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FEDERAL COMMUNICATIONS COMMISSION
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October 14, 1994

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street NW, Room 222
Washington, DC 20554

Re: In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services; CC Docket No. 94-54; RM-8012

Dear Mr. Caton:

Enclosed for filing is a corrected original plus five copies of Reply Comments of LDDS Communications, Inc. in the above-referenced proceeding.

These comments were filed in a timely fashion on October 13, 1994. However, page numbers inadvertently were not included on that document. The enclosed copies correct that oversight. Please substitute our corrected version for yesterday's filing.

Respectfully submitted,

HOGAN & HARTSON L.L.P.

By: Karis A. Hastings/pjs
Peter A. Rohrbach
Karis A. Hastings

Counsel for LDDS Communications, Inc.

PAR/KAS/vjs
Enclosures

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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

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Equal Access and Interconnection	)	CC Docket No. 94-54
Obligations Pertaining to	)	RM-8012
Commercial Mobile Radio Services	)	

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS OF LDDS COMMUNICATIONS, INC.

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October 13, 1994

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SUMMARY

The record before the Commission clearly supports prompt action to bring the benefits of equal access -- user choice and access to diverse providers and services -- to the growing number of wireless customers. Equal access and resale can act as *"competition multipliers,"* enabling new entrants to vie for the business of mobile users.

The claims of CMRS providers that they lack "bottleneck" facilities justifying imposition of equal access requirements are meritless. The duopoly structure of the cellular market allows cellular carriers to maintain supra-competitive rates, and neither PCS nor ESMR poses a substantial threat to cellular carriers' market dominance in the short term. More importantly, however, even if additional sources of competition for local wireless service develop, each wireless provider still will have the ability to deny other carriers reasonable and nondiscriminatory access to its customers. The local loop supplied by the CMRS carrier constitutes an essential facility for any IXC that requires access to the customer either to originate or terminate service.

Opponents of equal access have presented no valid reason to deny wireless customers the same competitive choice they enjoy today in the wireline market. Suggestions by some CMRS providers that users are unwilling or unable to exercise their rights intelligently should be rejected out of hand. CMRS carriers argue that they are in the best position to negotiate bulk rate agreements for long distance service and pass those savings along to customers. However, this

negotiating power today rests on the market problem that, absent equal access, IXCs only can serve customers through the intermediary of the mobile carrier. In the absence of effective competition, there is no guarantee that the mobile carrier will pass its cost savings on to consumers in the form of lower rates. Added competition will make it more likely that customers who use the long distance service provided by the CMRS provider will actually receive the benefit of any bulk rate discount the carrier obtains. These benefits of equal access clearly outweigh the associated costs, which are modest according to BOC providers who have experience in converting mobile systems to equal access capability.

In defining local service areas for purposes of CMRS equal access requirements, the Commission should rely on LATA boundaries (as modified by existing waivers). However, the Commission should also leave open the possibility that states may require CMRS carriers to provide equal access below the LATA level in order to promote competition for intraLATA toll traffic. In any event, MTAs are clearly inappropriate for defining CMRS local service areas. The use of MTAs would simply increase the area within which customers are denied the right to select the long distance carrier of their choice.

Finally, the Commission must extend resale requirements to all CMRS providers. In the landline market, resale has played a critical role in expanding competitive alternatives, and it can play a similar part in increasing the options available to wireless users. However, the Commission must emphasize that the resale obligation extends to all of a CMRS provider's service offerings, including its bulk discount rate plans.

BEFORE THE

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WASHINGTON, D.C.

In the Matter of	)	
Equal Access and Interconnection	)	CC Docket No. 94-54
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Commercial Mobile Radio Services	)	

REPLY COMMENTS OF LDDS COMMUNICATIONS, INC.

