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May 14,2007

VIA HAND DELIVERY

FILED/ACCEPTED
MAY 1 4 2007
Federal Communications Commission
Office of me Secretary

Marlene H. Dortch, Secretary
Fcdcral Communications Commission
Office of the Secretary, c/o Natek, Inc.
236 Massachusetts Avenue, N.E.; Suite 110
Washington, DC 20002

Re: Reply Comments of Iowa Petitioners:
Winnebago Cooperative Telephone Association, Docket No. CSR-7140-Z
Radcliffe Telephone Company, Docket No. CSR-7142-Z
South Slope Cooperative Telephone Co., Docket No. CSR-7143-2
Farmers' and Business Mens' Telephone Co., Docket No. CSR-7146-Z
Dumont Telephone Company, Docket No. CSR-7147-Z
Heart of Iowa Communications Cooperative, Docket No. CSR-7148-Z
Kalona Cooperative Telephone Co., Docket No. CSR-7149-2
West Liberty Telephone Company, Docket No. CSR-7177-2
Local Internet Service Co., Docket No. CSR-7182-Z
Mahaska Communications Group, Docket No. CSR-7184-Z
CS Docket No. 97-80

Dear Secretary Dortch:

On behalf of the Iowa Petitioners listed above, transmitted herewith are an original and four (4) copies of the petitioners' reply comments for filing in the above-referenced dockets. A copy of this filing is also being submitted via ECFS in Docket No. 97-80. Please date-stamp and return the extra copy of this filing.

Should you have any questions concerning this matter, please contact the undersigned at 202-344-8065.

Sincerely,

James U. Troup
Tony S. Lee
Grace R. Chiu

No. of Copies rec'd 0+4
List ABCDE

Counsel for the Iowa Petitioners

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of the Secretary

In the Matter of	)	
Requests for Waiver of Section 76.1204(a)(1)	)	CS Docket No. 97-80
of the Commission's Rules	)	
	)	
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Radcliffe Telephone Company	)	CSR-7142-2
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Local Internet Service Co.	)	CSR-7182-Z
Mahaska Communications Group	)	CSR-7184-2

JOINT REPLY COMMENTS OF
THE IOWA PETITIONERS

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Dated: May 14,2007

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SUMMARY

The Consumer Electronics Association ("CEA") opposes the Waiver Requests because the Iowa Petitioners allegedly seek a permanent waiver from compliance with the FCC's rules (an assertion flatly contradicted by the plain language of the petitions). CEA asserts that Iowa Petitioners also failed to state valid grounds for a waiver and, moreover, that grant of the petitions would deny rural customers choice in navigation devices. In addition, CEA contends that the Petitioners should have applied for a waiver of the obligation to provide separate security modules pursuant to Section 76.640 of the FCC's rules.

CEA misapprehends the facts underlying Petitioners' Waiver Requests, and urges the Commission to misapply the law pertinent to these requests. CEA employs a **"one** size fits all" analysis of the Waiver Requests, recognizing no distinction between large MSOs and small video operators, such as the Petitioners. Unlike large MSOs, which routinely avoid rural areas due to the high costs of plant and low market potential, however, the Iowa Petitioners have elected to serve America's small, historically underserved, rural communities. The Commission has recognized that small rural video operators, by virtue of their unique circumstances, face special difficulties in complying with the July 1,2007 deadline for separate security. CEA appears to advocate a CableCARD-only solution to achieve compliance with the FCC's integration ban. However, CableCARDs are not the only method to achieve compliance, and other solutions, such as downloadable conditional access, will allow video operators to comply with the FCC's rules. In addition, CEA's assertion that the Petitioner's must comply with Section 76.640 and provision Point of Deployment modules for their digital systems is misplaced as the digital systems that the Iowa Petitioners operate do not fall with the definition of digital cable system set forth in Section 76.640. Therefore, that rule does not apply to the Iowa Petitioners.

