

ENSafrica TMT ENSight

Welcome to the twelfth issue of **ENSafrica's TMT ENSight**, focusing on topics, news and analysis of novel and interesting developments in the technology, media and telecommunications space. In this edition:

- Our **featured articles** look at the challenges of regulating AI and the importance of Data centre vendors
- **Telecommunications**, a roundup of recent developments in the telecoms sector.
- **In the news**, a curation of topical events in the technology and telecommunications industry.

featured articles

- **Data center vendors – a view at risk management**
 - Wilmari Strachan, Shaaista Tayob and AlexPowell discuss the importance of data *center* vendors
 - Read the article [here](#).
- **Challenges in regulating the use of artificial intelligence**
 - Kayla Casillo and Alex Powell discuss the challenges facing global AI regulation.
 - Read the article [here](#).

telecommunications

- **GG48346: National Policy on Rapid Deployment of Electronic Communications Networks and Facilities**
 - On 31 March 2023, the Minister of Communications and Digital Technologies issued the National Policy on Rapid Deployment of Electronic Communications Networks and Facilities (the "**Policy**").
 - The Policy has been developed and published pursuant to the National Integrated ICT Policy White Paper ("**White Paper**") that was published on 03 October 2016.
 - In developing the Policy, the Minister considered the judgment of the Constitutional Court of South Africa in the matter of *City of Tshwane Metropolitan Municipality v Link Africa (Pty) Limited*.
 - The purpose of the Policy is to provide a process that must be followed by licensees who wish to access property in order to deploy electronic communications networks and to create a dispute resolution mechanism to

resolve disputes that may arise in connection to the deployment of electronic communications networks between licensees and property owners.

- The objectives of the Policy are to:
 - balance the rights of licensees to enter onto private and public land with the rights of property owners;
 - facilitate access to rights of way, wayleaves, servitudes and other approvals;
 - enable the rapid deployment of broadband infrastructure in an efficient, cost effective, environmentally responsible manner;
 - facilitate the achievement of the goals and targets set out in the National Broadband Policy, 2013 - SA Connect;
 - promote the sharing of broadband infrastructure; and
 - enable the development of a dispute resolution mechanism.
- Under the Policy, licensees have the right to use public and private land nationally to deploy broadband infrastructure and licensees will retain the ownership of the broadband infrastructure that has been deployed.
- All government entities, including SOEs, that have servitudes for infrastructure such as roads, power lines, water pipelines, sanitation pipelines and railway lines, must permit licensees to use such servitudes to deploy broadband infrastructure.
- Government entities must share property and infrastructure such as high sites, poles and ducts with licensees for purposes of broadband deployment.
- When a licensee wishes to access land to deploy broadband infrastructure, it must give the property owner (and any other person whose rights or legitimate expectations may be materially and adversely affected) thirty calendar days' written notice, of its proposed access to the property.
- The notice must:
 - specify the reasons for engaging in the activity;
 - specify the date of commencement of such activity;
 - outline the dispute resolution process in case of a dispute relevant to its plans;
 - specify where the licensee intends on locating the broadband infrastructure;
 - provide environmental, water, health and safety information, as may be applicable; and
 - specify the relevant approvals that are required such as wayleave approvals under municipal by-laws.
- The licensee must consult with the property owner and any other person whose rights or legitimate expectations may be materially and adversely affected regarding the placement of the infrastructure.
- All employees and contractors of the licensee that need access the property must provide a letter of authorisation and identification to the property owner when they access the property.
- When deploying the infrastructure, the licensee must comply with good engineering practice, and the engineering standards of the relevant municipality.
- The licensee must restore the property to its former state and repair any damage caused as a result of the deployment.

