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The Independent Communications Authority of South Africa (ICASA)

Attention: The Licensing Department

Block B, 350 Witch-Hazel Avenue,
Eco Point Office Park, Eco Park,
Centurion, Highveld Park, 0169

BY EMAIL: broadcastingapplications@icasa.org.za

Cc: Rhythm (Pty) Ltd trading as Rhythm FM

Attention: Mr Given Mkhari / Ms Pheladi Gwangwa

Email: Given@msgafrika.com
pheladi@msgafrika.com
queen@msgafrika.com

30 June 2026

Dear Sir/Madam

**REPRESENTATIONS BY ALGOA FM IN RESPECT OF THE RHYTHM FM LICENCE
RENEWAL APPLICATION**

1. Introduction

1.1 On 9 June 2026, the Independent Communications Authority of South Africa ("ICASA") published Notice 3971 of 2026 in Government Gazette No. 54816, inviting written representations on applications by Rhythm (Pty) Ltd trading as Rhythm FM ("Rhythm FM") for the renewal of its- (i) Individual Commercial Sound Broadcasting Service ("I-CSBS") licence (the "I-CSBS Licence"); and (ii) Radio Frequency Spectrum ("RFS") licence (the "RFS Licence") (together, the "Licences"; and the applications, the "Renewal Applications").

1.2 Umoya Communications (Pty) Ltd trading as Algoa FM ("Algoa FM") holds an I-CSBS licence and an RFS licence authorising it to provide a commercial sound broadcasting service in the Eastern Cape. Algoa FM operates in the same provincial market in which Rhythm FM is licensed to operate and has a direct interest in the proper allocation and use of broadcasting spectrum in that market.

- 1.3 Algoa FM makes these representations in terms of sections 11(3) and 9(2) of the Electronic Communications Act 36 of 2005 ("**ECA**"). Algoa FM requests an opportunity to make oral submissions if ICASA decides to hold a public hearing in respect of the Renewal Applications.

2. Procedural Matters

- 2.1 We note that, on the face of it, the Licences expired on 7 December 2025 (the "**Expiry Date**"). While the Renewal Applications appear to have been lodged on or about 30 April 2025, ICASA published the invitation for representations only on 9 June 2026, more than six months after the Expiry Date.
- 2.2 Section 11(4) of the ECA requires ICASA, except in the case of a late application condoned under section 11(9), to decide a renewal application before the licence expires, subject to the procedure in section 11(8). ICASA did not do so.
- 2.3 We note that, if the I-CSBS Licence Renewal Application was lodged within the prescribed period, section 11(10) of the ECA provides that the I-CSBS Licence remains valid until ICASA has decided that application. In considering the Renewal Applications, ICASA will be required to consider: (i) the date on which each Renewal Application was received; and (ii) whether each Renewal Application was complete and accompanied by the applicable prescribed fee.
- 2.4 An additional consideration to be scrutinised and confirmed is whether the RFS Licence (which is governed by a separate statutory and regulatory framework) has remained in force pending any decision on the relevant Renewal Application - including whether Rhythm FM complied with the applicable renewal requirements.

3. Background

- 3.1 The background set out below is relevant to ICASA's determination of the Renewal Applications and, in particular, whether the grounds contemplated in section 11(7) of the ECA are present. It also identifies matters that ICASA should verify before deciding the Renewal Applications.

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*Dave Tiltmann (Chairperson), *Alfred da Costa,

