

To: The Acting Director-General
Department of Communications and Digital Technologies

Attention: Mr. A Wiltz, Chief Director, Telecommunications and IT Policy

Re: Government Gazette Vol. 661, dated 22 July 2020, No. 43537
Electronic Communications Act, 2005

Date: 10 August 2020

By Email: rapid@dtps.gov.za

Our Ref: Tanisha Bhana, info@tanishabhana.com

From:

1. Kelvin Residents Association
2. Woodmead & Khyber Rock Residents Association NPC
3. Sunninghill Community Ratepayers Association NPC
4. Carlswald Residents' Association
5. WEX T8 S Residents Association
6. Beaulieu Country Estate
7. Parkmore Community Association NPC
8. Norwood Oaklands Residents Association
9. Bryanston East Community Forum
10. JUST
11. Glen Austin Conservancy
12. Greater Kyalami Conservancy
13. Craigpark™ Residents' Association
14. Glen Austin Residents Association (GARA)
15. Emmarentia Residents Association

Full details of the above organisations are available at the end below.

WRITTEN COMMENTS ON PROPOSED POLICY AND POLICY DIRECTION ON RAPID DEPLOYMENT OF ELECTRONIC COMMUNICATIONS NETWORK AND FACILITIES

We note the proposed policy and policy direction on rapid deployment of electronic communications network and facilities (hereinafter referred to as "*the proposed policy*") and have no objection to the rollout of facilities which support effective communications services.

However, we request the department to consider and address the requests, concerns and related submissions made herein prior to such rollout.

INTRODUCTION AND INVITATION, PARAGRAPH 1.1

Potential Health and Safety Risks

The introduction states that the purpose of the proposed policy direction is to direct the Authority to prescribe regulations on procedures and processes for resolving disputes that may arise between an electronic communications network service licensee and any landowner, *“in order to satisfy the public interest in the rapid rollout of electronic communications networks and electronic communications facilities”*.

This purpose is echoed in paragraphs 2.11 and 3.1.

It is submitted that the rights to high speed electronic communications networks and electronic communications facilities should not outweigh the public’s right to an environment that is not harmful to their health or well-being as well as the right to bodily integrity, which includes the right to security in and control over their body.

It is well known that 5G uses higher frequency waves than earlier mobile networks and the adverse health effects of 5G mobile networking technology are documented in various scientific publications as well as peer reviewed articles.

In regard to the above, please consider the following documents to support our concern:

1. Reports of Findings from the National Toxicology Program Carcinogenesis Studies of Cell Phone Radiofrequency Radiation in Hsd: Sprague Dawley® SD rats (Whole Body Exposures)

By: R. Mark Simpson, D.V.M., Ph.D., Laboratory of Cancer Biology and Genetics, NCI

Dated: 19 May 2016

Sources: a) <https://www.biorxiv.org/content/10.1101/055699v1.full>

b) https://www.niehs.nih.gov/ntp-temp/tr595_508.pdf

c)

https://ntp.niehs.nih.gov/ntp/htdocs/lt_rpts/tr595_508.pdf?utm_source=direct&utm_medium=prod&utm_campaign=ntpgolinks&utm_term=tr595

2. Comments on the US National Toxicology Program technical reports on toxicology and carcinogenesis study in rats exposed to whole-body radiofrequency radiation at 900 MHz and in mice exposed to whole-body radiofrequency radiation at 1,900 MHz

By: Lennart Hardell and Michael Carlberg, International Journal of Oncology

Dated: 24 October 2018

Source: <https://www.spandidos-publications.com/10.3892/ijo.2018.4606>

<https://doi.org/10.3892/ijo.2018.4606>

3. A Rationale for Biologically-based Exposure Standards for Low-Intensity Electromagnetic Radiation

By: BioInitiative Working Group, David Carpenter, MD; Cindy Sage, MA

Dated: 31 December 2012

Source: a) <https://bioinitiative.org/table-of-contents/> (for the full report)

b) <https://bioinitiative.org/research-summaries/> (for summaries of reports on oxidative damage and neurological effects)

4. Adverse health effects of 5G mobile networking technology under real-life conditions

By: Ronald N. Kostoff, Paul Heroux, Michael Aschner, Aristides Tsatsakis

Dated: 2019

Source: <https://www.sciencedirect.com/science/article/abs/pii/S037842742030028X?via%3Dihub>

5. 5G Appeal: Scientists and doctors warn of potential serious health effects of 5G

By: As cited - 180 scientists and doctors from 36 countries

- 393 signatories as at 6 July 2020

Dated: 11 September 2017, 6 July 2020

Source: a)

<https://www.actu-environnement.com/media/pdf/news-29640-appel-scientifiques-5g.pdf>

(11 September 2017)

b) <http://www.5gappeal.eu/the-5g-appeal/> (6 July 2020 update)

In the aforesaid publications, Scientists and Doctors, independent from industry, warn of potential serious health effects of 5G.

