

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

_____)	
In the Matter of the Joint Application of)	
)	
IXC Holdings, Inc.,)	
Assignor,)	WC Docket No. 11-85
)	
and)	File No. ITC-ASG-20110509-00130
)	
TelePacific Managed Services)	
Assignee)	
)	
)	
For Grant of Authority Pursuant to)	
Section 214 of the Communications Act of 1934,)	
as amended, and Sections 63.04 and 63.24 of the)	
Commission's Rules to Complete an)	
Assignment of Assets of an Authorized)	
Domestic and International Section 214 Carrier)	
_____)	

**JOINT REPLY COMMENTS OF
TELEPACIFIC MANAGED SERVICES AND IXC HOLDINGS, INC.**

Dated June 9, 2011

SUMMARY

Straitshot's Comments in this proceeding are nothing more than a transparent attempt to hold the Application hostage to a dispute that is unrelated to the proposed transfer of assets and that is already properly before a court of competent jurisdiction. Straitshot has offered nothing more than empty and speculative allegations of anti-competitive behavior and customer mistreatment from a pre-existing dispute it initially filed over two years ago in the State of Washington against Telekenex, Inc. The Commission should follow its sensible precedent and reject Straitshot's attempt to import a commercial dispute and a pending complaint which have not been adjudicated into the Commission's transfer process.

Straitshot raises no issue concerning the fitness and qualifications of TMS to operate the IXCH business and offers no evidence that TMS has engaged or will engage in any anti-competitive behavior. Instead, Straitshot points to alleged past practices of anti-competitive behavior and customer mistreatment by Telekenex, Inc., which is not a party to the Transaction, without further explanation for how that has any relevance to the future business conduct of TMS. The Commission transfer process should not be disrupted because Straitshot has not and cannot raise any issues with the qualifications of TMS.

While the Commission has the duty to weigh the public interest benefits against the public interest harms of a proposed transaction, Straitshot has made no showing that the transfer of assets would in any way violate the Act or the Commission's rules or otherwise cause harm to existing competition or consumer protection. The alleged public interest "harms" concern a pre-existing dispute that Straitshot has with Telekenex, Inc. and is unrelated to the Transaction. Straitshot unconvincingly tries to substitute its own interest as a "public interest."

Finally, no conditions are warranted in connection with this Transaction. Although Straitshot requests a condition for TelePacific to assume full financial responsibility for paying it any and all judgments and other relief awarded as part of the Washington Complaint, such condition is specific to a pre-existing dispute and has no relevance to the Transaction. A condition is not merited to remedy pre-existing harm or for a speculative claim that an applicant will fail to comply with any legal or financial obligation in an underlying dispute after consummation of a transaction.

Applicants submit that the Commission has the information it needs to act on the Application and that no issue has been raised concerning competition or consumer protection or any other public interest concern due to the Transaction. They urge the Commission to expeditiously approve the Transaction pursuant to streamlined processing.

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**JOINT REPLY COMMENTS OF
TELEPACIFIC MANAGED SERVICES AND IXC HOLDINGS, INC.**

TelePacific Managed Services (“TMS”) and IXC Holdings, Inc. (“IXCH”) (together, the “Applicants”), pursuant to the Public Notice issued by the Federal Communications Commission (“Commission”),¹ hereby jointly reply to the comments filed by Straitshot RC, LLC and Straitshot Communications, Inc. (together, “Straitshot”) in the above-captioned proceedings.

In connection with an Asset Purchase Agreement (“Agreement”) dated as of April 28, 2011, Applicants filed an Application, pursuant to Section 214 of the Communications Act of

¹ See *Domestic Section 214 Application Filed for the Acquisition of Assets of IXC Holdings, Inc. by TelePacific Managed Services, Streamlined Pleading Cycle Established*, Public Notice, DA 11-927 (rel. May 19, 2011) (“Public Notice”).

1934, as amended (the “Act”) and Sections 63.04 and 63.24 of the Commission’s Rules, requesting Commission authority for TMS to acquire certain assets, including certain customer accounts, from IXCH (the “Transaction”).² Straitshot’s comments (“Straitshot Comments”) in this proceeding are nothing more than a transparent attempt to hold the Application hostage to a dispute that is unrelated to the proposed Transaction and that is already properly before a court of competent jurisdiction. The Commission is the wrong forum for that dispute.

The Commission should reject Straitshot’s request to deny the Application on the grounds that:

- The claims are unrelated to the Transaction since Straitshot seeks relief the Commission cannot (and should not) grant and that has been requested in a court case filed in the State of Washington,
- Straitshot does not (and cannot) raise any issues concerning TMS’ fitness to operate the IXCH business, and
- Straitshot fails to establish that the Transaction would be adverse to the public interest since no harm caused by the Applications to competition or customers has been demonstrated, and Applicants have shown public interest benefits, which outweigh any speculative harm to Straitshot.

