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

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Intercarrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68
	)	
IP-Enabled Services	)	WC Docket No. 04-36

COMMENTS OF iBASIS, INC.

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IP-Enabled Services	)	WC Docket No. 04-36

COMMENTS OF iBASIS, INC.

Pursuant to the Public Notice issued by the Federal Communications Commission ("Commission"),[1/] iBasis, Inc. ("iBasis") hereby submits the following initial comments in the above-captioned proceeding. iBasis supports the efforts of the Commission to reform intercarrier compensation. The current system of widely disparate charges for the same network functions imposes unnecessary costs on the industry and on consumers. iBasis's comments are

[1/] *Comment Dates Established for Comprehensive Intercarrier Compensation and Universal Service Fund Reform Further Notice of Proposed Rulemaking*, Public Notice, DA 08-2486 (rel. Nov. 12, 2008) (setting the initial comment deadline for Nov. 26, 2008 and reply comment deadline for Dec. 3, 2008).

limited to three discrete, but important issues. First, iBasis supports the elimination of originating access charges and respectfully urges that the Commission apply the same transition plan that it ultimately adopts for terminating access charges. Second, iBasis respectfully urges the Commission to clarify that locally dialed prepaid calling card traffic falls within the scope of 251(b)(5). Last, iBasis also supports the Commission's efforts to reform the Universal Service program, including revising the current revenue-based contribution mechanism. Certain of the proposals however, suggest maintaining revenue-based contributions for business services on an interim basis, and classify prepaid calling cards as a business service. iBasis respectfully suggests that if the Commission adopts such an approach, it should at a minimum, base contributions on the actual revenue collected by the prepaid carrier - not the face value of the prepaid calling card.

INTRODUCTION

iBasis' primary business is providing wholesale international call termination. The company also offers branded and private-label prepaid calling cards that provide consumers in the U.S. reliable, high quality service to more than 100 countries at competitive rates. Like its wholesale business, the company's prepaid calling card business leverages its global voice infrastructure, which includes substantial voice over Internet Protocol ("VoIP") facilities, and operates with a commitment to the highest standards of business conduct in dealing with distributors and consumers.

I. THE PHASE OUT OF ORIGINATING ACCESS CHARGES SHOULD MIRROR THE TREATMENT OF TERMINATING ACCESS CHARGES

In the *Order on Remand*,[2/] the Commission asked for comment on three separate proposals found in Appendices A, B, and C concerning intercarrier compensation reform and Universal Service contribution reform.[3/] With respect to terminating access charges, the Commission seeks comment on the adoption of a three-phase, ten-year transition plan designed to reduce termination access rates in a manner that would not adversely affect customers or carriers.[4/] Under the first phase, intrastate termination access rates would be reduced to the levels of interstate rates within two years. In the second stage, carriers would "reduce their rates to an interim uniform termination rate set by the state . . . [d]uring stage three, rates carriers charge at the end of stage two . . . will be gradually reduced to the rates that will apply at the end of the transition."[5/]

The proposals correctly conclude that retaining originating access charges in light of the Commission's determination to place all traffic within the ambit of Section 251(b)(5) would be inconsistent with the statutory scheme contemplated by that provision and the Commission's regulations implementing that scheme.[6/] Certainly for iBasis, originating access charges are as burdensome as terminating charges, and are as susceptible to arbitrage and abuse by local

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[2/] *Order on Remand and Report and Order and Further Notice of Proposed Rulemaking*, CC Docket Nos. 96-45, 96-98, 99-68, 99-200, 01-92, WC Docket Nos. 03-109, 04-36, 05-337, and 06-122, FCC 08-262 (rel. Nov. 5, 2008) ("*Order on Remand*").