LDDS Communications, Inc. d/b/a LDDSMetromedia ("LDDS"), by its attorneys, hereby submits its reply to the comments of other parties in response to the Notice of Proposed Rule Making and Notice of Inquiry in the above-captioned proceeding, FCC 94-145 (released July 1, 1994) ("Notice"). LDDS urges the Commission to act promptly to give wireless users the same freedom of choice and access to services that wireline users now enjoy.

INTRODUCTION

Decisions in this docket will determine the level of future competition in the critical wireless telecommunications market. If the Commission does not reaffirm its bedrock principles of equal access and resale, it will create an environment in which only the few providers of facilities-based wireless service ever will be in a position to compete in each mobile marketplace. In contrast, equal access and resale are *"competition multipliers."* They help unleash market forces by

reducing discriminatory entry barriers so that many other vendors can respond more freely and quickly to consumer demands. Over the past decade the Commission has successfully used equal access and resale policies to promote competition in the wireline interexchange market. The Notice here will similarly multiply the number of consumer choices in the wireless arena.

Predictably, some cellular carriers have objected to rules that would take away their unilateral control over their customers' long distance choices and revenues. However, they offer no colorable basis for this blatantly anti-competitive position. Some CMRS providers assert that equal access will not benefit end users, but this claim is belied by experience in the landline market, as well as the recognized benefits that equal access has provided to wireless customers of the BOCs. CMRS providers also assert that equal access is unduly costly to implement, but the record in fact confirms that the process can be completed relatively quickly and at reasonable expense.

In short, the record in this proceeding strongly supports the Commission's proposal to introduce the "competition multipliers" of equal access and resale more completely into the wireless market. The Commission should take prompt action on this pro-consumer initiative.

I. THE RECORD CONFIRMS THE NEED FOR EQUAL ACCESS RULES TO OVERCOME THE MARKET POWER OF CMRS PROVIDERS

A number of cellular carriers object to the Commission's proposed imposition of equal access rules based on the claim that they do not control

bottleneck facilities. 1/ They point to the existence of two facilities-based cellular providers in each market, and the expected advent of additional competition from ESMR and PCS. These carriers, however, miss the point that LDDS demonstrated in its comments: local mobile service competition is not the same as mobile exchange access competition.

The Commission has found in the past that equal access requirements are justified where a group of carriers controls the "sole means for competitive carriers . . . to access their customers." 2/ As LDDS previously explained, this is exactly the situation faced by the Commission here. 3/ An interexchange carrier can sell service to a mobile customer only if it has nondiscriminatory access to the customer's local wireless "loop." And the IXC only can terminate service directed to an end user over the wireless "loop" selected by that customer. Thus, a cellular provider has complete control over its customer's ability to reach (or be reached by) LDDS or any other long distance provider. Absent regulation, the cellular provider could deny interconnection absolutely, or impose unreasonable or discriminatory interconnection terms that have the same practical result.

In recognition of this market problem, the BOCs today must provide equal access on an interLATA basis under the MFJ, and AT&T has agreed to a

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1/ See, e.g., ALLTEL Comments at 4; Comcast Comments at 18; GTE Comments at 4; Nextel Comments at 6; SNET Mobility Comments at 5; Southwestern Bell Comments at 16.

2/ MTS and WATS Market Structure (Phase III), 94 F.C.C.2d 292, 298 (1983).

3/ LDDS Comments at 8-9.

similar requirement as a condition of its acquisition of McCaw. However, the Commission must extend these principles to mobile vendors generally so that other wireless carriers face the same obligations, and so that equal access principles can continue indefinitely even if company-specific antitrust consent decrees are replaced or expire.

It should be noted that cellular companies vastly overstate the level of mobile service competition today. As LDDS discussed in its comments, 4/ the Department of Justice has recently investigated the mobile services industry and concluded that because of the current duopoly market structure, BOC cellular providers retain market power, including the ability to charge supracompetitive prices without losing market share. The Department also rejected the claim that actual or potential competition from ESMR and PCS providers represented an effective check on cellular carriers' market power.