In the report under bullet 2 immediately above, it is stated that *“We conclude that there is clear evidence that RF radiation is a human carcinogen, causing glioma and vestibular schwannoma (acoustic neuroma). There is some evidence of an increased risk of developing thyroid cancer, and clear evidence that RF radiation is a multi site carcinogen. Based on the Preamble to the IARC Monographs, RF radiation should be classified as carcinogenic to humans, Group 1.”*

We are concerned that public safety limits for electromagnetic and radiofrequency fields remain much higher than exposure levels which health studies show to be associated with serious health impacts.

5G will substantially increase exposure to radiofrequency electromagnetic fields (RF-EMF) on top of the current telecommunications already in place. Due to the potential harm that RF-EMF may cause to humans and the environment, we request that further investigation on the safety of the networks, facilities and technology be conducted prior to the rollout.

We submit that the dangers to public health of electromagnetic fields support the lowering of exposure limits instead of increased exposure to the public, particularly where in close proximity to residential homes, schools and hospitals.

The International Agency for Research on Cancer (IARC) has classified RF radiation as *“possibly carcinogenic to humans,”* based on limited evidence of a possible increase in risk for brain tumors among cell phone users, and inadequate evidence for other types of cancer.

The World Health Organisation has not endorsed or expressed a view on the safety of the high frequency radiation that may be emitted from 5G Towers.

Constitutional Rights

Enabling and enforcing the installation of 5G masts and related equipment, without at least giving a landowner the option of providing consent thereto, effectively unduly takes away the rights of residents and homeowners to bodily integrity, and the right to security in and control over their body as they will not be in a position to investigate for themselves, taking the advice of doctors and scientists, the level of harm that they choose to expose themselves to.

We therefore submit that the proposed policy unduly places the rights of an electronic communications network service licensee (hereinafter referred to as “*the licensee*”) over and above the rights of the public to an environment that is not harmful to their health or well-being as well as the right to bodily integrity. The convenience and business imperative to obtain high speed electronic communications networks and electronic communications facilities cannot outweigh the long-term public health risks potentially faced.

Current Safety Legislation

It is submitted that the current South African occupational health and safety guidelines and the Occupational Health and Safety Act of 1993 provides for the protection of employees of institutions, not for the protection of the public from corporates or institutions who provide infrastructure for communications or other services. It therefore does not adequately protect the public the dangers associated with infrastructure and services

Requests:

1. Given the potential risks associated with exposure to radiofrequency electromagnetic fields (RF-EMF), we seek a proper investigation into the long-term health risks before the rollout of electronic communications networks and electronic communications facilities.
2. In regard to the above, we seek amendments to current applicable legislation which provide for the safety and continuous monitoring of the safety of such infrastructure, facilities and services to the public and the environment, particularly where these are in close proximity to residential and commercial areas with a high density of people or people in living spaces.
3. Should it be determined that the infrastructure and services are safe and that legislation is in place for the monitoring thereof, we request that landowners have the right to decide upon their own risks by at least requiring that consent to such infrastructure first be obtained before any installation on their property.

In this regard, it is not sufficient to merely provide for an objection process as it is unfair to expect a landowner to have the onus of proof as to the reasonableness of his/her request or objection.

SECTION 1.1

This section identifies the need to “*address the supply side challenges to transform South Africa into an inclusive people centred and developmental digital society and includes policy on the rapid deployment of electronic communications networks and facilities*”.

Support

We acknowledge the importance of the above and have no objection to the rollout of facilities which support effective communications services.

However, it is submitted that the manner in which the deployment of electronic communications networks and facilities do not take into account the public's rights to an environment that is not harmful to their health or well-being as well as the right to bodily integrity, which includes the right to security in and control over their body.

Rolling out this infrastructure without entitling landowners to individually consider the available scientific and medical science at any point removes a person's right to use their own discretion in protecting their bodily integrity and the right to security in and control over their body. The lack of landowner consent in relation to the rollout of communications infrastructure is therefore a breach of the public's constitutional rights.

A person should not be forced to live in an environment which he does not feel safe in, particularly if this is his own home or business.