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- 3.2 The Licences were issued on 7 December 2015 following the Invitation to Apply for Individual Commercial Free-to-Air Sound Broadcasting Service Licences for Secondary Markets, published under General Notice 94 in Government Gazette 35000 of 2 February 2012 (the "**ITA**"). The ITA was issued under section 9 of the ECA, and referred to ICASA's Position Paper on the Review of Ownership and Control of Broadcasting Services dated 13 January 2004.
- 3.3 The secondary-market process was intended to extend commercial sound broadcasting services beyond the established primary markets. The ITA required applicants to demonstrate (in a competitive bidding process), among other things, a demand and support for the proposed service; financial viability; and the capability, experience, and expertise necessary to establish and operate it. Applicants relying on investors or external funding were required to provide supporting evidence of the proposed funding arrangements.
- 3.4 Regulation 5(1)(a) of the Standard Terms and Conditions for Individual Licences Regulations, 2010, as amended (the "**Standard Terms Regulations**"), required Rhythm FM to commence the sound broadcasting service authorised under the I-CSBS Licence (the "**Licensed Service**") within 12 months of the issue of that licence, unless ICASA granted an extension on good cause shown. Regulation 5(3) provides that an extension may be granted only once and may not exceed the original commencement period.
- 3.5 It is common cause that Rhythm FM did not commence the Licensed Service within the prescribed period. In case no. 357/2019, the Complaints and Compliance Committee ("**CCC**") recorded Rhythm FM's concession that it had not complied with regulation 5 and recommended that ICASA issue a final commencement direction (the "**2020 Compliance Proceedings**"). The CCC also found that the limited transmission of music relied on at the time did not constitute lawful commencement of the Licensed Service, as it amounted to no more than an "obvious superficial mechanism" to circumvent the requirements of the Standard Terms Regulations. A copy of the CCC ruling is attached, marked "**A**".

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- 3.6 On 22 May 2020, ICASA decided that Rhythm FM be given eight months (excluding the COVID-19 lockdown period) to commence the Licensed Service (the "**ICASA Decision**"). The ICASA Decision was also subject to confirmation of funding and the submission, within 30 days, of a project plan incorporating an implementation plan. A copy the ICASA Decision is attached, marked "**B**".
- 3.7 The public records available to Algoa FM do not indicate whether Rhythm FM complied with the funding and planning requirements imposed by the ICASA Decision; when the eight-month period expired after excluding the lockdown period; or whether ICASA subsequently determined that Rhythm FM had complied with the commencement direction.
- 3.8 Algoa FM is not aware of Rhythm FM having commenced the Licensed Service in accordance with the I-CSBS Licence. A Daily Dispatch report dated 14 November 2024 (the "**Daily Dispatch Report**") stated that Rhythm FM had launched but had been "unable to sustain" operations because of financial constraints. Algoa FM's understanding is that Rhythm FM has not, at any point since the issue of the Licences in December 2015 and, thereafter, the ICASA Decision, commenced the Licensed Service. In any event, and while Algoa FM is not in a position to independently verify the claims, the Daily Dispatch Report reinforces the need for ICASA to establish whether, when, and for how long Rhythm FM commenced Licensed Service, and whether any transmission complied with the programming and other conditions of the I-CSBS Licence. A copy of the Daily Dispatch Report is attached, marked "**C**".
- 3.9 The Daily Dispatch Report further stated that Mr Siviwe Mpengesi was negotiating to acquire an ICASA licence from Rhythm FM's owners. ICASA was quoted as confirming that it had not, at that stage, received a transfer application. Algoa FM does not allege that a transfer or change of control has occurred. However, it asks ICASA to confirm, before deciding the Renewal Applications, whether any transaction as contemplated in the Daily Dispatch Report is being considered by Rhythm FM.

3.10 Algoa FM further understands that a default judgment was granted against Rhythm FM in December 2020 in the East London Circuit Local Division of the High Court under case no. EL500/20 for R5,286,092.30, together with interest and costs, in proceedings concerning rental obligations relating to broadcasting premises (the "**Default Judgment**"). A copy of the order is attached, marked "**D**".

3.11 Regulation 11(1)(a) of the Standard Terms Regulations requires a licensee to notify ICASA in writing within 14 days of any judgment given against it. ICASA is requested to confirm that it was notified of the Default Judgment, and to consider any non-compliance arising from the Default Judgment as part of Rhythm FM's overall compliance record. The Default Judgment is also relevant to ICASA's assessment of Rhythm FM's financial standing and business record, and of the business record of any directors of, or persons in a position of control over, its operations.