The cellular carriers here provide no evidence that calls into question the Department's findings. 5/ Cellular resellers confirm that their ability to compete is seriously restricted by their dependence on the service provided by the

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4/ LDDS Comments at 5-7.

5/ In support of their allegations regarding the competitiveness of the cellular market, Southwestern Bell and Vanguard rely on affidavits submitted by Professor Jerry A. Hausman. However, Professor Hausman's views were relied on by Southwestern Bell in support of its request for removal of the MFJ's equal access requirement. In recommending that the Court deny that request, the Department of Justice considered and rejected Professor Hausman's analysis.

facilities-based duopolists. 6/ ESMR providers state that cellular carriers dominate the CMRS marketplace. 7/

In the end, however, this question is something of a red herring. It remains to be seen how quickly -- and how extensively -- the current cellular duopoly will be supplemented by additional facilities competition. LDDS certainly supports the Commission's actions towards this end. However, we submit that this empirical question is largely irrelevant to the Commission's decisions in this docket. For one thing, equal access serves as an important "competition multiplier" whether the number of local wireless facilities is two, or more than two. Either way, equal access creates opportunities for still more vendors to join the competitive fray.

But more fundamentally, equal access is needed because addition of new local wireless companies would not create competitive choices in the access market. It would not change the dependence of long distance companies and other vendors on access to a specific customer's mobile "loop" in order to originate or terminate service -- and therefore does not obviate the need for equal access policies to ensure reasonable and nondiscriminatory interconnection opportunities. An end user still will choose only one wireless "loop" provider to satisfy his or her need for local mobile service. Once the customer has made its selection, that wireless "loop" also becomes an essential facility for any IXC that requires access to the customer.

6/ See, e.g., Allnet Comments at 2-3; National Cellular Resellers Association Comments at 2-3.

7/ Nextel Comments at 8.

An IXC must have nondiscriminatory access to each wireless local loop provider in the geographic area where it wishes to offer service. And the IXC must have nondiscriminatory access to all wireless companies to terminate service. Otherwise end users will be denied access to their carrier of choice.

In other words, the existence of multiple mobile carriers has no material effect on the degree of market power each carrier holds over access to its respective wireless customers. At most, it affects only the number of customers controlled by an individual wireless carrier. As a result, wireless carriers -- who will offer non-local services themselves -- will have a strong incentive to discriminate against competing IXCs who require access to their customer bases.

In theory one solution would be to prohibit cellular and other wireless companies from providing interexchange services at all. The MFJ takes this approach with respect to interLATA services in the case of the BOCs. At a minimum, however, the Commission should adopt and enforce meaningful equal access requirements that prevent such anti-competitive discrimination.

II. CMRS VENDORS HAVE NOT PROVIDED ANY LEGITIMATE REASON TO DENY CUSTOMERS FULLY COMPETITIVE INTEREXCHANGE CHOICE

LDDS largely assumes that the benefits of equal access are self-evident, even leaving aside the competitive issues discussed above. Equal access leads to greater choices for customers, and more competitive pressure on carriers to lower prices and introduce service innovations. These public interest benefits are recognized by the Commission in its Notice (¶¶ 36-41). CMRS vendors, then, bear a

heavy burden to explain why the "competition multiplier" of equal access should not apply in the mobile market as it does in the landline market. They have totally failed to do so on the record here.

A. Equal Access Will Not Interfere with the Ability of CMRS Vendors to Compete Fairly

A number of cellular carriers argue that it is not in the best interests of wireless customers to be given decision-making power with respect to their long distance provider. The Rural Cellular Association even suggests that customers would be unable to make rational choices, claiming that they are likely to "unwittingly" select a more expensive long distance carrier. 8/ Obviously the Commission cannot make policy decisions based on the assumption that mobile service customers are unqualified to choose their carriers.

