



**For attention:**

Hon Khusela Lwandlekazi Nobatembu Sangoni  
Chairperson  
Portfolio Committee on Communications and Digital Technologies

**Per email:** tngoma@parliament.gov.za

21 September 2026

Dear Hon KLN Sangoni, MP

The Helen Suzman Foundation is a Non-Profit Organisation that advocates for constitutional democracy and human rights in South Africa. We attach our written submission in response to the invitation for comments on the [Electronic Communications Amendment Bill \[B12- 2026\]](#).

We confirm our interest in making oral submissions.

Should you have any queries, it would be appreciated if you could contact me at the following email address: [naseema@hsf.org.za](mailto:naseema@hsf.org.za)

Yours Sincerely

**Naseema Fakir**

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## Introduction

1. The Helen Suzman Foundation (HSF) is an organisation that promotes constitutional democracy, the rule of law, and human rights. HSF has a longstanding interest in matters that advance the South African society. Electronic communications and the Information and Communications Technology (ICT) sector have an important function in access to information, the promotion of the development of “public, commercial and community broadcasting service which are responsive to the needs of the public... protect the integrity and viability of public broadcasting services; refrain from undue interference in the commercial activities of licensees while taking into account the electronic communication needs of the public” as outlined in the Electronic Communications Act 36 of 2005 (the Act).
2. HSF welcomes the opportunity to comment on the [Electronic Communications Amendment Bill, 2026 \[B 12—2026\]](#) (the Bill). This submission is largely confined to one aspect which is the insertion of section 21A but also sections 43, 44 and 67A. The section empowers the Minister responsible for the local government to make a national standard draft by-law dealing with:
  - 2.1. Wayleave applications;
  - 2.2. The sharing of municipal property and infrastructure;
  - 2.3. Integrated Development Plans;
  - 2.4. Cost-based fees; and
  - 2.5. Related matters for the rapid deployment of electronic communications networks and facilities.
3. The memorandum of the Bill states that these amendments were brought about the intervention of the National Integrated ICT Policy White Paper, 2016<sup>1</sup> which identifies the need of a policy framework to transform the ICT sector, electronic communications networks and the broadcasting space in the public interest.<sup>2</sup> The White Paper notes, to achieve this, provisions must be made for “infrastructure rollout, including managing scarce resources and enabling proportionate and appropriate regulation”.<sup>3</sup>

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<sup>1</sup> National Integrated Information and Communications Technology (ICT) Policy White Paper, *Government Gazette* No. 40325, Department of Telecommunications and Postal Services, 28 September 2016, available here: <https://www.dcdt.gov.za/documents/legislations/white-papers/file/109-the-national-integrated-ict-policy-white-paper-3rd-october-2016.html> (*National Integrated ICT Policy White Paper*).

<sup>2</sup> *Ibid* at 9.

<sup>3</sup> Memorandum on the Objects of the Electronic Communications Amendment Bill, 2026 at 12.

4. The White Paper was drafted to respond to South Africa's developmental agenda and noting that the social, political and economic project of the country will be disrupted if it does not respond to the changes of ICT as part of the National Development Plan.<sup>4</sup> The aim of the White Paper is to create a rapid deployment policy<sup>5</sup> as a response to increase in costs of rolling out electronic communications network which, in turn, contribute to the delay in expanding broadband infrastructure that is intended to realise the goal of an "inclusive digital society and knowledge economy" in South Africa.<sup>6</sup>
5. HSF supports the objective of including the role of the Minister of Cooperative Governance and Traditional Affairs, responsible for local government, in setting a standard for the deployment of electronic communications networks and facilities. The objective of rapid deployment reform is supported. This submission's concern is that section 21A, as currently drafted, does not specify how municipalities and other stakeholders are to be consulted in drafting the:
  - 5.1. Standard by-law;
  - 5.2. What the by-law's legal status is;
  - 5.3. How it relates to existing municipal by-laws; and
  - 5.4. How it is to be reconciled with the national rapid deployment regulatory framework that already exists under section 21 of the principal Act.
6. Left unresolved, the HSF, is of the view, that these gaps risk producing the very fragmentation, delay and legal uncertainty the Bill is intended to cure.
7. This submission proceeds on the point that this is an important step in involving local government, especially when the deployment of electronic communications networks and facilities will touch on the competence of municipalities. This is a step that ensures that the principle of co-operative governance is complied with and realised in terms of sections 40 and 41 of the Constitution.<sup>7</sup>

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<sup>4</sup> *National Integrated ICT Policy White Paper* above n 2 at 14.

