



Western Cape
Government

MINISTRY OF TRANSPORT AND PUBLIC WORKS

Our Reference: TPW 1/3/1/1/1
Enquiries: Jacqui Gooch, 021 483 2826

THE PORTFOLIO COMMITTEE ON TELECOMMUNICATIONS AND POSTAL SERVICES

PO BOX 15

CAPE TOWN

8000

ATTENTION: MS H SALIE

email: hsalie@parliament.gov.za

Dear Madam

Electronic Communications Amendment Bill [B31-2018]

1. The invitation to provide written comments on the Electronic Communications Amendment Bill, B31-2018 (the Amendment Bill) refers.
2. Please find the comments of the Western Cape Government attached hereto.

Yours sincerely,

DONALD GRANT

MINISTER: TRANSPORT AND PUBLIC WORKS

Date: *19 November 2018*

Item	Clause / proposed section	Comment	Recommendation
1.	General	Clarity is sought as to whether a SEIA undertaken in support of the Bill and the outcome thereof? The WCG believes that the undertaking of a thorough SEIA process is essential in defining the problem statement(s) and identifying the various policy options (which includes the rationalisation of the existing regulatory framework) and should inform this law reform process. Such a SEIA should inform and assist all stakeholders (i.e. organs of state whose mandates will be affected by this proposed Bill) to participate in this process. A SEIA will also assist to ensure: • Alignment with national priorities in promoting inclusive growth, addressing inequality, spatial imbalances and environmental degradation; • Risks associated with the implementation of such laws are mitigated, thus minimising unintended consequences;	Clarify whether a SEIA has been conducted, and if so make it available for scrutiny by all relevant stakeholders.

		• Costs of implementing such prescripts are reduced while benefits by the deprived service recipients are optimised; • Regulatory burden is reduced, resulting in efficient administrative mechanisms to implement national policies.	
2.	General	Clause 12 to clause 18 of the Electronic Communications Amendment Bill ("Amendment Bill") propose extensive amendments to Chapter 4 of the Electronic Communications Act, 2005 (Act 36 of 2005) ("ECA") which deal with Electronic Communications Networks and Communications Facilities. It is noted that sections 21, 22, 23 of Act 36 of 2005 are proposed to be repealed with new sections 20A-20K proposed to be inserted and section 24 proposed to be amended. Certain of these proposed amendments will, if passed in their current form, introduce confusion and uncertainty into the process of the deployment of electronic communications networks and facilities ("electronic service infrastructure") and practical problems in implementation. Furthermore, they potentially encroach on the functions of the other spheres of government, in particular pertaining to approvals which	Express provision must be made in the Amendment Bill that electronic communications network service licensees ("service licensees") must comply with applicable laws in exercising their rights under ECA.

	must be obtained from authorities within other spheres of government in terms of applicable legislation. In the matter of <i>City of Tshwane Metropolitan Municipality v Link Africa (Pty) Ltd</i> 2015 (6) SA 440 (CC) (“the Tshwane case”) the Constitutional Court (by a narrow margin) upheld the validity of section 22 and 24 of the ECA. Section 22(1) of ECA currently provides, inter alia, that electronic communications network service licensees may enter land including any street, road, footpath or land reserved for public purposes and construct and maintain an electronic communications network or electronic communications facilities. Section 22(2) currently provides that: <i>“In taking any action in terms of subsection (1), due regard must be had to <u>applicable law</u> and the <u>environmental policy of the Republic</u>”. (Our underlining).</i>	
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		The Constitutional Court upheld the validity of the abovementioned provisions of these provisions of ECA by finding that they were capable of an interpretation consistent with the common law of servitudes.¹ The Court reasoned that “<i>applicable law</i>” is unlimited, and must include the common law and the Constitution² and, in the case of a local authority, laws that they make within their constitutional legislative competence in terms of Chapter 7 of the Constitution.³ By extension of reasoning this applies equally to a law made by a Province within its Constitutional competence in terms of Chapter 6 of the Constitution. In the matter of <i>Dark Fibre Africa (Pty) v the City of Cape Town</i>⁴ the Court held that a municipalities powers must be reconciled with rights under section 22 of the ECA. This applies equally to the powers of a Province.	
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¹ The Court reasoned as follows at para 127: “*The grant of a right under section 22(1) to a network licensee does not determine how that licensee may exercise it. For that, one has to go to section 22(2). And this explicitly requires that “[i]n taking any action in terms of subsection (1) due regard must be had to applicable law*”. Here the analogous principles and rules of the common law of servitudes point the way to the statutes validity.”

