



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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### CONTENTS

*Page*

#### GENERAL NOTICE

No. 135	Communication Regulatory Authority of Namibia: Notice of Intention to make Regulations Prescribing Functions of Carriers in Respect of Installation and Maintenance of Telecommunications Facilities: Communications Act, 2009 .....	1
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## General Notice

### COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 135

2021

#### NOTICE OF INTENTION TO MAKE REGULATIONS PRESCRIBING FUNCTIONS OF CARRIERS IN RESPECT OF INSTALLATION AND MAINTENANCE OF TELECOMMUNICATIONS FACILITIES: COMMUNICATIONS ACT, 2009

The Communications Regulatory Authority of Namibia (hereafter “the Authority”), under section 129 of the Communications Act, 2009 (Act No. 8 of 2009) and in accordance with regulation 4(3) of the Regulations Regarding Rule-Making Procedures published as General Notice No. 334 of 17 December 2010 (hereafter “the Regulations Regarding Rule-Making Procedures”) publishes this notice of intention to make regulations which includes -

1. A concise statement of the purpose for the proposed Regulations as set out in Schedule 1;
2. A draft of the proposed Regulations as set out in Schedule 2.

The Authority invites the public to submit comments in writing to the Authority within 30 days from the date of publication of this Notice in the *Gazette*, and written comments must -

- (a) contain the name and contact details of the person making the written submissions and the name and contact details of the person or entity on whose behalf the written submissions are made, if different; and
- (b) be clear and concise.
- (c) be sent or delivered -
  - (i) by hand to the head office of CRAN, Communications House, 56 Robert Mugabe Avenue, Windhoek;
  - (ii) by post to CRAN, Private Bag 13309, Windhoek, Namibia;
  - (iii) by electronic mail to CRAN email address: [legal@cran.na](mailto:legal@cran.na);
  - (iv) by facsimile to CRAN facsimile number: +264 61 222790; and
  - (v) by facsimile-to-email to number: 0886550852.

The “Notice of Intention to Make Regulations” is available at the head offices of the Authority during business hours and copies may be made on payment of a fee determined by the Authority, and on the Authority’s website where copies may be downloaded free of charge.

**H. M. GAOMAB II**  
**CHAIRPERSON OF THE BOARD**  
**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

**SCHEDULE 1**  
**CONCISE STATEMENT OF PURPOSE**

The objects of the proposed regulations are to -

- (a) make the rights granted to the carriers by Part 5 of Chapter V of the Act to install certain telecommunications facilities applicable to other telecommunications facilities;
- (b) set out the manner, form and period of notice to be given by a carrier to a land owner in connection with installation or maintenance of telecommunications facilities; and
- (c) set out the procedure to be followed and consultations to be held between a carrier and the land owner.

**SCHEDULE 2**

**REGULATIONS PRESCRIBING FUNCTIONS OF CARRIERS IN RESPECT OF  
INSTALLATION AND MAINTANANCE OF TELECOMMUNICATIONS FACILITIES:  
COMMUNICATIONS ACT, 2009**

The Communications Regulatory Authority of Namibia, under section 129 of the Communications Act, 2009 (Act No. 8 of 2009) read with section 68(2) of that Act and after having complied with regulation 4 of the Regulations Regarding Rule-Making Procedures published under General Notice No. 334 of 17 December 2010, has made the regulations set out in the Schedule.

**Definitions**

1. In these regulations, any word or expression to which a meaning is assigned in the Act has that meaning, and unless the context otherwise indicates -

“landowner” means a person who owns or legally occupies a land, and includes the State, a local authority and a public body;

“party” means a carrier or landowner, and includes any affected person or public body that is joined as a party;

“telecommunications facilities” means telecommunications facilities relate to the wires, fibres, or any other form of telecommunications line as well as facilities used to protect or support such wires, fibres or lines (including poles, stays, ducts and pipes), and include masts, antennas, towers, pay telephones and other similar equipment; and

“the Act” means the Communications Act, 2009 (Act No. 8 of 2009).

