

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544**

In the Matter of

Structure and Practices of the Video Relay
Service Program

CG Docket No. 10-51

Telecommunications Relay Services and
Speech-to-Speech Services for Individuals
with Hearing and Speech Disabilities

CG Docket No. 03-123

**SORENSEN COMMUNICATIONS, INC. REPLY COMMENTS
ON VRS COMPENSATION RATES**

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Sorenson Communications, Inc., (“Sorenson”) submits these reply comments on the portions of the Commission’s October 21, 2015 Further Notice of Proposed Rulemaking (“*FNPRM*”)¹ pertaining to compensation rates for video relay service (“VRS”).

INTRODUCTION AND SUMMARY

In its opening comments, Sorenson explained that the Commission’s proposal to freeze rates for some but not all providers will fail to prevent deterioration in VRS as a whole. This is because the current rate structure does not fully account for the real-world costs of providing service and provides no mechanism for VRS providers to earn a reasonable profit. It serves no purpose to pretend that any provider—small or large—can deliver useful VRS based solely on the Commission’s allowable costs and the approximately one percent margin that its rate formulas contemplate. The comments filed in this proceeding overwhelmingly underscore this point: the rate structure is broken, and it needs to be fixed. Without a fix, the industry will go the way of IP Relay, where the Commission’s reliance on the same flawed compensation methodology resulted in a mass exodus from the industry (and less consumer choice) and forced the Commission to *raise* rates in order to keep the remaining provider in business. To be clear, Sorenson’s decision to halt IP Relay service was a direct result of the Commission’s June 2013 IP Relay rate decisions.

There is no justification, however, for the Commission to undermine competition by freezing rates for five providers, while cutting rates for Sorenson, as some of Sorenson’s mid-sized competitors suggest. Such a move would abandon all pretense of competitively neutral

¹ *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, FCC 15-143, 2015 WL 6855270 (2015) (“*FNPRM*”).

rate setting, and would be a blatant pro-competitor attempt to use rates to reduce the leading—and most cost-effective—provider’s service quality in order to try to shift market share. The Commission should not be in the business of selecting winners and losers to the detriment of consumers. The record demonstrates that ZVRS and Purple Communications, Inc. (“Purple”)—who entered the market before Sorenson—are large enough to have achieved virtually all economies of scale available and have had more time than any other provider to do so. Moreover, as explained below, barriers to interoperability and portability are largely a thing of the past—and have been for several years.

Regardless of whether it enacts a rate freeze, the Commission should promptly establish a firm timetable for a transition to a market-based rate. The record overwhelmingly demonstrates that the current rate methodology is flawed and unsustainable, and any further delays in transitioning to a new system will only further harm the VRS program and the deaf community.

I. FREEZING RATES FOR ONLY THE THREE SMALLEST PROVIDERS WILL NOT STOP THE DETERIORATION OF SERVICE CAUSED BY RATE REDUCTIONS.

The proposal to freeze rates for the three smallest providers—while narrowly addressing their pressing concerns—fails to address the systemic deterioration of VRS caused by the 2013 rate schedule. The comments confirm that *no* provider can continue to provide the same high-quality service as rates decline. As Sorenson explained in its comments, *all* providers face imminent cuts to service quality if the Commission continues to demand that they do more (or even the same) with less. The three smallest providers collectively provide only a small fraction of all VRS. Freezing only their rates will not do anything to halt the decline in service to the vast majority of VRS consumers. The harm of further declines in rates for all other providers will fall primarily on VRS users, who are guaranteed functionally equivalent service by the Americans

with Disabilities Act (“ADA”). Comments from VRS providers and users confirm that the *FNPRM*’s proposed rate freeze will not stop the decline in service quality.

