

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In re Application of)
)
INTELLI LLC) **LMS File No. 0000161926**
)
For Renewal of the License of) Facility No. 20355
KKOL(AM), Seattle, WA)
) Pleading File Nos. 0000178494,
) 0000178506, 0000180625, 0000182809, and
) 0000184566

To: **The Secretary, Federal Communications Commission**
Attn: **The Chief, Audio Division, Media Bureau**

CONSOLIDATED OPPOSITION TO PETITIONS TO DENY

Intelli LLC (“Intelli”), by its attorney, hereby opposes the petitions to deny filed by the City of Bainbridge Island (the “City”) and by David and Andrea Knight and other individuals (the “Knights *et al.*”) against Intelli’s above-captioned application for renewal of its license for KKOL(AM), Seattle, Washington.¹ Subsequent to the filing of the petitions, Knight *et al.* filed a supplement dated January 21, 2022, a second supplement dated January 29, 2022, and a third supplement dated February 7, 2022. As demonstrated below, neither of the Petitions or supplements present a sufficient case to warrant a hearing on the KKOL renewal application, let alone its denial, under the standards set forth in Section 309(k) of the Communications Act. Accordingly, both Petitions should be dismissed or denied.

¹ *See* Petition to Deny of The City of Bainbridge Island (Pleading File No. 0000178494, filed Jan. 3, 2022) (the “City Petition”); “Petition to Deny and Declaration” of David and Andrea Knight, Thomas and Eileen Nicol, and Phillip Hutcherson and Emily Mockett (Pleading File No. 0000178506, filed Jan. 3, 2022) (the “Knight Petition” and, collectively with the City Petition, the “Petitions”).

As an initial matter, the City lacks standing to file its petition. The City claims status as a party in interest simply by virtue of an assertion that “[c]onstituents of Bainbridge are residents of KKOL’s service area and by definition Bainbridge represents the interests of those residents.”² While it is generally true that a petitioner may establish party-in-interest status by demonstrating either residence within the station’s service area or that the party is a regular listener to the station,³ an organization (or in this case a municipality) that purports to represent the interests of its “members” must establish standing in its own right.⁴ The affidavit of the City’s attorney supplied with the City Petition makes no demonstration that either the attorney nor any of the City’s alleged “constituents” reside within KKOL’s service area.⁵ Moreover, neither the City’s own decision to “pursue available procedural and legal options” against KKOL, nor its allegations of violations of City regulations or permitting requirements, establish the City’s standing as a market competitor suffering either signal interference or economic harm. Thus, the City has not met the requirements of a “party in interest” with standing to file a petition to deny against KKOL’s renewal application, and at most, for this reason as well, the City Petition should be considered as an informal objection.

Section 309(k) of the Communications Act requires the Commission to grant an application for renewal of a broadcast license if: (i) the station has served the public interest, convenience, and necessity; (ii) there have been no serious violations of the

² City Petition at 2.

³ See Letter to Mr. Jim Ward *et al.* re WDCG(FM), Durham, NC, 22 FCC Rcd 16167, 16169 n.3 (Med. Bur. 2007).

⁴ *Maumee Valley Broadcasting, Inc.*, 12 FCC Rcd 3487, 3489 (1997), *recon. dismissed*, 14 FCC Rcd 21734 (1999), *modified*, *CHET-5 Broadcasting, L.P.*, 14 FCC Rcd 13041 (1999).

⁵ See City Petition, Exh. E.

Communications Act or Commission rules; and (iii) there have been no other violations by the licensee of the Communications Act or Commission rules which, taken together, constitute a pattern of abuse.⁶ Neither the City nor Knight *et al.* raise a *prima facie* question of KKOL's compliance with this standard.

In fact, the City is the only petitioner that even attempts to address any prong of Section 309(k). It asserts that KKOL "has not served the public interest" because of its periods of silence and reduced power operation.⁷ This claim is more than a little ironic, because these periods have been a direct result of Intelli's attempts to resolve issues with the station's technical operation that have been raised by the City, Knight *et al.*, and other residents living near KKOL's licensed antenna site on Bainbridge Island.⁸

When Intelli acquired KKOL on September 27, 2019, the station held an outstanding construction permit to relocate its transmission facility to a triplex with two other AM stations using two existing towers on Bainbridge Island.⁹ A month earlier, the station's prior licensee had activated the station at its full authorized 50 kW daytime power for tuning and testing under FCC program test authority, only to receive complaints from neighboring residents about blanketing interference and disruptions of various devices and services at their homes. Not wishing to resume operation of KKOL at full authorized power until interference issues could be resolved, Intelli suspended KKOL's operation for most of the period from its acquisition of the station until mid-

⁶ 47 U.S.C. § 309(k).