The Commission should also reject Straitshot’s requested condition for TelePacific to assume full financial responsibility for paying any and all judgments and other relief awarded to Straitshot as part of the a pre-existing dispute pending before a court in the State of Washington. Such condition has no relevance to the Transaction and it only serves Straitshot’s private interest, not the public interest.

² See *IXC Holdings, Inc., Assignor, and TelePacific Managed Services, Assignee, for Grant of Authority Pursuant to Section 214 of the Communications Act of 1934, as amended, and Section 63.04 and 63.24 of the Commission’s Rules to Complete an Assignment of Assets of an Authorized Domestic and International Section 214 Carrier*, WC Docket No. 11-85 and File No. ITC-ASG-20010509-00130 (filed May 9, 2011) (“Application”).

Applicants submit that the Commission has the information it needs to act on the Application and that no issue has been raised concerning competition or consumer protection or any other public interest concern due to the Transaction. They urge the Commission to expeditiously approve the Transaction pursuant to streamlined processing.

I. STRAITSHOT’S CLAIMS ARE IRRELEVANT TO THE COMMISSION’S REVIEW OF THE APPLICATION

A. The Pending Dispute is Unrelated to the Transaction

Straitshot argues that Telekenex, Inc. and/or IXCH could potentially owe money to Straitshot in the future as a result of a complaint Straitshot initially filed over two years ago in the State of Washington (“Washington Complaint”) and that the Commission should not approve the Transaction, or approve it only on express conditions.³ As set forth below, that dispute is unrelated to the Transaction and is already properly before a court of competent jurisdiction.

The Commission consistently denies attempts by third parties to disrupt transactions by using the Commission’s transfer process as a “forum to address or influence various disputes with one or the other of the applicants that have little if any relationship to the transaction or to the policies and objectives of the Communications Act.”⁴ In rejecting attempts to import commercial disputes into the Commission’s transfer process, the Commission has reminded parties:

It is important to emphasize that the Commission’s review focuses on the potential for harms and benefits to the policies and objectives of the Communications Act that flow from the proposed transaction - i.e., harms and benefits that are “merger-specific.” The Commission recognizes and discourages the temptation and tendency for parties to use the license transfer review

³ Straitshot Comments at 1-2.

⁴ *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner, Inc., Transferee*, Memorandum Opinion and Order, 16 FCC Rcd 6547, 6550 (2001).

proceeding as a forum to address or influence various disputes with one or the other of the applicants that have little if any relationship to the transaction or to the policies and objectives of the Communications Act.⁵

In this case, the Commission should not permit Straitshot to sidetrack the Commission's transfer process to serve its purposes in the pending commercial dispute. Straitshot has sought resolution of its dispute in courts located in the State of Washington, and the dispute is now in a Federal court there. That is the proper venue for resolving any and all issues raised by Straitshot; the Commission is the wrong forum for that dispute. Indeed, since submitting its Comments, Straitshot filed with the Washington Court a motion requesting a temporary restraining order to enjoin the consummation of the Transaction. While Applicants believe this motion is misplaced, Straitshot's making such filing demonstrates that the Washington court is the proper venue for any issue or remedy concerning the allegations included in Straitshot's Comments.

Commission precedent also makes clear that pending complaints or issues which have not been adjudicated should not be a basis for denying a proposed transaction.⁶ The dispute set forth in the Washington Complaint remains pending and has not been adjudicated. The court's denial of a motion for summary judgment is not adjudication, despite Straitshot's conjecture,⁷ and should not have any bearing on the Commission's review of the Transaction. Straitshot must

⁵ *Id.*

⁶ *Application of General Electric Co.*, Memorandum Opinion and Order, 3 FCC Rcd 2803, 2810 (1988) ("It would be premature for us to deny the proposed transfer of control or impose conditions merely on the basis of pleadings raising issues that have not yet been adjudicated.") *See also, Joint Applications of Global Crossing Ltd. and Citizens Communications Company for Authority to Transfer Control of Corporations Holding Commission Licenses and Authorizations Pursuant to Sections 214 and 310(b) of the Communications Act and Parts 20, 22, 63, 78, 90 and 101 of the Commission's Rules*, Memorandum Opinion and Order, 16 FCC Rcd 8507, 8512 (dismissing objections for inter-carrier disputes already the subject of a state commission proceeding).