Several CMRS vendors oppose equal access with the assertion that customers do not care about having the right to choose a long distance carrier. 9/ These vendors argue that they themselves are in the best position to negotiate with long distance companies to obtain low cost long distance services for their customers, and hence equal access is unnecessary. 10/ First of all, LDDS rejects the view that customers see long distance companies as fungible and do not value their right to competitive choice. Our customers select us both for price reasons and

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8/ Rural Cellular Association Comments at 8.

9/ See, e.g., Nextel Comments at 10.

10/ See, e.g., Comcast Comments at 29; NYNEX Comments at 2; Rural Cellular Association Comments at 8; SNET Mobility Comments at 10.

because of the tailored service packages we offer, and welcome the ability to use us as their mobile IXC where equal access is available today.

Second, and in any event, a CMRS vendor's leverage over long distance companies in purchasing bulk service arises largely from the fact that, absent equal access, IXCs have no other ability to serve the vendor's customers at all. But the ability of the CMRS vendor to exploit its control of its customer base to obtain long distance service for resale at lower cost says nothing about whether the CMRS vendor will pass that savings on to customers in the form of lower prices. As the Justice Department has found, in today's oligopoly environment one hardly follows from the other. 11/ Quite the contrary, CMRS vendors are far more likely to pass through any cost savings in their long distance purchases if they face competitive pressure from effective equal access and resale policies.

CMRS vendors also allege that equal access will eliminate the potential for economic efficiencies through vertical integration. 12/ This argument is little more than bare rhetoric. First, CMRS operators do not explain how equal access interferes with them. For example, their flexibility to design and market mobile service products is not constrained by equal access. Equal access simply provides other IXCs the ability to offer end users additional choices. It prevents the

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11/ See Memorandum of the United States in Response to the Bell Companies' Motions for Generic Wireless Waivers, filed in United States v. Western Elec. Co., Civil Action No. 82-0192 (D.D.C. July 25, 1994) at 13. The Commission has also recognized that lower costs for cellular carriers do not necessarily translate into lower prices for consumers. Notice at ¶ 41.

12/ See, e.g., Nextel Comments at 10; Vanguard Comments at 11-12.

mobile carrier alone from deciding how and at what price its customers will obtain interexchange service.

Finally, the Commission must also reject the claims by some CMRS providers that 800, 950, or 10XXX access is sufficient to satisfy customers' right to choose. 13/ This is contrary to a decade of experience on the landline side and would give the incumbent local wireless carrier an unwarranted advantage. The requirement that LECs offer 1+ presubscription was essential to the development of robust competition among IXCs for interLATA traffic, and the absence of dialing parity has seriously restricted IXCs' ability to compete with the LECs for intraLATA toll traffic. Dialing parity is similarly critical to the ability of IXCs to compete on a level playing field with the long distance service offered by the local CMRS provider. Equal access involves equality in the price of interconnection as much as it does equality in the form of interconnection. These "dial-around" solutions address neither.

B. The Record Demonstrates that Wireless Equal Access Can Be Implemented within Reasonable Cost and Time Limits

Unable to challenge the obvious benefits of equal access, some CMRS providers fall back on claims that those benefits are outweighed by the cost of implementing customer choice. Yet the evidence before the Commission confirms that equal access for CMRS can be accomplished relatively quickly and at a

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13/ See, e.g., CTIA Comments at 10; GTE Comments at 6; SNET Mobility Comments at 9.

reasonable cost. Contrary claims by some CMRS providers that conversion costs will be excessive are for the most part completely undocumented. In any event, they are contradicted by the representations of the BOCs, who have actual experience in both the construction of equal access-capable wireless systems and the conversion of existing systems to equal access.

The BOCs' comments demonstrate that conversion costs are relatively modest. Bell Atlantic states that when it has had to convert systems it acquired to equal access it "found that the necessary equipment is readily available and can be installed at reasonable cost." 14/ Similarly, the costs of conducting customer balloting are "small" and represent "largely a one-time expense." Id. 15/ NYNEX agrees, stating that "[b]ased on its experience in providing cellular equal access, NYNEX does not believe that the costs of providing equal access for CMRS services will be excessive." 16/ For new CMRS entrants, the costs of offering equal access will be even less, because they "will not have to retrofit existing networks with equal access capability, but can build their systems with that capability." 17/

14/ Bell Atlantic Comments at 11.