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JOINT REPLY COMMENTS OF
THE IOWA PETITIONERS

Dumont Telephone Company, Heart of Iowa Communications Cooperative, Kalona Cooperative Telephone Co., Farmers' and Business Mens' Telephone Co. d/b/a F&B Communications, Local Internet Service Co., Mahaska Communications Group,[1] Radcliffe Telephone Company, South Slope Cooperative Telephone Co., West Liberty Telephone Company, and Winnebago Cooperative Telephone Association (each, a "Petitioner," and collectively, the "Iowa Petitioners" or "Petitioners") submit this reply in response to comments filed by the Consumer Electronics Association ("CEA") opposing the above-captioned petitions for waiver of Section 76.1204(a)(1) of the Commission's rules ("Waiver Requests").

[1] Mahaska Communications Group ("Mahaska") joins in these Reply Comments because, although the Consumer Electronics Association did not oppose Mahaska's waiver petition, Mahaska's arguments in support of its petition are the same **as** those presented by the other nine Iowa Petitioners in their respective waiver petitions. Accordingly, Mahaska joins in these reply comments on the assumption that the comments of CEA would apply equally to its own waiver petition.

I. INTRODUCTION

CEA opposes the Waiver Requests because the Iowa Petitioners allegedly seek a permanent waiver from compliance with the FCC's rules (an assertion flatly contradicted by the plain language of the petitions).[2] CEA asserts that Iowa Petitioners also failed to state valid grounds for a waiver[3] and, moreover, that grant of the petitions would deny rural customers choice in navigation devices.[4] In addition, CEA contends that the Petitioners should have applied for a waiver of the obligation to provide separate security nodules pursuant to Section 76.640 of the FCC's rules.[5]

As discussed below, CEA misapprehends the facts underlying Petitioners' Waiver Requests, and urges the Commission to misapply the law pertinent to these requests. In an effort to persuade the Commission to deny the Waiver Requests, CEA employs a "one size fits all" analysis of the Waiver Requests, recognizing no distinction between large MSOs and small video operators, such as the Petitioners. Unlike large MSOs, which routinely avoid rural areas due to the high costs of plant and low market potential, however, the Iowa Petitioners have elected to serve America's small, historically underserved, rural communities. The Commission has recognized that small rural video operators, by virtue of their unique circumstances, face special difficulties in complying with the July 1,2007 deadline for separate security. Because CEA is unwilling to acknowledge these special difficulties and has made a number of misstatements of fact and law in its comments, the Iowa Petitioners submit these reply comments to correct these misstatements as well as to identify the unfounded assumptions upon which CEA's opposition relies.

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[2] CEA Comments at 2.
[3] ***Id.*** at 4.
[4] ***Id.*** at 6-7.
[5] *Id.* at 3.

II. THE IOWA PETITIONERS ARE NOT SUBJECT TO SECTION 76.640 OF THE COMMISSION'S RULES

CEA contends that the Iowa Petitioners are obligated under Section 76.640 of the FCC's rules to provide and support the operation of CableCARDs (or a successor standard national security interface).[6] CEA also claims that, since the security systems on which Petitioners expect to rely cannot satisfy that obligation, the Petitioners should have applied for a waiver of the obligation to provide CableCARDs, as set forth in Section 76.640.[7]

Section 76.640(b) of the Commission's rules requires cable operators to support unidirectional digital cable products through the provisioning of Point of Deployment modules (PODs) and services.' These requirements apply to "digital cable systems," which for purposes of the rule is defined as a cable system "with one or more channels utilizing QAM modulation for transporting programs and services from its headend to receiving devices."[9]

The Iowa Petitioners provide video services to their subscribers through an all-digital video distribution network, utilizing ATM or IP over ATM.[10] The digital systems that the Iowa Petitioners operate do not use QAM modulation for transporting programs and services from the headend to receiving devices. The requirements of Section 76.640 therefore do not apply to the Iowa Petitioners. Consequently, CEA has no basis for claiming that the Iowa Petitioners are obligated to support and provision CableCARDs.