² Paragraph 126.

³ Paragraph 185.

⁴ ZA WCHC 7748/2017 14 December 2017 para 20-22.

		Furthermore, it is now trite that where a particular matter impacts on the functional areas of more than one sphere of government, each sphere must independently exercise its authority. This must be done in the spirit of cooperative governance.⁵ The principle is stated at <i>Maccsand (Pty) Ltd v City of Cape Town and Others</i>⁶ as follows: <i>“The Constitution allocates powers to three spheres of government in accordance with the functional vision of what is appropriate to each sphere. But because these powers are not contained in hermetically sealed compartments, sometimes the exercise of powers by two spheres may result in overlap. When this happens neither sphere is intruding in the functional area of another. Each sphere would be exercising power within its own competence”.</i>	
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⁵ This principle was also illustrated in *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management* 2007 (6) SA 4 (CC), *Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd and Another* 2009 (1) SA 337 (CC), and *Maccsand (Pty) Ltd v City of Cape Town and Others* 2012 (4) SA 181 (CC).

⁶ 2012 (4) SA 181 (CC).

		The result is that one activity may require more than one approval from different spheres of Government independently exercising it's authority in respect of a particular functional area. It is of concern that clause 14 of the Amendment Bill proposes the deletion of, inter alia, section 22 of ECA. The new provisions which are proposed to be inserted governing access to public and private land contain no express provision which compels compliance with applicable law. Although certain proposed provisions of the Amendment Bill refer to approvals in terms of other laws, there is no express requirement which requires service licensees to comply with such laws. The proposed amendments have the result that the reasoning in the Tshwane case on which the constitutionality of the provisions governing the right of access of licensees to land was based, is potentially no longer applicable. The proposed amendments run the risk of being found to be constitutionally unsound, amongst others, on the grounds that they encroach on provincial and municipal functions.	
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	Section 125(5) of the Constitution provides that the implementation of provincial legislation in a province is an exclusive provincial executive power. Provincial Roads and Traffic is a functional area of exclusive provincial legislative competence under Schedule 6 of the Constitution which will be directly impacted by the proposed amendments. Regulatory measures to protect provincial roads are relevant, and may be of application in the context of the deployment of electronic communications networks and facilities. The Amendment Bill will furthermore have an impact on land use, land use planning and various regulatory decision making requirements associated with the implementation of telecommunication infrastructure. The constitutional mandate of municipalities in terms of municipal planning as well as land use planning legislation such as the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) (SPLUMA); the Land Use Planning Act, 2014 (Act 3 of 2014) (LUPA) and municipal land use planning by-laws have not been recognised in the Amendment Bill. Since telecommunication infrastructure is in most cases subject to land use approvals, and in many cases controversial resulting in	
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		objections and appeals consequent to public participation, it is imperative that the relevant land use planning legislation be taken into consideration. Equally so, the use of land as a natural resource is also governed by the National Environmental Management Act, 1998 (Act 107 of 1998) and its associated Environmental Impact Assessment Regulations, 2014. The Bill should acknowledge that the use of land is a complex matter that has to consider multiple and often competing land uses. Although it is submitted that the proposed amendments fall to be interpreted in a manner which requires compliance with applicable law, it is submitted that this must be made explicit in the Amendment Bill in order to avoid uncertainty and contestation in implementation.	
3.	Clause 13 Proposed section 20A	Proposed section 20A(1) provides for the Minister responsible for Telecommunications and Postal Services to “<i>provide oversight over the implementation of this Chapter and liaise with other Ministers responsible for matters affected by the rapid deployment of electronic communications networks and facilities.</i>” This provision does not	Consideration must be given to include provision for liaison with Provincial MEC's and municipalities.