15/ Given the minor costs of balloting, there is no reason for the Commission to forego balloting in favor of customer notification, as suggested by the California and New York state commissions. California PUC Comments at 3; New York DPS Comments at 4. This suggestion is based on the incorrect assumption that the balloting process is "elaborate and expensive." New York DPS Comments at 4.

16/ NYNEX Comments at 7 n.6.

17/ Bell Atlantic Comments at 11 (footnote omitted).

Similarly, the record confirms that implementation of equal access can be accomplished within a reasonable time frame. New Par, a cellular provider with experience in converting an existing system to equal access capability, states that the process of making the necessary system modifications and conducting balloting could take as little as six months. 18/

The Commission cannot allow unsupported assertions regarding conversion costs to deter it from its pro-competitive policy goals. CMRS providers should bear a heavy burden to demonstrate why consumers should be denied the compelling public interest benefits of equal access. They have not met that burden here. 19/

III. THERE IS BROAD SUPPORT FOR THE USE OF LATA BOUNDARIES TO DEFINE CMRS SERVICE AREAS

At this time the Commission should adopt LATA boundaries (as modified by existing waivers) to define service areas for purposes of CMRS equal access requirements. As MCI points out, the existing infrastructure, including IXC points of presence and LEC access tandems, is already in place for the LATA-based landline equal access framework. 20/ In addition, customers are familiar with the

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18/ New Par Comments at 9.

19/ The Commission can leave open the opportunity for CMRS providers to request waiver of the equal access requirement in specific cases where they can demonstrate unusual cost burdens. However, LDDS is skeptical that such showings would be compelling in most cases.

20/ MCI Comments at 4.

LATA system. Id. Moreover, the use of LATAs will maximize regulatory parity since they already are the boundaries applicable to the BOCs and AT&T/McCaw.

However, the Commission should also expressly leave open state options to require CMRS companies to provide equal access below the LATA level. As the Commission is aware, states are increasingly considering wireline intraLATA equal access issues and are beginning to extend the benefits of such interconnection to the intraLATA market. In particular, as states consider opening the local market to competition, they are also recognizing that the intraLATA toll market should be at least as competitive. InterLATA equal access is the minimum level of competition that should be mandatory across the country. States then can tailor additional rules for their own intraLATA jurisdictions.

Contrary to the suggestions of some CMRS providers, 21/ MTAs are clearly inappropriate to define service areas for purposes of CMRS equal access. These parties encourage the Commission to ignore a critical fact: larger equal access service areas translate directly to a limitation on wireless users' right to choose their service provider -- and hence on the benefits of competition in the form of lower prices and service innovation. Adoption of MTAs rather than LATAs as the relevant service area boundary would substantially increase the number of calls

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21/ New Par Comments at 13; Pacific Bell Comments at 4; Southwestern Bell Comments at 42; Vanguard Comments at 20.

subject to the unilateral control of the CMRS provider, 22/ and would do so for no purpose. 23/

The parties that support MTAs claim that larger equal access service areas will permit CMRS providers to offer toll-free service within an extended calling area. This argument is misleading, for one does not depend on the other. The use of LATAs to define equal access boundaries will not prevent CMRS providers from continuing to offer flat rate service over a broader area. Equal access only creates opportunities for other carriers to compete by marketing their own long distance products to the CMRS provider's customers. They can offer interexchange services at lower rates than those offered by the CMRS vendor, encouraging customers to buy their services in conjunction with the vendor's local wireless offering. Alternatively, IXCs could purchase and resell the CMRS provider's unbundled local service with their own long distance service to compete directly with both the local and interexchange services of the CMRS carrier,

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22/ See McCaw Comments at 34.