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[6] CEA Comments at 2-3.

[7] *Id.* at 3.

[8] 47 C.F.R. § 76.640(b).

[9] *Id.* § 76.640(a). Cable systems that "only pass through 8 VSB broadcast signals shall not be considered digital cable systems. *Id.*

[10] The Dumont system utilizes IP over ATM for transporting video programming from the headend (operated **by** Iowa Network Services) to Dumont's central office. There, the signal is converted to QAM modulation for transmission to receiving devices. Because the Dumont system does not utilize QAM modulation for transporting programming ***from the headend*** to receiving devices, the Dumont system does not fall within the definition of a digital cable system. Section 76.640 therefore does not apply to the Dumont system.

III. CONTRARY TO CEA'S ASSERTION, THE IOWA PETITIONERS SEEK A TIME-LIMITED WAIVER OF THE INTEGRATION BAN

CEA asserts that the Iowa Petitioners seek "an apparently permanent waiver from compliance" with the FCC's common reliance rule." CEA claims that the Petitioners "admit, candidly, that . . . they propose to rely permanently (or at least indefinitely)" on non-compliant conditional access systems.[12] CEA further asserts that "from the face of the Petitions, it appears that Petitioners are asking . . . to be permanently excused from providing separate security modules."[13] No justification has been cited by the Petitioners, declares CEA, "that has ever been recognized by the Commission as supporting any such exemption.[14]

CEA's claims are disingenuous. No justification for a permanent waiver is cited because the Petitioners are not seeking such a waiver of the FCC's rules. The Waiver Requests unambiguously state that the Petitioners seek a waiver of the integration ban until December 31, 2009, as Petitioners expect compliant equipment will be available by that time. This fact may be readily ascertained "from the face of the Petitions": The requested December 31, 2009 end-date appears in both the opening and closing paragraphs of each Waiver Request." None of the remaining sections of the Waiver Requests, moreover, contain any language that would support CEA's assertions that the Iowa Petitioners seek a permanent or indefinite waiver of the Commission's rules.

The Commission should similarly disregard CEA's unsupported assertion that the Iowa Petitioners admit that they propose to rely permanently or indefinitely on non-compliant security

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[11] CEA Comments at 2.

[12] *Id.* at 2 (emphasis added).

[13] *Id.*

[14] *Id.*

[15] Dumont Petition at 1, 8; F & B Petition at 1, 8; Heart of Iowa Petition at 1,8; Kalona Petition at 1, 8; LISCO Petition at 1, 12; Mahaska Petition at 1, 8; Radcliffe Petition at I, 8; South Slope Petition at 1, 8; West Liberty Petition at 1, 8; Winnebago Petition at I, 8; ***Commercial Availability of Navigation Devices, CS*** Docket No. **97-80.**

solutions.[16] The Petitioners have made no such admission candidly or otherwise. To the contrary, the Petitioners have explained that a temporary waiver is necessary because despite their efforts, no vendor to date has committed to making compliant devices available prior to July 1, 2007. The Petitioners have also detailed the special circumstances they face in complying with the integration ban. They lack the market power necessary to influence vendors' timelines to develop security solutions that comply with the common reliance requirement. In addition, the Petitioners possess neither the resources nor expertise to develop a solution on their own. More important, in the absence of a waiver, the Petitioners will be forced (due to their all-digital transmissions) to deny rural subscribers access to not only advanced all-digital video and related services, but to the basic features of its video system, thereby depriving customers from primary sources of news, entertainment, and advanced services that are readily available to their urban counterparts.

The Iowa Petitioners have already committed to provide these services, as evidenced by their implementation of an all-digital network. Faced with no other alternatives available at this time in the marketplace to the conditional access solutions currently being used, and the prospect of being required to deny their rural customers access to video programming and advanced services — particularly in remote rural areas that do not have access to reliable over-the-air broadcast transmission — the Iowa Petitioners have no choice but to seek a waiver of the July 1, 2007 deadline for compliance with the rule.