	“Role of Minister responsible for Telecommunications and Postal Services”	provide for liaison with Provincial MEC’s and municipalities, especially insofar as it involves the overlapping and concurrent constitutional mandates (e.g. planning and environment).	
4.		Proposed clause 20A(2) states that the Minister responsible for Telecommunications and Postal Services must “<i>establish a Rapid Deployment National Co-ordinating Centre as a division within the Department of Telecommunications and Postal Services.</i>” The growth of the public service sector is currently under much scrutiny and it should be ensured that this does not become an additional burden on the tax payer. Can a National Co-ordinating Centre not be established within existing structures utilising existing personnel? The Infrastructure Development Act, 2014 (Act 23 of 2014), for example, makes provision for various implementation structures to facilitate the implementation of SIPS. This includes the appointment	Consideration must be given to the establishment of a National Co-ordinating Centre within existing organisational structures and the duplication of functions with regard to governance structures created in terms of the Infrastructure Development Act, 2014 (Act 23 of 2014).

	of SIP Coordinators and Steering Committees with the purpose (inter alia) to “.....facilitate and monitor the implementation of the strategic integrated project.....and..... to serve as a one-stop-shop where any matter relating to the implementation of a strategic integrated project can be resolved.” What is the relationship between the various institutional structures created in term of the Infrastructure Development Act, 2014 (Act 23 of 2014) and those proposed in the Bill? Consideration should be given to rationalise the various institutional structures created.	
5.	Proposed section 20A(4) sets out the representatives of the Rapid Deployment Steering Committee (“the Steering Committee”). It is not clear whether representatives of municipalities, issuing land use planning approvals for telecommunication infrastructure, have been considered for inclusion in this committee.	Consider including representatives of municipalities, issuing land use planning approvals for telecommunication

			infrastructure, in this committee.
6.		No provision is made for the nature and functioning of the Rapid Deployment National Co-ordinating Centre ("the National Co-ordinating Centre"). For example, who will be the office-bearers, is this body a juristic person and how will it be financed?	Provide for the nature and functioning of the National Co-ordinating Centre.
7.	Clause 13 Proposed section 20B "Role of rapid Deployment National Co-ordinating Centre"	Proposed section 20B and J both deal with the role of the National Co-Ordinating Centre and it is proposed that these proposed sections be consolidated.	Consolidate proposed sections 20B and J.

8.	The wording of proposed 20B(1) suggests that the main role of the National Co-ordinating Centre is to support and encourage installations with local authorities. It is noted that proposed subsection (1) states “<i>relevant authorities and relevant S/Ps</i>” but proposed subsections (2) and (3) appear to focus only on municipalities and ignore provinces and national departments as well as SANRAL	Proposed section 20B should be amended to make it clear that in performing its functions the National Coordinating Centre must liaise with all spheres of government and relevant authorities, and not only local authorities.
9.	Proposed section 20B(2) provides for the National Co-ordinating Centre to “<i>co-operate with local municipalities to promote and encourage the fast-tracking of rights of way and wayleave approvals</i>”. Whilst the intention to fast-track approvals is good, it is often viewed by the applicant as a method to avoid public participation. This may also lead to unintended consequences where the finalisation of other land use applications may be delayed. Planning legislation has legislated timeframes to which a municipality must adhere to and this provision could thus have a negative impact.	The Amendment Bill’s allocation of functions to the National Co-ordinating Centre should not interfere with the mandates of Municipalities. Consideration must be given to rephrasing this

	In addition to the above, the clause further states that the National Co-ordinating Centre must <i>“provide guidance on application processes and application templates for rights of way and wayleaves.”</i> It should be noted that the National Co-ordinating Centre does not have the competence to intervene in municipal planning affairs nor the capacity to meaningfully advise a municipality on its land use planning processes or land use planning approvals.	provision to provide only for the provision of support to municipalities and omit reference to guidance and templates.
10.	One of the duties of the National Co-ordinating Centre is stated in proposed subsection (3)(a) as follows: <i>“oversee the establishment of common wayleave application systems based on an understanding of common infrastructure requests across municipalities including the automation thereof”</i>	Reconsider this provision.