<sup>5</sup> The White Policy defines rapid deployment as "the process of gaining access to and using property, including buildings and land such as waterways, roads, railways, footpaths and tunnels, to deploy electronic communications networks". See *National Integrated ICT Policy White Paper* above n 2 at 90.

<sup>6</sup> *Ibid* at 98.

<sup>7</sup> In *Adonisi v Minister for Transport and Public Works, Western Cape; Minister of Human Settlement v Minister for Transport and Public Works, Western Cape* [2026] ZACC 29 held that—

"Section 41 of the Constitution obliges these spheres of government to *co-operate with one another in mutual trust and good faith and to co-ordinate their actions with one another*... This obligation arises from a purposive, textual and contextual interpretation and from proper understanding of the manner in which the national and provincial spheres of government ought to operate under the Constitution, in

8. HSF submits that, in its current form, section 21A does not sufficiently address several issues that are pivotal in ensuring constitutional compliance and clear lines of communications, including:
  - 8.1. The absence of a defined process for consulting municipalities and other stakeholders in drafting the standard by-law;
  - 8.2. The uncertain legal status of the standard draft by-law and how it interacts with existing municipal by-laws;
  - 8.3. Gaps in the public participation safeguards built into the by-law-making process;
  - 8.4. The lack of a formal channel for coordination between municipalities, South African Local Government Authority (SALGA), the responsible Ministers and the Authority (the Independent Communications Authority of South Africa, ICASA);
  - 8.5. The relationship between section 21A and the existing regulatory framework under section 21, the National Integrated ICT Policy White Paper, and the Competition Commission's Data Services Market Inquiry;
  - 8.6. Practical uncertainty as to how section 21A would operate once in force; and
  - 8.7. Further textual issues arising from the amendments to sections 43, 44 and 67A of the principal Act.

### **Omission of Consultation Process for Municipalities and other Stakeholders**

1. The White Paper highlights that there is no uniform nationwide requirements in the granting of permits and authorisation for the rollout of electronic

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order to progressively realise the nation's socioeconomic objectives. *This necessarily includes co-operation with other spheres of government*". Emphasis added, cited from para 200-01 of the judgment. In *Maccsand (Pty) Ltd v City of Cape Town* [2012] ZACC 7, also endorsed in *Adonisi*, the Constitutional Court stated that principle of co-operative governance, especially when there are conflicting legislations across different spheres of government. The Constitutional Court stated that—

"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 into the functional area of another. Each sphere would be exercising power within its own competence. It is in this context that the Constitution obliges these spheres of government to co-operate with one another in mutual trust and good faith, and to co-ordinate actions taken with one another.*" Emphasis added, cited from para 47 of *Maccsand*.

Please note that this is what the National Integrated Information and Communications Technology Policy White Paper and section 21 of the principal Act envision by making provision for multiple departments and authorities to be consulted in the rapid deployment of electronic communications network infrastructure and facilities. The White Paper also makes mention of a Rapid Deployment Coordinating Committee that is the interdepartmental and interdisciplinary forum for this type of coordination and cooperation to ensure that this happens.

communications networks which causes complications in the regulation of deadlines for applications of these permits, the use of public infrastructure and balancing the rights of landowners' operators with wayleaves which drive up the costs. For example, "wayleaves, rights of way and servitudes" are approved by different departments, institutions and authorities within government. Without a streamlined institutional framework and coordination of different stakeholders, especially at a municipal level, this "leads to overlaps, inconsistent processes and delays in the issuing of approvals... these processes are unnecessarily time-consuming and cumbersome". Hence the proposal of a one-stop shop to address this.