**Objects and application of regulations**

2. (1) The objects of these Regulations are to -
- (a) prescribe the functions of carriers in installing and maintaining telecommunications facilities;
  - (b) set out the procedure to be followed and consultations to be held between a carrier and the landowner; and
  - (c) to make the rights granted to the carriers by Part 5 of Chapter V of the Act to install certain telecommunications facilities applicable to other telecommunications facilities.
- (2) These regulations -
- (a) apply to all carriers; and
  - (b) do not prevent the carriers and landowners from entering into agreements governing carriers’ access to land for purpose of installation and maintenance of telecommunications facilities.

**Submission of documents to Authority**

3. Whenever documents are required to be delivered to the Authority, such documents are delivered physically or electronically -

- (a) by hand to an employee of the Authority at its principal place of business, being Communication House, No. 56 Robert Mugabe Avenue, Windhoek;
- (b) by post mailed to Private Bag 13309, Windhoek;
- (c) by electronic mail sent to legal@cran.na;
- (d) by facsimile faxed to +264 61 222 790; or
- (e) in any other manner or to any other address specified by the Authority from time to time.

**Application of Part 5 of Chapter V of Act to other telecommunications facilities**

4. The rights granted to the carriers by Part 5 of Chapter V of the Act to install telecommunications facilities relate to wires, fibres, or any other form of telecommunications line as well as facilities used to protect or support such wires, fibres or lines (including poles, stays, ducts and pipes) as referred to in section 59(3) of the Act apply to masts, antennas, towers, pay telephones and other similar equipment as contemplated in section 59(4) of the Act.

**Service of correspondences between carriers and landowners**

5. For the purpose of these regulations, a correspondence between a carrier and landowner should be effected -

- (a) by delivering a copy thereof personally to the person to be served;
- (b) by leaving a copy of the correspondence at the place of residence or place of business of the person to be served, where personal service is not reasonably possible;
- (c) by delivering or leaving a copy thereof at the *domicilium citandi* so chosen, if the person to be served has chosen a *domicilium citandi*;
- (d) by delivering a copy thereof to any agent duly authorised in writing to accept service on behalf of the person to be served; or
- (e) by handing a copy thereof to a responsible employee of the company or body corporate at its registered offices or its principal place of business, or if no such employee is willing to accept service, by affixing a copy of the correspondence to the main gate or door of such office or place of business.

**Notice by carriers to access land**

6. (1) A carrier must submit to the landowner a written notice to access the land in the form of Form A set out in the Annexure before accessing the land for the purpose of conducting -

- (a) inspection on the land or do anything on the land that is necessary or desirable to determine whether the land is suitable for its purpose;
  - (b) installation of telecommunications facilities;
  - (c) alteration, removal or replacement of telecommunications facilities; or
  - (d) routine maintenance of telecommunications facilities.
- (2) The notice must -
- (a) set out the reason of the carrier for accessing the land and outline the actions it intends to take as part of accessing the land;
  - (b) specify the duration of the activities and the proposed start date for accessing the land which must be -
    - (i) at least five days for inspection on the land, installation, alteration, removal or replacement as referred to in subregulation (1); or
    - (ii) at least three days for routine maintenance, from the date of receipt of the notice by the land owner; and

- (c) be copied to the Authority for noting.

### **Objection by landowner**

7. (1) Subject to subregulation (5), upon receipt of a notice from the carrier in terms of regulation 6, the landowner may give the carrier a written objection to the notice in the form of Form B set out in the Annexure.

(2) The objection is given to the carrier at least five days before the proposed start date and must -

- (a) include grounds of the objection; and
- (b) indicate the date the parties must meet for consultation as required by regulation 8(2); and
- (c) be copied to the Authority for noting.

(3) The grounds of objection by the landowner include -

- (a) the location of the telecommunications facility proposed by the carrier;
- (b) the duration of the activities;
- (c) the date for accessing the land and start the activities;
- (d) consideration of health, safety and security; and
- (e) the likely effect that the proposed activities have on the land such as -
  - (i) servitude;
  - (ii) on going work or work about to commence; or
  - (iii) environmental degradation.

(4) If no objection is received from the landowner within five days from date of receipt of the notice, the carrier may proceed to access the land as outlined in the notice.

