
GOVERNMENT NOTICE

DEPARTMENT OF COMMUNICATIONS

No. 246**27 February 2008**

ELECTRONIC COMMUNICATIONS ACT, 2005 (ACT No. 36 of 2005)

GUIDELINES FOR RAPID DEPLOYMENT OF ELECTRONIC COMMUNICATIONS FACILITIES

The Minister of Communications in consultation with the Minister of Provincial and Local Government, the Minister of Environmental Affairs and Tourism, the Authority and other relevant institutions has, under section 21 of the Electronic Communications Act, 2005 (Act No. 36 of 2005), made the Guidelines in the Schedule.

SCHEDULE

PREAMBLE

RECOGNISING the government's national policy to ensure rapid development of robust, reliable and affordable ICT infrastructure that enables the provision of enhanced broadband services necessary to stimulate economic growth and meet the increasing communications needs of the people of South Africa;

RECOGNISING the role of ICT in socio-economic development and its contribution to meeting the Millennium Development Goals and the commitments made at the World Summit on the Information Society;

ACKNOWLEDGING the Department of Communications' mandate to develop ICT policies and legislation that support the development of an ICT sector that creates conditions for accelerated and shared growth of the South African economy;

ACKNOWLEDGING the government's responsibility to meet the country and public's ever increasing requirements for international connectivity that is adequate, secure, stable and affordable;

DESIROUS to provide for the rapid and comprehensive approval of cable landing authorisations for international submarine cables ;

CONSIDERING that the government has decided to use its strategic economic and geographic position with respect to international submarine cables to advance the principles and objectives of the New Partnership for Africa's Development (NEPAD);

COGNISANT of the fact that the government has decided that, as part of the objective to reduce the cost of communications in South Africa and Africa in general has to invest and increase their presence in the sub-marine cable space globally;

RECOGNISING that international gateways and international submarine cables are critical infrastructure with national security implications that require special governmental attention; and

TAKING into consideration the increasing interest and plans to land new international submarine cables in South Africa and the government's policy objective and responsibility to encourage, promote and support increased ownership and control of electronic communications facilities by Africans.

NOW, THEREFORE in furtherance of the objects of the Act, the Minister hereby issues these Guidelines pursuant to section 21 of the Act and the Minister's authority in exercising his or her functions as representative of the Republic in international fora, including with respect to the Republic's obligations in terms of bilateral and multilateral agreements and international treaties, protocols and conventions.

1. DEFINITIONS.

In these Guidelines a word or expression to which a meaning has been assigned in the Act has the meaning so assigned and, unless the context indicates otherwise –

"the Act" means the Electronic Communications Act, 2005 (No. 36 of 2005);

"Authorisation" means an authorisation issued by the Minister to connect international submarine cables to international submarine cable systems in the Republic;

"Authority" means the Independent Communications Authority of South Africa;

"cable landing station" means an electronic communications facility, including where applicable collocation space, monitoring equipment, space on or within ducts, cable trays, conduits and beach joints that houses the electronics and is used to connect an international submarine cable to land-based electronic communications facilities and includes all associated support systems, sub-systems and services, ancillary to such international submarine cables and electronic communications facility;

"ICT" means information and communications technology;

"International submarine cable" means any marine-based fiber optic cable operated outside the Republic;

"joint application" means an application filed pursuant to these guidelines where the parties to the application comprise more than one electronic communications network service licensee;

"Regulations" means regulations made by the Authority;

"Republic" means the Republic of South Africa, its possessions, air space and territorial waters;

"South African" means, in the case of: (i) a natural person, is a citizen of the Republic; or (ii) a juristic person, is or will be registered under the laws of the Republic and has or will have its principle place of business located within the Republic.

"international submarine cable" means the domestic wet segment of a fibre-optic cable, including the fibres and circuits therein that extends from the point of interconnection to an international submarine cable, through the territorial waters of the Republic and terminates or otherwise interconnects to a land-based point of interconnection in a cable landing station; and

"international submarine cable system" means the international submarine cables and all associated cable landing stations including any land-based electronic communications facilities used to interconnect a land-based electronic communications network to the cable landing stations regardless whether such electronic communications facilities are collocated or otherwise housed in the cable landing station but excludes international submarine cables and land-based electronic communications networks.

2. GENERAL PROVISIONS.

(1) An international submarine cable, a cable landing station or an international submarine cable system may only be landed or operated in the Republic with the written Authorisation issued by the Minister in accordance with these Guidelines.

(2) An Authorisation issued pursuant to these Guidelines may not be transferred and an ownership interest in an international submarine cable system that was relied upon to meet the qualification criteria set out in guideline 3 may not be relinquished, sold or assigned, without the prior approval of the Minister.

(3) Coastal provinces have jurisdiction over the seabed from the coast out to three (3) nautical miles as well as over the land where cables emerge from the sea. The Republic has jurisdiction over the seabed within its territorial waters extending up to twelve (12) nautical miles from the coast as well as sovereignty over the exclusive economic zone which extends to either 200 nautical miles or to the edge of the continental shelf.

(5) The Minister in consultation and concurrence with the Minister of the Department of Environmental Affairs and Tourism hereby declares that the landing of international submarine cables and the construction of international submarine cable systems in the Republic constitute activities that will affect more than one province and once connected to the international global communications network will traverse international boundaries; having implications for national environmental policy and the Republic's national security. Accordingly, pursuant to section 24C(2) of the National Environmental Management Act 107 of 1998, the Department of Environmental Affairs and Tourism must serve as the competent authority responsible for the grant of the requisite environmental authorisation required pursuant to Listing Notice No. 387 of 21 April 2006.

3. QUALIFICATION CRITERIA FOR GRANTING OF AUTHORISATIONS.

(1) To qualify for an Authorisation, the applicant must, at the time of filing and throughout the term of the Authorisation, be an individual electronic communications network service licensee registered in terms of South African law.

(2) South African entities must, at the time of filing and throughout the term of the authorisation have in respect of the international submarine cable that the applicant wishes to connect to South Africa, a combined equity ownership interest, on its own or jointly with other African entities as authorized by the Minister, that is equal to or greater than 51%.

(3) In any case where an individual electronic communications network service licensee will own less than a 51% equity interest in the international submarine cable system, it may join with one or more other individual electronic communications network service licensees and file a joint application, such that the total equity ownership interests in the international submarine cable system held by the joint applicants is equal to or exceeds 51%.

(4) Applications submitted by persons not meeting the criteria set out in these Guidelines will not be approved.

4. CONTENT OF APPLICATION FOR AUTHORISATIONS.

(1) An application for an Authorisation must contain

(a) a general project overview and a description of the international submarine cable, including the full capacity and the capacity that will be initially deployed and made available for use;

(b) in the case of an individual being part of the application, the name, address, telephone number(s), website (if any) and e-mail address of the applicant;