[3/] *See* "Chairman's Draft Proposal," *High-Cost Universal Service Support*, WC Docket Nos. 05-337, et al. ("*Appendix A Proposal*"); *see also* "Narrow Universal Service Reform Proposal," *High-Cost Universal Service Support*, WC Docket Nos. 05-337, et al. ("*Appendix B Proposal*"); and "Alternative Proposal," *High-Cost Universal Service Support*, WC Docket Nos. 05-337, et al. ("*Appendix C Proposal*").

[4/] *Appendix A Proposal* ¶¶ 158, 190; *Appendix C Proposal* ¶ 187.

[5/] *Appendix A Proposal* ¶ 192; *Appendix C Proposal* ¶ 187.

[6/] *Appendix A Proposal* ¶ 229; *Appendix C Proposal* ¶ 224. The FCC's reciprocal compensation rules bar a carrier from assessing charges for traffic that originates on its network. 47 C.F.R. § 51.703(b).

carriers. iBasis thus supports eliminating all charges for originating traffic at the conclusion of the transition period set for terminating access and capping originating access charges at current levels in the interim. iBasis responds to the Commission's request for comment on the appropriate transition plan for eliminating originating access charges.[7/]

iBasis suggests that the transition for originating access mirror that for terminating access. Although the Commission's proposals suggest that there may be issues unique to originating access that would warrant different treatment, none are identified.[8/] Moreover, the Commission cites to nothing in the record to justify the disparate treatment of originating access. There is, in fact, no reasonable basis for placing originating access on a different transition track than terminating access. This is particularly true for origination of toll-free, 8YY calls. The FCC treats origination of 8YY calls like a termination service and applies the same rates as terminating access.[9/]

In previous orders, the FCC has refused to apply different transition rules for terminating and originating access. The *CLEC Access Charge Reform* order, for example, imposed new benchmarks on both originating and terminating access and applied the same transition period to both.[10/] Similarly, a number of states have already reformed intrastate access charges, either by lowering them to interstate levels and/or requiring competitive carriers to charge no more than

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7/ *Appendix A Proposal* ¶ 346; *Appendix C Proposal* ¶ 224.

8/ *Appendix A Proposal* ¶ 229; *Appendix C Proposal* ¶ 224.

9/ *See, e.g.*, *Access Charge Reform*, 14 FCC Rcd 14221, ¶ 182 (1999) (noting that the FCC treats ILEC originating "open end" minutes, such as originating access for 800 service, as terminating minutes for access charge purposes).

10/ *Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, 16 FCC Rcd 9923, ¶ 56 (2001) ("We will apply the benchmark for both originating and terminating access charges. That is, it will apply to tariffs for both categories of service, including toll-free, 8YY traffic, and will decline toward the rate of the competing ILEC for each category of service.").

the incumbent LECs against which they compete.[11/] To the extent these states have imposed some transition period, they have placed originating and terminating access on the same tracks.[12/] There is sound reason for doing the same here. Originating access services utilize the same network components as terminating access services and carriers often charge the same rates for the use of those components. Originating access services thus impose the same inefficiencies as

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[11/] *See, e.g.*, Texas: Case No. 02-05-17, *DPUC Investigation of Intrastate Carrier Access Charges* (D.P.U.C. Feb. 18, 2004), Project No. 33060, *Rulemaking to Amend Substantive Rule 26.223, Prohibition of Excessive COA/SPCOA Usage Sensitive Intrastate Switched Access Rates*, Order (Tx. P.U.C. May 24, 2007); Ohio: Case No. 06-1344-TP-ORD, *Establishment of Carrier-to-Carrier Rules*, at 55 (P.U.C.O. Aug. 22, 2007) (adopting new rule 4901:1-7-14, which would require "a facilities-based CLEC, an ILEC's affiliate holding a CLEC certification, or an ILEC operating outside its ILEC service area" to "cap their rates, on a rate element basis, at the current rates of the ILEC providing service in the CLEC's service area, for the termination and origination of intrastate switched access traffic"); Louisiana: General Order No. U-17949-TT, Preamble at 12 (May 3, 1996) (mandating that a CLEC must charge switched access rates that do not exceed the intrastate switched access rates of the competing ILEC in each of the CLEC's certificated areas); Iowa: Docket Nos. TF-07-125, TF-07-139, *Iowa Telecommunications Association*, Final Order (May 30, 2008), *see also* Docket No. RU-03-11, *In Re: Intrastate Access Service Charge*s, Opinion (Mar. 18, 2004) (requiring CLECs to concur in the ITA access tariff, or alternatively, to file a separate access rate tariff that could be subject to review to ensure that the rates are just and reasonable); Missouri: Case No. TO-99-596, *Access Rates to be Charged by Competitive Local Exchange Telecommunications Companies in the State of Missouri*, Report and Order, at 20 (Mo. P.S.C. June 1, 2000) (capping CLEC access rates).

