

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

ORIGINAL

In the Matter of
Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
Llano and Marble Falls, Texas

) MM Docket No. 95-49
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SEP 23 1996

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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COMMENTS AND COUNTERPROPOSAL

Roy E. Henderson ("Henderson"), by his counsel, and Tichenor License Corporation ("Tichenor") by its counsel, jointly referred to herein as "Hen-Tic" or "Petitioners", hereby jointly submit their Comments and Counterproposal in the above-captioned proceeding, pursuant to Sections 1.415 and 1.420 of the Commission's rules. In support whereof, the following is submitted:

I. Background

This proceeding began on May 1, 1995, when the Commission released a Notice of Proposed Rulemaking (DA 95-884) in a new Docket designated as "MM Docket 95-49" responsive to a petition (RM-8558) filed by Maxagrid Broadcasting Corporation ("Maxagrid") licensee of KLKM-FM requesting the deletion of channel 284C3 at Llano, Texas, and its reassignment as Channel 285C3 in Marble

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Falls with the petitioner's license modified accordingly for operation on the new channel in the new community. Although the petition also proposed replacing the channel deleted from Llano with new channel 242A, it did not include the required statement of intention to apply for use of that channel if allocated and that proposal was therefore not included in the NPR. In response to the NPR, Henderson filed a Counterproposal on June 22, 1995, directed to the Marble Falls proposal.

On August 2, 1996, the Commission issued a Further Notice of Proposed Rulemaking in this proceeding (DA 96-1198), based upon a subsequent commitment by the original petitioner to construct a station at Llano if a new channel were assigned there, and setting a date of September 23, 1996, for Comments and Counterproposals directed to the new proposal to allot Channel 242A at Llano, Texas. In response to that Further Notice, Henderson and Tichenor have prepared the instant Counterproposal which they believe would demonstrably result in substantially more public service benefits of increased FM service and efficiency than that proposed in the Llano Further Notice. 1/

II. The Counterproposal

Henderson is currently the licensee of station KLTO(FM) in Rosenberg, Texas. KLTO a Class A facility operating on channel

1/ It is also noted here that in view of the superior service that would result from adoption of the instant joint counterproposal, Henderson has simultaneously this date filed with the Commission a Motion to Withdraw his Comments and Counterproposal filed earlier in this docket in response to the original Marble Falls proposal.

285A and currently short-spaced to channel 285A in LaGrange. Tichenor is currently the licensee of KLTP(FM) in Galveston, Texas, as a grandfathered short-spaced Class A station also operating on channel 285A. Petitioners propose herein to delete the allotment of 285A in Galveston and to allot channel 242C2 to the community of Menard, Texas, with the request that the license of KLTP be modified to specify a new operation as a first local service on Channel 242C2 in Menard.

Petitioners further propose to delete the allotment of channel 285A in Rosenberg, Texas, and to allot the channel as 285C3 to the community of Missouri City, Texas, with a request that the license of KLTO be modified to specify a new operation as a first local service on channel 285C3 in Missouri City. Since the assignment of channel 285C3 to Missouri City could not be made without deletion of that channel as presently assigned to KLTO in Rosenberg, the allotment of that channel to Missouri City would not be subject to outside expressions of interest.

As described in the attached Engineering Statement, both of these reallocations would result in substantial public interest benefits far and beyond what has been proposed in the Llano allocation. First, as to the Missouri City proposal, it is noted that both Rosenberg and Missouri City lie within Fort Bend County which is itself within the Houston SMSA. As such, the reallocation here would not involve a channel outside an SMSA moving into an SMSA. According to the 1994 Rand McNally Atlas, the population of Rosenberg is 20,183 while the population of

Missouri City is 36,176. At the same time, Rosenberg presently has assigned to it two fulltime local services (KLTO(FM) and KMPQ(AM)) while Missouri City presently has no local service at all. In addition, Missouri City is the largest city in Fort Bend County (the county population is 225,183 persons) and was the only city listed by the 1990 U.S. Census as a "significant city" within Fort Bend County.

