

Before the
Federal Communications Commission
Washington, DC 20554

<i>In re Application of</i>)	
)	
W. LAWRENCE PATRICK)	LMS File No. 0000130216
)	Facility No. 19062
<i>Assignor</i>)	Facility No. 36029
)	Facility No. 52908
)	
VCY AMERICA, INC.)	
)	
<i>Proposed Assignee</i>)	
)	

*For Assignment of Stations KFRH(FM), North Las Vegas, Nevada;
KREV(FM), Alameda, California; and
KRCK-FM, Mecca, California*

Filed with: **Office of the Secretary**
Directed to: **Audio Division, Media Bureau**

SUPPLEMENT TO PETITION TO DENY

Royce International Broadcasting Corporation (“Royce”) and Silver State Broadcasting, Inc. (“Silver State”), by its attorney, hereby submit a Supplement to its Petition to Deny the above-referenced applications for assignment of license filed with respect to Station KFRH(FM), North Las Vegas, Nevada; KREV(FM), Alameda, California; and KRCK-FM, Mecca, California. With respect thereto, the following is stated:

The Receiver in this case is engaging in inappropriate behavior, which is hereby being reported to the FCC immediately, and which should be sanctioned and stopped immediately. Mr. Stolz, President of Royce and Silver State, today has been before the United States District Court, Central District of California, Eastern Division, pertaining to matters pertaining to the production of documents to the Receiver pertaining to the stations. Earlier today, as a part thereof, a claim has been made concerning Mr. Stolz’s cooperation with the Receiver. As a part

of those discussions, the Receiver attempted to require, **as a condition for Mr. Stolz to avoid incarceration by the Court**, for the Court to **order** Mr. Stolz to dismiss this pending Petition to Deny. When that attempt failed, subsequently, the Receiver even went so far as to request a “briefing schedule” to be established to allow the Receiver to attempt to argue why the Court should literally **require** Royce and Silver State to affirmatively and immediately **dismiss** their Petition to Deny, *i.e.*, before allowing FCC action on the Petition to occur.

This outrageous attempt on the part of the Receiver to totally avoid FCC scrutiny of this transaction must immediately be rejected by the FCC, and his tactics should immediately be halted by the Commission. The controlling case in this area is *Radio Station WOW v. Johnson*, 326 U.S. 120 (1945), which was a case concerning the relationship of the FCC to the power of a local court. In that case, Supreme Court of Nebraska had attempted to order a party "to do all things necessary" to secure the assignment of the license back to the predecessor licensee. That ruling by the Supreme Court of Nebraska was rejected by the United States Supreme Court. *Id.* at 130. As the Supreme Court stated:

it is urged that by ordering the parties "to do all things necessary" to secure a return of the license to the defrauded Society, the State court invaded the Commission's function.

* * * *

[W]e think the court went outside its bounds when it ordered the parties "to do all things necessary" to secure a return of the license. Plainly that requires the Society to ask the Commission for a retransfer of the license to it and requires WOW not to oppose such transfer.... [I]nsofar as the Nebraska decree orders the parties "to do all things necessary" to secure the return of the license, it hampers the freedom of the Society not to continue in broadcasting and to restrict itself, as it properly may, to its insurance business. Equally does it prevent WOW from opposing a return to the Society... These are restrictions not merely upon the private rights of parties as to whom a State court may make appropriate findings of fraud. They are restrictions upon the licensing system which Congress established. It disregards practicalities to deny that, by controlling the conduct of parties before the Communications Commission, the court below reached beyond the immediate controversy and into matters that do not belong to it.

Id. at 129-131 (emphasis added). Similarly, the seminal FCC case in this area is *Arecibo Radio Corporation*, 101 F.C.C.2d 545 (1985). In that case, when examining whether the Superior Court of Puerto Rico had exceeded its jurisdiction when allowing a Marshall of the Court to sign assignment applications on behalf of a licensee, the FCC stated in no uncertain terms:

We understand the Supreme Court to have held that, in taking steps to place a matter before the Commission, a court can neither prohibit interested parties from making arguments to the Commission concerning the merits of the matter nor infringe in any way the Commission's exclusive, jurisdiction over licensing matters. *See Radio Station WOW v. Johnson, supra* at 130-31.

Id. at ¶ 10 (emphasis added).

Yet that is precisely what the Receiver is attempting to do in this case. In the *Arecibo* case, it was determined that the Superior Court's actions had not interfered with the licensee's right to assert before the Commission any argument regarding the assignment applications, and the court specifically left to the Commission the determination of all public interest issues which might be raised by the applications. In the present case, the exact opposite is true. The Receiver's demands before the Court are in direct contravention of the limitations that have been established by both the United States Supreme Court and the Federal Communications Commission over a local courts' ability to interfere with and attempt to avoid entirely any scrutiny with respect to issues raised by a party in a case before the FCC.

Nor can this be viewed as casual ignorance of the law by the Receiver and his representative. In Court proceeding held early today, the Receiver's counsel specifically was asked whether he was aware of the Supreme Court's ruling on this issue. He indicated in the affirmative. Nevertheless, in a subsequent hearing held later that same day, a request on behalf of the Receiver *again* was made that the Court determine that Mr. Stolz was interfering with the Receiver by Royce's and Silver State's filing with FCC, and *again* requested that a

determination be made by the Court that Royce and Silver State be required to dismiss the pending Petition to Deny. Although the Court did not yet grant the request, the Court has now established a “briefing schedule” on this matter, whereby the Receiver will be filing a brief in support of his attempt to interfere with FCC jurisdiction on February 23, 2021, and Mr. Stolz will be permitted to file his brief opposing that impermissible and ill-advised attempt no later than March 1, 2021.

Regardless of the outcome before the Court, the fact remains, and will forever remain a part of the record, that W. Lawrence Patrick, the Receiver in this proceeding, has been *attempting*, and is *continuing* to attempt before the United States District Court, to hinder and interfere with the FCC’s jurisdiction and its ability to process in an orderly manner objections that have been duly and timely filed before the Commission. Patrick is permitted, of course, to vigorously advocate why the Petition to Deny should not be granted. The FCC’s determination in this case will presumably be in the form of a decision by the merits by the Bureau, and if necessary, appealed, with that appeal resolved in the form of a decision by the Commission itself or eventually by the United States Court of Appeals. However, Patrick is going further – he is directly and unabashedly trying to *avoid entirely* due process and due procedure in this case before the FCC. He is engaging in overt forum shopping, and is trying to get a Court to shove aside the FCC and its jurisdiction entirely, even though it is the FCC that has primary jurisdiction over the licenses in controversy in this case. Patrick’s actions are inappropriate and reprehensible (regardless of how he evidently feels personally about Mr. Stolz), and evidences a total disdain for FCC processes that should not be permitted to continue for even one minute longer by the FCC. This attack on FCC jurisdiction simply is beyond the pale. As a current licensee, Patrick is obliged to follow FCC procedures and precedent. His latest representations before the Court demonstrate his lack of respect of both.

WHEREFORE, it is again requested that the Petition to Deny filed in this proceeding be granted.

Respectfully submitted,

**ROYCE INTERNATIONAL
BROADCASTING CORPORATION**

**SILVER STATE BROADCASTING,
INC.**

By: ____/Dan J. Alpert/_____
Dan J. Alpert

Their Attorney

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February 19, 2021

CERTIFICATE OF SERVICE

I, Dan J. Alpert, hereby certify that a copy of the foregoing “Supplement to Petition to Deny” is being provided by UPS Delivery to the following:

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