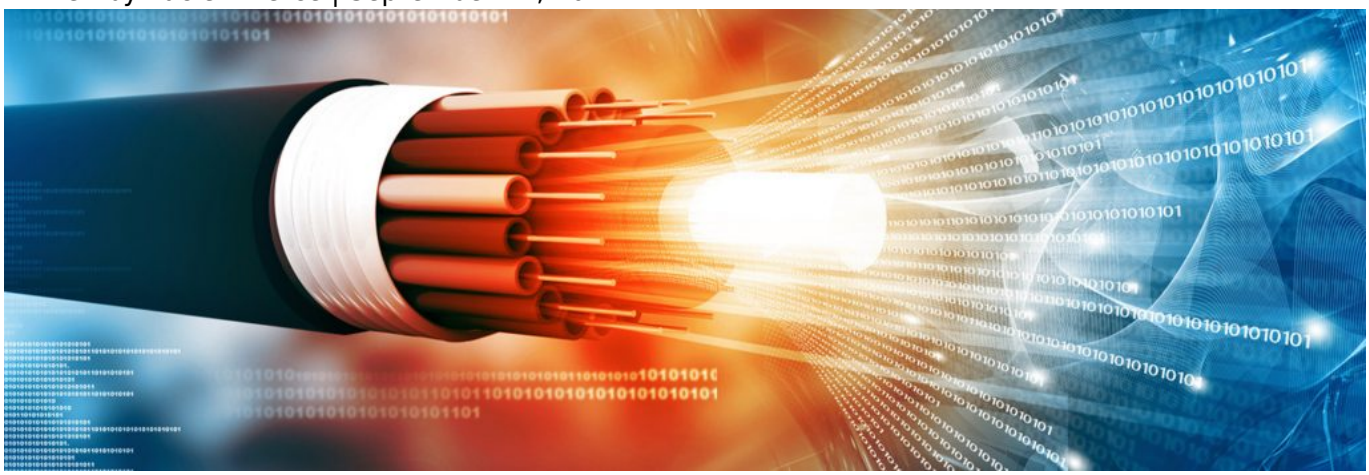
THE STANDARD DRAFT BY-LAWS FOR THE DEPLOYMENT OF ELECTRONIC COMMUNICATIONS AND FACILITIES – A POSITIVE STEP TOWARDS THE FASTER ROLL-OUT OF COMMUNICATIONS INFRASTRUCTURE

Category: Infrastructure and Telecommunications
written by Lucien Pierce | September 21, 2022



The rapid deployment of electronic communications and facilities is critical to closing South Africa's digital divide. The *Standard Draft By-Laws for the Deployment of Electronic Communications and Facilities* were published for public comment on 16 September 2022. Once finalised, they should allow for the quicker deployment of electronic communications infrastructure.

Some background and history

South Africa's National Development Plan 2030 did not mince its words when it was published in 2012. In discussing ICT infrastructure, it says that:

> *Compared with the best international standards, South Africa's ICT infrastructure is abysmal. Efficient information infrastructure that promotes economic growth and greater inclusion requires a stronger broadband and telecommunications network, and lower prices. The economic and employment benefits outweigh the costs.*
>
> *National Development Plan – 2030, p189.*

It also says that:

> *By 2030, ICT will underpin the development of a dynamic and connected information society and a vibrant knowledge economy that is more inclusive and prosperous. A seamless information infrastructure will be universally available and accessible and will meet the needs of citizens, business and the public sector, providing access to the creation and consumption of a wide range of converged services required for effective*

> *economic and social participation – at a cost and quality at least equal to South Africa's main peers and competitors. Within this vision, the underlying ICT infrastructure and institutions will be the core of a widespread digital communications system*.
>
> *National Development Plan – 2030.*

As a first step in attempting to remedy this, South Africa's Electronic Communications Act, 25 of 2002 ("**EC Act**") was amended in 2014. Section 21 was incorporated and says:

Rapid deployment of electronic communications facilities.—

(1) The Minister must, in consultation with the Minister of Cooperative Governance and Traditional Affairs, the Minister of Rural Development and Land Reform, the Minister of Water and Environmental Affairs, the Authority and other relevant institutions, develop a policy and policy directions for the rapid deployment and provisioning of electronic communications facilities, following which the Authority must prescribe regulations.

(2) The regulations must provide procedures and processes for—

(a) obtaining any necessary permit, authorisation, approval or other governmental authority including the criteria necessary to qualify for such permit, authorisation, approval or other governmental authority; and

(b) resolving disputes that may arise between an electronic communications network service licensee and any landowner, in order to satisfy the public interest in the rapid rollout of electronic communications networks and electronic communications facilities.

(3) The policy and policy directions contemplated in subsection (1) must be made within twelve (12) months of the coming into operation of the Electronic Communications Amendment Act, 2014.

South Africa's 2016 National Integrated ICT Policy White Paper recognises that the deployment of networks in rural and underserviced areas is critical and that time is of the essence if "*if the country is to meet the targets set out in SA Connect and the economic growth targets put forward in the NDP.*" (ICT Policy White Paper, p69). It goes on to say that the "'*rapid deployment' of infrastructure must be proactively promoted and is therefore encouraged through policy.*"

Despite the 2014 amendments to the EC Act and the views expressed in the ICT Policy White Paper, communications infrastructure providers continued to experience delays in being able to install infrastructure such as fibre optic cable and radio masts and towers. Disputes such as *City of Tshwane Metropolitan Municipality v Link Africa (Pty) Limited and others* are examples of some of the delays that municipalities and land owners have caused, in their opposition to communications infrastructure being installed on their property.

The Draft By-laws' need for more clarity

The Standard Draft By-laws for the Deployment of Electronic Communications and Facilities ("**the Draft By-laws**") are therefore one of the many steps in a multi-pronged approach that is intended to improve the speed at which electronic communications infrastructure can be rolled out in South Africa.

They are certainly a welcome step in the right direction, but have a few wrinkles that will need to be

ironed out in the public consultation process. A few examples of issues that may need further clarity include the following:

- 5G technology is going to likely need high numbers of micro-cells. The Draft By-laws contemplate micro-cells being deployed on “Street Furniture” (defined in the document to include municipal property on or alongside a road reserve, for example poles). It appears that a wayleave is not required for deploying micro-cells on Street Furniture and all that is required is a municipal lease agreement. This is great but, the Draft By-laws’ infrastructure sharing provisions only seem to allow infrastructure sharing for infrastructure that requires a wayleave. Imagine what a city or town’s poles will look like with 4 or 5 micro-cells on each one. The infrastructure sharing provisions therefore need to be extended to micro-cells and not just wayleaves, so that if it is possible to do so, more than one service provider can then share a micro-cell.
- The wayleave application process contemplates a normal wayleave application processes being completed within a maximum period of 60 days. However, emergency wayleave applications are subject to time periods described as “as soon as practicable”. It may be more prudent to stipulate clear and shorter time periods, to give applicants more certainty.
- Emergency wayleave applications will be processed in accordance with the severity of the emergency: who decides which emergency is more severe?

Due date for comments

These are only three of the issues we have identified that would require more clarity. It is in the interest of the electronic communications sector that all interested parties scrutinise and critique the Draft By-laws as much as possible so that they are clear and avoid any room for misinterpretation and delays.

Comments on the Draft By-laws are due 30 days after 16 September 2022. You can download a copy of the Draft By-laws here.