So, as of the present time, Missouri City, the largest and most significant city in Fort Bend County has no local aural service while the substantially smaller city of Rosenberg in Fort Bend County has two fulltime local aural services. The reallocation of channel 285A from Rosenberg to Missouri City will not only cure that obvious inequity in service but at the same time remove an existing short-space and allow an upgrade of the channel operation from a short-spaced Class A operation to a fully spaced wide area Class C3 operation thereby resulting in increased service to all of Fort Bend County, including a continued reception service to Rosenberg.

Similarly, the deletion of channel 285A from Galveston and the allocation of channel 242C2 to Menard, Texas, would result in clear and substantial public interest benefits. The present allotment of Channel 285 to KLTP in Galveston is as a short-spaced Class A facility. In addition, Galveston presently receives additional local aural service as provided by 3 other fulltime stations, those being KQQK(FM), a full Class C station, and fulltime AM stations KGBC(AM) and KHCB(AM). KLTP as a short-

spaced Class A operation is not an important factor to local broadcast service in Galveston but would be a significantly greater service to the public as a first local aural service operating on Channel 242C2 and serving Menard, Texas.

As set forth in the attached Engineering Statement, the City of Menard is also the County Seat of Menard County (County population 2,252 persons). The city has a population of 1608 persons with both the U.S. Census and 1990 Rand McNally Commercial Atlas listing it as a separate and independent city. As county seat, the city of Menard provides all of the traditional services both to the city and the county residents. Menard presently has no local aural services of any kind and the assignment of channel 242C2 would be a first local service not only for the city but for the entire county. Assignment of that channel to Menard would also serve to remove the existing grandfathered short-space of the channel as a Class A facility in Galveston and result in more efficient use of the channel as a wide-area C2 service serving a large area presently without any existing local service at all. It is again noted that even with the deletion from Galveston of the short-spaced class A allocation, that Galveston would continue to receive local service from an existing Class C FM station as well as two existing fulltime AM stations.

In sum, adoption of the instant counterproposal would result in removal of several existing short-spacings; would provide a first local service to the city and county of Menard, Texas,

while leaving Galveston with three existing fulltime local services, including a full C FM service; would provide a first local service to the City of Missouri City, a city almost twice as large as Rosenberg and the largest city in Fort Bend County while leaving Rosenberg with fulltime local service as well as continued reception service from the channel assigned to Missouri City; and would increase the efficient use of the FM Table of Allocations by replacing short-spaced Class A allocations with wide-area Class C2 and C3 allocations. In addition, by removing the short-spaced channel 285A from Rosenberg, that would then provide for the potential improvement of that channel in LaGrange to a fully spaced 6KW, should it elect to do so. Substantial new and expanded service would result from adoption of the instant proposal and no community would be deprived of local aural service.

Both Henderson and Tichenor are fully committed to the counterproposals set forth herein. Henderson, the licensee of KLTO(FM) in Rosenberg, affirms and commits without reservation that upon adoption of the proposal to reallocate channel 285A from Rosenberg to KLTO on channel 285C3 in Missouri City as set forth herein, he will proceed to take all necessary actions to build and operate the station in Missouri City, as requested. Tichenor, the licensee of KLTP(FM) in Galveston, also affirms and commits that upon adoption of this entire counterproposal and the deletion of channel 285A from Galveston and the reallocation of that facility to KLTP as channel 242C2 in Menard, Texas, it will

proceed to take all necessary actions to build and operate the station in Menard as requested.

III. The instant Counterproposal is Superior in Public Interest Benefits to the Llano Proposal As Set Forth in the Further Notice

