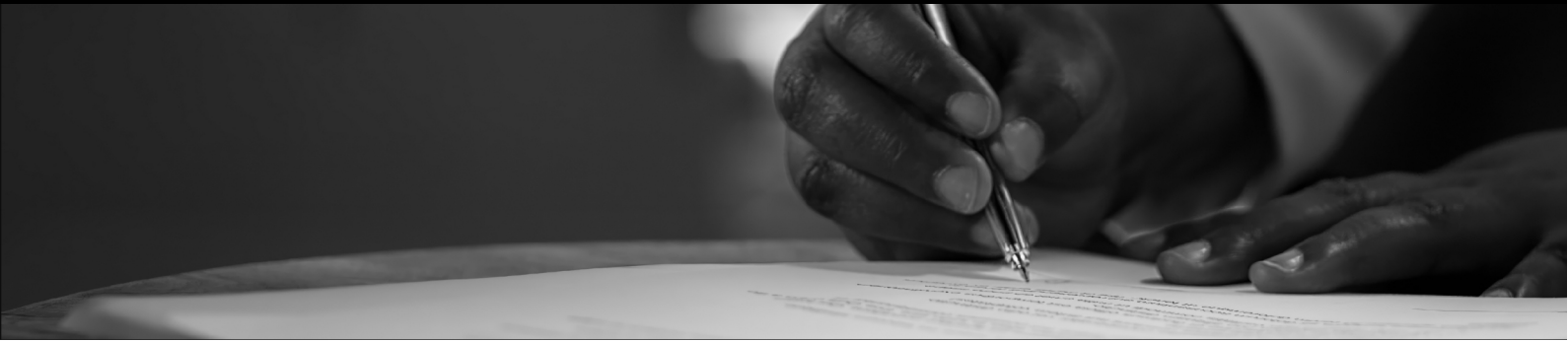




DISPUTES

From policy direction to regulation: Is South Africa finally achieving rapid deployment?

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by Corlett Manaka, Director and Head of Disputes, Akhona Bilaty, Director and Kuhle Joja, Associate

In September 2024, we published an article examining whether Government was aligned in its approach to enabling the rapid deployment of electronic communications networks and facilities, highlighting a persistent disconnect between national policy objectives and municipal implementation, particularly in the context of the Standard Draft By-Laws for Deployment of Electronic Communications Facilities ("**Draft By-Laws**"), gazetted on 24 February 2023. We identified several specific deficiencies in those By-Laws, including the undefined scope of "persons" to whom they apply (notwithstanding section 7 of the Electronic Communications Act's ("**ECA**") prohibition on providing services without a licence), the compounding of wayleave approval timelines to in excess of 90 working days, and the imposition of unclear ongoing charges under the proposed Municipal Land Use Agreements. We also noted that, despite national government's stated commitment to rapid deployment, only three municipalities had incorporated the Draft By-Laws into their wayleave by-laws.

The publication of the Draft Policy Direction by the Minister of Communications and Digital Technologies in March 2026 ("**Draft Policy**"), followed by ICASA's Draft Rapid Deployment Regulations ("**the Regulations**") on 10 April 2026, signals a coordinated attempt to translate policy ambition into an operational regulatory framework. The Draft Policy had already directed ICASA to prescribe regulations addressing the manner, costs of and time within which a decision for access must be made, the implementation and publication of decisions made in terms of a dispute resolution procedure, and how reasonable compensation must be determined. The Draft Policy and the Regulations now seek to give detailed effect to those earlier directives.

A Shift from Policy Fragmentation to Regulatory Alignment

The Draft Policy explicitly gives effect to the 2023 National Policy on the Rapid Deployment of Electronic Networks and Facilities ("**the National Policy**") by ensuring more efficient access to land, both public and private, for broadband infrastructure. This builds on the broader objectives of the SA Connect policy, which recognised that the lack of always-available, high-speed and high-quality bandwidth negatively impacts upon South Africa's development and global competitiveness.

Importantly, the Policy Direction does not operate in isolation. It directs ICASA to develop a regulatory framework that addresses key structural inefficiencies, including unnecessary duplication of infrastructure, inconsistent access to public

servitudes and infrastructure, the absence of a centralised infrastructure database, and the lack of effective dispute resolution mechanisms. ICASA's Draft Regulations are therefore the operationalisation of the Draft Policy, providing the procedural detail that has historically been absent.