2. Section 21A(1) requires the Minister responsible for local government to make the standard draft by-law, as contemplated in section 14 of the Local Government: Municipal Systems Act (MSA), but does not itself set out how municipalities and other relevant institutions are to be consulted.<sup>8</sup> This matters because the by-law will set the terms on which licensees access municipal property and infrastructure, and municipalities and licensees alike have a direct interest in how those terms are formulated.
3. Section 14(1) of the MSA states that:  
  
*(b) Before making any standard draft by-laws or amendment in terms of paragraph (a), the Minister must—*  
*(i) publish the proposed standard draft by-laws or amendment in the Gazette for public comment; and*  
*(ii) consult the Cabinet member concerned if those standard draft by-laws or amendment affect that Cabinet member's area of responsibility.*
4. It is not clear on the face of section 21A whether this consultation duty is imported by the cross-reference to section 14, or whether section 21A creates a freestanding power that borrows only the concept of a standard draft by-law without the following due procedure. There is also a documented Ministerial practice, under section 14, of publishing a standard draft by-law in the *Gazette* for public comment before finalisation. For example, the Standard Draft By-Laws for Township Economies, was published for a 30-day comment period which section 21A does not currently make provision for this by-law.
5. HSF submits that the Bill must clarify:

5.1. Whether section 21A adopts the consultation formula in MSA section 14(1);

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<sup>8</sup> Act 32 of 2000.

- 5.2. Whether the formula should be extended to the Minister responsible for communications and the Authority, given the standard by-law's direct interaction with the existing regulatory framework under section 21 of the Act; and
- 5.3. Whether the standard by-law itself should be required to go out for public comment before finalisation, in line with section 14 of MSA.

**Omission in resolving conflict between the standard draft by-law and existing municipal by-laws.**

6. The Standard Draft By-Laws for Deployment of Electronic Communications Facilities gazetted in 2023 contains dispute resolution mechanism in clause 21.<sup>9</sup> Several municipalities, including some metropolitan municipalities, already administer their own wayleave by-laws. Section 21A is silent on what happens where such a by-law conflicts with the new national standard by-law, whether it is automatically superseded, whether a transition period applies, or whether the municipality retains discretion to keep provisions that diverge from the standard.
7. This question cannot be answered without regard to Chapter 7 of the Constitution. The following should be taken into consideration:
  - 7.1. Section 151(2) vests the executive and legislative authority of a municipality in its Municipal Council;
  - 7.2. Section 151(3) gives a municipality the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation;
  - 7.3. Section 151(4) provides that the national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions;
  - 7.4. Section 155(7) gives national government the authority to see to the effective performance by municipalities of their functions "by regulating the exercise by municipalities of their executive authority" under section 156(1);

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<sup>9</sup> Standard Draft By-Laws for Deployment of Electronic Communication Facilities made in terms section 14(1) of the Local Government: Municipal Systems Act 32 of 2000 on 24 February 2023, *Government Gazette* No. 48113 (Standard Draft By-Law), available here: <https://www.cogta.gov.za/index.php/docs/standard-draft-bylaws-for-deployment-of-electronic-communications-facilities-gg-48113/>. Clause 21(1) states—

"The Municipality will seek to resolve disputes arising from the implementation of these Standard Draft By-laws through negotiation and the involvement of government structures created to facilitate rapid deployment of electronic of electronic communications facilities, such as the Rapid Deployment Co-Ordinating Committee".

- 7.5. Section 156(2) confirms a municipality may make and administer by-laws for matters it has the right to administer; and
  - 7.6. Section 156(3) provides that a by-law that conflicts with national or provincial legislation is invalid, subject to section 151(4).
8. Read together, national government may regulate how municipalities exercise wayleave-related functions but may not compromise or impede the municipality's own right to govern that function, and only an Act of Parliament or valid provincial legislation, not a draft standard that potentially has no binding, can render a conflicting by-law invalid under section 156(3).<sup>10</sup>
9. The practical consequence cuts against the Bill's own stated objective. The standard draft by-law is, on the current drafting, a non-binding template. Section 21A currently contains no mechanism that compels or meaningfully incentivises municipalities to adopt it, align existing by-laws with it, or even respond to it within a defined period. A rapid deployment reform without a compliance or alignment mechanism risks being rapid in name only.
10. HSF submits that Section 21A:
- 10.1. Should clearly state if the proposed standard by-law is a *model* by-law which does not, of itself, override an existing municipal by-law;
  - 10.2. Impose a time-bound obligation on municipalities to review their own by-laws against the standard and report the outcome, using sections 154 and 155(7) of the Constitution rather than purporting to bind municipal councils directly, which sections 151(4) and 156(3) would not permit; and
  - 10.3. Provide guidance where the standard by-law is itself inconsistent with the Authority's regulations or policy direction under section 21.