		It is not clear what is contemplated by the “<i>common wayleave application system</i>” ? Any right of access is subject, <i>inter alia</i>, to granting of any necessary planning and environmental permissions, as well as any necessary permission from the road authority to ensure the safeguarding of road infrastructure. It is also unclear what is intended by the underlined phrase “<i>including the automation thereof</i>”. It is difficult to see how this will function in the context of wayleave applications?	
11.	Clause 13 Proposed section 20C “Role of Authority”	It is not clear why the Authority is given the responsibility on a day to day basis for ensuring that the National Coordination Centre undertakes the inputting of information and other functions as described in (3) and not the Steering Committee. It is doubtful that the Authority can be expected to micro-police the functions of the National Coordination Centre, as contemplated in proposed section 20C(3).	Making sure that the National Coordinating Centre performs as contemplated in proposed subsection (3) is an auditing function, in which the Rapid Deployment

			Steering Committee should at least play a role. The role of the Authority should possibly instead be to audit the Steering Committee's performance in doing this work.
12.		The 12-month timeframe to provide information on existing networks and facilities may lead to a failure to comply. This timescale will be hard to meet even if the GIS system is functional. Compliance with the timeframe may further be compromised in cases where the licensee in respect of existing networks and facilities no longer exists – in such cases who would be responsible for capturing and submitting the information?	The timeframe should be a longer period than 12 months. It is suggested that in the absence of a licensee, the Rapid Deployment Steering Committee must undertake this work in liaison with the landowner.

13.	Clause 13 Proposed 20C(1)(d) and (2) read with proposed 20D(6). “Role of Authority” “Right to enter and use property”	Proposed section 20C(1)(d) provides that the Authority must prescribe rapid deployment regulations which must include: <i>“processes and procedures to enable a landowner to object to the Authority at least 14 days before the electronic communications network service licensee commences with the activity, if the proposed electronic communications network or facility will cause significant interference with the land”.</i> Proposed 20C(2) provides that: <i>“The regulations contemplated in subsection (1) must provide for procedures and processes for the Authority to resolve disputes that may arise between an electronic communications network service licensee and any landowner on an expedited basis, in order to satisfy the public interest in the rapid rollout of electronic communications networks or facilities that are intrusive”.</i> This provision must be read with proposed section 20D(6) which provides that:	These provisions should be reconsidered. In particular, it must be clarified that these provisions may not preclude another authority from approaching a competent Court or enforcing compliance with an applicable law.
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		<i>“A landowner may object to the Authority in the prescribed manner at least 14 days before the electronic communications network service licensee commences with the activity and only if the proposed electronic communication network or facility will cause significant interference with the land”.</i> The nature of these provisions and the manner in which they are intended to operate are unclear. In this regard how and by whom will “significant interference with land” be determined? Secondly, as explained above, regulatory approvals are required in terms of, inter alia, legislation governing planning, the environment and road infrastructure. How does this provision relate to existing regulatory approvals (and their appeal processes)? What happens if the objections raised in terms of the Amendment Bill has already been dealt with as part of the regulatory processes (and appeals) in terms of, for example, SPLUMA, LUPA, NEMA or relevant transport infrastructure legislation? The scope of these provisions is not clear.
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	However, they should not apply to disputes that are related to regulatory processes in terms of other statutes. In addition, the proposed dispute resolution mechanisms contained in the proposed provisions are vague insofar as it is not clear what happens after the objection is raised, for example what is the status of a decision by the Authority and will there be an appeal process? What recourse will a landowner have if the Authority is unable to process the objection timeously, for example, due to lack of capacity? The Authority is also not given any effective powers. For example, how will the Authority enforce a decision regarding access to a landowner's property in the event that an objection is either upheld or dismissed? These issues should be dealt with in the Amendment Bill itself and not left to the regulations. Any dispute resolution procedures in the Amendment Bill must not preclude a licensee, a landowner or any interested party from approaching a Court for relief. These provisions must also not preclude another authority from enforcing compliance with an applicable law, for example a road authority must be entitled to	
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		enforce its own technical standards for the protection of transport infrastructure.	
14.	Clause 13 Proposed 20C(1)(g) read with proposed 20K “Role of Authority” “Fees, charges and levies”	Proposed section 20C(1)(g) provides that the Authority must prescribe rapid deployment regulations which must include— <i>“guidelines on reasonable access fees that may be charged by landowners to electronic communications network service licensees for deploying electronic communications networks or facilities that are intrusive.”</i> It is not clear why this provision is limited to networks or facilities which are intrusive? Fees may also be applicable in instances where access is not intrusive. Proposed section 20K places limitations on fees which may be charged by landowners.	These provisions must be revised to ensure compliance with the principle of compensation as set out in the Tshwane case and to ensure there are no impermissible intrusions on the authority of a Province or municipality to determine its own processes, tariffs and fees.