A. The FCC’s Rate Methodology is Broken.

Commenters were unanimous in their conclusion that the current rate system is broken. The FCC’s methodology fails to account for the actual costs of providing VRS service, including the costs of complying with increasing regulatory obligations. Indeed, the “true costs of providing VRS” bear little relationship to the FCC’s “allowable costs.”² The FCC’s formula fails to recognize many costs that, while not “allowable,” are necessary to stay in the VRS business: marketing and outreach, customer premises equipment necessary to use VRS, and research and development.³ VRS users understand that these expenses are essential both to “remaining competitive in an ever-evolving market” and to providing “improved service” to VRS users.⁴ And, as Purple points out, without those expenditures, VRS providers will face serious limits on their ability to innovate and “provide *ever improving* functional equivalency” as the ADA requires.⁵ Without “an honest appraisal” of the allowable cost regime, VRS rates will never reflect the actual cost of doing business. And VRS will suffer the same fate as IP Relay, where the Commission’s reliance on this flawed allowable-cost model caused a mass exodus from the industry.

² Comments of ZVRS to the Compensation Rate Freeze at 15, CG Docket Nos. 10-51 and 03-123 (filed Dec. 9, 2015).

³ *Id.* at 15-16.

⁴ Comments of Consumer Groups at 5, CG Docket Nos. 10-51 and 03-123 (filed Dec. 9, 2015) (“Consumer Group Comments”).

⁵ Comments of Purple Communications, Inc. Video Relay Service Rate Freeze Further Notice of Proposed Rulemaking at 12, CG Docket Nos. 10-51 and 03-123 (filed Dec. 9, 2015) (internal quotations omitted) (“Purple Comments”).

Furthermore, without immediate intervention, the gap between true costs and allowable costs will only get wider. Commenters agree that “[p]roviders have already assumed significant additional costs to implement the added reforms adopted in the *2013 VRS Reform Order*, but were never accorded an opportunity to seek added compensation, despite being compelled to assume those costs under a declining compensation structure.”⁶

Finally, trying to engineer a transfer of market share by forcing a decline in service quality by the largest provider—through paying that provider far less than other providers—is an abuse of the Commission’s power to set compensation rates and has no basis in pro-competition (as distinct from pro-competitor) policies. It is also profoundly anti-consumer. The logic of the *FNPRM* is explicit that Sorenson should be compensated less than its competitors for the same service provided to the same consumers because the Commission does not like the source of Sorenson’s financing costs—although even with its financing costs, Sorenson provides VRS for less compensation per minute than any other provider. There is nothing market-driven about the Commission’s approach; it is simply picking winners and losers.

B. The Rate Reduction Will Harm Service.

Commenters also agree that allowing rates to fall further will inevitably result in lower quality service.⁷ As all six VRS providers have repeatedly explained, the four scheduled years of successive rate cuts, adding to the dramatic rate cut in 2010, are already interfering with the

⁶ Comments of ASL Services Holdings, LLC at 11-12, CG Docket Nos. 10-51 and 03-123 (filed Dec. 9, 2015) (“ASL Comments”).

⁷ See, e.g., Purple Comments at 13.

quality of VRS service.⁸ This round of comments shows that those challenges are not going away. Convo Communications, LLC, for example, emphasizes that rate cuts will necessarily have to be accompanied by “operational reductions” that will “correspondingly affect service quality.”⁹ For VRS consumers, declining quality of service presents a serious problem—and one acknowledged by the U.S. Government Accountability Office¹⁰—because “VRS is an instrumental and necessary service for consumers who are deaf, hard of hearing, deaf-blind, and deaf with mobility issues.”¹¹ Consumer Groups stressed in their comments that “the burden of these additional rate cuts will fall primarily on the deaf and hard of hearing consumers and their hearing contacts that rely on VRS service for functionally equivalent communications.”¹² Because all providers face imminent cuts to service quality if rates continue to fall, an across-the-board rate freeze must be implemented to ensure that VRS users continue to have access to these vital services.

II. THERE IS NO COMPETITIVELY NEUTRAL JUSTIFICATION TO FREEZE RATES FOR SOME PROVIDERS BUT NOT OTHERS.

Although VRS providers unanimously agree that the Commission’s current rate methodology is broken and that continued implementation of the rate cuts adopted in the 2013

⁸ See, e.g., Joint Proposal of All Six VRS Providers for Improving Functional Equivalence and Stabilizing Rates at 7, CG Docket Nos. 10-51 and 03-123 (filed Mar. 30, 2015) (“Joint Proposal”).