### **Public Participation Timeframes must prioritise Meaningful Public Participation**

11. The standard draft by-law made in 2023 under section 14(1) of the MSA sets a 30-day period for processing a wayleave application, extendable by 15 days, within which the municipality must also conduct any required public consultation. Compressing site inspection, decision-making and public consultation into this window undermines meaningful public participation due to time constraints.<sup>11</sup>

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<sup>10</sup> This also extends to Integrated Development Plans (IDPs) that the provision in the amendment Bill touches on.

<sup>11</sup> The Constitutional Court has commented extensively on the importance of public consultation, particularly *meaningful public participation*, in government authorities and functionaries make decisions that will impact affected communities as part of participatory democracy. In *Corruption Watch NPC v*

12. This timeframe is a feature of the existing 2023 standard by-law made under MSA section 14, not of the Bill itself; but if section 21A proceeds unamended, then the same or a similar timeframe is likely to be carried into, or used as template for, the standard by-law it contemplates.
13. HSF submits that section 21A impose a minimum public participation period for comment on a standard by-law to ensure appropriate time for meaningful public consultation.

### **Criteria for Dispensing with Public Participation**

14. The 2023 standard by-law allows a municipality to dispense with public consultation where the applicant has completed a relevant assessment.<sup>12</sup>
15. No criteria are provided for when such assessments will be treated as sufficient, or for what makes a prior process *acceptable*. This creates an unguided administrative discretion, vulnerable to inconsistent application between municipalities and to challenge on administrative law grounds. It is also worth noting that a heritage or environmental impact assessment protects environmental and heritage protection interests from the property, access and compensation interests. A wayleave-specific public participation process is meant to safeguard, so completion of the former does not necessarily answer the need for the latter.

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*Speaker of the National Assembly [2025] ZACC 15 at 26-36, the Constitutional Court summarized the Court's jurisprudence on the right to public participation in governance. The Court stated that—* "This Court's judgment serves as a guide to the elements of an effective and meaningful public participation process. *The public and organs of civil society must be informed of the matter requiring public involvement. This is an elementary notice requirement. Sufficient time must be given to allow for public participation. Participation must occur at a stage in the process when it is possible for the public participation input to alter or influence the outcome of the parliamentary process.* Parliament must consider the views and comments of members of the public in its deliberation and decision-making. *Parliament is not bound by the views or comments but should demonstrate preparedness to be guided by the public involvement process. Members of public and organs of civil society must have access to sufficient information about the subject matter to enable meaningful and informed deliberation.* The process selected for public involvement should be accessible to the public so as to foster inclusive public engagement." Emphasis added.

Although the judgment focused on the role of the National Assembly in decisions that affect the public, this reasoning also extends to local government when municipal councils make decisions on wayleave applications. HSF accepts that the process of the rollout of wayleave application (application and granting of permits) should be rapid and fast, however, affected members of the community must be informed of such decisions and this public involvement must be meaningful.

<sup>12</sup> Clause 6(7) in the *Standard Draft By-Law* above n 9.

16. HSF recommends that the Bill clarifies whether section 21A should require the standard by-law to set out defined factors a municipality must have regard to in deciding whether a prior consultation process is acceptable, or whether a heritage or environmental impact assessment may substitute for consultation on the wayleave, access or compensation terms specifically.