[12/] As examples, the California Public Utilities Commission ("CPUC") adopted a two-step series of limitations on the intrastate access charges, both originating and terminating, charged by CLECs. First, the CPUC limited charges to $ 0.025 per minute, effective April 1, 2008. Second, the CPUC mandated that access charges may not exceed the higher of comparable charges by AT&T or Verizon, plus 10%, effective January 1, 2009. *See* R. 03-08-018, *Order Instituting Rulemaking to Review Policies Concerning Intrastate Carrier Access Charges*, Decision No. 07-12-020 (C.P.U.C. Dec. 6, 2007), petition for rehearing denied, R. 03-08-018, *Order Instituting Rulemaking to Review Policies Concerning Intrastate Carrier Access Charges,* Order Denying Rehearing of Decision, Decision No. 08-02-037 (Feb. 28, 2008). The Virginia Corporation Commission adopted a policy that first implemented an interim state benchmark for all intrastate switched access charges at $.029 per minute, and upon the expiration of the interim period, prohibited CLEC intrastate access rates from exceeding the higher of the CLEC's interstate switched access rates or the aggregate intrastate rate of the ILEC providing service in the same area. *See* Case No. PUC-2007-00033, *Amendment of Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers*, Final Order, Attachment A, at 7 (Sept. 27, 2007).

do above-cost terminating access rates and therefore should be treated in the same manner as terminating access.[13/]

Applying the same transition as proposed for terminating access, intrastate originating access charges would be reduced to interstate levels within two years. Thereafter, originating access charges would be subject to the same state-set reciprocal compensation rates applicable to terminating access. At the end of the ten-year transition, however, originating access charges would be eliminated altogether. Of course, should the Commission ultimately adopt a shorter transition period as some have suggested,[14/] and which iBasis would also support, the transition time for originating access should be similarly shortened.

II. LOCALLY DIALED PREPAID CALLING CARD CALLS ARE SUBJECT TO 251(B)(5)

iBasis supports the comments of STi Prepaid, LLC ("STi") seeking prompt resolution of one specific originating access controversy concerning certain types of calls made with prepaid calling cards.[15/] As noted by STi, prepaid calling card providers sometimes enable their customers to reach the calling card platform by dialing a local number that has been provided by a competitive local exchange carrier ("CLEC'). Local exchange carriers ("LECs") that deliver these calls to the CLEC (which in turn connects the call to the platform, often using DID trunks) claim that they are owed originating access charges because the calls may ultimately be carried

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13/ *See, e.g.,* Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Anna M. Gomez, Vice President, Government Affairs, Sprint Nextel Corp., CC Docket Nos. 01-92, et al., at 7 (filed Oct. 1, 2008).

14/ *See Appendix A Proposal* ¶ 192 n.500 (noting that a "number of parties argue for a shorter transition period than provided here" including AT&T, NCTA, and CTIA - The Wireless Association).

15/ Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Eric J. Branfman, Counsel to STi Prepaid, LLC, CC Docket No. 01-92, WC Docket No. 05-68 (filed Oct. 27, 2008) ("STi Comments").

outside of the local exchange. STi and others argue that the calls are subject to reciprocal compensation under section 251(b).[16/]

iBasis agrees that the FCC should take the opportunity to resolve the issue of appropriate charges for locally dialed prepaid calls in this proceeding. Doing so will resolve a contentious issue that is threatening to spawn ever more litigation.[17/] Failure to act will undermine the FCC's effort to establish uniform rates.