[16] **CEA** Comments at 2

For these reasons, the Commission should disregard **CEA's** mischaracterization of the relief the Iowa Petitioners **seek.** The Petitioners seek a time-limited — notpermanent — waiver of Section 76.1204(a)(1) of the Commission's rules."

IV. THE FCC HAS RECOGNIZED THAT SMALL VIDEO OPERATORS FACE SPECIAL DIFFICULTIES IN COMPLYING WITH THE JULY 1,2007 DEADLINE

CEA opposes the Waiver Requests as proposing "egregious terms and assumptions [that] would completely frustrate" the Congressionally-mandated purpose of common reliance and competitive availability of navigation devices." CEA claims that the Iowa Petitioners have failed to show good cause for a waiver and, moreover, that grant of the Waiver Requests would deny rural customers choice in navigation devices." CEA would have the FCC believe that **the** Petitioners possess the power to achieve compliance, hut have instead elected instead to sit on their hands. The Iowa Petitioners, CEA explains, "like many larger cable operators, apparently paid no regard to the set-top box integration ban and other regulations pertaining to the competitive availability of navigation devices.[20]

CEA's comparison of the Petitioners to large MSOs reflects a "one size fits all" approach that is wholly inapplicable to rural video operators such as Petitioners. The Iowa Petitioners, unlike the large MSOs, have elected to serve America's sparsely populated and largely agricultural areas. CEA assumes that the Petitioners possess the kind of market power and financial resources enjoyed by large MSOs that would enable them to easily achieve compliance

[17] **As** explained in Section V of these reply comments, *infra*, the Iowa Petitioners are not subject to obligations set forth in Section 76.640 of the FCC's rules and therefore, contrary to CEA's assertion, need not and do not request a waiver (temporary or otherwise) of that rule.

[18] CEA Comments at 2-3.

[19] *Id.* at **3.**

[20] *Id.* at **5** (emphasis added).

by forcing equipment manufacturers to change their development or production schedules, or by developing compliant technology in-house. These assumptions have no basis whatsoever in fact.

The Iowa Petitioners are small MVPDs that provide video and advanced services to small, historically underserved rural communities in Iowa. Six of the ten Petitioners serve fewer than 550 households apiece, while three serve approximately 1200, 1700 and 2000 households, respectively." The tenth has not yet commenced providing service.[22] These numbers alone demonstrate the patent absurdity of CEA's comparison of the Iowa Petitioners to large MSOs

CEA avers in its comments that it would oppose waiver applications ''unless found to be truly *de minimis*."[23] Although CEA does not discuss the criteria that it would apply to make a finding that a waiver application was "truly *de minimis,*" the facts establish that with respect to the instant cases the number of customers that could be potentially affected by grant of the waivers is very small. These customers, moreover, are dispersed among communities located in sparsely populated and largely agricultural areas. Given these facts and circumstances, it is difficult to conceive how grant of the Waiver Requests could have anything other than a ***de minimis*** impact on the competitive availability of navigation devices. Accordingly, CEA's attempt to draw similarities between the Iowa Petitioners and large MSOs fails

CEA acknowledges in some measure that small video operators face unique circumstances in finding conditional access security solutions that comply with the FCC's common reliance requirement. Specifically, CEA states that "the very market conditions that led [to the integration ban] have left small operators at the mercy of the dictates of two dominant set-

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[21] Dumont Petition at 1; F & B Petition at 1; Heart of Iowa Petition at 1; Kalona Petition at 1; Mahaska Petition at 1; Radcliffe Petition at 1; South Slope Petition at 1; West Liberty Petition at 1; Winnebago Petition at 1

[22] LISCO Petition at 2.