		These provisions are inconsistent with the principle of compensation set out in the Tshwane case, namely “<i>compensation in proportion to the advantage gained by the by the network licensees and disadvantages suffered by the owner</i>”. The electronic service infrastructure, may, for example, not be intrusive, but still deprive the landowner of the use of his or her land. Furthermore, buried cabling may be intrusive. These provisions potentially constitute impermissible intrusions on the authority of a Province and municipalities to determine their own processes, tariffs and fees and should be reconsidered. They furthermore could arguably constitute an arbitrary deprivation of property in terms of section 25(1) of the Constitution. It is not accepted that the compensation must be <u>agreed</u> by the licensee as provided for in proposed section 20K(4). Proposed section 20K(3) should be amended to provide that the Authority <u>may</u> determine compensation in the event of a dispute. In
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		addition, it should be provided that this provision does not preclude a Court from determining a matter pertaining to compensation. A land owner that is a road authority must be allowed to recover costs of the investigation required to determine the implications of the installation of the electronic service infrastructure, including the interaction between it and the service licensee to exchange information so that the design of the installation is an optimum one for both parties. In addition, a road authority should have the right to recover the costs of a monitoring expert consultant that will act in the interests of the road authority during the period before, during and after the installation of the electronic service infrastructure. It is important that the amount of compensation is fair to the landowner. A road authority, for example, will have to cover the costs it will have to incur in the future to manage and protect the presence of an electronic service infrastructure within and alongside its own infrastructure. It is further essential that the compensation is paid in advance of the installation so that the road authority has the funds to draw from when future costs as a consequence of the electronic	
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		service infrastructure are required. Most service licensees are private companies and there is no guarantee for a road authority that it will be in business at the time when compensation is required	
15.	Clause 13 Proposed section 20D “Right to enter property”	The right to perform the functions described in proposed section 20D(2) should also be subject to the limitations listed in subsection (5).	Proposed 20D(2) should be made subject to proposed subsection (5).
16.		Proposed section 20D(3) provides that licensees retain ownership of any electronic communications networks and facilities.	Proposed section 20D(3) should be amended to make it clear that only communications cables and

	It is noted from the definitions that electronic communications networks and facilities exclude ducts and conduits that carry network delivery cables and fibre. The ducts and conduits once installed are fixed assets and constitute property that belongs to the landowner. It is noted in this regard that in terms of the common law position, fixed immovable infrastructure (such as ducting and conduits that house fibre optic cables and manhole chambers that provide access to fibre optic cables) installed on land belonging to another party becomes the property of that owner. The common law position must remain unchanged in this regard. In the case of provincial roads, the automatic transfer of ownership of the duct, manhole and unused space to the licensee provided for by this provision may constitute an expropriation of provincial land insofar as ownership of the road reserve vests in the road authority.	not ducts and conduits are owned by the service licensee.
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17.	Proposed section 20D(4) provides that property owners may not cause damage to electronic communications networks or facilities. Proposed section 20D(5) provides for the licensee to give notice to the owner or occupier of the affected land and lists the information to be provided. The implications of non-compliance with these provisions are unclear. Presumably the dispute resolution mechanisms in proposed section 20B(1)(d) and (2) are intended to apply? Refer to the response in line 13 above regarding these provisions.	Refer to response in line 13 above.
18.	Proposed clauses 20D(1), (2) and (5)(a) provide for licensees to enter upon and use public and private land for the deployment of electronic communications networks and facilities; and entitles the licensees to select appropriate land and gain access to such land subject to giving the applicable notice. This provision should be made subject to all applicable regulatory permissions, <i>inter alia</i>, planning and environmental permissions and	This provision should be made subject to all applicable regulatory permissions, <i>inter alia</i>, planning and environmental permissions and any permission that may be