Further, rolling out widespread infrastructure of any kind in public spaces, in close proximity to residential and commercial living and working areas, without first ensuring that public health will not be prejudiced by this, is a breach of the constitutional right to an environment which is not harmful to the public's health or well-being.

Requests:

Please consider the requests set out per paragraph 1.1 above.

SECTION 1.2

This section mentions the White Paper which *"seeks to ensure a balance of rights of electronic communications network service licensees to enter onto property to deploy critical broadband infrastructure with the rights of public and private landowners"*.

Bodily Integrity and Right to Security in and Control over Body

We submit that the rollout of infrastructure on private land, without obtaining prior consent, removes the right of a landowner to use their own discretion in protecting their bodily integrity and the right to security in and control over their body.

Requests:

1. It is uncertain what constitutes *"critical broadband infrastructure"*. We request that this term be defined in the proposed policy.
2. Please consider the requests set out per paragraph 1.1 above.

SECTION 1.3

This section claims that the *"demand for connectivity requires ongoing investment in and roll-out of electronic communications networks"*.

This section also claims that *"widespread coverage of electronic communications networks is necessary for the creation of a digital economy and digital society"*.

It further states that *"administrative procedures must be simplified and approval costs minimised"*.

It is uncertain if the “rights of way” granted in terms of this section are for 5G as well as fibre, 4G, 3G and other new technology to come. We submit that it is possible to interpret this proposed policy and particularly this section as being inclusive of all the above.

Clarity on applicable technology

Please clarify if the intention is to permit all the above forms of technology, as well as new technology and infrastructure which may not yet be safe or tested, on public and private land without any consent or further regulation.

Requests:

1. If it is indeed intended that the scope of this proposed policy extends to all forms of electronic communications networks, we submit that provision is required to be made for an authority which monitors the safety of telecommunications infrastructure on public health.
2. We further submit that regulations providing for the safety, the ongoing use, the access and maintenance thereof be put in place to guide telecommunications licensees on the ongoing requirements to be met in order to keep their infrastructure safe for public use as well as to ensure that landowners who host such infrastructure are not exploited.
3. The scope of this section is too wide. We request that more reasonable limitations to the types, volume and extent of technology to be installed on private property be included.

SECTION 2.1

This section permits that “*electronic communications network service licensees have the right to enter upon and use public and private land for the deployment of electronic communications networks and facilities*”.

Potential Public Exploitation

It is submitted that this right, without any limitations or any authority set up to protect the public, leaves landowners open to be exploited by the telecommunications industry and telecommunications licensees and corporations. This is unduly unfair on title holders of land and opens the public up to potential and unfair abuse by telecommunications companies and corporates which provide this service.

It is also unduly unfair to expect landowners to open their doors to make their property available at the ongoing behest of a licensee for the purpose of tending to, maintaining or repairing their facilities and infrastructure.

Crime and Personal Safety Risks

Residents of South Africa fear for their personal safety due to the extent of criminal activity experienced on private land. Many do not permit any person or stranger that they do not know on their properties. This right should be respected. Failure to do so forces a landowner to forgo his/her discretion in determining who/what is safe to enter his premises.

Onus on landowners not reasonable

Many homes may have residents who are away at work during office hours and require private family time after office hours. We submit that they should not be forced to take time off work, risking financial loss or leave time for the purposes of keeping their homes available at the behest of licensees.

Requests:

1. It is submitted that prior consent be obtained from landowners for the use of their land for the purpose of *deployment of electronic communications networks and facilities*.
2. Should the public accommodate the above infrastructure, it is requested that provision be made for the establishment of an authoritative body as well as the promulgation of supporting regulation to protect the public from exploitation, unduly inconvenient, unfair and unsafe requests or demands from licensees.
3. To ensure that the safety and security of landowners or occupiers is not compromised during the entry of an licensee on private land, we submit that the legislator ought to extend paragraph 2.1 of the proposed policy to include a provision on the following terms:

“Prior to entry on private land, the licensee together with their associates or agents, ought to produce to the landowners or occupiers proof of their identity and further produce a permit authorising the licensee to perform their work. At the time of production of the said identity and permit, a member of the South African Police Service (SAPS) ought to be present to ensure that the production is done in a manner that does not infringe any of the rights of the parties concerned.
4. Furthermore, we submit that a provision in the following terms is additionally required:

“Where the licensee, for one reason or another, is unable or unwilling to produce their identity and their permit, landowners or occupiers may refuse entry of the licensee onto private land and only allow entry on satisfactory production of the licensee’s identity and permit in the presence of a South African Police Service (SAPS) officer.”