(5) An objection by a landowner to the notice by a carrier to access land does not apply to a notice to access land for routine maintenance of telecommunications facilities.

### **Consultation between carriers and landowners**

8. (1) In case where the landowner objects to the notice of the carrier, the landowner and carrier have 10 days consultation period from the date of receipt of the objection to discuss and try to resolve the objection.

(2) The landowner must make reasonable efforts to start the consultation within the first five days of the consultation period.

(3) The landowner and carrier must participate in good faith to resolve the objection.

(4) If the landowner and the carrier cannot resolve the objection by agreement during the consultation period, either party by agreement must -

- (a) prepare the outcome of their consultation in the form of Form C set out in the Annexure; and
- (b) refer the dispute to the Authority for adjudication.

#### **Emergency access to land**

**9.** A carrier may access the land without notice for purpose of performing activities that need to be carried without delay in order to protect -

- (a) the health, safety or security of persons;
- (b) the environment;
- (c) the property of the carrier; or
- (d) the telecommunications facilities or to deal with its maintenance.

#### **Notice by carrier-landowners to other carriers**

**10.** (1) Where a carrier who is also a landowner (carrier-landowner) wishes -

- (a) to install telecommunications facilities; or
- (b) to conduct alteration, removal or replacement of telecommunications facilities,

on its own land, the carrier-landowner must, for the purposes of coordination and noting by other carriers and the Authority, respectively, give a notice to other carriers and the Authority in the form of Form D set out in the Annexure before such installation, alteration, removal or replacement is conducted.

(2) The notice must -

- (a) set out the nature of the telecommunications facilities to be installed, altered, removed or replaced; and
- (b) specify -
  - (i) the duration of the activities; and
  - (ii) the proposed start date which should be at least seven days from the date of receipt of the notice by other carriers and the Authority.

## ANNEXURE

## FORM A

## COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

Communications Act, 2009 (Act No. 8 of 2009)

**NOTICE BY CARRIER TO ACCESS LAND**

(Regulation 6(1))

In terms of regulation 6(1) of the Regulations Prescribing Functions of Carriers in Respect of Installation and Maintenance of Telecommunications Facilities published under General Notice No. 135 of 8 April 2021, a carrier must submit to the landowner this Notice to access the land before engaging in activities set out in regulation 6(2).

**A. CARRIER**

Carrier	
Contact Person	
Physical Address	
Postal Address	
Telephone number(s)	
Facsimile number	
Electronic mail address (email address)	

**B. LANDOWNER**

Landowner	
Contact Person	
Physical Address	
Postal Address	
Telephone number(s)	
Facsimile number	
Electronic mail address (email address)	

**C. REASON FOR ACCESS TO LAND**

Provide a clear and concise reason for accessing land in terms of regulation 6(2). (May attach supporting documents)


**D. ACTIVITIES CARRIER INTEND TO PERFORM**

Provide an outline of activities the carrier intends to perform as part of accessing land. (May attach supporting documents)


## E. DURATION OF ACTIVITIES

Provide duration of activities and proposed start date which should be at least 14 days from date of receipt of Notice by landowner.


## F. ANY OTHER INFORMATION

Provide any other relevant information.


Signed by \_\_\_\_\_ at \_\_\_\_\_ in his/her capacity as \_\_\_\_\_ duly authorized and warranting such authority and warranting that the information provided herein is true and correct, on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_ Signature

## ACKNOWLEDGEMENT OF RECEIPT BY LANDOWNER:

Name	
Date	
Place	
Signature	

## ACKNOWLEDGEMENT OF RECEIPT BY CRAN:

(In terms of regulation 6(2)(c))

Name	
Date	
Place	
Signature	

## ANNEXURE

## FORM B

## COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

Communications Act, 2009 (Act No. 8 of 2009)

**OBJECTION TO CARRIER'S NOTICE**

(Regulation 7(1))

In terms of regulation 7(1) of the Regulations Prescribing Functions of Carriers in Respect of Installation and Maintenance of Telecommunications Facilities published under General Notice No. 135 of 8 April 2021, a landowner may upon receipt of Notice from the carrier object to the notice received in terms of regulation 6.