Standardisation of Access and the End of Informal Deployment Practices

A significant contribution of the Draft Regulations is the formalisation of land access procedures under section 22 of the ECA, which empowers ECNS licensees to enter upon any land, construct and maintain electronic communications networks or facilities, and to alter or remove their electronic communications facilities, with due regard to applicable law and the environmental policy of the Republic. As interpreted by the Constitutional Court in *City of Tshwane Metropolitan Municipality v Link Africa (Pty) Ltd and Others* [2015] ZACC 29, the right under section 22 entitles licensees to select and access premises, provided this is done in a civilised and reasonable manner, including giving reasonable notice and consulting with the property owner. Where licensees previously relied heavily on these statutory rights of entry — often resulting in disputes, as is evident from recent cases such as *Metrofibre Networks (Pty) Ltd v Independent Communications Authority of South Africa and Others* [2024] ZAGPPHC 919 (11 September 2024) – the Regulations now impose a structured process requiring prior approvals from relevant authorities, mandatory consultation with landowners and affected communities, and the conclusion of an access agreement governing entry, installation, and compensation.

This reflects a deliberate move towards procedural fairness and transparency, addressing one of the key criticisms in our earlier analysis, namely, the absence of uniform engagement standards. Practically, the procedures for approval remain a concern at local authority level. Section 24 of the ECA requires ECNS licensees to give 30 working days' notice to any local authority or person owning or responsible for the care and maintenance of any street, road or footpath. As we noted in our earlier article, the cumulative effect of obtaining prior approvals from all relevant authorities before submitting an application could extend the effective approval period to in excess of 90 working days, a concern which remains relevant under the new framework.

Infrastructure Sharing and the Move Toward a Coordinated Network Economy

The Draft Policy places particular emphasis on reducing duplication of infrastructure, including by encouraging access to existing facilities and public infrastructure. This is reinforced in the Draft Regulations through obligations to cooperate with other licensees and provisions for trench sharing and co-build arrangements, marking a transition from a competitive build model to a more coordinated, efficiency-driven deployment environment.

The Emergence of a National Infrastructure Database

A central pillar of both the Draft Policy and the Draft Regulations is the establishment of a centralised Geographic Information System (GIS) database. The Draft Policy envisages a database populated by licensees with information on new and existing infrastructure, while the Draft Regulations go further by prescribing detailed data submission requirements, bi-annual reporting obligations, and the inclusion of forward-looking investment plans. A significant development. The absence of reliable infrastructure data has historically contributed to repeated trenching, accidental damage to existing networks, and inefficient allocation of resources. The GIS framework introduces a foundation for evidence-based regulation and coordinated planning, aligning South Africa with international best practice.

Reconfiguring Property Rights Through Compensation and Process

The Draft Policy's emphasis for reasonable compensation to landowners where deployment activities cause damage, aligns with the National Policy requirement that compensation charged by property owners ought to be reasonable, proportionate to the disadvantage suffered, and may not enrich the property owner or exploit the licensee. Consistent with the ECA, which provides that licensees are only obligated to pay the reasonable expenses incurred as a consequence of the construction, alteration or removal of electronic communications facilities and networks, the Draft Regulations introduce a structured compensation framework requiring good faith negotiations, consideration of market value and demonstrable loss, and compensation for both physical damage and loss of use of land.

Notably, ICASA does not prescribe compensation amounts, instead facilitating a process aimed at achieving a “just and equitable balance” between the interests of licensees and landowners. This approach reflects a careful constitutional balancing exercise recognising the importance of broadband infrastructure while safeguarding property rights.

Dispute Resolution

Both the Draft Policy and the Draft Regulations recognise the absence of effective dispute resolution as a major impediment to deployment. The Draft Policy contemplates early declaration of disputes, possible suspension of deployment activities, and referral of compensation disputes to courts. The Draft Regulations give effect to this through a tiered dispute resolution framework requiring negotiation, mediation within a prescribed period, and escalation to ICASA, arbitration, or courts. This provides much-needed clarity and predictability, although the potential suspension of deployment pending dispute resolution could introduce delays if not carefully managed.

Persistent Challenges: Municipal Alignment and Implementation Risk

However, notwithstanding these advances, the Draft Policy itself acknowledges that only a fraction of municipalities have adopted the Draft By-Laws. Inconsistent wayleave processes at local authority level remain a significant obstacle. The success of the Draft Regulations will therefore depend heavily on municipal cooperation, alignment of by-laws with the national framework, and the administrative capacity of local authorities. Absent this alignment, there remains a risk that regulatory standardisation at national level may not fully translate into practical efficiency on the ground.

Conclusion: A Turning Point—But Not Yet a Resolution

The Draft Policy and Draft Regulations represent the most comprehensive attempt to date to address the structural barriers to rapid deployment in South Africa. They reflect a clear shift toward procedural standardisation, coordinated infrastructure planning, and balanced protection of property rights.

However, the ultimate question remains one of implementation. The framework is now considerably more coherent, but its success will depend on whether it can overcome the same challenges that have historically hindered rapid deployment, particularly at municipal level. What is clear, however, is that Government is now moving in a more unified direction. The disconnect we previously identified may not yet be fully resolved, but it is, at the very least, being actively addressed.



Corlett Manaka

Head of Disputes

[View Profile](#)



Akhona Bilaty

Director

[View Profile](#)



Kuhle Joja

Associate

[View Profile](#)