The question of whether such calls should be subject access charges or section 251(b)(5) has now been resolved by the FCC's *Order on Remand*. The Commission there confirmed that section 251(b)(5) is not limited to local traffic but encompasses "telecommunications" generally, and specifically rejected arguments that section 251(b)(5) excludes interexchange traffic.[18/] The FCC concluded that dial up calls to ISPs are subject to 251(b)(5).[19/]

The Commission should reach the same result for locally dialed calls that are directed to a prepaid calling card provider's platform. Such calls obviously involve "telecommunications," and the functions provided by the CLEC constitute "transport and termination."[20/] These calls originate on the network of the local exchange carrier, typically an incumbent LEC, which delivers the call to the CLEC associated with the number that has been dialed. The CLEC accepts the traffic at its point of interconnection with the LEC and transports and terminates the

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16/ The issue is similar to a pending petition for reconsideration filed more than two years ago by Arizona Dialtone, Inc. requesting clarification of which entity, the prepaid calling card provider or the CLEC, should be responsible for originating access when prepaid calling card platforms are reached using local numbers. *See Arizona Dialtone, Inc. Petition for Reconsideration*, WC Docket 05-68 (filed August 31, 2006). In response, carriers argued that the issues raised by Arizona Dialtone should be resolved as part of the FCC's comprehensive reform of intercarrier compensation. *See, e.,g.*, Comments of Level 3 Communications, WC Docket 05-68, at 6 (filed October 12, 2006).

17/ *See* STi Comments at 1 (noting threats to file suit).

18/ *Order on Remand* ¶¶ 7-11.

19/ *Order on Remand* ¶¶ 7, 15.

20/ 47 USC § 252(b)(5).

call to the prepaid calling card provider's point of presence ("POP") or platform. Delivering the call to the prepaid provider's POP constitutes termination just as delivering a locally dialed called to an ISP constitutes termination.[21/] That further communications may occur once the call is delivered to the prepaid calling card providers' platform, is no longer relevant for 251(b)(5) purposes, just as it is no longer relevant that further communications take place after a dial-up Internet call reaches an ISP's modem bank. Under the Commission's *Order on Remand*, the jurisdictional end points are not relevant for 251(b)(5) purposes. Nor does it matter that the call ultimately may be carried on a third-party interexchange carrier's network.[22/]

The exclusion from 251(b)(5) of access services predating the 1996 Act, as set forth in section 251(g), does not require a different result.[23/] The delivery of traffic by an ILEC to a CLEC for termination to a prepaid calling card platform is not encompassed by section 251(g). As the D.C. Circuit recognized in *Worldcom v. FCC*, there were no pre-Act obligations governing interconnection services provided between local carriers:

> Indeed, the Commission does not even point to any pre-Act, federally created obligation for LECs to interconnect to each other for ISP-bound calls. And even if this hurdle were overcome, there would remain the fact that §251(g) speaks only of services provided "to interexchange carriers and information service providers"; LECs' services to other LECs, even if en route to an ISP, are not "to" either an IXC or to an ISP.[24/]

21/ *Order on Remand* ¶ 13.

22/ *Order on Remand* ¶¶ 11-12.

23/ *Order on Remand* ¶ 16 ("traffic encompassed by Section 251(g) is excluded from section 251(b)(5) except to the extent that the Commission acts to bring that traffic within its scope.").

24/ *Worldcom v. FCC*, 288 F.3d 429, 433-34 (D.C. Cir. 2002).

Similarly, LECs' services to other LECs for the purposed of routing a call to a prepaid calling card platform does not constitute service to an interexchange carrier and is thus not encompassed with section 251(g).