- Before doing maintenance or repairs, a licensee must give the property owner and any other affected person fourteen calendar days' written notice.
 - A licensee must submit geographical information system information about the type and location of broadband infrastructure deployed to ICASA.
 - ICASA must use the geographical information system information to update the geographic information system database of the Rapid Deployment National Coordinating Centre of the Department.
 - Where it is possible to share broadband infrastructure, licensees should share the infrastructure.
 - The property owner may not ask for compensation from licensees for building broadband infrastructure on their property where the infrastructure is not intrusive, such as includes buried or overhead cabling.
 - A property owner may seek reasonable compensation for building broadband infrastructure that is intrusive.
 - Reasonable compensation must be reasonable in proportion to the disadvantage suffered, and may not enrich the property owner or exploit the licensee.
 - Where infrastructure is placed on communal land, compensation should be paid monthly, subject to regulations on the rapid deployment of electronic communications networks and facilities.
 - A property owner may dispute the reasonability of compensation by lodging a dispute at least fourteen calendar days before the licensee commences with the deployment.
 - A licensee may not continue to deploy broadband infrastructure while awaiting the resolution of the dispute.
 - The dispute resolution mechanism is voluntary and the property owner must agree to participate in it in writing.
 - A property owner is entitled to the replacement value or reasonable compensation agreed to between the property owner and the licensee, for any damage caused.
 - Disputes relating to the replacement value or reasonability of compensation for damage should be referred to a court of competent jurisdiction.
 - A decision made in accordance with the rapid deployment regulations is binding on the parties to the dispute unless a court order is granted against the decision.
 - Any appeal against or review of a decision of ICASA must be referred to a court of competent jurisdiction.
 - In order to expedite environmental impact assessment approvals, licensees should consider submitting consolidated network rollout plans and applications to the Department of Forestry, Fisheries and the Environment and Provincial Environmental Affairs Departments.
 - Environmental impact assessment approvals should take no more than 57 calendar days from date of submission of all relevant documents, to date of final decision by the relevant authorities.
 - To the extent that the Policy differs from the White Paper, on the rapid deployment policy, the Policy will take precedence.
- **GG48346: Policy Direction on Rapid Deployment of Electronic Communications Networks and Facilities**

- On 31 March 2023, the Minister of Communications and Digital Technologies issued the Policy Direction on Rapid Deployment of Electronic Communications Networks and Facilities pursuant to the ECA.
- The ECA provides that ICASA must prescribe regulations on the rapid deployment of electronic communications networks and facilities to provide for relevant procedures and processes after the Minister issued the policy.
- The regulations must include procedures and processes for resolving disputes 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 uses public and private land for the deployment of broadband infrastructure.
- The regulations must promote the public interest in the rapid rollout of broadband infrastructure.
- The procedures and processes may address:
 - the manner, costs of and time within which a decision must be made;
 - the implementation and publication of decisions made in terms of the dispute resolution procedure; and
 - how reasonable compensation may be determined.
- **GG48332: Notice of the Applications Received in Respect of the Invitation to Pre-Register for Community Television Broadcasting Service and Radio Frequency Spectrum Licences for Multiplex 1 Frequencies**
 - On 30 March 2023, the Independent Communications Authority of South Africa (ICASA) published a notice that it had received applications for pre-registration for community television broadcasting service and radio frequency spectrum licences in various provinces throughout South Africa.
 - ICASA received thirty-seven applications, of which twenty applications were admitted to Phase 1 of the ITP-R licensing process.
 - Interested parties are invited to submit written representations in relation to the applications by 21 April 2023. Written representations received after the deadline will not be considered.
 - Parties that wish to submit representations must also indicate whether they wish to make oral submissions should ICASA hold public hearings in respect of the applications.
 - Applicants that wish to respond to the representations may do so in writing by 12 May 2023.
 - All written representation must be directed to the attention of Mr Pascalis Adams, Project Manager: DTT Community TV on MUX 1 Committee via email: itp-r-tv@icasa.org.za, via hand delivery: Block B, 350 Witch-Hazel Avenue, Eco Point Office Park, Eco Park, Centurion, or via registered post: Private Bag X10, Highveld Park, 0169.
- **GG48331: Amendment of the Processes and Procedures Regulations for Individual Licences, 2010**
 - On 29 March 2023, ICASA published the Amendment of the Processes and Procedures Regulations for Individual Licences, 2010 ("**Regulations**") under section 5(7) of the Electronic Communications Act, 2005.
 - In terms of the amended Regulations, an applicant must submit an application as either (i) one soft copy of the original application electronically or (ii) two hard copies (including an original) of the application as well as a soft copy of the application using an external storage device.