⁹ Comments of Convo Communications, LLC at 6, CG Docket Nos. 10-51 and 03-123 (filed Dec. 9, 2015).

¹⁰ U.S. GOV’T ACCOUNTABILITY OFF., GAO-15-409, TELECOMMUNICATIONS RELAY SERVICE: FCC SHOULD STRENGTHEN ITS MANAGEMENT OF PROGRAM TO ASSIST PERSONS WITH HEARING OR SPEECH DISABILITIES, Report to the Honorable Jeff Sessions (April 2015), available at <http://www.gao.gov/products/GAO-15-409>.

¹¹ Consumer Group Comments at 4.

¹² *Id.*

VRS Reform Order will lead to a deterioration of service, some providers suggest that it is appropriate to grant a rate freeze to all providers other than Sorenson—even though there is no question that Sorenson already receives the lowest average compensation per minute of any provider. Doing so would essentially *expand* the current system of tiers, which the Commission has previously decided to reduce and eliminate. But the record provides no support for such an expansion. Contrary to the claims of ZVRS and Purple, and unlike the three smallest providers, economies of scale do not provide a justification for treating ZVRS and Purple differently than Sorenson. The record evidence demonstrates that ZVRS and Purple are large enough to have achieved virtually all economies of scale available—and have had more time than any other provider to do so. Moreover, as explained below, barriers to interoperability and portability are largely a thing of the past—and have been for several years.

A. Sorenson Gained Its Market Share by Offering a Superior Product That Consumers Preferred.

In their comments, two of Sorenson’s oldest competitors suggest that they need subsidies, in part, because Sorenson is a “dominant provider” or an “incumbent” provider akin to the incumbent local exchange carriers. Nothing could be further from the truth. Unlike the pre-divestiture AT&T, Sorenson did not originally gain any of its customer base through a legal monopoly, as the incumbent local exchange carriers did. Rather, Sorenson gained its customers the old-fashioned way: by offering a product that was better than the product offered by its competitors.

Indeed, when Sorenson entered the market as a VRS provider, Purple’s predecessor, Hands On Video Relay Services, Inc.,¹³ and ZVRS’s predecessor, CSD,¹⁴ were already providing VRS services, and Sorenson had a zero percent market share. Unlike Purple and ZVRS, however, Sorenson focused on developing a videophone specifically tailored to the unique needs of deaf, hard-of-hearing, and speech-disabled users. Sorenson’s first videophone, the Sorenson VP-100[®], reflected more than \$50 million in investments and was revolutionary when it was released in 2002. But Sorenson did not settle for developing innovative, deaf-friendly equipment—it also hired and trained its own interpreters, bringing a level of quality control to VRS that had not previously existed, and developed an array of enhanced add-on capabilities beyond the minimum standards identified in the FCC’s rules.¹⁵ The combination of unique videophones tailored to deaf, hard-of-hearing, and speech-disabled users, a higher level of interpreting quality, and enhanced features naturally attracted many users to Sorenson VRS. Clearly that was a choice made by consumers—they were not obligated to take Sorenson’s equipment or use Sorenson service and could have opted for VRS offerings from other, more

¹³ Purple Communications, Inc. (“Purple”) was formed through the consolidation of Hands On VRS, MCI Communications Corporation’s VRS operations (first acquired by Verizon Communications, Inc., then sold to the company that became Purple), and GoAmerica, Inc.

¹⁴ ZVRS was spun off by non-profit Communication Service for the Deaf, Inc. (“CSD”) in 2006. CSD touts itself as the “very first to launch commercial...VRS” in 2000, “creating a highly competitive industry” by 2002. CSD History, (Sept. 12, 2012) <https://web.archive.org/web/20120912000016/http://www.c-s-d.org/AboutCSD/History.aspx>. By 2002, CSD was “market[ing] VRS nationally through a partnership with Sprint.” *Id.*

¹⁵ Even in the early days of VRS, some customers chose to take advantage of Sorenson’s superior interpreters without opting for Sorenson videophones; for example, customers used Microsoft’s NetMeeting to call Sorenson VRS.

established providers in the marketplace.¹⁶ Consumers *chose* Sorenson’s VRS because it simply worked better than all other offerings on the market.