### **Undefined Coordination between Municipalities, the Rapid Deployment Coordinating Committee, the Responsible Ministers, SALGA and the Regulators**

17. The 2023 standard by-law's cooperative-governance clause refers disputes over its implementation to negotiation "involving key government structures created to facilitate rapid deployment," such as the Rapid Deployment Coordinating Committee.
18. Neither the 2023 standard by-law nor the Bill sets out a formal, defined mechanism for how municipalities, the coordinating structure, the Minister of Communications and Digital Technologies, the Minister responsible for local government, SALGA and the Authority are meant to communicate, plan or resolve disagreements around rapid deployment on an ongoing basis.
19. A Rapid Deployment National Coordinating Structure was in fact established under the National Policy and Policy Direction on Rapid Deployment with GIS and coordination functions sitting with the Authority.<sup>13</sup> That structure's dispute-resolution function is voluntary and is not, on the information available, clearly linked to the municipal standard by-law process the Bill now creates, nor does it give SALGA a defined institutional role. The concern is accordingly better framed not as a total absence of coordination structures, but as a failure to connect the existing structure, and SALGA, to the new section 21A mechanism.
20. HSF submits that it is imperative that the Minister responsible for local government is required to connect the existing coordination structure to the new mechanism structure to allow for integrated and efficient decision making.

### **Lack of Integration with Section 21 Framework**

21. Section 21 of Act already provides that the Minister of Communications and Digital Technologies, in consultation with the Minister of Cooperative Governance and Traditional Affairs, the Minister of Rural Development and Land Reform, the Minister of Water and Sanitation, the Authority and other relevant institutions, must develop policy and policy directions for the rapid deployment of electronic

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<sup>13</sup> Government Gazette 48346 of 31 March 2023.

communications facilities, following which the Authority must prescribe regulations, including criteria for obtaining the necessary permits or authorisations and for resolving disputes between licensees and landowners. Section 21A creates a parallel process, run solely by the Minister responsible for local government, without amending or cross-referring to this existing framework.

22. This is not a hypothetical overlap. The Authority has already published draft Regulations on Rapid Deployment, made under sections 4, 21, 22 and 23 of the principal Act, dealing with, among other matters, wayleave certificates, compensation, restoration obligations and a GIS data submission format. Both this instrument and the section 21A standard by-law would regulate substantially the same subject matter, uniform wayleave processes and access to municipal property and infrastructure, without the Bill designating which prevails where they diverge, for example on fee methodology, permitted timeframes, or the content of a wayleave permit. Without a reconciliation mechanism, the Bill risks producing two competing national standards rather than the single uniform framework the White Paper and the Data Services Market Inquiry called for.
23. The Committee may wish to consider whether section 21A should require the standard by-law to be developed about, and kept consistent with, the Authority's regulations and any policy direction made under section 21.

### **Non-alignment with Institutional Framework recommended by the White Paper**

24. The institutional framework is intended to manage the rapid deployment of electronic communication networks by clearly stating the role of the Minister(s), the regulator(s), landowners located at different spheres of government (private and state-owned), the role of municipalities, SALGA, and the Rapid Deployment Steering Committee.<sup>14</sup>
25. Section 21A implements only the municipal by-law-making element of this framework and does not address SALGA's role or the steering/coordinating structure the White Paper itself identifies as necessary.
26. The Committee may wish to consider whether the Bill, taken as a whole, gives adequate effect to the institutional framework the White Paper itself identifies as necessary for rapid deployment, and whether SALGA's role should be made explicit rather than left to inference.

### **Lack of Data Services Market Inquiry's Recommendations Implementations**

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<sup>14</sup> Ibid at 112-13.

27. The Bill also intends to implement the recommendations made by the Data Services Market Inquiry<sup>15</sup> commissioned by the Competition Commission investigating the concerns raised by the public on the affordability of data and its impact on the consumers and the South African market. Part of the issues identified in the report is that there is a lack of access to facilities that drive up the costs and that ICASA's regulations do not cover infrastructure of municipalities. The report also noted that the conditions set by municipalities in wayleave applications in the deployment of infrastructure drive up the costs making it economically unfeasible. The Commission recommended that there should be a rapid infrastructure deployment strategy that should be attended to amendments to the Electronic Communications Act to make it seamless to acquire wayleaves and the use of municipal infrastructure. It recommended that these "legislative changes should also incorporate restrictions on municipal changes and conditions for granting such wayleaves".<sup>16</sup>
28. Section 21A creates a mechanism capable of eventually producing such restrictions, through the future content of the standard by-law, but does not itself impose any substantive restriction, cap or minimum standard on municipal wayleave conditions or fees.
29. This may well be dealt with by the Rapid Deployment Co-ordinating Committee but HSF recommends that the Committee should think through this and consider whether section 21A should itself set, or require the standard by-law to set, a minimum or maximum standard for municipal wayleave fees and conditions, consistent with the Inquiry's recommendation, rather than leaving this entirely to the future content of a standard by-law. Otherwise, the Inquiry will be reduced to nothing and no mechanism to deal with wayleave conditions and reducing data costs will yield nothing.