In the original NPR the Commission expressed valid reservations about the suggestion that Channel 242A be allotted to Llano as a "replacement" for existing Channel 285C3. Notwithstanding the failure of Maxagrid to include an expression of interest in building a station on 242A if allotted to Llano and its resultant failure to be included as a proposal to be considered in the original NPR, the Commission did take the occasion to note there several obvious defects that motivate against adoption of such an allocation. As set forth there (NPR DA 95-884) at paragraphs 3 and 4, the proposal is contrary in several basic respects to Commission policy as set forth in Modification of FM and TV Authorizations to Specify a New Community of License 4 FCC Rcd 4870 (1989), Reconsideration Order (grnt'd in part), 5 FCC Rcd 7094 (1990). Most notably, adoption of the Llano proposal as a "replacement" for the channel proposed to be deleted from Llano is objectionable since it would not be offering an "equivalent service" (replacing a Class C3 existing service with a proposed Class A service) and would, if adopted and implemented result in a loss of local service for some part of the existing Llano population. Moreover, the proposal to replace an existing operating channel with a new proposed allotment through rule making is speculative by definition, and even if accomplished, is contrary to the Commission's specific statement that proposed replacement of an operating station with

a vacant allotment does not adequately cure the disruption of existing service to the public.

All that Maxagrid could offer as a "justification" for this proposal was that "...adoption of its proposal would provide service to a larger community " (NPR at Pa.4). This is clearly an insufficient basis to support the proposed Llano change. To the extent that Maxagrid has filed the required "expression of interest" in implementing the Llano proposal, that has been sufficient to have it included in this docket in the Further Notice, but it has in no way cured the basic defects of the proposal that clearly militate against its adoption.

Conversely, not only are the public interest benefits of the instant Counterproposal by Hen-Tic patent and substantial, but they also do not suffer the negative objections that are inherent in the Llano proposal. The Hen-Tic proposal is consistent with established Commission policy governing allocations. The provision of first local service has long been recognized as a high priority in the Commission's consideration of rulemaking proposals, Revision of FM Assignment Policies and Procedures, 51 P&F RR 2d 807, 810 (1982), and would be well served by the instant counterproposal by Hen-Tic which would provide a new such service with fully-spaced channels in two separate communities. The collateral benefit of deleting two short-spaced channels to be replaced by two fully-spaced channels would further serve the public interest through the enhanced efficient use of the allocated spectrum. See, generally Table of Allocations in

Columbus, Nebraska, et.al, 51 Fed. Reg. 4926, Feb 10, 1986. To the extent that this can all be accomplished without depriving either existing community of its only existing local service, it provides yet further public interest benefits to adoption of the proposal.

In sum, with adoption of this Counterproposal, the efficiency of the Table of Allocations will be vastly improved by converting two existing short-spaced class A stations to wide area C3 and C2 channels providing first local service to two new communities with the existing communities retaining other existing local service in each case, and with the way cleared for another existing short-spaced Class A station to then upgrade its own facilities to a fully-spaced 6Kw station if it elects to do so. It is respectfully submitted that the reallocation as suggested here by Hen-Tic would therefore be in the public interest and should be adopted.

In view thereof, it is respectfully requested that the Commission amend the FM table of Allotments for the following communities:

<u>City</u>	<u>Present</u>	<u>Proposed</u>
Rosenberg, Texas	285A-	-
Galveston, Texas	285A-, 293C	293C
Missouri City, Texas	-	285C3
Menard, Texas	-	242C2

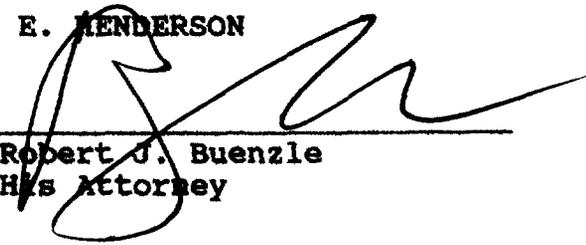
In addition, as previously mentioned, Rosenberg would continue to receive fulltime local service from KMPQ(AM), and Galveston would

continue to receive additional fulltime local service from
KGBC(AM) and KHCB(AM).

Wherefore it is respectfully submitted that adoption of this
Counterproposal would be in the public interest and should be
adopted.