Moreover, while some of the comments blithely refer to Sorenson as a “dominant provider” in the VRS marketplace, as if that somehow justified paying higher rates to mid-sized providers that have been operating longer, this is also incorrect. While Sorenson clearly is the most successful VRS provider, it is not “dominant,” as that term is typically used by the FCC; “dominant” does not simply equal “big” or “largest.” In its *Phoenix Qwest Forbearance Order*, the Commission defined “a dominant carrier as a carrier that possess[es] market power (*i.e.*, the power to control price), and a nondominant carrier as one that does not possess power over price.”¹⁷ Of course, these concepts are not applicable to iTRS providers because they are not considered common carriers,¹⁸ but even if they were, it is clear that Sorenson would not be considered “dominant.” Sorenson plainly cannot exercise market power to control prices, and it

¹⁶ Notably, a number of VRS providers began offering the D-Link i-2-Eye videophone shortly after the VP-100 entered the market. D-Link was an Original Equipment Manufacturer (“OEM”) licensee of Sorenson, and the i-2-Eye videophone hardware was essentially the same as the VP-100. Sorenson differentiated the VP-100 by adding enhanced features to the device targeted to the deaf, hard-of-hearing, and speech-disabled community and by offering better interpreting services.

¹⁷ *Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phx., Ariz. Metro. Statistical Area*, Memorandum Opinion and Order, FCC 10-113, 25 FCC Rcd. 8622, 8624-25 ¶ 5 (2010) (alternation in original) (internal quotations omitted).

¹⁸ See 47 U.S.C. § 153(11) (“The term ‘common carrier’ or ‘carrier’ means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy....”); *Structure and Practices of the Video Relay Service Program*, Second Report and Order and Order, FCC 11-18, 26 FCC Rcd. 10,898, 10,913 ¶ 34 (2011) (confirming that a company need not be a common carrier in order to be an FCC-certified iTRS provider).

therefore has no ability to price its competitors out of the market.¹⁹ Rather, VRS compensation rates are set by the FCC, which is the only purchaser in the VRS market.²⁰ Nor, as discussed above, can Sorenson compel end users to select its VRS service if they do not wish to do so. In addition, supply elasticity is high in the VRS context—competitors can readily scale up to provide additional capacity, and barriers to new entry into the market are relatively low compared to infrastructure-intensive industries with high start-up costs like local telecommunications. And Sorenson has worked alongside the other VRS providers to continue to improve interoperability among VRS providers, while continuing to compete vigorously to develop new features and functions.

In the end, Sorenson’s growth in the VRS industry was the direct result of the fact that it did a better job than its competitors at meeting consumers’ needs, not due to any unfair or illegal advantage. While Sorenson’s competitors certainly wish the market were more evenly divided, *consumers* determine market share by choosing the company they want to provide them VRS, and consumers have consistently chosen Sorenson. The constant barrage of allegations from competitors seeking to cast Sorenson’s success in a negative light, and of recommendations seeking to undermine consumer choice, is fundamentally misplaced. “Wishing” for more equal market share only matters to the extent that it spurs innovation, competition, and *more* choices for consumers in the VRS marketplace, not fewer.

¹⁹ See, e.g., *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, Order, FCC 95-487, 11 FCC Rcd. 3271, 3310-18 ¶¶ 75-87 (1995) (addressing AT&T’s ability to exercise market control over prices as key element in dominance analysis).

²⁰ And, of course, far from being able to dictate higher prices for its products, under the Commission’s tiered compensation scheme, Sorenson currently receives *less* than other VRS providers for providing the same VRS services.

B. A Rate Freeze for Mid-Sized VRS Providers Is Not Justified by Economies of Scale.

In the proceeding leading up to the *2013 VRS Reform Order*, former FCC Chief Economist Michael Katz submitted declarations demonstrating that any economies of scale in VRS are limited and that a tiered rate structure is not warranted in any event. Professor Katz's findings were not seriously challenged in the record and support the Commission's decision in 2013 to abandon a tiered rate structure and move to a market-based approach to rate-setting.