### **Uncertainty of Section 21A Operation**

30. Although it could be argued that legislation is not intended to spell out all the finer details of implementation overstepping the function of the day-to-day function of the department responsible for electronic communications. However, HSF is of the view that it is important to highlight that the amendment does not make clear how the role of the Minister responsible for local government, and of

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<sup>15</sup> Data Services Market Inquiry, Competition Commission of South Africa, available here: <https://www.compcom.co.za/wp-content/uploads/2019/12/DSMI-Non-Confidential-Report-002.pdf> (*Data Services Market Inquiry*).

<sup>16</sup> Ibid at 31-4 and at 270 para 735.5.

municipalities themselves, is to function alongside the existing regulatory and policy architecture under section 21, leaving significant operational uncertainty for licensees, municipalities and affected communities.

31. It is important when the Committee thinks about the practical effect of section 21A in practice and in relation with the policy framework that the amendment is built on to consider the issues raised in this submission above as a package, given that they are largely interdependent and related.
32. For example, the consultation requirement has limited purpose without the clarity on the by-law's legal effect and where those powers are sourced without usurping powers of the competence of local government but staying faithful to co-operative governance. But also, coordination with existing structures is difficult without integration with what section 21 of the principal Act stipulates. Put simply, electronic communications, particularly with rapid deployment requires multiple stakeholders to work together cohesively to ensure that the rollout of these networks are done responsibly in the public interest. If avenues such as the Rapid Deployment Co-ordinating Committee and other relevant institutions such as the authorities i.e. ICASA and SALGA do not work together, these risks being a complicated government programme that will have duplication and be cumbersome.

### **Review of Timeframe for Essential Facilities under Section 43**

33. The insertion of subsection (8) in section 43 to include "within 12 months of the coming into operation of the Electronic Communications Amendment Act, 2026". HSF notes that the principal Act in term of sections 43 and 44 require the Authority, which is ICASA, to constantly review and publish the prescribed list of essential facilities. Due to the role of multiple stakeholders in the rapid deployment policy objectives as per the recommendations of the White Paper and the Data Services Market Inquiry, HSF is concerned that 12 months might not be sufficient to do this type of work. Which might, essentially, require an audit of the current prescribed lists of essential facilities in the previous prescribed list and contrast with the new prescribed list.
34. This is to reasonably give the Authority and the relevant entities involved in electronic network communications to do they work sufficiently. We submit that the Committee reconsider the timeframe to allow for this to be done well, especially given the fragmentation in the different departments and entities as we have outlined in this submission.

### **Lack of Definition of "Non-Discriminatory" Terms and Conditions**

35. HSF notes that non-discriminatory appears several times in the principal Act, particularly section 2 of the principal Act under the object of the Act.<sup>17</sup> The definitions section of the principal Act does not offer a definition of non-discriminatory and HSF, is of the view, that it is prudent that guidance be given on what is meant by this. Does this relate to the public interest and transformative objectives of the Act, such as broad-based black economic empowerment and inclusion of categories of persons who have been historically disadvantaged?
36. HSF notes that the amendment Bill proposes substitution by subsection (8A) that the consideration of non-discriminatory terms and conditions is within the jurisdiction of the Authority as it relates to this amendment. It also further notes, that in the amendment of the provision, if no agreement is reached on non-discriminatory terms and conditions of the leasing agreement(s) shall be determined and imposed by the Authority within 60 days.
37. HSF submits the Committee must consider including the definition of non-discriminatory for clarity and guidance for when the Authority and other parties are contemplating the terms of a leasing agreement.