- Where any document is required in terms of the Regulations, it must be submitted to ICASA before 16h00 during working days. Any documents submitted after 16h00, will be considered to have been received on the next working day.
- ICASA will not consider any application if the applicant is:
 - in arrears with respect to any fees due and payable to ICASA; and/or
 - found to be non-compliant by the Complaints and Compliance Committee (CCC) with regards to the applicable regulations and/or the provisions of the ECA and has failed to remedy the non-compliance.
- ICASA may publish an application for the transfer of an individual license as a notice in the *Government Gazette* and on its website.
- An application to transfer a licence or to transfer the control of a licence will be evaluated based on the:
 - promotion of competition in the ICT sector;
 - interests of consumers; and
 - equity ownership by historically disadvantaged groups in the transferee.
- ICASA may refuse the transfer or renewal of a licence if the licensee is in arrears in respect of any fees; or if the ownership and control in the transferee of a licence or applicant does not comply with the 30% HDG equity requirement.
- A licensee may surrender its licence by submitting a notice as set out in Form I of the Regulations, which must be submitted in no less than ninety days prior to the date determined by the licensee of when the surrender will take effect.
- A licensee may not stop providing services prior to having submitted a notice for the surrender of its licence to ICASA.
- A licensee that intends to surrender its licence must take appropriate steps to inform its end-users/listeners/viewers of its intention to cease providing its services two months before it stops offering the services.
- All amounts due and payable to the ICASA must be paid within one calendar month of the date on which the service provided in terms of the licence is discontinued, except where the licensee has made a request to ICASA to extend the deadline.
- A licensee must submit a written notice to ICASA within fourteen days of a change in the:
 - name, and/ or contact details of the licensee;
 - type of the services provided in terms of the licence (only applicable to ECS and ECNS);
 - shareholding in the licensee;
 - principal place of business; and
 - postal address.
- Publicly listed entities that hold individual licences must submit a notification on changes to its shareholding to ICASA on an annual basis in accordance with the licensee's financial year end.
- ICASA may by means of an Invitation to Apply, published in the *Government Gazette* and its website, allow applicants to lodge applications through an online application process on the date to be determined by ICASA.

- The following forms have been amended:
 - Form C: Application to Amend an Individual Licence;
 - Form E: Application to Renew an Individual Licence;
 - Form G: Application to Transfer Ownership and/or Control of an Individual Licence
 - Form I: Notice of Surrender of an Individual Licence;
 - Form J: Application for a Special Temporary Authorisation; and
 - Form O: Notice of Change of Information in Respect of an Individual Licence
- The amendments came to effect on 30 March 2023.
- **GG48318: End-User and Subscriber Service Charter Amendment Regulations 2023**
 - On 26 March 2023, ICASA published the End-User and Subscriber Service Charter Fourth Amendment Regulations, 2023 ("**Amendment Regulations**") in terms of section 4, read with section 69 (3) of the ECA.
 - The Amendment Regulations amend Regulation 1 of the End-User and Subscriber Service Charter Regulations, 2016 ("**the Regulations**") by adding new definitions. Read the new definitions [here](#) .
 - ICASA may order or direct licensees to issue consumer advisories on specific issues which ICASA deems relevant and necessary for the protection of end-users. Such directives may include, but are not limited to: fraudulent SIM swaps, fraudulent number porting, billing, or any other issues which affect consumers.
 - The new applicable measurement parameters for fixed, fixed wireless and mobile services can also be found in the regulations.
 - An Electronic Communications Network Services (ECNS) licensee is required to monitor its network 24 hours a day 7 days a week.
 - ICASA will also monitor the quality of service performance provided by licensees at any time through drive tests, walk tests, probes and/or counters at its sole discretion without prior warning.
 - A licensee is required to provide raw network performance data at any time to ICASA upon request.
 - A licensee must notify affected end-users via SMS, and on social media platforms, or on its own website, seven days before any planned service interruptions.
 - The end-users must be opted in to receive the communication as a default position, but they must be provided with the option to opt out to receive the communication about planned outages.
 - For all major network outages, a licensee must notify its customers and ICASA of the outage as soon as it occurs via social media platforms, SMS and its website.
 - The Amendment Regulations came into force on 28 March 2023.
- **GG48317: Amendment of the Standard Terms and Conditions for Individual Licences, 2010**
 - On 26 March 2023, ICASA published the third amendment to the Standard Terms and Conditions for Individual Licences, 2010 ("**the Regulations**") in terms of under section 8, read with section 4 of the ECA and section 17E (2)(b) of the Independent Communications Authority of South Africa Act, 2000.

