DIGITAL MEDIA & ELECTRONIC COMMUNICATIONS

New communications Bill proposes changes to telecoms access, pricing and spectrum rules

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Regulatory change does not wait for a bill to become law before it starts to matter. Long before the Electronic Communications Amendment Bill [B12-2026] ("the Bill") takes effect, it should already be shaping investment decisions, transaction planning, regulatory engagement and corporate strategy. Businesses considering acquisitions, infrastructure investment, market expansion or long-term commercial arrangements in the communications sector should not treat the Bill as a future compliance exercise to be assessed only once the parliamentary process has run its course. If enacted substantially in its current form, the Bill could reshape the commercial, investment and regulatory landscape of South Africa's electronic communications sector. Now is the time to test whether existing commercial assumptions still hold in a regulatory environment that could look very different within a few years. The six questions below are a starting point.

1. Should we reconsider our long-term investment assumptions?

The Bill's essential facilities provisions may affect the revenue assumptions behind infrastructure valuations, though how much will depend on the pricing rules and methodology ultimately prescribed by the Independent Communications Authority of South Africa ("ICASA"). Under the proposed s43(8), ICASA must compile a list of essential facilities, which could include high sites, cable landing stations, backhaul infrastructure, earth stations, ducts in road and rail reserves, municipal infrastructure and internet peering points. Once a facility is on that list, its holder must lease it out on request, subject to the applicable statutory requirements. The proposed s47 goes further, mandating (rather than merely empowering) ICASA to ensure that wholesale pricing is "cost-oriented" and, for essential facilities, reflects "cost plus a reasonable return". The latter term is not defined in the Bill, but it is worth determining whether infrastructure investment still generates the returns assumed in current acquisition models. If regulated pricing pushes those returns down, some long-term investment cases may need to be reassessed.

The rapid deployment provisions in the Bill may ease the cost side of the equation. The proposed s21A requires the Minister responsible for local government to make standard draft municipal by-law covering, among others, uniform wayleave processes, cost-based fees and the terms and conditions for sharing municipal property and infrastructure. If municipalities apply it consistently, this could reduce deployment delays and the cost of extending facilities into underserved areas.

2. Should we revisit our planned transactions?

Regulatory due diligence in telecommunications transactions has traditionally focused on a target's existing licences, compliance history, spectrum holdings and pending regulatory proceedings. That may no longer be enough. The proposed amended s67 replaces the existing market review regime, centred on significant market power, with a broader inquiry into market features that impede, distort or restrict competition. Under this regime, ICASA can identify licensees contributing to those features and impose proportionate pro-competitive remedies, including wholesale access obligations, rate regulation, separate accounting and, in appropriate cases, structural separation. The Bill also strengthens coordination between ICASA and the Competition Commission.

Transaction teams must therefore look beyond the usual due diligence checklist and ask whether target assets could become subject to regulated wholesale access, materially lower forecast revenues, or a market inquiry into the relevant market. Where projected cash flows depend on pricing freedom or exclusive control over network infrastructure and spectrum, future regulatory intervention could affect both the value of the assets and the expected return on investment. Deal teams should reflect these potential regulatory outcomes in their valuation models and transaction assumptions. Buyers who skip this step may find that the regulatory environment after completion looks quite different from the one on which the deal was priced.

3. Should we review our licensing assumptions?

Licence holders have long treated their licences as relatively stable regulatory assets. Although licence conditions have always been capable of amendment under certain circumstances, investors have generally modelled their businesses on the assumption that core rights and obligations would stay broadly predictable over the investment period. The Bill may unsettle that assumption. Following a market inquiry, ICASA will be empowered to impose pro-competitive licence conditions that could alter the commercial characteristics of licences already issued.

The Bill also introduces the concept of an "access provider", which is defined as an electronic communications network service licensee that has been assigned International Mobile Telecommunications (IMT) spectrum (and whose network covers at least 90% of South Africa's population. Access providers must provide national roaming and mobile virtual network operator (MVNO) services on request.

Separately, the Bill introduces a "use it or share it" principle in terms of which parts of spectrum that remain unused in a particular geographic area after the prescribed statutory period may become subject to compulsory secondary sharing. Unused spectrum may also be withdrawn in specified circumstances following the prescribed processes.

The value of a communications licence may therefore depend increasingly not only on the rights it currently confers, but also on the regulatory obligations that could attach to it in future. A licence that today permits considerable flexibility may, following a market inquiry, become subject to obligations affecting pricing, network access, operational autonomy or the ability to extract value from infrastructure investment. As a result, the regulatory risk profile is becoming less predictable, particularly for operators with a significant presence in the market or extensive network infrastructure.