### **Review of Essential Facilities List**

38. The amendment Bill substitutes subsection (g) of the principal Act by maintaining the 36 months imposed for the review of the essential facilities list but goes further to add that when the ICASA has undertaken an inquiry and finds that there are changes in the market conditions that warrant such modifications – of the list.
39. The amendment Bill further substitutes section 44(1) of the principal Act requires regulations be reviewed by the Authority on develops of the market and laws every 24 months. The Committee is well within their mandate to allow for an imposition of such a timeframe. However, HSF finds it confusing that a similar amendment, as addressed in the preceding paragraph, imposes a 36-month period for the review.

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<sup>17</sup> Section 2 states that:

"The primary object of this Act is to provide for the regulation of electronic communications in the Republic in the public interest and for the purpose to—

(a) ...

(g) promote an environment of open, fair and *non-discriminatory* access to broadcasting services, electronic communications networks and to electronic communications services;

(h) promote broad-based black empowerment, with particular attention to the needs of women, opportunities for youth and challenges for persons with disabilities". Emphasis added.

40. Since these amendments fall within ambit of sections 43 and 44 of the Act, we submit that it would be advised that the Committee impose the same timeframe. Either 24 months or 36 months to give the Authority sufficient time that is reasonably required to perform this function.

### **Concurrent Jurisdiction Discrepancy**

41. The amendment Bill in section 67A(1) states that the Authority must enter in a concurrent jurisdiction agreement with the Competition Commission and further states that this agreement must be published. HSF welcomes this intervention of two state organs working together on overlapping issues to advance electronic communications network.
42. We submit that the amendment must make consideration to sections 40 and 41 of the Constitution on co-operative governance as a governing framework for this concurrent jurisdiction agreement. We propose this to promote co-operative governance and ensure that state organs or government entities are required by the Constitution, as outlined in section 41,<sup>18</sup> and not viewing this agreement purely on contract law between private actors.
43. HSF submits that it is important that the Committee should consider having public input on the concurrent jurisdiction agreement between those two authorities in line with meaningful public participation, especially stakeholders that operate with the space of the two authorities.

### **Conclusion**

44. This submission supports the Bill's objective of enabling rapid, uniform deployment of electronic communications networks and facilities, and the real

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<sup>18</sup> Section 41 of the Constitution states that:

- (1) All spheres of government and all organs of state within each sphere must—
  - (a) ...
  - (b) secure the wellbeing of the people of the Republic;
  - (c) provide effective, transparent, accountable and coherent government for the Republic as a whole;
  - (d) ...;
  - (e) respect the constitutional status, institutions, powers and functions of government in other spheres;
  - (f) not assume any power or function except those conferred on them in terms of the Constitution;
  - (g) ...;
  - (h) Co-operate with one another in mutual trust and good faith..."

problem section 21A is designed to solve, particularly, the absence of a uniform, nationwide wayleave framework at municipal level.

45. However, HSF recommends the following recommendations:

- 45.1. Provide a clear process for consultation with municipalities and other relevant stakeholders in the development of the standard draft by law;
- 45.2. Clarify the legal status of the standard draft by-law and its relationship with existing municipal by-law, including the process for addressing conflicts between them;
- 45.3. Provide for meaningful public participation in the development of a standard draft by-law, including an appropriate period for public comment;
- 45.4. Establish clear mechanisms for coordination between municipalities, relevant ministers, SALGA, the Authority, and existing rapid deployment structures;
- 45.5. Ensure that the mechanism under section 21A is integrated with, and does not operate in conflict with, the existing policy and regulatory framework under section 21 of the principal Act;
- 45.6. Give appropriate effect to the institutional framework contemplated in the National Integrated ICT Policy White Paper, including the roles of the relevant government departments, municipalities, SALGA, the Authority, and rapid deployment coordination structures;
- 45.7. Give effect to the relevant recommendations of the Competition Commission's Data Services Market Inquiry – particularly in relation to municipal wayleave conditions and fees; and
- 45.8. Provide sufficient clarity on the implementation and operation of section 21A to avoid duplication, regulatory uncertainty and delays in the rapid deployment of electronic communications networks and facilities.