[23] *Id.* at 3.

top box vendors."[24] CEA, however, sidesteps the logical conclusion that follows: Vendors have no incentive to make a priority of developing compliance solutions for small MVPDs. CEA instead warns that dire consequences will befall rural subscribers if the requested waivers *are* granted because grant of the waivers will purportedly "invite" rural regions across the nation to opt out of national portability and common reliance requirements.

The Iowa Petitioners can conceive of no valid reason why CEA would hold to this presupposition, given that waiver requests are not automatic, and require the FCC to determine whether the unique circumstances in each case warrant a rule waiver. The record of FCC actions taken on waiver petitions indisputably demonstrates that the Commission has evaluated each waiver request individually based on the facts and information provided by the requesting party.[25] The disastrous outcomes that CEA predicts therefore are no more than a convenient fiction — a "red herring" intended to divert the Commission's attention away from conducting an objective and reasoned analysis of the Waiver Requests.

To make its case, CEA must turn a blind eye not only to the facts but to the real-world impact that strict enforcement of the rule will have upon the Petitioners and the customers they serve. Unlike CEA, however, the Commission in the ***BendBroadband Order*** recognized the special difficulties that small video operators face in complying with the July 1,2007 deadline

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[24] *Id.* at 7.

[25] *See Bend Cable Communications, LLC d/b/a BendBroadband Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 22 FCC Rcd 209 (2007) *("BendBroadband Order"); Cablevision Systems Corporation's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 22 FCC Rcd 220 (2007); *Comcast Corporation Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 22 FCC Rcd 228 (2007); *Charter Communications, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, CSR-7049-Z, DA-07-2008,2007 FCC LEXIS 3637 (rel. May 7,2007) *("Charter Order"); Millennium Telcom, LLC d/b/a OneSource Communications Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, CSR-7129-2, DA-07-2009, 2007 FCC LEXIS 3638 (rel. May 7,2007); and *GCI Cable, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, CSR-7130-Z, DA-07-2010, 2007 FCC LEXIS 3639 (rel. May 7, 2007).

for separate security.[26] In granting the petitioner's waiver request, the Commission expressed understanding of those difficulties "particularly since manufacturers may prioritize orders from the largest cable operators."[27]

The Iowa Petitioners face similar difficulties. They serve a handful of communities situated among sparsely populated and largely agricultural areas — areas that are typically avoided by large MSOs due to the high cost of building or rebuilding plant and low market potential.[28] None possesses the market power or resources to influence their vendors' timetables for developing conditional access solutions that comply with the Commission's integration ban. Under these circumstances, the Iowa Petitioners can do no more than urge their vendors (as they have) to commence developing conditional access solutions that comply with this requirement.[29] Absent a waiver, the Petitioners would not be able to offer their subscribers the use of set-top boxes necessary to access even the basic features of the video system due to its all-digital transmissions. Subscribers would therefore deprived from a primary source of news, entertainment, and advanced services that are readily available to their urban counterparts, a result that would be plainly inequitable and, in these cases, unnecessary.

Strict enforcement of the rule, moreover, would in effect "punish" the Iowa Petitioners for transitioning to an all-digital network, while allowing cable operators that have not made a comparable commitment to upgrade to new and more advanced technologies to continue to provide basic legacy video services. Such an outcome would frustrate the intent of Congress to

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[26] *BendBroadband Order*, 22 FCC Rcd at 212.

[27] *Id.*

[28] Plant upgrades, for example, from copper/coaxial cable to fiber-to-the-home, are necessary to provide additional high-quality and innovative features, such as high definition video programming and video-on-demand, and broadband Internet services. The costs of upgrading plant are substantial and, for small rural video operators, they constitute an exceptionally heavy burden.