- Under the Regulations, a licensee is required to submit a written notice to ICASA within 14 days if there is a change in the licensee regarding:
 - the name of the licensee;
 - contact details including the contact persons (e.g. telephone, cell number and email);
 - shareholding of the licensee;
 - principal place of business; and
 - postal address.
- A licensee must notify ICASA in writing if it is unable to provide its services for reasons beyond its control for a continuous period of six hours within 12 hours of being aware of the occurrence. Moreover, a licensee must request an exemption to comply with the licence terms and conditions from ICASA in writing if it is unable to provide its services for more than seven days within two days of being aware of the occurrence.
- Where a licensee fails to provide ICASA with requested information ICASA may refer the matter to the Complaints and Compliance Committee (CCC) after three attempts to obtain the information from the licensee.
- Under Schedule 3 of the ECS licensees are required to commence operation of the licensed service within 24 months from the effective date unless ICASA grants the licensee an extended commencement period.
- An ECS licensee cannot provide any service for a charge or fee unless the price and terms and conditions are:
 - available to the end-user on request for free or they are available inspection at the Licensee's principal place of business during business hours and on the website; and
 - have been filed with ICASA at least five days prior to the provision of the said service.
- An ECS licensee is obligated to notify ICASA of the termination of an existing service at least five days prior to the termination of the service.
- The Regulations came into effect on 28 March 2023.
- **GG48113: Standard Draft By-Laws for Deployment of Electronic Communications Facilities**
 - On 24 February 2023, the Minister of Cooperative Governance and Traditional Affairs published the Standard Draft By-Laws for Deployment of Electronic Communications Facilities in terms of section 14(1) of the Local Government: Municipal Systems Act, 2000 ("**Standard Draft By Laws**").¹
 - The objectives of the Standard Draft By-Laws are to:
 - facilitate the rapid deployment of electronic communications infrastructure; and
 - ensure uniformity within the context of the competencies, laws and developmental obligations of municipalities about municipal planning in relation to electronic communications infrastructure.
 - The Standard Draft By-Laws apply to all persons seeking to deploy or operate electronic communications facilities on, under or above municipal property.
 - The deployment of electronic communications facilities attached to municipal property may not take place without the owner of the electronic communications facilities and the municipality having first entered into a Municipal Land Use Agreement or Municipal Lease Agreement.

- The owner of the electronic communications facilities who wishes to deploy or perform maintenance on the facilities on municipal property must apply for a wayleave from the municipality prior.
- A completed wayleave application form must include:
 - drawings in digital format or three copies of drawings of the proposed work clearly showing the following:
 - the full extent of the deployment, including—
 - any deployment of electronic communications facilities on, under or over private land in the municipal area; and
 - the position and size of ancillary and supporting facilities
 - the position of other services infrastructure already deployed in the area;
 - the depth of all electronic communications facilities below the road where trenching is planned;
 - the distance of the works from the boundary of the road reserve, where relevant; and
 - where aerial fibre is planned, the dimensions and functionality of poles, where they are to be sited, and the height at which fibre will be strung.
 - the proposed reinstatement.
 - the proposed commencement date and expected duration of the work to be done on the property.
 - details of consents or permissions required from third parties for the planned deployment and proof that these have been obtained.
 - where applicable, a statement that the leasing of existing electronic communications facilities has been investigated and is not feasible.
 - where applicable, evidence that the applicant has met the infrastructure sharing notification.
 - a completed compliance statement as provided for in the wayleave application form.
 - a Municipal Land Use Agreement between the owner/operator of the electronic communications network and the municipality.
- a wayleave application must be processed within 30 working days after submission.
- if the municipality requires additional time to process the application, it must notify the applicant before the expiry of the initial period that it needs a further 15 days to consider the application.
- wayleaves for emergency or maintenance works may only be applied for if there is an existing wayleave issued by a municipality.
- a wayleave application form for emergency or maintenance works must include:
 - drawings in digital format or three copies of drawings clearly indicating where works will be conducted;
 - the nature of the emergency, in the case of emergency works;
 - the proposed commencement date and expected duration of the works; and
 - a completed compliance statement as provided for in the wayleave application form.

- a wayleave holder must submit a request for an extension of the wayleave as soon as it becomes aware of any circumstances that are reasonably beyond its control that may cause a delay in completing any work beyond the term granted in the wayleave.
- before submitting a wayleave application, an applicant must notify third-party infrastructure providers of its intention to apply for a wayleave by publishing a notice in the print and online version of a local newspaper and sending a notification to all members of any database established for this purpose.
- the notice must also:
 - provide details that are reasonably required for the third parties to determine whether they wish to enter into a co-build or similar arrangement with the applicant; and
 - give interested parties no less than 10 days to respond to the notification.
- the tariffs for wayleave applications and deployment of electronic facilities on municipal property will be based on the municipality's tariff policy.
- a municipality may require a wayleave holder to provide an irrevocable bank or performance guarantee for purposes of granting the municipality access to funds to cover any damage that may be caused to municipal property by the wayleave holder.
- wayleave holders must indemnify the municipality, its staff and representatives in respect of:
 - any claims for damage caused to third-party infrastructure or interruption of third-party services caused by the wayleave holder; and
 - any claims for damage caused by other wayleave holders to the wayleave holder's electronic communications facilities.
- a municipality can also impose sanctions on wayleave holders for breaching the terms and conditions of their wayleave. The sanctions imposed are based on current tariffs.
- a municipality can also lodge a complaint with ICASA if the municipality believes that a wayleave holder or party to a Municipal Land Use Agreement or Municipal Lease Agreement is an electronic communications network service licensee acting in contravention of its licence terms and conditions.
- where a wayleave holder must alter or remove electronic communications facilities due to work undertaken by a municipality, the municipality will be liable for the costs incurred.
- if a wayleave holder believes that any tree or vegetation on municipal property obstructs or interferes with the deployed electronic communications facilities, it must provide written notice to the municipality that it requires the municipality to remedy the obstruction or interference.
- if the remedial action is not completed within a reasonable period, a wayleave holder can take the steps to remove the obstruction or interference at its own cost.
- disputes arising from the implementation of these Standard Draft By-laws will take place through negotiations and will involve the government structures created to facilitate rapid deployment of electronic