The objection should be served to carrier at least seven days before the proposed start date.

## A. LANDOWNER

Landowner	
Contact Person	
Physical Address	
Postal Address	
Telephone number(s)	
Facsimile number	
Electronic mail address (email address)	

## B. CARRIER

Carrier	
Contact Person	
Physical Address	
Postal Address	
Telephone number(s)	
Facsimile number	
Electronic mail address (email address)	

## C. GROUNDS OF OBJECTION

Provide clear and concise ground of objection to carrier's notice in terms of regulation 7(2).  
(May attach supporting documents)


## D. CONSULTATION BETWEEN PARTIES

Provide a proposed date on which parties may meet to consult in terms of regulation 8, and the venue for the meeting.


E. ANY OTHER INFORMATION

Provide any other relevant information.


Signed by \_\_\_\_\_ at \_\_\_\_\_ in  
his/her capacity as \_\_\_\_\_ duly authorized and  
warranting such authority and warranting that the information provided herein is true and correct, on  
the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

\_\_\_\_\_ Signature

ACKNOWLEDGEMENT OF RECEIPT BY CARRIER:

Name	
Date	
Place	
Signature	

ACKNOWLEDGEMENT OF RECEIPT BY CRAN:  
(In terms of regulation 7(2)(c))

Name	
Date	
Place	
Signature	

## ANNEXURE

## FORM C

## COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

Communications Act, 2009 (Act No. 8 of 2009)

**OUTCOME OF CONSULTATION BETWEEN PARTIES**

(Regulation 8(4)(a))

In terms of regulation 8(4)(a) of the Regulations Prescribing Functions of Carriers in Respect of Installation and Maintenance of Telecommunications Facilities published under General Notice No. 135 of 8 April 2021, either party by agreement must prepare in writing the outcome of their consultation to the other party.

**A. CARRIER**

Carrier	
Contact Person	
Physical Address	
Postal Address	
Telephone number(s)	
Facsimile number	
Electronic mail address (email address)	

**B. LANDOWNER**

Landowner	
Contact Person	
Physical Address	
Postal Address	
Telephone number(s)	
Facsimile number	
Electronic mail address (email address)	

**C. NOTICE BY CARRIER**

Provide details of notice of request to access land by carrier. (May attach supporting documents)


**D. OBJECTION BY LANDOWNER**

Provide details of objection by landowner. (May attach supporting documents)




**FORM D**

## COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

Communications Act, 2009 (Act No. 8 of 2009)

**NOTICE BY CARRIER-LANDOWNER TO INSTALL, ALTER, REMOVE OR REPLACE  
TELECOMMUNICATIONS FACILITIES**

(Regulation 10)

In terms of regulation 10 of the Regulations Prescribing Functions of Carriers in Respect of Installation and Maintenance of Telecommunications Facilities published under General Notice No. 135 of 8 April 2021, a carrier-landowner must submit to other carriers and CRAN this notice to install, alter, remove or replace telecommunications facilities before engaging in such activities.

**A. CARRIER-LANDOWNER**

Carrier-Landowner	
Contact Person	
Physical Address	
Postal Address	
Telephone number(s)	
Facsimile number	
Electronic mail address (email address)	

**B. OTHER CARRIERS/CRAN**

Carrier/CRAN	
Contact Person	
Physical Address	
Postal Address	
Telephone number(s)	
Facsimile number	
Electronic mail address (email address)	

**C. NATURE OF ACTIVITIES**

Provide a clear and concise nature of telecommunication facilities to be installed, altered, removed or replaced. (May attach supporting documents)


**D. ACTIVITIES CARRIER-LANDOWNER INTENDS TO PERFORM**

Provide an outline of activities the carrier-landowner intends to perform on its land.  
(May attach supporting documents)


## E. DURATION OF ACTIVITIES

Provide duration of activities and proposed start date which should be at least seven days from the date of receipt of notice by carrier and the Authority.

Duration:
Start Date:

## F. ANY OTHER INFORMATION

Provide any other relevant information.