[29] Despite their diligence, the Iowa Petitioners have not succeeded in obtaining confirmation from their middleware providers that their conditional access implementations comply with the integration ban.

promote advanced services to all Americans, particularly when Congress also directed the Commission to "avoid actions which would have the effect of freezing or chilling the development of new technologies and services."[30] In the ***BendBroadband Order,*** the Commission recognized that the ability to migrate to an all-digital network would produce "clear, non-speculative public interest benefits, particularly when considered in the context of the Commission's goal of promoting the broadcast television digital transition."[31] Additionally, in the ***Charter Order,*** the Commission specifically acknowledging the financial impact upon a cable operator serving a predominantly rural customer base.[32]

Here, the Iowa Petitioners have not merely committed to, but have delivered, an all-digital network to serve their rural customer bases. As the Commission is well aware, rural subscribers already have few, if any, choices for video programming and advanced services, and they may be located too distant from terrestrial television stations to receive reliable and good quality over-the-air transmissions. A waiver therefore is necessary to permit subscribers to continue to enjoy the benefits that Petitioner's advanced all-digital video service offers, and to allow Petitioner to continue to expand its service to subscribers that would not otherwise have access to high-quality video programming and services in rural areas.

V. THE FCC PERMITS CABLE O ERATORS TO USE SECURITY SOLUTIONS THER THAN CABLECARDS O COMPLY WITH THE INTEGRATION BAN

CEA claims that grant of the Waiver Requests would be "permanent approval of abandonment of the CableCARD" and replacement by "any number" of security systems that do not provide for a nationally standard security interface.[33] CEA appears to be advocating

[30] Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. 104-230, 104th Cong., 2d Sess. at 181 (1996).

[31] ***BendBroadband Order,*** 22 FCC Rcd at 217.

[32] ***Charter Order, 2007*** FCC LEXIS *23.

[33] CEA Comments at 7.

CableCARDs as the only viable solution for compliance with the FCC's integration ban. CEA's concern that a multitude of security standards will supplant the CableCARD standard is misplaced. CableCARDs are only one method by which cable operators can comply with the FCC's rules, and other viable solutions are and will be available to permit operators to comply with the FCC's rules.

The Commission has already recognized that video operators may comply with the integration ban by employing security solutions other than CableCARDs, such as downloadable conditional access solutions.[34] Indeed, the Commission recently reiterated that downloadable security "comports with the rule's ban on the inclusion of conditional access and other functions in a 'single integrated device' because, by definition, the conditional access functionality of a device with downloadable security is not activated until it is downloaded to the box by the cable operator."[35] The Commission should therefore disregard CEA's assertion that grant of the Waiver Requests will lead to the abandonment of CableCARDs as a security solution.

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[34] *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices,* Second Report and Order, 20 FCC Rcd 6974 (2005) *("Second Report and Order").*

[35] *Commission Reiterates that Downloadable Security Technology Satisfies the Commission's Rules on Set-Top Boxes and Notes Beyond Broadband Technology's Development of Downloadable Security Solution,* CS Docket No. 97-80, Public Notice, **DA** 07-51 (rel. Jan. 10, 2007). While the Widevine solution used by some of the Iowa Petitioners is a downloadable solution, despite diligent requests by the Iowa Petitioners, their middleware providers have not been able to confirm that the Widevine solution complies with the FCC's integration ban.

VI. **CONCLUSION**

WHEREFORE, for the foregoing reasons, the Iowa Petitioners submit that the arguments of the Consumer Electronics Association, which rely upon both misstatements of fact and law and unfounded assumptions, should be rejected by the Commission as inapt under the facts and circumstances as set forth in the Waiver Requests and in these Reply Comments.

Respectfully submitted,

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Counsel to the Iowa Petitioners

Dated: May 14,2007

CERTIFICATE OF SERVICE

I, Monica Gibson-Moore, a legal administrative assistant in the law firm of Venable LLP, do hereby certify that on this 14'" day of May, 2007, I caused a copy of the foregoing Reply Comments of the Iowa Petitioners on the Comments Filed by the Consumer Electronics Association to be served by U.S. Mail, on the following:

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