With respect to economies of scale, Professor Katz noted that many of the costs of VRS vary in direct proportion to volume because an interpreter is required for every call. However, he added, there are some efficiencies of scale on account of "queuing efficiencies" which allow firms processing larger volumes of calls "to take greater advantage of statistical averaging to smooth out the stochastic variation in their traffic volumes."²¹ Professor Katz concluded, however, that a VRS provider "operating at 250,000 minutes per month can achieve 95.4 percent of the maximal feasible VRS efficiency."²²

As practical matter, that means that the three very small VRS providers will always need subsidies in the form of tiered rates and/or special freezes unless they can attract more users. In addition, Professor Katz pointed out that "the current tier structure acts as a tax on mergers of small providers" because their compensation would be lowered if they combined to take advantage of queuing efficiencies.²³ In any event, Professor Katz found no economic

²¹ Comments of Sorenson Communications, Inc. at Appendix A 21 ¶ 29, CG Docket Nos. 1051 and 03-123 (filed Mar. 9, 2012) ("Sorenson 2012 Comments").

²² *Id.* at Appendix A 25 ¶ 35.

²³ *Id.* at Appendix A 13 ¶ 18.

justification for tiers, which “reward those firms that have been less successful at offering services that VRS users find attractive.”²⁴

With respect to Purple and ZVRS, Professor Katz’s analysis shows that there is no reason to treat them differently than Sorenson on account of economies of scale.²⁵ (And while the graph at page 21 of Purple’s comments claims otherwise, it amounts to nothing more than *ipse dixit* because it does not disclose the data or the methodology used to create the chart.)²⁶ For that reason, there is no basis for providing a rate freeze for them but not Sorenson. It bears emphasis that the D.C. Circuit recognized that the Commission decided in 2013 that tiers “are inefficient and should be eliminated” and clearly approved of that course.²⁷ But the court upheld the Commission’s decision to “retain the tiers while transitioning to a competitive-bidding scheme,” adding that “[t]he agency made clear in the 2013 Rate Order that it still plans to eliminate the per-minute rate methodology and that its critique of tiered rates guided its planning for the interim.”²⁸ The Commission would be pushing the envelope by effectively broadening tiers by means of selective freezes for favored competitors.

Sorenson wants to make clear that it favors consumer choice and does not urge the Commission to set rates that eliminate competition. But a unitary rate set by market-based forces is the only fair and efficient system. And as Professor Katz explained, if the Commission wants to ensure competition involving a particular number of competitors, the appropriate unitary rate

²⁴ *Id.* at Appendix A 11 ¶ 15.

²⁵ *Id.* at Appendix A 17 ¶ 23.

²⁶ Purple Comments at 21.

²⁷ *Sorenson Commc’ns v. Fed. Commc’ns Comm’n*, 765 F.3d 37, 51 (D.C. Cir. 2014).

²⁸ *Id.*

“would be equal to the cost level of the $N + 1$ st lowest-cost potential service provider.”²⁹ The Commission should quickly turn its attention to developing such a market-based rate and turn away from singling out particular competitors for favored treatment.

C. Vague and Unsubstantiated Claims of Interoperability or Customer-Switching Issues Do Not Justify Differential Treatment.

Vague and unsubstantiated claims of interoperability or customer-switching issues do not justify an expansion of the rate disparity between large and small providers.³⁰ In the *2013 VRS Reform Order*, the Commission invoked “technical barriers to interoperability and portability” as a justification for maintaining rate disparities in the short term, while noting that it would gradually reduce the gap between the highest and lowest tiers.³¹ And in their comments, a number of Sorenson’s competitors invoke vague and unspecified issues with interoperability and customer migration as a justification for freezing their rates but not Sorenson’s. But these issues are largely historical and have been resolved through extensive cooperation among all providers.

Although the VRS industry historically experienced interoperability issues because there was no single set of standards governing VRS, the industry has worked hard for many years to address those issues, and for the past several years, providers have worked together to address any interoperability issues as they arise. The cooperation among providers has been both formal and informal. On the formal side, providers have held seven semi-annual interoperability conferences to engage in testing and collaborate on fixing any issues identified, and these conferences have

²⁹ Sorenson 2012 Comments at Appendix A 44 ¶ 70.