Signed by \_\_\_\_\_ at \_\_\_\_\_ in his/her capacity as \_\_\_\_\_ duly authorized and warranting such authority and warranting that the information provided herein is true and correct, on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_ Signature

## ACKNOWLEDGEMENT OF RECEIPT BY CARRIER:

Name	
Date	
Place	
Signature	

## ACKNOWLEDGEMENT OF RECEIPT BY CRAN:

Name	
Date	
Place	
Signature	

**CONSIDERATION OF COMMENTS ON THE REGULATIONS PRESCRIBING  
FUNCTIONS OF CARRIERS IN RESPECT OF INSTALLATION AND MAINTENANCE  
OF TELECOMMUNICATIONS FACILITIES**

**1. Introduction**

The purpose of this paper is to review the comments received from stakeholders on the proposed Prescribing Functions of Carriers in respect of Installation and Maintenance of Telecommunications Facilities which was published in Government Gazette No. 7354 on 7 October 2020. Written comments were received from MTC Mobile Telecommunications Limited (“MTC”), Telecom Namibia (“Telecom”) and Paratus Telecommunications (Pty) Ltd (“Paratus”).

**2. Consideration of Comments**

<b>COMMENTS BY MTC</b>		
<b>Comment</b>	<b>Review &amp; Consideration</b>	
1.	MTC notes the content of these Regulations 1 to 6 and agrees thereto.	The Authority notes the comment.
2.	<p>MTC submits that they object to these Regulations 7 to 9 in its entirety, as same is ultra vires to the provisions of the sections 60 and 62 of the Communications Act No. 8 of 2009.</p> <p>MTC also submits that Chapter 5 of the Communications Act, 2009 (Act No. 8 of 2009) affords Carriers the right to enter upon any land and construct erect, telecommunications facilities for the provision of a telecommunications service, the Act only requires Carriers to provide a notice to the Land Owners in order to exercise such rights.</p> <p>MTC further states that the proposed Regulations have the effect of delaying a Carrier’s rights as afforded to it in terms of sections 60 and 62 respectively, of the Communications Act. Though the Authority has the power in terms of the Act to provide for Regulations specifying the manner, form, period, procedure and consultations to be held between the Carriers and Land Owners. The Act does not make provision for an objection from a Land Owner on the exercise of a Carrier’s rights, nor does it allow for such objection to halt the execution of a Carrier’s rights in terms of the Act.</p> <p>The Act merely allows the Authority to make regulations prescribing dispute resolution procedures and to prescribe a consultative process, but does not allow for such processes to halt the execution of a Carrier’s rights.</p> <p>MTC is of the opinion that a Carrier’s rights are only limited from application in terms of section 59 of the Act, specifically where national security or the safety of the President is threatened or where prejudice to public purpose or a legal duty arises.</p>	<p>An “Objection” is inherently a “procedural matter” in any process or procedure involving the affected rights of any person. Whether a land owner is authorized to “object”, or to “comment”, make submission” or “presentation” regarding the notice, the end result will be the same because a person may still raise an objection to anything relating to the notice that may affect his or her right.</p> <p>The objection provided in regulation 7 is not an unrestricted objection but an objection that is regulated and guided by grounds. We trust that the above is in order.</p> <p>Please note that section 69(1) &amp; (2) provide that:</p> <p style="text-align: center;"><i>“unless the provisions of this Chapter expressly provide otherwise, any party to a dispute regarding the exercise of the rights conferred upon a carrier in this Part, may only be adjudicated upon by the Authority.</i></p> <p style="text-align: center;"><i>(2) Any party to a dispute referred to in subsection (1) may refer the dispute in the prescribed manner to the Authority.”</i></p> <p>Adjudication in this context is confined to disputes regarding the exercise of the rights under Part V. Therefore both parties are compelled to engage the Authority for adjudication.</p> <p>Section 68(2) enables the Authority the power to choose what procedural matters should be included in the procedure to be followed and consultations to be held between a carrier and any affected person or public body (within the framework of Part V).</p> <p>Rights conferred to carriers by Part V, are subject to the procedure laid down by the Authority in terms of section 68(2).</p>