SECTION 2.2

This section entitles Electronic communications network service licensees to *“select appropriate land and gain access to such land for the purposes of constructing, maintaining, altering or removing their electronic communications networks or facilities”*.

The same concerns apply as is described for Section 2.1 above.

Requests:

1. Please consider the requests set out per paragraph 2.1 above.
2. Further, we submit that at all material times during entry into private land, whether for construction, maintenance, alteration or removal of networks or facilities, provision be made for licensees to produce to the landowners or occupiers proof of their identity and further produce a permit authorising them to conduct work in the presence of a police officer as outlined in the requests to 2.1. above.

SECTION 2.3

Ownership of facilities

The proposed policy provides that the licensees retain ownership of any networks and facilities constructed in private land. This provision in the proposed policy goes against the basic principles of property law in South Africa. The rule in South African property law is that “ownership is acquired by accession when a thing or portion of a thing is incorporated by natural or artificial means into another thing. The thing incorporated is called the accessory and the thing into which it is incorporated is called the principal thing. By accession,

ownership of the accessory is lost and the owner of the principal thing becomes the owner of the new entity.” (Reference: See *Pocock v De Oliveira and Others* (06/2889) [2006] ZAGPHC 245).

In the present situation, we submit that upon successful attachment of the networks or facilities (accessories) by the licensees on the land (principal thing) owned by the landowner those networks or facilities will immediately be owned by the landowner.

Requests:

Given the above, we submit that the legislator needs to amend paragraph 2.3 of the proposed policy.

SECTION 2.4

This section requires property owners to “*exercise due care and diligence to avoid damage to electronic communications networks or facilities deployed on its property*”.

Undue Onus of Care

The placing of an onus on landowners to exercise care of facilities which they may not understand, consent to or even agree to have on their land is unfair and unlikely to garner support and cooperation.

Requests:

1. It is submitted that consent be obtained from landowners for the use of their land for the purpose described in this proposed policy and should any care be required to be exercised in regard to the facilities.
2. We submit that the legislator should include a provision in the following terms:
“The licensees should, when installing networks or facilities, exercise reasonable care and install such networks or facilities in a manner that will make them durable and not susceptible to damage.”

This clause will avert negligence on the side of the licensees during installations and prevent the shifting of blame to landowners or occupiers when damage to the networks or facilities occurs.

SECTION 2.5

This section requires an electronic communications network service licensee to “*exercise due care and diligence to minimise damage, which must include acting according to good engineering practice, and taking all reasonable steps to restore the property to its former state, including the repair of damages caused*”.

Risk of Harm

It submitted that should there be any risk of damage or harm to a landowners person or property, it is fair to provide for a landowner to consent to any installation of any facilities or infrastructure on his/her property.

It is unfair to expect a landowner to be forced to accept facilities on his/her property which he/she believes to be of harm to his person or family or of potential damage to his property, irrespective of the source of his information, and irrespective of how perceivably minimal such harm may appear to a licensee.

Service of Notices

Section 2.5(a) provides that the licensee must give 30 calendar days' notice to the property owner and, if applicable, occupier of the affected land, but is however silent as to how the 30 calendar days' notice ought to be served, especially in the instances where landowners or occupiers may not be present on their premises during working hours, or where those serving such notice are not permitted onto the premises for fear of their safety.

We submit that all notices ought to be in writing if they are to be lawful. We submit further that they ought to be served by registered post or in person by a duly appointed officer of the court. We submit further that a system needs to be put in place to ensure that landowner or occupiers are able to confirm or acknowledge receipt of the notices to avoid future disputes on whether or not landowners or occupiers successfully received notices.

Reasonable timeframes for completion

While the proposed policy provides that the notice in question should specify the date of commencement of the activity, we submit that the probable date of completion of the activity ought to also be included in the notice. This will enable landowners or occupiers to plan accordingly. For example, some landowners or occupiers will prefer to be physically present in their premises when work is undertaken by the licensee. It is therefore in the best interests of the landowners or occupiers to know how long the licensee will be in their private land.

Location of the facility

The proposed policy provides that the licensee should, in the notice, also specify where the licensee intends locating the network or facility. We submit that in the event that the licensee will undertake work in private land, the licensee should not exercise unilateral discretion as to the location of the network or facility, but should come to that conclusion or determination only after reasonable consultation with the landowner or occupier. The decision on the location of network or facility should, we submit, be one that is mutually agreed by the landowner or occupier and the licensee. Where there is no consensus on the location of the network or facility, and since the land in question belongs to the landowner or is in lawful possession of the occupier, the opinion or preference of the landowner or occupier should take precedence.