4. Should we reassess key commercial agreements?

Many commercial agreements allocate rights, obligations and commercial risk on the basis of the current regulatory framework. Where the Bill changes the rules governing access, pricing or spectrum use, parties should consider whether those arrangements remain appropriate.

Access providers will have to conclude national roaming and MVNO agreements within prescribed periods, and unresolved disputes can be referred to ICASA for determination. That leaves parties less room to prolong negotiations or leave material terms unresolved, particularly around reference offers and dispute resolution provisions negotiated under the current legislative scheme. The Bill also removes the existing statutory right to refuse an essential facility request on the grounds that it is not technically or economically feasible. That considerably narrows a facility holder's ability to resist compulsory access, though technical and operational constraints may still influence the terms ultimately agreed or imposed.

More importantly, the Bill signals a move from a regulatory environment in which access, pricing and risk allocation are predominantly determined through commercial negotiations, towards one in which regulatory rules may increasingly determine the outcome. Reference offers, wholesale pricing standards, prescribed negotiation periods and ICASA's power to determine unresolved terms could narrow the range of outcomes available to contracting parties.

Infrastructure sharing, network access, wholesale supply, spectrum sharing, managed services and long-term customer contracts may all rest on assumptions about pricing flexibility, network utilisation, exclusivity or anticipated returns that could change as ICASA develops the Bill's new regulatory regime.

Businesses should therefore consider whether existing contracts, and agreements currently under negotiation, are resilient enough to withstand these changes in the regulatory framework, paying closer attention to change-in-law provisions, regulatory cooperation obligations, pricing adjustment mechanisms, renegotiation rights, appropriately drafted force majeure and termination rights, and the express allocation of regulatory risk, including the prospect of future market inquiries, licence amendments or pro-competitive remedies, rather than leaving these matters to general boilerplate provisions.

5. Should we engage in the legislative and regulatory processes?

The Bill is currently before the National Assembly's Portfolio Committee on Communications and Digital Technologies, which has invited stakeholders and interested parties to make written submissions on the Bill by 21 September 2026. The legislative process on the Bill is expected to continue well into 2027 and is expected to include public hearings across all nine provinces. In addition, much of the Bill's practical effect will come from the regulations ICASA still has to make for national roaming, MVNO services, essential facilities, wholesale pricing, spectrum sharing and market inquiries, mostly within 18 months of commencement (12 months for the essential facilities list). The Minister responsible for local government also still has to make the standard municipal by-law contemplated by the proposed s21A.

Businesses with material exposure to the sector have a narrow but important window to influence the legislative text before the Bill is finalised, and afterwards to help shape the regulations that will give it practical effect. Engagement that is technical, well-informed and backed by economic modelling and operational data is most likely to produce a regulatory framework that reflects how networks are actually built and operated. Getting involved early is likely to prove more effective than waiting for the rules to be settled.

6. Should boards rethink how they oversee regulatory risk?

Viewed as a whole, the Bill's various layers of ongoing regulatory obligation point to a potentially more dynamic regulatory environment than the one that businesses operate under today. It is worth considering whether existing governance frameworks are equipped to identify, monitor and respond to this kind of risk, and whether boards are receiving regular enough reporting on regulatory developments that may affect capital allocation, investment decisions or long-term strategy. A framework built for regulatory stability may not be adequate here. Governance frameworks should therefore be able to identify emerging risks, assess their potential impact and respond before those risks materialise.

The Bill represents more than a single legislative event. It suggests a shift towards a more actively managed market, one in which access may become compulsory, pricing methodology is regulated, spectrum may be shared, and two regulators exercise formalised concurrent jurisdiction through mandatory agreements, information sharing, coordination and mutual enforcement of findings.

Although day-to-day compliance will remain management's responsibility, the Bill's strategic implications for investment decisions, capital allocation, transaction strategy and long-term planning fall squarely within the board's oversight responsibilities.

This calls for a strategic response, not merely a compliance one. Boards should build regulatory foresight into capital allocation, commercial negotiation and governance now, before positions harden and become difficult to reverse.

Conclusion

The Bill is still working its way through Parliament, and its terms may well change before it is finalised. Even so, it already gives a clear indication of where South Africa's communications sector is headed. Businesses that use this period to reassess their investment decisions, transactions, licensing assumptions, commercial arrangements and governance frameworks are likely to be better prepared for the regulatory environment that emerges than those that wait until the new regulatory framework is fully in place. The time to act is now: review your strategic assumptions, engage with the legislative and regulatory processes, and ensure your board is equipped to oversee the regulatory risks ahead.

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