communications facilities, such as the Rapid Deployment Coordinating Committee.

- the Standard Draft By-Laws will be reviewed every 2 years.

in the news

- **Uber South Africa launches initiatives to empower women**
 - Uber South Africa has introduced services from GigSister and Zoie Health to its Uber and Uber Eats platforms that will be available to women drivers on the platforms.
 - The services are aimed at supporting women drivers on Uber and Uber Eats, and the company expects that this will help remove barriers that women face when conducting their business on the platforms.
 - Zoie Health is a digital women's health and wellness clinic that allows users to get healthcare advice from professionals through virtual consultations with medical providers.
 - GigSister is a community-based initiative created to connect, empower and grow female drivers on the Uber platform across Africa.
 - Over the next 12 months, women drivers will have access to bespoke health and wellness services made available for them and their families.
 - Uber South Africa will also launch a new incentivisation program for women drivers to refer other drivers to Uber in April.
 - For every new driver they refer to Uber in South Africa, drivers will get ZAR1 000 once-off payment when their referee completes their first five trips.
 - Uber has also partnered with L'Oréal and its global campaign to end street harassment and offer drivers tips on how to safely combat harassment.
 - More about Uber South Africa's initiatives can be read [here](#).
- **Google rolls out its AI chatbot**
 - Google has started rolling out its AI chatbot, Bard, to users over the age of 18.
 - Bard is able to access up-to-date information from the internet and has a "Google it" button which accesses the search engine directly.
 - The company stated that Bard does have limitations which include sharing misinformation and issues with display bias because it relies on real world information.
 - Bard was developed based on Google's language model Lamda. However, Lamda was never fully released to the public.
 - Bard is programmed not to respond to offensive prompts and has filters to prevent it from sharing harmful, illegal, sexually explicit or personally identifiable information, however this is not fail-proof.
 - Bard can mimic writing styles from other sources, but it does not express opinions or take on a persona.

- Google will be closely monitoring Bard to make sure it adheres to the AI principles it has set, which include avoiding the creation or reinforcement of bias.
- More about Bard can be read [here](#).
- **Microsoft adds AI chatbot to development tools**
 - On 22 March 2023, Microsoft announced that GitHub has added new features to its app Copilot, which is aimed at helping software developers code.
 - This new version is called Copilot X and has added a chat and voice feature which allows programmers to ask questions regarding programming tasks.
 - When it was first launched, Copilot offered a completion tool that suggested snippets of programming code as a software developer typed the code.
 - The chat feature can suggest bug fixes, techniques to test the code, and offer explanations of what sections of the code are supposed to do.
 - Developers can also use their voice to give directions or pose inquiries to the chatbot.
 - Copilot X will also be using OpenAI's latest language model, GPT 4. GitHub plans to use other AI models to cater to different tasks.
 - Developers can now sign up for the waitlist to preview the new service.
 - More about Copilot X can be accessed [here](#).
- **Meta rolls out paid verification for Facebook and Instagram**
 - On 17 March 2023, Meta announced that it will be rolling out a paid verification service, Meta Verified, for Facebook and Instagram in the United States.
 - Meta Verified will offer creators a verified badge that authenticates your account with a government ID, proactive account protection, access to account support, and increased visibility and reach.
 - Meta Verified will cost USD14.99 per month on iOS and Android devices, or USD11.99 per month on the website.
 - To access the service, Meta Verified subscribers must be at least 18 years old and will need to present a valid form of government ID.
 - Meta Verified has already been tested in Australia and New Zealand.
 - More about this new service can be read [here](#).

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