Notwithstanding the above, we contend that prior consent from landowners first be obtained before any installations are conducted and that such installations take place at a mutually agreeable time.

In addition to the above, provision should be made for facilities to be located in areas which do not infringe on the movement of people or services or impact on the aesthetics and property values in a neighbourhood.

Requests:

1. Please consider the requests set out per paragraph 1.1 above.
2. We submit that the wording in paragraph 2.5 (c) does not seem to match the seriousness of the potential damage that could be caused by the work of the licensee, especially on private land. We submit that the paragraph should be extended to include a provision in the following terms:

“Where the licensee fails, on reasonable inspection of the land where they conducted work, to restore the property to its former state, the licence of such licensee may be withdrawn with immediate effect, pending investigation.”

This clause will encourage the licensee to exercise due care and diligence in carrying out its operations and therefore there might be few or no complaints or lawsuits emanating from private landowners against the licensee.

SECTIONS 2.6, 2.7 and 2.8

This section states that *“reasonable access fees may be charged in cases where more intrusive electronic communications networks or facilities, such as masts, are erected on property. In such cases any access fee must be reasonable in proportion to the disadvantage suffered and must not enrich the property owner or exploit the electronic communications network service licensee”*.

Quantification of fees

The disadvantage suffered may always be disproportional to a landowner who may suffer a potential long-term health risk as a result of infrastructure placed on his/her property or from mistaking a criminal for a person purporting to be a representative of a licensee.

The proposed policy provides for a procedure for the landowner or occupier to object to the reasonability of the access fee offered. We contend that the proposed policy places too much of a burden on the side of the landowner or occupier to bear the onus of launching an objection to and proving the potential unreasonableness of proposed fees.

Requests:

1. Clarity is sought on what may be considered to be reasonable access fees and how this may be determined.
2. Should the parties not agree upon the fees, provision must be made for the licensee to locate other appropriate land for the purposes required.

SECTION 2.9

This section provides for a property owner to be *“entitled to reasonable compensation agreed to between the property owner and the electronic communications network service licensee, for any damage caused by an electronic communications network service licensee entering and inspecting land, or installing, deploying or maintaining electronic communications networks or facilities”*.

While damage to property may be quantifiable, the determination of compensation on a reasonable basis is too subjective a test for the risks of damage to a person from long-term health risks, personal injury, suffering due to inconvenience and stress induced by the potential of having to accept unknown licensee representatives on one’s land by discerning them from those with criminal intent.

SECTIONS 2.11 to 2.16

Requests:

1. As the risks and inconvenience of installing 5G masts, towers, equipment, devices and wiring are to the landowner, please provide for the costs of disputes to be borne by the electronic communications network service licensee.
2. While the proposed policy provides that the decisions concerning the disputes are effective and binding on the parties, the proposed policy is silent about the appeal processes. We submit that the proposed policy should make provision for an appeal process or procedure which will detail how appeals will be launched and to which relevant authority.

CONCLUSION

It is hoped that the legislator will take the above submissions into account in an effort to clarify uncertainties in the proposed policy and in an effort to prevent what could otherwise be infringement of the fundamental rights of South Africans.

Sincerely,

Kelvin Residents Association

Kelvin Village Residents Community (Section 21)

Registration number: 2007/023604/08

Contact person: Ms Tanisha Bhana

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Sunninghill Community Ratepayers Association NPC

Registration number: 1999/027619/08

Contact person: Linda Joan Gildenhuis

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WEX T8 S Residents Association

Registration number: K2017431458

Contact person: Robert Jonathon Eedes

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Woodmead & Khyber Rock Residents Association NPC

Registration number: 1996/009316/08

Contact person: Wendy Margaret Robertson

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Carlswald Residents' Association

Registration number: 2017/268347/08

Contact person: Penelope Anne Hoets

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Beaulieu Country Estate

Registration number: 2009/008241/08

Contact person: Rosemary Sandison

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Parkmore Community Association NPC

Registration number: 1999/025688/08

Contact person: Dr Danny Pillay

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Norwood Oaklands Residents Association

Registration number: Not applicable

Contact person: Brett McDougall

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Bryanston East Community Forum

Registration number: 2004/011551/08

Contact person: Ian Tumiel

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JUST

Registration number: 2019/190404/08

Contact person: Rosemary Sandison

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Glen Austin Conservancy

Registration number: GCA 064

Contact person: Judy Bird

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Greater Kyalami Conservancy

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