⁷ Straitshot Comments at 9.

resolve its claims in that adjudicatory proceeding and should not be allowed to exercise remedies in a Commission transfer proceeding or disrupt a business transaction before a determination has been made.

Applicants urge the Commission to follow its sensible precedent and dismiss Straitshot's Comments as unrelated to the Transaction. TMS' acquisition of IXCH assets will not impact Straitshot's pending dispute with Telekenex/IXCH. Indeed, contrary to Straitshot's suggestion that transferring IXCH's assets to TMS would eliminate its right to a remedy,⁸ the Transaction will necessarily benefit Straitshot. IXCH will receive the consideration that TMS has agreed to pay to acquire the given assets. In other words, IXCH will be in at least as good a position as it is now to pay any judgment that could theoretically be issued as part of the Washington Complaint. There will be no harm to Straitshot, and, in fact, it may be in a better position to collect a judgment (in the unlikely event one were to be issued) if the Transaction takes effect than it would be if, for example, the IXCH assets were sold pursuant to a judicial foreclosure sale. Also, Straitshot's insinuation that IXCH will fail to comply with any legal or financial obligations after consummation of the Transaction is speculative and unsupported by evidence. Accordingly, Straitshot should not be allowed to subvert the Commission transfer process by attempting to interject in this proceeding disputes unrelated to the Transaction.

B. Straitshot Fails to Raise Any Issues Concerning the Fitness of TMS to Provide Services

Despite the fact that TMS will be the entity providing services to customers as a result of the Transaction, Straitshot's objections to the Transaction are almost-entirely based on allegations related to Telekenex, Inc.⁹ Straitshot fails to raise any issues concerning the fitness

⁸ Straitshot Comments at 9-10.

⁹ Straitshot Comments at 8, 11-14.

and qualifications of TMS, and consequently, Straitshot's objections are irrelevant to the Commission's evaluation of the Transaction.

In evaluating assignment applications, the Commission does not re-evaluate the qualifications of the assignee "unless issues related to the basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing."¹⁰ Straitshot has not sufficiently raised issues related to TMS' qualifications. TMS has the managerial, technical and financial resources to ensure the IXCH customers receive service under the same rates, terms and conditions as they currently receive. U.S. TelePacific Corp. ("TelePacific") and TMS, a wholly-owned subsidiary of TelePacific, are operated by strong and experienced management teams. The TMS management will oversee the business after consummation, including the IXCH employees being retained. As described in the Application, TelePacific has acquired the stock in or assets of a number of other competitive carriers over the years, including Mpower Communications, Corp., Arrival Communications, Inc., O1 Communications, Inc., and PacWest Telecomm, Inc. In doing so, TelePacific has successfully retained the customer bases on a long-term basis. In addition, TelePacific and TMS have a much larger and more robust network than that of IXCH, which will benefit IXCH's current customers once they are served by TMS. Thus, Straitshot's objections do not justify a hearing to evaluate the qualifications of TMS.

Straitshot also fails to explain how alleged past practices of anti-competitive behavior and customer mistreatment by Telekenex, Inc., which is not a party to the Transaction, has any relevance to the future business conduct of TMS. As explained above, Straitshot's allegations of

¹⁰ *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18433, 18526 (2005) ("*Verizon-MCI Order*").

anti-competitive behavior against Telekenex, Inc. are already before a court of competent jurisdiction as a result of the Washington Complaint. Moreover, Straitshot's allegations of customer mistreatment concern "Telekenex, Inc." or "CF Communications, LLC d/b/a Telekenex, Inc." and occurred prior to IXCH acquiring the assets and customers of Telekenex, Inc. While Straitshot has sought to impute liability to IXCH for actions of Telekenex, Inc. and others, that would, if successful, be the result of a "legal fiction" and not evidence of anti-competitive actions by IXCH. Straitshot has not offered any evidence that TMS has engaged in or demonstrated any anti-competitive behavior. The Commission should therefore find that Straitshot's objections are irrelevant and do not warrant any of the relief requested.

C. Straitshot Fails to Establish the Transaction is Adverse to Public Interest

Opponents of proposed transactions have a high burden of proof to justify Commission intervention or rejection of a business transaction. The Commission must "weigh the potential public interest harms against the potential public interest benefits and to ensure that, on balance, the merger serves the public interest which, at a minimum requires that it does not interfere with the objectives of the Communications Act."¹¹ To assess the public interest aspects of a proposed transaction, the Commission considers four questions: (1) would the transaction result in a violation of the Act, (2) would the transaction result in a violation of Commission Rules, (3) would the transaction substantially frustrate or impair the Commission's implementation or enforcement of the Act or interfere with the objectives of that and other statutes, and (4) would

¹¹ *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corp., Transferor, to SBC Communications, Inc., Transferee*, Memorandum Opinion and Order, 13 FCC Rcd 21292, 21298-99 (1998).

the transaction promise to yield affirmative public interest benefits.¹² As explained below, no allegation has been made that the Transaction will result in any violation of the Act or the Commission's rules, and the benefits of the Transaction vastly outweigh any speculative harm to Straitshot that could possibly result from the Transaction.

