

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In re Application of)	
)	
W. Lawrence Patrick, Receiver, Assignor)	
)	
VCY America, Inc., Assignee)	LMS Application File No.
)	0000130216
)	
Application for Consent to Assignment of)	LMS Pleading File No. 0000158593
Radio Stations)	
KFRH(FM), North Las Vegas, NV (FIN: 19062))	
KREV(FM), Alameda, CA (FIN: 36029))	
KRCK-FM, Mecca, CA (FIN: 52908))	

To: Chief, Audio Division, Media Bureau

Partial Opposition to Motion for Extension of Time

W. Lawrence Patrick, Receiver (“Mr. Patrick” or “Receiver”) and VCY America, Inc. (“VCY”) (together, “Applicants”), by counsel, hereby jointly submit this Partial Opposition to the motion for extension of time filed by Royce International Broadcasting Corporation and Silver State Broadcasting, Inc. (together, “Petitioners”), seeking an additional 20 days to respond to the Status Report filed jointly by the Applicants on August 27, 2021.

The time has come for the Commission to put an end to the Petitioners’ gamesmanship and, like the District Court, declare that “enough is enough.” The Petitioners’ counsel did not contact the Applicants’ counsel to request an extension until after the close of business on Friday, September 3, 2021 (incidentally, the beginning of Labor Day weekend). After considering the Petitioners’ request, the Applicants offered to provide a seven-day extension, which would have doubled the

time for the Petitioners to respond, but counsel for the Petitioners rejected that offer.¹ The Applicants continue to believe that a seven-day extension is appropriate under the circumstances and oppose any extension beyond September 10, 2021.

There is simply no basis for providing the Petitioners with an additional 20 days (almost triple the original response time) to address the very narrow issue of how the FCC should respond to the Court’s August 27 Order. The Petitioners have known about that Order—which authorized VCY to “tell the FCC: sell the Stations”—since the Court’s hearing on August 23, 2021 and the Applicants’ email to FCC staff, with a copy to the Petitioners’ counsel, that same day.

Each of the reasons proffered by the Petitioners for a 20-day extension appears to be nothing more than a pretext for further delay.

First, the Petitioners cite the complexity of this proceeding. But however unusual this proceeding may be, the substitution of counsel does not provide the Petitioners with an opportunity to make new legal arguments or otherwise change the procedural posture. The Petitioners have filed no fewer than eight substantive pleadings beginning with their February 3, 2021 Petition to Deny and, through those pleadings, have had ample opportunity to exhaust their legal arguments. The apparent holdup for the Commission was the uncertainty over whether the District Court would terminate the Receivership and order the radio stations returned to their original licensees.

Accordingly, the *only issue* for the Petitioners to address in their response is whether the Court’s August 27 Order satisfactorily addressed that concern. Counsel have provided no reason why they

¹ “Thanks for your kind offer of an extension through this coming Friday. Unfortunately, I have no confidence that I will even really know which way is up on this case by then, even if I were to drop all of my other clients’ work for the next four business days. However, that would amount to malpractice with respect to their needs, so I can’t do it.” See Exhibit 1, Email from Barry D. Wood to Kathryn Dickerson, Ari Meltzer and Dawn Sciarrino, Friday, September 3, 2021 at 6:56 PM.

would need more than a day, much less more than a week, to get up to speed on that narrow issue.²

Second, the Petitioners cite their counsel's "pre-existing significant commitments to other clients." The veracity of this contention is belied, however, by the admission of one of the Petitioners' attorneys in an email to FCC staff that he is prioritizing restoring a vehicle that has been sitting in his garage for almost 35 years over his client obligations. The Petitioners and their principal have known since as early as August 23, 2021 – 11 days before new counsel apparently was engaged: (1) the substance of Judge Bernal's forthcoming order (that the Receivership would continue and the Applicants could tell the FCC to approve the sale of the stations); and (2) that a response to the Applicants' Status Report would be due promptly within 7 days of submission of the Status Report. If new counsel's case load was such that they could not promptly respond, then they had an obligation not to accept the case. *See* Va. and DC Rules of Professional Conduct § 1.16, Comment 1 ("A lawyer should not accept or continue representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion."). And if the Petitioners and their prior counsel were not confident the Petitioners' interests could be represented within the allotted time, they should not have changed counsel. *See* Va. and DC Rules of Professional Conduct § 1.16(b) (restricting the ability of counsel to withdraw where it would have a "material adverse effect on the interests of the client").

Given this history of this matter, it seems obvious that changing counsel is just the latest tactic by the Petitioners to interrupt and obfuscate the timely administration of this case. While the Applicants were willing to provide a reasonable amount of time for the Petitioners' substitute counsel to respond, the Applicants will be prejudiced by further delay, which will prevent the timely dissolution of the Receivership and extend the uncertainty regarding the status of the stations.

² To the extent this issue is somehow too difficult for substitute regulatory counsel to address, it could have been addressed in the first instance by the Petitioners' primary litigation counsel, who has been involved in this matter since June.

In light of the foregoing, Mr. Patrick and VCY respectfully request that the Commission immediately deny the Motion for Extension of Time, require the Petitioners to respond to the Status Report no later than 5:00 p.m. on September 10, 2021, and in the absence of such a response, promptly process and grant the Application and take such further action as may be just and proper.

Respectfully submitted,

W. Lawrence Patrick, Receiver

/s/ Dawn M. Sciarrino

By: Dawn M. Sciarrino
His Attorney

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September 6, 2021

VCY America, Inc.

/s/ Kathryne C. Dickerson

By: Kathryne C. Dickerson
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Its Attorneys

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Dawn Sciarrino

From: Barry Wood <woodlegal@comcast.net>
Sent: Friday, September 03, 2021 6:56 PM
To: kdickerson@wiley.law; ameltzer@wiley.law; Dawn Sciarrino
Cc: Ronald Maines
Subject: Fwd: Final of Motion for Extension of Time
Attachments: Motion for Extension of Time .pdf

All -- Attached is a copy of the extension motion we discussed. The pleading file no. is 0000158593.

Thanks for your kind offer of an extension through this coming Friday. Unfortunately, I have no confidence that I will even really know which way is up on this case by then, even if I were to drop all of my other clients' work for the next four business days. However, that would amount to malpractice with respect to their needs, so I can't do it.

At least VCY can take comfort in the fact that (to my knowledge; again, I am just starting to get familiar with the facts) it has access to the stations' airtime now, without having to write the Big Check, so any prejudice that might attend a delay in FCC action is minimal.

Barry

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----- Original Message -----

From: Ronald Maines <rdmaines@gmail.com>
To: Barry Wood <woodlegal@comcast.net>, "Barry D. Wood" <wood@legalcompass.com>
Date: 09/03/2021 6:18 PM
Subject: Final of Motion for Extension of Time

[Attached.](#)

I'm trying to get it uploaded. LMS keeps timing out. It is pure junk.

CERTIFICATE OF SERVICE

I, Dawn M. Sciarrino, an attorney in the law firm of Sciarrino & Shubert, PLLC, hereby state under penalty of perjury that the forging **Partial Opposition to Motion for Extension of Time** was emailed to the following on this 6th day of September 2021:

Barry D. Wood, Esq.*
Counsel to Royce International Broadcasting Company
And Silver State Broadcasting, Inc.
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Federal Communications Commission

/s/ Dawn M. Sciarrino

Dawn M. Sciarrino

* via email only