Even if this traffic is encompassed within 251(g), the Commission may act to bring the traffic within the scope of 251(b)(5).[25/] If that step is deemed necessary, the Commission should take it now. Doing so would provide certainty and uniformity to the industry, placing all prepaid calling card providers on equal footing, as well as resolving on-going disputes between incumbent LECs and CLECs over the proper treatment of this traffic.

The decision to place locally dialed prepaid calling card traffic within the scope of 251(b)(5) should be implemented immediately. There is no need for a transition period before these calls become subject to the existing state reciprocal compensation rates. As this is mechanism by which much of this traffic is exchanged today,[26/] incumbent carriers will not suffer revenue losses. Once placed within the ambit of 251(b)(5), this traffic should be placed on the same transition track as other terminating access services.

III. THE UNIVERSAL SERVICE CONTRIBUTION METHODOLOGY SHOULD NOT BASE REVENUE ON THE RETAIL VALUE OF CALLING CARDS

All of the draft proposals would alter the current revenue-based contribution mechanism used to fund Universal Service. They propose to adopt a number-based approach for residential services and suggest the use of a connections-based mechanism for business services. In the interim, the Chairman's Draft Proposal would continue to require business services to base their contributions on revenue. Of particular concern to iBasis is the proposal's suggestion that

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25/ *Order on Remand* ¶ 16.

26/ *See* STi comments at 1.

prepaid calling card services are "business services."[27/] The result would be that prepaid calling card providers, like iBasis, would continue to make contributions based on their interstate revenue pending the final adoption of a connections-based system.

If the Commission ultimately decides to maintain the revenue-based approach for some interim period, iBasis urges the Commission to correct at this time the current unfair and discriminatory method by which prepaid calling card revenues are determined. Currently, the Commission calculates prepaid calling card revenue subject to contribution based on the retail value of the calling card. As the Commission has been previously informed, however, prepaid calling card providers routinely sell their cards at discounted rates.[28/] For example, under current business practices, a $15 retail value card may only afford iBasis $12 in actual revenue. Nevertheless, the Commission requires prepaid calling card providers to contribute to Universal Service based on the face-value of the card *not* on the revenue that they actually receive.[29/] Accordingly, iBasis proposes that only actual revenue should be counted for contribution purposes until the Commission adopts the new connections-based contribution mechanism. This approach would also be consistent with the Commission's proposal that prepaid calling services

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27/ *Appendix A Proposal* ¶ 133 n.329.

28/ *See, e.g.*, *IDT Corporation and IDT Telecom· Request for Review of Decision of the Universal Service Administrator*, WC Docket 06-122, at 3 (filed June 30, 2008) ("Typically, the card is sold by IDT to a distributor for a wholesale price (i.e., a price less than that listed on the face of the card). That distributor, in turn, may sell the card to one or more "sub-distributors" before ultimately selling the cards to a retail store, typically an independent ethnic market, but also to large drug stores and supermarkets. These stores ultimately set the price of the cards (which are often, but not always, at the stated face value of the card) and sell the cards to the public."); *Reply Comments of Sprint Nextel Corporation*, WC Docket No. 05-68, at 7 n.21 (filed Oct. 23, 2006) ("Most prepaid calling cards are sold through retailers, who sell the cards at face value but purchase them at discounts of up to 50%.").

29/ *Universal Service Contribution Methodology*, 21 FCC Rcd 7518, 7603 (2006) (the 499A form "line should include revenues from prepaid calling cards provided either to customers or to retail establishments. Gross billed revenues should represent the amounts actually paid by customers and not the amounts paid by distributors or retailers, and should not be reduced or adjusted for discounts provided to distributors or retail establishments. All prepaid card revenues are classified as end-user revenues.").

be considered “business services,” because it would focus on the amounts received from the distributors (the entities identified as the “business customers” in the Commission’s rationale), rather than on the face value amounts paid by the residential end users who purchase the cards.