1. Transaction Will Not Result in Violation of Act or Commission Rules

No argument has been made that the Transaction will result in a single specific violation of the Act or any Commission Rule or frustrate the Commission's implementation of the Act. Instead, Straitshot makes general "anticompetitive" claims based on alleged past business practices of Telekenex, Inc. It argues that allowing the Transaction, in effect, condones the alleged anti-competitive behavior of Telekenex, Inc, which is not a party to this Transaction. Any remedy for a violation of business practices by Telekenex, Inc. cannot and should not be decided by the Commission as part of this proceeding.

Straitshot also argues the public interest would be disserved by allowing the Transaction if alleged customer mistreatment by "Telekenex, Inc." and "CF Communications, LLC d/b/a Telekenex, Inc." is allowed to continue. However, TMS management will oversee the business after consummation, and TelePacific and TMS are operated by strong and experienced management teams that have developed a proven track record of serving customers. As described in the Application, TMS will provide IXCH customers with services under the same rates, terms and conditions as the services currently provided, pursuant to IXCH's customer contracts and service orders, so that the Transaction will be virtually transparent to customers in terms of the services received. Straitshot's unsubstantiated speculation that Transaction will

¹² *Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee*, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14737-38 (1993).

somehow enable TMS to mistreat customers and evade the requirements of the Act is without foundation and merit.

2. Alleged Non-Disclosure is Immaterial to Commission's Review

Straitshot alleges TMS and IXCH failed to disclose the pending Washington Complaint in a California advice letter, and then dramatically suggests, such non-disclosure should preclude the Commission from approving the Transaction. Such allegation does not raise any substantive issue material to the Commission's review. It is not the responsibility of the Commission to sit in review of documents filed in connection with the transfer of state-issued licenses. If any review is necessary, it falls within the jurisdiction of the California Public Utility Commission ("CPUC") where the advice letter was filed. Applicants submit that TelePacific has already responded to a similar claim filed with the CPUC and explained that the omission was not a deviation from the CPUC's rules and information relevant to TMS acquiring IXCH's assets and customers.

3. Public Interest Benefits Demonstrated and Outweigh Speculative Harms

The claim that Applicants failed to meet their public interest burden is clearly unfounded. Applicants explained in their Application that the Transaction will ensure that "IXCH customers enjoy continuity of high-quality telecommunications services" through the assignment of customers, together with the assignment of other assets required to serve those customers, to TMS.¹³ They described that TMS was recently formed as a wholly-owned subsidiary of TelePacific and is well qualified to provide services to IXCH's customers through its domestic interstate authority and the international authority held by TelePacific.¹⁴ Applicants also

¹³ Application at 5.

¹⁴ *Id.* at 3-4.

demonstrated that the Transaction would not cause customer confusion because the rates, terms and conditions of service will not change and notice would be provided to affected customers.¹⁵

Straitshot fails to disprove the public interest benefits of the Transaction or to demonstrate a basis for the Commission to take the extraordinary step of second-guessing the business judgment of the parties.¹⁶ For instance, the suggestion that the IXCH assets to be assigned to TMS may not be sufficient to ensure “uninterrupted” services is unsubstantiated since existing customers may complain or seek service from another provider if they have any problems today receiving service from IXCH. If TMS should find that the assets being acquired from IXCH need to be augmented in any way, it has access to the larger and more robust networks of its parent and other TelePacific affiliates. In addition, the suggestion that IXCH customers might not continue to receive high-quality services is without foundation and merit. As described herein, TelePacific has a proven track record of serving customers on a long-term basis following its acquisition of the stock in or assets of a number of other competitive carriers. Such experience is relevant to this Transaction despite Straitshot’s argument to contrary. Furthermore, Straitshot’s contention that there is not going to be any change in the business of the company because Applicants propose a virtually transparent Transaction in which employees of IXCH will become employees of TMS is inappropriate. Even if there were a valid ground for concern (which there is not), this argument wholly ignores the fact that upon consummation, TMS will provide services and will be responsible for making sure that such services are provided in compliance with all Commission regulations.

¹⁵ *Id.* at 4-5.