⁷ See City Petition at 1, 3-5, 7.

⁸ Intelli acquired KKOL on September 27, 2019. *See* File No. BAL-20180514AAH. While the City cites periods of silence and reduced power operation which precede that date, those periods are not relevant to consideration of Intelli's pending renewal application.

⁹ See File No. BP-20171207ABL.

September of 2020. On September 18, 2020, KKOL resumed operation at full power so that any remaining interference could be identified and addressed. This resulted in additional complaints. To mitigate the effects of KKOL's operation on nearby residents until the cause of interference complaints could be identified and resolved, Intelli requested special temporary authority (STA) for KKOL to operate during daytime hours with its authorized nighttime power of 3.2 kW. The Commission granted that STA on September 24, 2020.¹⁰ Since September 25, 2020, except for brief cessations to investigate and resolve individual complaints, KKOL has operated continuously under STA with at least its authorized nighttime power.¹¹

It is disingenuous and highly unfair for the City to take aim at KKOL in the name of protecting the community from adverse impacts of KKOL's authorized facility,¹² while citing as its primary ground for non-renewal the periods of silence and reduced power operation that Intelli has undertaken *for that very purpose*. Unlike the situations highlighted in the *Vandalia* case that the City so prominently cites,¹³ KKOL is hardly a silent station resuming operation for an exceedingly brief period of time to avoid the passage of the one-year Section 312(g) period, or a station "alternat[ing] between periods of silence and operations with minimal levels."¹⁴ Rather, KKOL's periods of silence and

¹⁰ See File No. BSTA-20200921ABY.

¹¹ In August 2021, the Commission modified this STA to allow operation at varying levels up to full licensed power, in order to determine the power level at which blanketing interference is being caused. *See* File No. BSTA-20210806AAB.

¹² See City Petition, Exh. A (City resolution to "pursue available procedural and legal options in an effort to protect the community from the adverse impacts posed by [KKOL's] new transmitter . . .").

¹³ See id. at 3-4 (citing *Vandalia Media Partners 2, LLC*, Hearing Designation Order and Notice of Opportunity for Hearing, MB Docket No. 21-118, DA 21-384 (Med. Bur. Apr. 2, 2021) ("*Vandalia*").

¹⁴ See *Vandalia*, ¶ 5.

reduced power have been necessary for Intelli to carry out its obligations under Sections 73.88 and 73.318 of the Commission’s rules, and otherwise to work toward resolving interference complaints by residents near the station’s antenna site. Even so, KKOL was on the air for roughly half of the period between Intelli’s acquisition of the station and the filing of its renewal application, at power levels at or well above its authorized nighttime power of 3.2 kW.¹⁵ That is a far cry from the facts in *Vandalia* and the other cases cited by the City.¹⁶

Moreover, both the City and Knight *et al.* are incorrect in suggesting that Intelli has been deemed in violation of FCC rules, or that it falsely certified in its renewal application that there had been no such violations.¹⁷ Both petitioners misconstrue the Audio Division’s February 26, 2021 letter to Intelli regarding interference complaints made to the FCC by Knight *et al.* and by Philip Hutcherson (who is also a party to the Knight Petition).¹⁸ At no point did the Bureau Letter make a determination, preliminary or otherwise, that Intelli is in violation of any FCC rule. Rather, the Bureau letter simply provided “formal notice” to Intelli of the Knight and Hutcherson complaints, explained

¹⁵ As noted in n. 11 *supra*, in August 2021 the Commission modified KKOL’s original 3.2 kW STA to permit operation at varying levels up to full licensed power in order to uncover and resolve interference issues. From approximately September 9, 2021 to the present, KKOL has (except for a brief period of transmitter maintenance in January 2022) operated at steadily increasing power levels ranging from 4.5 kW to upwards of 30 kW.

¹⁶ Compare *Vandalia*, ¶ 9 (station silent for all 275 days of its license term, followed by Section 307(c)(3) operation under STA at 100 watts); *Birach Broadcasting Corp.*, 16 FCC Rcd 5015, 5020 (2001) (licensee silent for all but 56 days of its initial four-year license term), *appeal dismissed sub nom. New World Radio, Inc. v. FCC*, 294 F.3d 164 (D.C. Cir. 2002); *Radioactive, LLC*, Hearing Designation Order, 32 FCC Rcd 6392, 6395 (2017) (station operated for only seven isolated days over a period of more than seven years)

¹⁷ See City Petition at 6 n.18; Knight Petition at 3.