4. **Algoa FM's Interest and the broader Public Interest**

4.1 Section 2 of the ECA identifies, as objects of the Act, the promotion of competition within the ICT sector; the efficient use of radio frequency spectrum; the development of public, commercial, and community broadcasting services responsive to public needs; a varied range of programming; the empowerment of historically disadvantaged persons; and stability in the ICT sector.

4.2 It is well understood that radio frequency spectrum is a scarce public resource. Algoa FM's interest is thus not limited to commercial competition. It also concerns the proper regulation of licensed entities more generally; the consistent enforcement of licence conditions and regulatory requirements; the efficient use of spectrum; and the provision of licensed services to the public.

4.3 These matters engage a broader public interest and ICASA's regulatory oversight function. Where a licensee has failed to commence or sustain the service for which a licence and associated spectrum were awarded, ICASA must establish whether the applicable statutory and regulatory requirements have been met before permitting the licensee to retain those authorisations for a further licence term.

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- 4.4 Section 51 of the ECA separately requires ICASA (when considering the grant of a new commercial broadcasting service licence) to have due regard to the objects in section 2; and to consider, among other matters, demand and need for the proposed service, the applicant's technical capability, expertise, experience, financial means, and business record. ICASA must also consider the business record of directors and/or persons in a position to control the operations of the licensee. Although section 51 does not prescribe the test for a renewal of licences, these considerations were relevant to the decision to award the I-CSBS Licence, and remain relevant to the determination of the Renewal Applications.
- 4.5 In the event that renewal is refused and the spectrum becomes available for reassignment, we respectfully submit that a transparent and competitive licensing process conducted *de novo* would better serve the objects of the ECA and the broader public interest. Such a process would enable ICASA to assess the matters contemplated in section 51, together with the policy considerations underlying the ITA, against current circumstances and market conditions. It would therefore enable ICASA to determine which applicant is presently best placed to provide the Licensed Service and use the available spectrum efficiently.
- 4.6 A licence and associated spectrum assignment that are retained for an extended period without a sustained licensed service do not advance the public interest reflected in the objects of the ECA. They may exclude other potential users of the spectrum without delivering the public benefits for which the licences were awarded.
- 4.7 Consistency in enforcement is also material to orderly competition. Licensees make investments and operate on the basis that licence conditions and regulatory deadlines will be applied lawfully and consistently. ICASA should therefore determine the Renewal Applications on a complete and verified compliance record - particularly in circumstances where Rhythm FM has previously failed to demonstrate that it is capable of providing the Licensed Service.

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5. Matters Requiring Determination before Renewal

5.1 The Section 11(7) Threshold

5.1.1 Section 11(6) of the ECA establishes renewal on no less favourable terms as the ordinary position. Under section 11(7), ICASA may refuse renewal or impose less favourable or different terms only if the licensee has materially and repeatedly failed to comply with its licence conditions, the ECA or related legislation, or regulations made by ICASA.

5.1.2 Algoa FM does not ask ICASA to revisit the merits of the decision to award the original licence or the later spectrum-amendment decisions. The relevant question is whether Rhythm FM's conduct during the licence term, considered cumulatively, satisfies the statutory threshold.

5.1.3 ICASA should determine:

5.1.3.1 whether Rhythm FM commenced the Licensed Service within the period ultimately allowed by ICASA, and, if so, the date and nature of that Licensed Service;

5.1.3.2 whether Rhythm FM has complied / is able to comply with ICASA's requirements concerning confirmation of funding and the submission and implementation of its project plan;

5.1.3.3 whether Rhythm FM has complied / is able to comply with the programming, operational, reporting, and other conditions of the I-CSBS Licence during any period in which it claims to have broadcast;

5.1.3.4 whether Rhythm FM has complied / is able to comply with the special conditions of the I-CSBS Licence, including any conditions specific to the Licensed Service area, programming format, local content, language requirements, and news output commitments imposed at the time of the original licence grant;