TELECOM	
Comment	Review & Consideration
<p>1. Telecom submits that on page 3, Regulations 2(2)(b) states that the agreement between the landowner and the Carriers may create a loophole to subject carriers to conditions other than those permitted under the Communications Act. For instance, the Communications Act gives carriers a right to install telecommunications facilities on any land but does not require carriers to pay landowners for such installation. The agreement may be used to create such a loophole.</p> <p>Telecom therefore proposes that agreements be allowed but no terms other than those permitted under the Communications Act may be imposed.</p>	<p>The Authority notes the comment and submit that an agreement is required only for the procedural aspects in respect of installation and maintenance of the Telecommunications Facilities. These Regulations do not impose the monetary requirements between the carrier and the landowner.</p>
<p>2. Telecom submits on page 5, Regulations 6(2)(a) states that although Telecom acknowledge the importance of giving notice to the land owner and ensuring proper coordination of installation of telecommunications facilities to avoid chaos and effecting other services that also relies upon the usage of the same land such as water, electricity, aviation etc., Telecom is concerned that fourteen (14) days to notify the landowner; some whom are competitors may be too long and might result in anticompetitive behaviour and activities. Telecom thus propose that the period be shortened to seven (7) days.</p>	<p>The Authority notes the comment and will reconsider the proposed notice period of 14 days.</p>
<p>3. Telecom in terms of page 5, Regulation 7(2) (b) propose that the date to be proposed when parties must meet for consultation in 8 (2) must not be later than 3 days from the date of notice of objection.</p>	<p>The Authority notes the comment and will reconsider the proposed start of consultation days in terms of the consultation period.</p>
<p>4. Telecom in terms of page 5, Regulation 7(3)(c) propose that objections on the date should only be subject to the date not complying to the prescribe date in the Regulations referencing when the Carrier may proceed to install Telecommunications facilities.</p>	<p>The Authority notes that comment and will consider same.</p>
<p>5. Telecom in terms of page 6, Regulation 8(2) proposes that the consultation must take place within 3 days from the date of objection as per their comments under regulation 7(2)(b).</p>	<p>The Authority notes the comment and will reconsider the proposed start of consultation days in terms of the consultation period.</p>
PARATUS	
Comment	Review & Consideration
<p>1. Paratus notes its objection to the entire proposed Regulations. Paratus further submits that Section 68 allows the Authority to prescribe “<b>the manner, form and period of notice</b>” (not whether or not notice must be given in the first place) to be given by a carrier to any person or public body in connection with the performance by the carrier of functions contemplated in Part 5 of the Act, and the “<b>procedure to be followed and consultations to be held</b>” between a carrier and any affect person or public body..</p>	<p>The Authority notes the contents.</p>