	any permission that may be required from the relevant road authority, if applicable	required from a relevant road authority.
19.	The notice period which a licensee is required to give to a landowner of 30 days is too short a time for a landowner to evaluate complex systems. It is noted that a landowner is, in terms of the proposed section 20D(6), obliged to submit any objection within 14 days of the proposed installation. This leaves only 16 days for the information submitted to be evaluated and a response formulated by the landowner. This provision must provide that the licensee must give adequately detailed information about the technical details, timescales and other intents by the licensee to install electronic communications networks and facilities. This requirement is omitted from proposed section 20D(5)(a).	It is proposed that 90 days should be the notice period provided. Add a "(v)" to the list that obliges the licensee to provide information about the proposed location, depth etc of the installation, how the reinstatement will be undertaken, how quality of work will be ensured, land protected from damage, and risk to persons using the land mitigated against. Also details of the

			commencement and completion dates of the works must be provided.
20.		Proposed section 20D(5)(b) provides that a licensee must for the purposes of subsection (1) <i>“provide all information required by the application process, if any, and obtain a wayleave certificate from the relevant authority, noting that the exercise of rights by the electronic communications service licensee is subject to by-laws that regulate the manner in which a licensee should exercise its powers, though the by-law may not require the municipality’s consent”</i>. It is not clear to whom such “information” must be provided and for what purpose? It is furthermore not clear from this proposed provision (or from proposed section 20(J)) whether an installation proposed on private land requires an application to be made to the landowner.	This provision must be revised in order to make reference to applicable legislation in all spheres of government and to avoid encroachment on the constitutional mandates of these spheres. This provision should be revised to include installations on private land.

	It is unclear why this proposed provision only makes the exercise of rights by licensees only subject to “<i>by-laws that regulate the manner in which a licensee should exercise its powers.</i>” This provision must be extended to include applicable provincial and national legislation. The current wording of this provision will not withstand constitutional scrutiny insofar as it purports to dictate that a municipal by-law may not require a municipalities consent and hence encroaches, <i>inter alia</i>, on a municipalities mandate in respect of, <i>inter alia</i>, of land use planning. See in this regard the response in line 2 above.	
21.	Proposed section 20D(5)(d) provides that a licensee must provide that “<i>the design, planning and installation of the electronic communications network or facility, follow best practice and comply with regulatory or industry standards.</i>” The licensee must also comply with the standards prescribed by a landowner that is a road authority at municipal, provincial and national	This provision should be modified to reflect the necessity for compliance with the requirements of any relevant road authority, Alternatively, this should be

	level. These authorities will require that all installations and reinstatements comply with its own standards, best practise and other requirements and take into account the existing infrastructure that will be affected by the electronic communications network services. It is essential that the service licensee obtains the relevant standards and guidelines from a road authority when planning the installation, undertaking it and rehabilitating damaged or disturbed infrastructure. Licensees have developed a particularly poor reputation for badly rehabilitated infrastructure and all efforts must be made to ensure the instances of this happening are reduced. The road authority should also have the right to appoint a consultant to monitor the compliance of the installation or any other works by the service licensee.	provided for in a separate provision.
22.	Proposed section 20D provides that: <i>“A landowner may object to the Authority in the prescribed manner at least 14 days before the electronic communications network service</i>	Refer to responses in lines 13 and 19 above.

		<i>licensee commences with the activity and only if the proposed electronic communication network or facility will cause significant interference with the land”.</i>	
23.	Clause 13 Proposed section 20E “Access to high sites for radio based systems”	It must be made clear that access to high sites by licensees for the purposes of deploying electronic communications networks and facilities is subject to all relevant regulatory approvals. Such regulatory approvals may set conditions that influence the manner in which the site is accessed. This provision is unclear as to whether the requirements of proposed section 20D must also be complied with in respect of high sites. Insofar as proposed section 20D applies to all “<i>public and private land</i>” it appears that this is the case. This should be made explicit. Furthermore, it is noted that proposed section 20E provides that the installation must be in accordance with the “<i>reasonable requirements of the owner</i>”. This requirement should also be expressly stated in proposed section 20D and 20G.	Clarify that this provision is subject to all relevant regulatory approvals. Clarify the applicability of proposed section 20D to this provision. The requirement that the installation must be in accordance with the reasonable requirements of the landowner should also