Respectfully submitted,

ROY E. HENDERSON

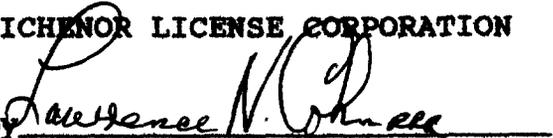
by 

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September 23, 1996

TICHENOR LICENSE CORPORATION

by 

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September 23, 1996

Radio Station KLTO(FM)
14318 Spring Maple Lane
Houston, Texas 77062

ENGINEERING STATEMENT
Comments and Counterproposal
MM DOCKET 95-49

September 1996

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STATE OF ILLINOIS)
) SS:
COUNTY OF PEORIA)

F. W. Hannel, after being duly sworn upon oath,
deposes and states:

He is a registered Professional Engineer, by
examination, in the State of Illinois;

He is a graduate Electrical Engineer, holding Bachelor
of Science and Master of Science degrees, both in Electrical
Engineering;

His qualifications are a matter of public record and
have been accepted in prior filings and appearances requiring
scrutiny of his professional qualifications;

The attached Engineering Report was prepared by him
personally or under his supervision and direction and;

The facts stated herein are true, correct, and
complete to the best of his knowledge and belief.



September 19, 1996

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Radio Station KLTO(FM)
14318 Spring Maple Lane
Houston, Texas 77062

ENGINEERING STATEMENT
Comments and Counterproposal
MM DOCKET 95-49

September 1996

ENGINEERING STATEMENT

This firm has been retained by the licensee of Radio Station KLTO(FM), Rosenberg, Texas, to prepare this engineering statement in support of its Comments and Counterproposal in MM Docket 95-49. It is also noted that the licensee of Radio Station KLTP(FM) is aware of this Counterproposal and is in full agreement and concurrence with the counterproposal and the changes proposed therein for Radio Station KLTP(FM). On August 2, 1996, the Commission issued a Further Notice of Proposed Rulemaking in this proceeding proposing the assignment of FM Channel 242A at Llano, Texas. The proposed FM Channel 242A at Llano was to be use as a replacement channel for the presently assigned FM Channel 284C3 at Llano.

In an earlier Notice in this proceeding, the Commission had sought comments regarding the deletion of the only aural service at Llano so that licensee could relocate to Marble Falls, Texas, on FM Channel 2853. That would leave Llano without a local aural service. In that Notice, no replacement channel was proposed for Llano, and the Commission then issued the Further Notice to propose the assignment of FM Channel 242A to Llano. In Reply

Comments, the Llano petitioner, for the first time, stated an interest in applying for FM Channel 242A at Llano if the Commission allotted the replacement channel.

The licensee of Radio Station KLTO(FM) has a proposal that would provide a higher and better use of FM Channel 242A as opposed to its allotment to Llano, Texas. Specifically, it is requested that the Commission allot FM Channel 242C2 to the community of Menard, Texas, as that community's first local service, and that the license of Radio Station KLTP(FM), Galveston, Texas, be modified to specify operation on FM Channel 242C2 at Menard, Texas, and that the license of Radio Station KLTO(FM), presently operating on FM Channel 285A- at Rosenberg, Texas, be modified to specify operation on FM Channel 285C3 at Missouri City, Texas, as that community's first local aural service.

The presently assigned FM Channel 285A at Galveston, Texas, is a grandfathered short-spaced Class A allotment presently occupied by Radio Station KLTP(FM). It is proposed that this channel at Galveston be deleted which would then allow the reassignment of FM Channel 285A at Rosenberg, Texas, to the community of Missouri City, Texas, as its first local service. In addition to a first local service at Missouri City, the proposed change in city of license would eliminate a short-spacing situation between FM Channel 285A at Rosenberg, Texas, and FM Channel 285A at La Grange, Texas. The deletion of FM Channel 285A- from Galveston will not deprive that community of aural

service, for Galveston has other local aural services licensed to the community. Specifically, Radio Station KQQK(FM), a Class C station and KGBC(AM), both of which offer full-time aural service to Galveston. In view of the substantial improvements in the distribution of FM services in the area, the deletion of FM Channel 285A- at Galveston and the modification of the license of Radio Station KLTP(FM) to specify operation on FM Channel 242C2 at Menard, Texas, clearly serves the public interest.