23/ The Department of Justice has recognized this point in the context of evaluating BOC requests for waiver of the LATA boundaries to permit Extended Area Service ("EAS") plans. The Department has noted that such proposals are inherently anti-competitive because they allow the BOCs to carry traffic "that would otherwise be carried competitively." Report of the United States Concerning Requests by BellSouth and the Alabama Public Service Commission for Waivers to Enable Them to Implement InterLATA Flat Rate Intra-County Calling, filed in United States v. Western Elec. Co., Civil Action No. 82-0192 (D.D.C. Sept. 18, 1992) at 10.

however that carrier chooses to price. Thus, equal access serves as a "competition multiplier," expanding customer choice without constraining the CMRS carrier. 24/

IV. RESALE OBLIGATIONS MUST BE EXTENDED TO ALL CMRS PROVIDERS

The comments clearly support the extension to all CMRS providers of the resale obligations that currently apply to cellular carriers. As a number of parties point out, consistent resale rules for all competing carriers will promote regulatory parity. 25/ However, resale should be required for much more important reasons. The Commission has long recognized the crucial role that resale plays as a tool to prevent unreasonable price discrimination among customers, drive rates toward cost, and serve as a vehicle for competitive entry itself. These objectives are no less important in the wireless market. Indeed, it is the combination of resale and equal access that will serve as the most powerful "competition multiplier," maximizing opportunities for market forces to operate.

LDDS assumes that the Commission will reaffirm its long-standing commitment to resale in this proceeding. Our principal request is that the Commission emphasize that CMRS providers must make all of their service offerings available for resale on a nondiscriminatory basis, including in particular

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24/ That said, it remains important that access is equal both in form and price -- that the CMRS carrier does not discriminate in the rates it charges others for access to subsidize its own ability to keep its interexchange prices low.

25/ See, e.g., American Personal Communications Comments at 8; CTIA Comments at 35; GTE Comments at 48; McCaw Comments at 21; National Cellular Resellers Association Comments at 20; Southwestern Bell Comments at 55.

their bulk discount offerings. As experience with AT&T in the interexchange market demonstrates, resale of those volume discount services is the fuel for telecommunications growth because it gives all customers the opportunity to obtain prices closer to cost.

A minority of cellular carriers oppose the adoption of procedures requiring interconnection with switch-based cellular resellers. 26/ These parties suggest that there are unspecified technical problems associated with switch-based resale and claim that such resale is not economical. However, in its recent decision regarding cellular resale, the California Public Utilities Commission ("CPUC") considered these arguments and determined that they did not justify denying resellers the option of providing their own switching services. The CPUC reasoned that resellers would not invest the substantial funds necessary to acquire a switch if there were valid technical and economic obstacles to switch-based resale. The CPUC established resellers' right to offer switching services, but left it to the market to determine when and if switch-based resale would develop. 27/ The parties opposing switch-based resale provide no persuasive reason for this Commission to depart from its long-standing policies in favor of unrestricted resale.

26/ BellSouth Comments at 19; Comcast Comments at 17-18; GTE Comments at 46; McCaw Comments at 14-16; Rural Cellular Association Comments at 10-11.

27/ Investigation on the Commission's Own Motion into Mobile Telephone Service and Wireless Communications, I.93-12-007 at 80-83 (California Pub. Util. Comm'n, Aug. 3, 1994).

CONCLUSION

For the reasons set forth above and in its previous comments, LDDS urges the Commission to reaffirm its commitment to competition and customer choice by adopting effective equal access requirements for all CMRS providers.

Respectfully submitted,

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d/b/a LDDSMetromedia

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October 13, 1994

CERTIFICATE OF SERVICE

I, Vincent J. Summa, do hereby certify that a copy of the foregoing "Reply Comments of LDDS Communications, Inc." was served by hand, on this 13th day of October, 1994, on the following:

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