	<p>A carrier must perform its functions in terms of Chapter 5 and in accordance with the regulations contemplated in section 68(2). Paratus submits that section 68 is not a model of clarity and must be read in context and considering the provisions of Part 5 of the Act (and cannot derogate therefrom)</p> <p>Paratus thus submits that the Authority should guard against impermissible dilution or limiting of the rights accorded in the Act through ultra vires regulations. They also propose that the regulation must employ language consistent with the Act, and not lump concepts or obligations.</p>	
2.	<p>Paratus submits that it is important to distinguish between sharing of infrastructure and accessing land for purposes of installing equipment. Paratus submits that <b>section 50</b> refers to <b>Infrastructure Sharing</b> and that that section specifically makes provision for the utility to refuse to lease infrastructure referred to under certain defined circumstances (50(7)).</p>	<p>Please note that whilst section 50 and the infrastructure sharing regulations apply to facilities already in existence, the proposed Carrier Regulations only apply to rights of way to implement new facilities by carriers (entities holding a service technology neutral telecommunications service licence) and the duties of those carriers. These are separate regulations with distinctly separate provisions and obligations and should not be applied interchangeably.</p>
3.	<p>Paratus submits that <b>section 60</b> makes provision for a carrier to <b>enter any land</b> and construct or maintain telecommunications facilities upon, under or over such land. It does not require consent from the landowner or occupier of land and it does not make provision for any objection.</p> <p>Paratus further submits that if it was the Legislature's intention, it would have made specific provision therefore, such as provided for in section 50. Even section 61 makes provision for the carrier to agree with the local authority, yet sections 60 and 62 do not. This cannot be implied.</p> <p>Paratus submits that section 62 provides for notice to be given to the local authority. In terms of the act, the local authority is only entitled to supervise the work to ensure that it does not affect their own underground pipes and cables.</p>	<p>Please note that the rights conferred to carriers by Part V are exercised subject to the provisions of Section 68, which obliges carriers to perform their functions in terms of Part V in accordance with the regulations made under subsection (2) which authorizes the Authority to prescribe the manner, form and period of notice to be given by a carrier to any person or public body in connection with the performance by the carrier of functions contemplated in the Part as well as the procedure to be followed and the consultations to be held between the carrier and the affect person or public body.</p> <p>The procedure to be followed regarding the notice is not limited to any specific aspect or guidelines. The Authority has the discretion to make regulations which are necessary, desirable and appropriate in the circumstances affecting the rights of persons or public bodies.</p>
5.	<p>Paratus submits that the principles applicable to the rights granted under Part 5 to carriers include:</p> <p>(a) the burden on the <b>land owner</b> must be as small as possible. (<b>not the local authority – throughout the Act there is a clear distinction</b>)</p> <p>(b) <i>when the rights referred to in this section relate to land owned by a public body or the State, the rights may not be exercised in such a manner that the exercise of those rights is <u>prejudicial to any public purpose or legal duty of the body or the State</u></i> (<b>it must be noted that the local authority is not specifically mentioned in this clause and it will only apply to it if it is the actual owner of a specific piece of land) And even then it is not given blanket right to object.</b></p>	<p>Section 65(1) of the Act provides: "If in the opinion of a carrier, any tree or vegetation obstructs or interferes with or is likely to obstruct or interfere with the working or maintenance of any telecommunications facility, pipe, tunnel or tube, whether or not such tree or vegetation is on state land or land belonging to a local [or] authority or other public body it may issue a notice in terms of subsection (2).</p> <p>Therefore in terms of "local authority" is only singled out in some provisions of Part V in circumstances where it is given an option to do something with regard to streets, roads, pathways etc. in a local authority area.</p>

	<p>(c) <i>when there are different technically feasible and economically reasonable ways of exercising the rights concerned, the rights must be exercised in such a manner that the <b><u>rights of the land owner and the carrier are balanced in a fair manner.</u></b></i></p> <p>(d) <i>When the exercise of rights referred to in this Part may affect <b>national security or the safety of the President or a member of Cabinet the Director-General</b> may forward a directive to the Authority indicating any requirements with which the telecommunications facilities in question must comply. <b>(The Director-General is required to send a directive in the event of a threat, not the local authority).</b></i></p> <p>Paratus submits that the proposed regulations impermissibly grant rights to the local authority which the Act has specifically not made provision for, and dilute and infringe the rights of carriers.</p>	
6.	<p>Paratus submits that “Land owner” is not defined in the Act.</p> <p>“Owner” is generally understood to be the person in whom a dominium is vested.</p> <p>Paratus further submits that if the Act intended to encompass persons other than owners of land where reference is made to owner, it would have expressly stated so. Section 64(1) refers to “owner or occupier” of the land”. Similar wording is found in section 65(2). It’s apparent that the Legislature appreciated the distinction between an owner and an occupier. Further categories of persons are also contemplated in Part 5.</p> <p>Paratus also states that it is important to avoid conflating terms in the proposed regulations, moreover, given that certain sections (under Part 5) only apply to certain categories or persons. This will simply result in confusion and is undesirable.</p>	<p>Regulation 1 defines “land owner” as derived from the context of Part V as follows: “land owner” means a person who owns or legally occupies a land, and includes the State, a local authority and a public body.</p> <p>Section 65(1) of the Act provides: “If in the opinion of a carrier, any tree or vegetation obstructs or interferes with or is likely to obstruct or interfere with the working or maintenance of any telecommunications facility, pipe, tunnel or tube, whether or not such tree or vegetation is on state land or land belonging to a local [or] authority or other public body, it may issue a notice in terms of subsection (2).</p> <p>“Owner” is generally understood to be the person in whom a dominium is vested. So the notice is issued to either the “owner” or “occupier” of the land referred to in subsection (1) being the land belonging to the State, local authority, public body, plus any private owner.</p>
7.	<p>Paratus states that section 62, 65 and 67 provide for notices by the carrier.</p> <p>Paratus submits that the proposed regulations (regulation 6) requires a carrier to provide “<b>written notice to access the land ... before accessing the land</b>” for purposes envisaged in the proposed regulation 6 (1) (a-c).</p> <p>Note proposed regulation 7 (4) – a carrier may “<b>proceed and access land as outlined in the notice</b>” only if <b>no objection</b> is received from the land owner within nine days from date of receipt of the notice.</p> <p>Paratus further submits that section 60 does not requires or provide for this and section 62, 65 and 67 do not contemplate what is now sought to be introduced in the proposed regulations.</p>	<p>Please note that the rights conferred to carriers by Part V are exercised subject to the provisions of Section 68, which obliges carriers to perform their functions in terms of Part V in accordance with the regulations made under subsection (2) which authorizes the Authority to prescribe the manner, form and period of notice to be given by a carrier to any person or public body in connection with the performance by the carrier of functions contemplated in the Part as well as the procedure to be followed and the consultations to be held between the carrier and the affect person or public body.</p>