¹⁸ Letter to Intelli from James D. Bradshaw, Senior Deputy Chief, Audio Division, Media Bureau (Feb. 26, 2021) (the “Bureau Letter”) (reproduced as Exh. D to the City Petition).

Intelli’s responsibilities under the blanketing interference rules, and directed Intelli to respond with a “detailed report of the steps taken to resolve the complaints”¹⁹ -- which Intelli did on March 25, 2021.²⁰ Furthermore, while both Intelli, the current licensee, and Inspiration Media, Inc. (“Inspiration”), the pending purchaser of KKOL,²¹ are committed to using best efforts to address and resolve all complaints of interference from residents near KKOL’s operation on Bainbridge Island, 100% achievement of that objective is not a precondition to compliance with the FCC’s rules governing blanketing interference, let alone to renewal of KKOL’s license. As the Bureau Letter explains in detail, a licensee’s responsibilities under Section 73.318 vary depending on both the timing of a given complaint and the location of the complainant,²² and certain devices are not covered by the blanketing interference rules at all.²³ Thus, there is no merit to vague, unsupported assertions such as the City’s second-hand claim that “Intelli has thus far not met the [blanketing interference] requirements and obligations and Intelli’s failure is another reason to set the KKOL renewal application for a hearing.”²⁴

Beyond the above misinterpretations of the standards for compliance with the Commission’s blanketing interference rules, the Knight Petition amounts to a collection of further declarations by residents who have already lodged complaints with the

¹⁹ *Id.* at 1, 4.

²⁰ Letter to James Bradshaw, Senior Deputy Chief, Audio Division, Media Bureau, from Dan J. Alpert, Counsel to Intelli (Mar. 25, 2021).

²¹ See File No. 0000150697 (filed Jun. 22, 2021) (pending application for assignment of KKOL from Intelli to Inspiration Media, Inc.)

²² See Bureau Letter at 2-4.

²³ See *id.* at 2 n.7.

²⁴ See City Petition at 6.

Commission and/or the station. Indeed, as noted above, two of the three declarations included in the Knight Petition are from parties whose earlier complaints were the subject of the Bureau Letter. While these parties seem grudgingly to concede that KKOL has successfully resolved many of the circumstances leading to their original complaints,²⁵ the Knight Petition's declarants nonetheless maintain that problems persist with various devices in their homes and/or that similar problems may arise with electronic items they may purchase in the future.

Nothing in the Knight Petition, however, warrants a hearing on KKOL's renewal application. As to continuing issues being experienced by the declarants, Intelli's records indicate that insofar as they appear to result from KKOL's operation, those issues have been addressed.²⁶ With regard to the declarants' speculations about future problems, Intelli can only reiterate that KKOL's licensee will continue to comply with its blanketing interference obligations under the Commission's rules and to make best efforts to address and resolve complaints of interference from local residents as they occur. But Knight *et al.* fail even to address the statutory renewal standard of Section 309(k), let alone establish a *prima facie* case that this standard has not been met.

²⁵ See Knight Petition at 1 (Knight *et al.* state that "some problems have been mitigated by the application of ferrite chockers"); *id.*, Declaration of Philip Hutcherson and Emily Mockett, at 1 (stating that "KKOL over a period of months was able to address most if not all of the specific issues above").

²⁶ As the Commission knows, Inspiration -- KKOL's proposed assignee -- is also the prior licensee of the station and has been aware of the problems experienced by residents living near the Bainbridge Island towers. Subject to Intelli's oversight, Inspiration's engineer has continued to work to resolve resident complaints as they arise and has maintained detailed records of these efforts. For instance, the engineer has visited the Knights yet again since the filing of the Knight Petition and made additional remedial efforts to address the computer and video monitor issues described in the Knights' declaration, although it appears that not all of the difficulties are resulting from KKOL's operation.

Conclusion

Neither the City Petition nor the Knight Petition comes close to raising a substantial or material question regarding the renewability of KKOL's license under the standards set forth in Section 309(k) of the Communications Act. For the reasons set forth above, the Commission should dismiss or deny both Petitions and grant KKOL's renewal application in due course.

Respectfully submitted,

INTELLI LLC

By: /s/ Dan J. Alpert /s/
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February 7, 2022

Certificate of Service

I, Dan J. Alpert, hereby certify that true copies of the foregoing “Consolidated Opposition to Petitions to Deny” were sent this 7th day of February 2021, by first class United States mail, postage prepaid, to the following:

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