In that regard, it is further proposed that FM Channel 285A at Rosenberg, Texas, a grandfathered short-spaced Class A allotment occupied by Radio Station KLTO(FM) be deleted and that FM Channel 285C3 be assigned to the independent community of Missouri City, Texas, and that the license of Radio Station KLTO(FM) be amended accordingly. The assignment of FM Channel 285C3 cannot be made without deleting the presently assigned channel at Rosenberg, Texas, therefore, the addition of FM Channel 285C3 at Missouri City, Texas, would not be subject to outside expressions of interest. The community of Rosenberg, Texas, would continue to be served by Radio Station KMPQ(AM), and the relocation of FM Channel 285 from Rosenberg to Missouri City would provide Missouri City with its first local aural service.

The community of Missouri City, Texas, as well as the community of Rosenberg, Texas, are both located in Fort Bend County, which lies within within the Houston SMSA. Under this proposal, the assignment of FM Channel 285C3 to Missouri City would provide Fort Bend County with its first wide

coverage area FM station. It should also be noted that Missouri City has a population of 36,176 persons, while the community of Rosenberg has a population of 20,183 persons, according to the Rand McNally Commercial Atlas. Missouri City is listed in the Rand McNally Commercial Atlas as a significant independent city within Fort Bend County, the only community so listed. The community is also listed by the US Bureau of Census as a city, thus the community certainly is qualified to receive a first local service allotment under Commission guidelines governing FM assignments. The total population within Fort Bend County is 225,183 persons, and Missouri City is the largest community within the county and it presently has no local aural assignment.

The community of Menard, Texas, is located within and is the county seat of Menard County. The city has a population of 1608 persons and Menard County has a population of 2,252 persons. The proposed assignment of FM Channel 242C2 to the community would provide a first local service to the city of Menard, and would be the only aural service within the entire county. Menard city is listed as by the US Bureau of Census as a city and the Rand McNally Commercial Atlas shows Menard as a separate city. As the county seat of Menard County, the city has its own government, provides all of the traditional city services to its residents, and is clearly qualified to receive a first local aural assignment under the criteria used by the Commission for determining whether an FM assignment would be consistent with the fair and equitable distribution of FM channels. As compared to the proposed

assignment of FM Channel 242A to the community of Llano, Texas, as a replacement channel for FM Channel 283C3, it is clear that the proposed use of FM Channel 242 as a Class C2 facility providing a first local aural service to Menard is certainly a superior use of the FM spectrum.

The proposed reference site for FM Channel 285C3 at Missouri City, Texas, is N29-30-31, W95-27-58. This reference site is located 13.7 km, (8.5 miles), southeast of Missouri City, (US atlas reference co-ordinates N29-37-00, W95-27-06), and a transmitter operating from the proposed transmitter reference site would fully comply with the Commission's mileage separation and city grade coverage requirements. Exhibit E-1 is a channel study conducted from the transmitter reference site which demonstrates that the proposal is in full compliance with minimum mileage separation requirements of the Rules.

The proposed reference site for FM Channel 242C2 at Menard, Texas, is N31-03-37, W99-35-26. This reference site is located 24.4 km, (15.2 miles), northeast of Menard, Texas, (US Atlas reference co-ordinates N30-55-06, W99-47-12), and a transmitter operating from the transmitter reference site will fully comply with the Commission's minimum mileage and city grade illumination requirements. Exhibit E-2 is an FM Channel study conducted from the transmitter reference site which demonstrates compliance with the minimum mileage separation requirements of the Rules with regard to the assignment of FM Channel 242C2 at Menard, Texas.

In view of the foregoing, it is respectfully requested that the Commission make the following changes in the FM Table of allotments:

Community	Present	Proposed
Rosenberg, Texas	285A-	---- ¹
Galveston, Texas	285A-,293C	293C ²
Missouri City, Texas	-----	285C3
Menard, Texas	-----	242C2

There are many public interest benefits contained in this proposal. No community is deprived of an aural service while there are substantial public service enhancements provided by this allotment proposal. Several existing short spacings are removed; first local service is introduced to both Missouri City and Menard, Texas. Improvement in potential coverage at La Grange, Texas, is provided, since it will no longer be short-spaced to Rosenberg or any other facility, thereby allowing it to increase power to 6 kw should it be interested in doing so.

