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The Independent Communications Authority of South Africa (ICASA)

Attention: The Licensing Department

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

BY EMAIL: Licensing@icasa.org.za

Cc: Histotrim (Pty) Ltd trading as Beat 105 FM

Attention: Mr Given Mkhari / Ms Pheladi Gwangwa

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26 June 2026

Dear Sir/Madam

REPRESENTATIONS BY OFM IN RESPECT OF THE BEAT FM LICENCE RENEWAL APPLICATION

1. Introduction

- 1.1 On 12 June 2026, the Independent Communications Authority of South Africa ("ICASA") published Notice 3975 of 2026 in Government Gazette No. 54834, inviting written representations on applications by Histotrim (Pty) Ltd trading as Beat 105 FM ("**Beat 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 Central Media Group (Pty) Ltd trading as OFM ("**OFM**") holds an I-CSBS licence and an RFS licence authorising it to provide a commercial sound broadcasting service in the Free State, Northern Cape and North West. OFM operates in the same provincial markets in which Beat FM is licensed to operate and has a direct interest in the proper allocation and use of broadcasting spectrum in that market.
- 1.3 OFM makes these representations in terms of sections 11(3) and 9(2) of the Electronic Communications Act 36 of 2005 ("**ECA**"). OFM 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 12 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 application to renew the I-CSBS Licence 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 application was complete and accompanied by the applicable prescribed fee.
- 2.4 The RFS Licence is a separate authorisation governed by different statutory and regulatory requirements. Although we have been advised that ICASA is considering the Renewal Applications together, an additional consideration to be scrutinised and confirmed is whether the RFS Licence has remained in force pending any decision, and whether Beat FM complied with the applicable requirements for renewal of that licence - including payment of the prescribed spectrum licence fees.

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.
- 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 Beat 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 Beat FM did not commence the Licensed Service within the prescribed period. In case no. 358/2019, the Complaints and Compliance Committee ("**CCC**") recorded Beat 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**".
- 3.6 On 22 May 2020, ICASA decided that Beat 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. ICASA specifically recorded its concern about Beat FM's financial reliance on Power FM (which ICASA noted was experiencing financial difficulties of its own), and that the funding relied on by Beat FM from the Industrial Development Corporation ("**IDC**") and the National Empowerment Fund ("**NEF**") had not been confirmed at that stage. A copy of the ICASA Decision is attached, marked "**B**".
- 3.7 The public records available to OFM do not indicate whether Beat 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 Beat FM had complied with the commencement direction.

4. OFM'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. OFM'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.
- 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 Beat FM has previously failed to demonstrate that it is capable of providing the Licensed Service.

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 OFM 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 Beat FM's conduct during the licence term, considered cumulatively, satisfies the statutory threshold.
- 5.1.3 ICASA should determine:
- 5.1.3.1 whether Beat 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 Beat 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 Beat 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 Beat 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;
- 5.1.3.5 whether Beat 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; and
- 5.1.3.6 whether any further compliance findings, complaints, or enforcement steps are recorded against Beat 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 Beat 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 Beat FM does not resolve the issue of whether Beat 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.

5.3 **Present Financial and Operational Capability**

5.3.1 In the 2020 Compliance Proceedings, Beat FM explained that:

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

5.3.1.2 further drawdowns were subject to performance milestones; and

5.3.1.3 the two stations were intended to launch at approximately the same time to achieve scale benefits.

5.3.2 ICASA nevertheless recorded that the funding relied on from IDC and the NEF had not been confirmed at that stage, and required Beat FM to provide confirmation of funding and an implementation plan within 30 days.

5.3.3 The Renewal Applications should therefore be assessed against current evidence of Beat FM's funding, staffing, technical arrangements, and implementation timetable. In particular, ICASA should satisfy itself that the funding and implementation matters identified by ICASA in 2020 have since been addressed and that Beat FM presently has the financial and operational capability to provide the licensed service.

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 Beat 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 The ownership structure disclosed in the Renewal Applications differs from the structure recorded when the Licences were granted in December 2015. The current shareholder schedule appears to include shareholders who were not reflected in the original structure and to omit certain original shareholders. ICASA should verify the history of changes in Beat FM's direct and indirect ownership and control and determine whether any such change resulted in a transfer of the I-CSBS Licence or control of that licence requiring prior approval under section 13 of the ECA.

- 5.4.2 In particular, a comparison of the shareholder schedule annexed to the Renewal Applications with the shareholder structure recorded in the original I-CSBS Licence indicates that certain original shareholders have exited; the NEF has become a direct shareholder; and the percentage interests of certain remaining shareholders have changed. The public record does not indicate whether any resulting change in control required, and received, ICASA's prior approval.
- 5.4.3 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 Beat FM and refers to the operation of Power 98.7 and Capricorn FM within the same group structure.
- 5.4.4 The Renewal Applications should also be considered against the requirements applicable to Beat 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 Beat 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 have regard to Beat FM's financial and business record, including the funding concerns recorded in the 2020 Compliance Proceedings, insofar as they are relevant to the business record of Beat FM and the persons controlling its operations.
- 5.4.5 OFM 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 Beat FM's complete direct and indirect ownership and control structure; the composition of its board; the changes implemented during the licence term; the accuracy of the disclosures in the Renewal Applications; and whether any approval required under section 13 of the ECA was obtained.

6. **Appropriate Outcome**

- 6.1 OFM 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 Beat 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) of the ECA.
- 6.3 If renewal is refused and the spectrum becomes available for reassignment, OFM 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, OFM 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.
- 6.6 For the avoidance of doubt, OFM 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, Beat 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 Beat FM a further, conditional period within which to commence the Licensed Service and, in doing so, recorded concerns regarding Beat FM's financial reliance on Power FM and the unconfirmed status of the IDC and NEF funding. OFM's understanding is that Beat 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 Beat 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 Beat FM's compliance with its ownership, control, and funding obligations under the Licences, before making any decision in respect of the Renewal Applications.
- 7.3 If the verified record establishes material and repeated non-compliance, OFM 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.

7.4 OFM reserves its rights in relation to ICASA's decision and the process followed in reaching it. OFM 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 read 'Nick Efstathiou', with a large, stylized flourish at the end.

Nick Efstathiou

Chief Executive Officer

Central Media Group (Pty) Ltd trading as OFM