As the Commission has recognized, the “revenue-based contribution methodology is no longer sustainable in today’s telecommunications marketplace.”[30/] The current funding mechanism has resulted in prepaid calling card providers, unlike other carriers, paying on revenue they never collect.[31/] The result is that prepaid calling card providers pay a higher effective rate than other carriers.[32/]

Continuing to base prepaid calling card contributions on the face value of cards not only imposes an unfair and disproportionate burden on prepaid calling card providers, it increases the costs for consumers that can least afford it. Prepaid calling cards are most often used by immigrants and lower-income individuals.[33/] Thus, the current higher assessment of Universal

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30/ *Appendix A Proposal* ¶ 131; *Appendix B Proposal* ¶ 79; *Appendix C Proposal* ¶ 127.

31/ *See* Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Tamar E. Finn, Douglas D. Orvis, Counsel to IDT Telecom, Inc., CC Docket Nos. 96-45, et al., at 3 (filed Feb. 27, 2006) (“Only prepaid calling card providers pay USF on revenue they never collect. Other carriers contribute USF only on collected revenue, by deducting revenue which is not actually collected in Line 423 of the Form 499-A.”).

32/ *Id*. (“For example, on a $10 face value card, the provider might sell the card at only 70% of the face value to the card distributor. Thus, if the provider contributes on the full face value but collects only 70% of the value, the effective USF rate is over 15%.”).

33/ *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, 20 FCC Rcd 4826, ¶¶ 34-35 (2005) (noting that many parties agree that calling cards are used by “low-income consumers and consumers in rural communities and inner-city neighborhoods” and stating that “[w]e appreciate that prepaid calling cards can provide a low-cost calling option for all types of consumers . . . .”); *see also* Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Jean Kidoo, Counsel to IDT Telecom, CC Docket No. 96-45, et al., at 2 (filed March 29, 2006) (“revenue-based assessments have a disproportionate and regressive impact on low income consumers who rely on prepaid telecommunications products, including prepaid wireless, and that these consumers as a class would be less burdened by a numbers-based assessment. Low income and ethnic consumers are the most common users of IDT's services, as IDT’s market research indicates that 25 percent of calling card users have annual household income under $25,000, and 50 percent of all calling card users report household income under $50,000 per year.”).

Service contributions is potentially harming the customers that can least afford to make long-distance phone calls. The Commission has certainly recognized that Universal Service contributions often lead to higher retail rates for calling cards, and thus determined that any revenues derived from calling cards provided to the military should be exempt from Universal Service assessments.[34/]

The draft proposals recognize this problem in the context of prepaid wireless plans and propose special rules to minimize the burdens of USF contributions of customers of those plans. They cite arguments that prepaid wireless "customers are typically low-income or low-volume customers and, as such, should be subject to a lesser assessment."[35/] The drafts credit these arguments, noting that "just as with Lifeline customers, many prepaid wireless end users are low income customers."[36/] Just as the draft proposals would accommodate the special needs of prepaid wireless customers, the Commission should recognize the similar harm caused by imposing excessive contribution requirements on prepaid calling card providers.

Accordingly, the Commission should clarify that Universal Service contributions by prepaid calling card providers should be based on actual revenue only, which in turn, would allow prepaid calling card providers to price their cards competitively for the benefit of consumers.

34/ *Regulation of Prepaid Calling Card Services*, 21 FCC Rcd 7290, ¶¶ 23-25 (2006).

35/ *Appendix A Proposal* ¶ 135; *Appendix B Proposal* ¶ 83; *Appendix C Proposal* ¶ 131.

36/ *Appendix A Proposal* ¶ 136; *Appendix B Proposal* ¶ 84; *Appendix C Proposal* ¶ 132.

CONCLUSION

For the foregoing reasons, iBasis urges the Commission to adopt the same transition plan for originating access that it adopts for terminating access, and to modify the contribution methodology for prepaid calling cards for the interim period for which those providers remain subject revenue-based contributions.

Respectfully submitted,

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