¹ Rosenberg continues to receive aural service from Radio Station KMPQ(AM).

² Galveston continues to receive aural service from Radio Station KGBC(AM) and KHCB(AM) in addition to the existing FM channel.

The net result of the adoption of this proposal is to essentially provide fully spaced channels for 3 facilities that are presently short spaced, and to provide a first local aural service to 2 additional communities. No community is deprived of an aural service, and, in fact, this proposal expands the services available to the several communities affected by this allotment request.

It is respectfully requested that the Commission adopt the proposal as is outlined above; that the license of Radio Station KLTP(FM) at Galveston be modified to specify operation on FM Channel 242C2 at the community of Menard, Texas; that the license of Radio Station KLTO(FM) be amended to specify operation on FM Channel 285C3 at the community of Missouri City, Texas; and that the Commission deny the allotment of FM Channel 242A to Llano, Texas, as was proposed in the Further Notice of Proposed Rulemaking.

Radio Station KLTO(FM)
14318 Spring Maple Lane
Houston, Texas 77062

ENGINEERING STATEMENT
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September 1996

Exhibit E-1
FM Channel Study
N29-30-31 W95-27-58
Channel 285C3

CALL	CITY	ST	CHN	CL	S	DIST	SEPN	BRNG	CLEARANCE
ALC	Ganado	TX	284	C2	V	116.7	117.0	238.2°	-0.3
NEW	Ganado	TX	284	C2	A	116.7	117.0	238.2°	-0.3
ALC	Galveston	TX	285	A	U	73.7	142.0	105.3°	-68.3
ALC	La Grange	TX	285	A	U	141.7	142.0	287.0°	-0.3
ALC	Rosenberg	TX	285	A	U	31.1	142.0	279.0°	-110.9
KBUK	La Grange	TX	285	A	L	141.7	142.0	287.0°	-0.3
KMPQFM	Rosenberg	TX	285	A	L	33.2	142.0	301.5°	-108.8
KLTP	Galveston	TX	285	A	D	71.9	142.0	100.0°	-70.1
KLTP	Galveston	TX	285	A	L	71.9	142.0	100.0°	-70.1

All Distances in Kilometers

Radio Station KLTO(FM)
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September 1996

Exhibit E-2
FM Channel Study
N31-03-37 W99-35-26
Channel 242C2

CALL	CITY	ST	CHN	CL	S	DIST	SEPN	BRNG	CLEARANCE
ALC	Winters	TX	241	A	U	105.9	106.0	340.4°	-0.0
ALC	San Antonio	TX	241	C1	U	183.1	158.0	149.7°	25.1
KSJLFM	San Antonio	TX	241	C1	L	183.1	158.0	149.7°	25.1
NEW	Winters	TX	241	A	C	115.0	106.0	343.2°	9.0
ALC	Llano	TX	242	A	U	90.7	166.0	106.2	-75.3
ALC	Del Rio	TX	242	C1	U	223.8	224.0	221.2°	-0.2
KTDR	Del Rio	TX	242	C1	L	223.8	224.0	221.2°	-0.2
ALC	Sterling City	TX	243	C2	V	160.6	130.0	297.8°	30.6
NEW	Sterling City	TX	243	C2	A	133.5	130.0	296.6°	3.5

All Distances in Kilometers

CERTIFICATE OF SERVICE

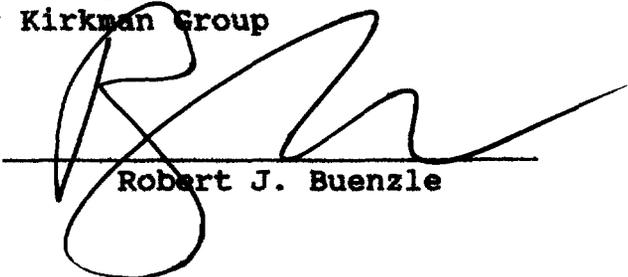
I hereby certify that copies of the foregoing COMMENTS AND COUNTERPROPOSAL have been served by United States mail, postage prepaid this 23rd day of September, 1996 upon the following:

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