	Paratus submits that the said proposed regulations currently read, there can be no access without prior notice and access can only be exercised if there is no objection. This is not what the Act contemplates and is ultra vires the Act.	The procedure to be followed regarding the notice is not limited to any specific aspect or guidelines. The Authority has the discretion to make regulations which are necessary, desirable and appropriate in the circumstances affecting the rights of persons or public bodies.
8.	<p>Paratus submits that in terms of the proposed regulation 7, the Authority seeks to introduce some form of “<b>objection</b>” procedure. Paratus submits this is not contemplated in the Act.</p> <p>Paratus thus submits that the Act (in particular the section referenced above) do not make provision for objections and also do not preclude access or the exercise of a right upon an “objection” being made.</p>	<p>An “Objection” is inherently a “procedural matter” in any process or procedure involving the affected rights of any person. Whether a land owner is authorized to “object”, or to “comment”, make submission” or “presentation” regarding the notice, the end results will be the same due to the fact that a person may still raise any objection to anything relating to the notice that may affect his or her right.</p> <p>The objection provided in regulation 7 is not an unrestricted objection but an objection that is regulated and guided by grounds.</p>
9.	<p>Paratus submits that in terms of the proposed regulation 8(4), the land owner and the carrier cannot resolve the “objection” by agreement, then the dispute <b>must</b> be referred to the Authority for adjudication.</p> <p>Paratus states that in terms of section 69(1), only disputes concerning the exercise of rights conferred upon a carrier in Part 5 are to be adjudicated by the Authority. Furthermore, section 69(2) does not compel a party to refer the dispute to the Authority.</p> <p>Paratus further submits that if the objection is such that it does not constitute or relate to a dispute regarding the exercise of rights conferred upon a carrier in Part 5 of the Act, the Authority in any event would have no jurisdiction to hear such a dispute.</p>	<p>Please note that section 69(1) &amp; (2) provide that:</p> <p><i>“unless the provisions of this Chapter expressly provide otherwise, any party to a dispute regarding the exercise of the rights conferred upon a carrier in this Part, may only be adjudicated upon by the Authority.</i></p> <p><i>(2) Any party to a dispute referred to in subsection (1) may refer the dispute in the prescribed manner to the Authority.”</i></p> <p>Adjudication in this context is confined to disputes regarding the exercise of the rights under Part V. Therefore both parties are compelled to engage the Authority for adjudication.</p>
10.	Paratus submits that the proposed regulations are ultra vires the Act in material respects and need to be revisited <i>in toto</i> .	<p>Section 68(2) enables the Authority (the power) to choose which procedural matters should be included in the procedure to be followed and consultations to be held between a carrier and any affected person or public body (within the framework of Part V).</p> <p>Whatever rights conferred to carrier by Part V such right is subject to the procedure laid down by the Authority in terms of section 68(2).</p>