		The current wording of proposed section 20D, 20E and 20G run the risk of contravening section 25 of the Constitution. In this regard the omission of the requirement to comply with “<i>applicable law</i>” is of a concern. This requirement was pivotal to the finding in the Tshwane case. See the response in line 2 above in this regard. It is noted that the potential for radiation effects on health and visual pollution arising from high masts and aerials are significant. It is noted that proposed section 20G relates to access to buildings and it is hence proposed that it should follow proposed section 20E sequentially.	be stated in clause 20D and 20G. Proposed section 20G should follow proposed section 20E sequentially.
24.	Clause 13 Proposed clause 20J “Application process and procedure”	Different governmental authorities may have differing requirements for applications. The processes relating to applications in respect of different of landowners must be kept updated.	

		Note that this is a substantial task, as different municipalities may have different requirements, and the same applies to different provinces and national departments.	
25.		Proposed section 20J(5) provides that the National Co-coordinating Centre must promote and encourage consistency in the time taken by the relevant authorities to grant approvals for the deployment of electronic communications networks and facilities. As noted in line 19 above, the notice period of installation to be provided by a licensee of 30 days is too short. For example, the Province will require a period of at least 90 days to assess proposed installations on road infrastructure (in all, other than very routine, installations) and for the necessary permission to be processed.	
26.	Clause 13 “Fees, charges and levies”	Refer to response in line 13 above.	Reconsider this provision in line with response in line 13 above. The term “<i>compensation</i>” should be

		Proposed section 20K(1) appears to assume that overhead cabling will never be intrusive – this is disputed. Overhead cabling may, for example, be visually intrusive. In proposed sections 20K(2)(a), (b) and (3) it is proposed that “access fees”, be substituted with “<i>compensation</i>”.	used instead of “access fees”.
27.	Clause 15 Proposed amendment of section 24.	The term “roads” as opposed to “streets” is used in Schedule 5 of the Constitution.	It is proposed that the term “roads” be used in the place of “streets” to avoid confusion.
28.		It is not clear how the notice in the proposed subsection (1) process relates to procedures set out under section 20D(5). It is not clear if this section is in addition to or instead of proposed section 20D. The provision must be expanded to provide that full planning details on how proposed subsections 24(1)(a)-(c) are to be undertaken. Furthermore, it must be stated that access is subject to permission being obtained from, and the conditions set by the road authority.	It is proposed that the processes under section 20D(5) and section 24 be rationalised. Ensure that the provision includes provincial and national departments and

		It is unclear why this provision only refer to the “local authority” . Provincial and national departments and statutory bodies (for example SANRAL) also bear responsibility for roads under their authority.	statutory bodies (for example SANRAL) responsible for roads.
29.		Proposed subsection 24(2) only deals with the circumstances referred to in subsection 24(1)(c).	Add “referred to in subsection (1)(c)” after “pipe” .
30.	Clause 16 Proposed amendment of clause 25.	It is not considered justifiable that the cost must be borne by the local authority or a person for moving an electronic communications network facility or fibre when it is upgrading its own infrastructure. The licensee must pay full costs in such cases.	This cost should be borne by licensee and not the landowner.
31.		The reference to “ <i>building</i> ” in section 25(2) is too limiting and excludes other structures or things that are built or erected that could affect the positioning of electronic communications networks or facilities.	It is proposed that “or public” be inserted after “private” and “or structure” be added after “building” to

		The reference to private property in this section and in section 25(4) is too limiting and should also be amended to include public property.	include such things as bridges and culverts in roads, or swimming pools on private land. Include reference to public property in section 25(4).
32.	Section 29	The section heading is misleading and should perhaps instead be “Construction of railways or works” Even so, it is unclear what scenario section 29 is intended to cover, and the meaning of the words in section 29(1): “<i>Any person who constructs, equips or carries on any railway or works for the supply of light, heat or power by means of electricity</i>” does not make sense.	It is proposed that the section heading be amended to more appropriately reflect the content of the section. It is suggested that section 29 be redrafted to clarify what it covers and the associated procedures.