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- 5.1.3.5 whether Rhythm FM has complied / is able to comply with the conditions of the RFS Licence, including any applicable requirements concerning the utilisation of the assigned spectrum;
- 5.1.3.6 whether the Default Judgment was reported under regulation 11(1)(a) of the Standard Terms Regulations; and
- 5.1.3.7 whether any further compliance findings, complaints, or enforcement steps are recorded against Rhythm FM.
- 5.1.4 If ICASA is satisfied that these matters establish material and repeated non-compliance, section 11(7) permits it to: (a) refuse renewal; or (b) renew on less favourable or different terms. ICASA should undertake the necessary investigation, and obtain and test the necessary information, before reaching its decision.

5.2 Commencement and Use of Spectrum

- 5.2.1 Regulation 14(4) of the Standard Terms Regulations states that failure to commence operations in accordance with regulation 5 will result in revocation. The CCC recorded in the 2020 Compliance Proceedings that revocation is not automatic and requires the applicable statutory process and a decision by ICASA. No revocation occurred in 2020 as the ICASA Decision afforded Rhythm FM a further indulgence within which to commence the Licensed Service, subject to confirmation of funding and the submission of a project plan incorporating an implementation plan within 30 days.
- 5.2.2 The indulgence afforded to Rhythm FM does not resolve the issue of whether Rhythm FM subsequently complied, which should be determined before the I-CSBS Licence is renewed. In relation to the RFS Licence, ICASA should also establish whether the assigned spectrum has been utilised in accordance with the licence conditions and consider any powers available to it under section 31 of the ECA.

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5.3 Present Financial and Operational Capability

5.3.1 In the 2020 Compliance Proceedings, Rhythm FM stated that:

5.3.1.1 its funding arrangements were linked to those of Beat FM, through MSG Afrika Broadcasting;

5.3.1.2 further drawdowns depended on compliance and commercial viability; and

5.3.1.3 no other licensee could make better use of the spectrum or launch sooner.

5.3.2 ICASA nevertheless required confirmation of funding and an implementation plan within 30 days of the ICASA Decision.

5.3.3 Nearly six years later, ICASA should not accept the earlier assertion of readiness without current evidence. The Renewal Applications themselves indicate that Rhythm FM's launch remains dependent on alignment with its funders to secure capital and on the available transmission footprint of Sentech SOC Limited. This reinforces the need for ICASA to require current evidence of Rhythm FM's available funding, transmission arrangements, and implementation timetable before deciding the Renewal Applications.

5.3.4 The criteria applied in the original ITA were tested competitively against the circumstances existing in 2012 and 2013. They do not establish, without more, that Rhythm FM remains the entity best placed to use the spectrum more than a decade later in 2026.

5.4 Ownership, Control, and Accuracy of the Application

5.4.1 We note that the original licence documentation refers to Histoprox (Pty) Ltd, while the Renewal Applications identify Rhythm (Pty) Ltd. ICASA should confirm from its records and the company's registration number whether this reflects only an approved change of name and that the applicant is the legal holder of the Licences.

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5.4.2 The Renewal Applications record 100% ownership by historically disadvantaged groups and answer "N/A" to the question whether any person holding an ownership interest in the applicant holds a licence or an ownership interest in another licensee providing a similar service. By contrast, the record of the 2020 Compliance Proceedings states that MSG Afrika Group held 19.9% of Rhythm FM and refers to the operation of Power 98.7 and Capricorn FM within the same group structure.

5.4.3 The Renewal Applications should also be considered against the requirements applicable to Rhythm FM's directors and persons in a position to control its operations. ICASA should verify the identity and eligibility of the current directors, their interests in or control over other commercial sound broadcasting licensees, and Rhythm FM's compliance with sections 64 and 65 of the ECA and the applicable requirements of the Companies Act 71 of 2008. In doing so, ICASA should consider the matters identified above, including the Default Judgment, insofar as they are relevant to the financial standing and business record of Rhythm FM and the record of persons controlling its operations.