³⁰ See, e.g., ZVRS Comments at 16.

³¹ *Structure and Practice of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-82, 28 FCC Rcd. 8618, 8699 ¶ 200 (2013) (“*2013 VRS Reform Order*”).

been hosted by both large providers (for example, Sorenson) and smaller providers (for example, ASL/Global). More informally, Sorenson also has held monthly interoperability telephone calls with Purple and ZVRS to identify and resolve interoperability issues, and it has offered to hold similar calls with every other provider, though the other providers have not responded to Sorenson's offers to schedule such calls. Sorenson also currently holds regular (weekly or bi-weekly) SIP interoperability calls with all six providers.

For years, these efforts have largely addressed the interoperability issues that previously plagued VRS. By November 2013, Sorenson explained that “[d]ial-around and point-to-point functionalities currently work very well” and that “Sorenson’s ntouch VP and VP-200 videophones can dial around to every other provider and can place and receive point-to-point calls to and from every other provider.”³² And while interoperability issues do continue to arise from time to time, these issues are “not categorical, but . . . episodic as providers (not just Sorenson) implement changes to their networks, systems and endpoint hardware and/or software.”³³ And they are quickly addressed through cooperation among providers.

Moreover, moving forward, interoperability should be even less of a concern than it was in the past because, through extensive provider collaboration in the SIP Forum, the industry has adopted a SIP standard, and providers are expected to begin the transition to SIP in January 2016. This transition should largely eliminate the technical barriers to interoperability that existed prior to 2013 because all providers will be implementing a common standard. While this will not eliminate the need for provider-to-provider collaboration, it should ensure that long-term or categorical interoperability issues are a thing of the past.

³² Letter from John T. Nakahata, Counsel, Sorenson Communications, Inc. to Marlene H. Dortch, Secretary, FCC at 1, CG Docket Nos. 10-51 and 03-123 (filed Nov. 14, 2013).

³³ *Id.*

In addition, the industry has reached consensus on an X-Card standard for addressbook portability, and Sorenson is pleased to support adoption of this standard. Accordingly, there simply are not any outstanding, identified customer migration issues that would justify treating Purple and ZVRS differently than Sorenson. Moreover, with the transition to SIP and the greater use of software-based VRS endpoints, there no longer is any reason to require device portability at all: with all devices using the same standard, it will not matter whether a user needs to switch devices in order to change providers—just as it does not matter if a wireless customer must switch phones when switching to a different carrier.

Finally, it bears emphasis that, although ZVRS and Purple invoke interoperability issues as a justification to freeze their rates but not Sorenson's, these providers have raised *no* unresolved interoperability issues with Sorenson that affect customers. As mentioned already, Sorenson holds monthly interoperability calls with ZVRS and Purple in order to address any current interoperability issues. As of right now, there are no pending escalations from these calls for H.323 interoperability issues. And while there are a few pending issues related to SIP, these do not affect customers because SIP is still in alpha testing. Accordingly, Sorenson believes there are no pending interoperability issues with these providers, and if there are, it stands ready, willing, and able to address them through cooperation. These issues do not, therefore, provide any justification for freezing Purple's and ZVRS's rates while cutting Sorenson's rates.

III. IN ANY EVENT, THE COMMISSION MUST SET A DEFINITIVE TIMETABLE FOR SHIFTING TO A MARKET-BASED RATE.

Regardless of whether the Commission adopts its proposed rate freeze, Sorenson urges the Commission to set a definitive timetable for shifting to a market-based rate. As the Commission acknowledged in the *2013 VRS Reform Order* and as the comments in this proceeding unanimously demonstrate, the current rate methodology is broken, and nothing short

of a full-scale shift to a market-based rate system can solve the problem. Moreover, lack of certainty about the future rate structure—combined with the current schedule of draconian rate cuts—will inevitably make it difficult for providers to attract more investment or financing. The Commission should not let uncertainty about rates continue to undermine the VRS program and should promptly establish a timetable for the transition to a market-based system.

CONCLUSION

The Commission’s proposal to freeze rates for the smallest three providers is a half-measure that will not stop declines in service quality. The Joint Proposal should be adopted.

Respectfully submitted,

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