5.4.4 Algoa FM does not have access to ICASA's confidential ownership, control, or directorship records and does not allege that the present structure contravenes sections 64 or 65 of the ECA. The apparent differences between the Renewal Applications and the earlier regulatory record should, however, be clarified. ICASA should verify the complete direct and indirect ownership and control structure, the composition of its board, any changes implemented during the licence term, and whether all approvals required under section 13 of the ECA were obtained. ICASA should also reconcile the apparently inconsistent percentages of ownership by historically disadvantaged groups recorded in the I-CSBS Licence and RFS Licence annexed to the Renewal Applications.

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6. Appropriate Outcome

- 6.1 Algoa FM respectfully submits that no decision should be made by ICASA in respect of the Renewal Applications until it has established (preferably in a public hearing) the matters identified above from a complete compliance, ownership, financial, operational, and spectrum-utilisation record relevant to each Licence.
- 6.2 If ICASA finds that Rhythm FM has materially and repeatedly failed to comply within the meaning of section 11(7), it should, respectfully, refuse renewal or impose such licence terms as are appropriate in the circumstances. Any preliminary decision to do so must be dealt with in accordance with the procedure in section 11(8).
- 6.3 If renewal is refused and the spectrum becomes available for reassignment, Algoa FM submits that any future commercial sound broadcasting licence and associated spectrum assignment should be awarded through a transparent and competitive process conducted *de novo* under the ECA. Such a process would permit ICASA to test current market demand, public need, financial viability, operational capability, transformation, and efficient spectrum use against present conditions.
- 6.4 As a general principle, Algoa FM submits that any future process should not confer a participation advantage on entities that previously held licences in respect of the relevant spectrum that have since expired.
- 6.5 Further, consistent with the objects of the ECA, any applicant in a future process should be required to establish afresh that it satisfies the applicable licensing requirements. This should include an assessment of the matters contemplated in section 51 - including the applicant's financial means and business record, the business record of persons in a position to control its operations, and the record of the applicant and those persons in situations requiring trust and candour. ICASA should also satisfy itself that the applicant's directors and controllers meet the applicable statutory eligibility requirements. The fact that an applicant, or a related entity, previously held a licence in respect of the relevant spectrum should not relieve it of that scrutiny or confer any participation advantage.

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- 6.6 For the avoidance of doubt, Algoa FM does not seek, through these representations, any preference in a future process and expresses no view on the merits of any prospective applicant.

7. Conclusion

- 7.1 In the 2020 Compliance Proceedings, Rhythm FM conceded that it had failed to launch the Licensed Service within the 12-month period prescribed by regulation 5 of the Standard Terms Regulations. ICASA then afforded Rhythm FM a further, conditional period within which to commence the Licensed Service. Algoa FM's understanding is that Rhythm FM did not comply with that decision and has not since provided the Licensed Service. In any event, the public record does not establish that Rhythm FM complied, or that it presently has the financial, technical, and operational capability to provide the Licensed Service.
- 7.2 ICASA should investigate and determine that issue, together with Rhythm FM's compliance with its reporting, ownership, control, and funding obligations under the I-CSBS Licence and the applicable requirements governing its use of the assigned spectrum, before making any decision in respect of the Renewal Applications.
- 7.3 If the verified record establishes material and repeated non-compliance, Algoa FM requests that ICASA exercise its powers under- (i) section 11(7) in relation to the I-CSBS Licence; and (ii) section 31 in relation to the RFS Licence. If renewal is refused and the spectrum becomes available for reassignment, any future commercial sound broadcasting licence and associated spectrum assignment should be awarded through a transparent and competitive process conducted *de novo* under the ECA.

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7.4 Algoa FM reserves its rights in relation to ICASA's decision and the process followed in reaching it. Algoa FM requests that any further correspondence concerning these representations be directed to the contact details set out below.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Alfie Jay', written over a faint, stylized circular logo.

ALFIE JAY
MANAGING DIRECTOR

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