¹⁶ See e.g., *Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control*, Memorandum Opinion and Order, 25 FCC Rcd 5972, ¶19 (2010) (“*Frontier-Verizon Order*”) (noting that it is not the Commission’s role to substitute its business judgment for that of the applicants or the market”).

Clearly, the benefits associated with the Transaction vastly outweigh any speculative harm of which Straitshot complains. Straitshot's public interest "harms" concern a pre-existing dispute that it has with Telekenex, Inc. and is unrelated to the Transaction and the Commission's process.

II. NO JUSTIFICATION HAS BEEN PROVIDED FOR REMOVING THE APPLICATION FROM STREAMLINED PROCESSING

Straitshot requests that, at a minimum, the Application be removed from streamlined processing to investigate the issues raised in its Comments. However, Straitshot does not dispute that the Applicants have satisfied the prerequisites for streamlined processing set forth in Section 63.03(b)(2)(i) of the Commission's rules. Immediately following the Transaction, neither TMS and its affiliates nor IXCH and its affiliates will have a market share in the interstate, interexchange market of ten percent (10%) or more, TMS and its affiliates will provide competitive local exchange service only in areas served by a dominant local exchange carrier that is not a party to the transaction, and none of TMS, IXCH or their affiliates are dominant with respect to any service. The Application also satisfies the requirements for streamlined processing with respect to international authority because none of the exclusionary criteria in Section 63.12(c) of the Commission's rules apply.

Straitshot fails to raise any issues that justify removal of the Application from streamlined processing for an investigation. As detailed above, Straitshot offers no evidence of any conduct or attribute of TMS or IXCH which is anti-competitive or in any way cognizable in this Commission assignment proceeding. Rather, Straitshot inappropriately attempts to use the Commission's review to bootstrap a pre-existing dispute unrelated to the Transaction and to seek a condition that serves only Straitshot's private interest (not the public interest) and is beyond the

scope of this proceeding. The Commission must therefore reject Straitshot's request to remove the Application from streamlined processing for further investigation.

III. NO JUSTIFICATION HAS BEEN PROVIDED FOR ATTACHING A CONDITION TO APPROVAL

The Commission's public interest authority enables it "to impose and enforce conditions based upon our extensive regulatory and enforcement experience to ensure that the merger will, overall, serve the public interest."¹⁷ However, "the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms) and that are related to the Commission's responsibilities under the Communications Act and related statutes. Thus, we will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction."¹⁸ No conditions are warranted in connection with this Transaction.

Straitshot's requested condition for TelePacific to assume full financial responsibility for paying it any and all judgments and other relief awarded as part of the Washington Complaint is specific to a pre-existing dispute and has no relevance to the Transaction. The Commission has previously determined that a condition is not merited for a speculative claim that an applicant will fail to comply with any legal or financial obligation in an underlying dispute after consummation of the application of a transaction¹⁹ or to remedy pre-existing harms.²⁰ Yet,

¹⁷ *Verizon-MCI Order* at 18445. *See also, SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18303 (2005).

¹⁸ *Id.* *See also, Applications Granted for the Transfer of Control of the Licensees of TeleGuam Holdings, LLC to AP TeleGuam Holdings, Inc.*, Public Notice, DA 11-1005 (rel. June 6, 2011).

¹⁹ *See Domestic Section 214 Authorization Granted, Domestic Section 214 Application Filed for the Acquisition of Assets of Comtel Telecom Assets L.P. and Comtel*

Straitshot's request suggests a condition is needed because IXCH will fail to comply with any financial obligations that may be imposed in the pre-existing dispute after consummation of the Transaction. As explained above, the Transaction will necessarily benefit Straitshot because IXCH will receive consideration from TMS to acquire the given assets, and IXCH will be in at least as good a position as it is now to pay any judgment that could theoretically be issued as part of the Washington Complaint.

Also, Straitshot's requested condition seeks to serve only Straitshot's private interest - not the public interest - and is outside of the scope of this proceeding. One of the Commission's responsibilities in administering Section 214 of the Act is to protect the broader public interest, particularly by ensuring that a transaction will not diminish competition or lead to inferior service to consumers. The proposed condition would affect only Straitshot, which is pursuant a purely private interest - and a very speculative one at that - regarding what IXCH does with the consideration received from TMS. Straitshot failed to demonstrate any basis for the Commission to take the extraordinary step of adopting a condition that is unrelated to the *public interest* and the Commission's responsibilities under the Act and related statutes. Accordingly, the Commission should reject Straitshot's proposed condition to approve the Transaction.

Virginia LLC by Matrix Telecom, Inc. and Matrix Telecom of Virginia, Inc., Public Notice, DA 10-864 (rel. May 14, 2010).

²⁰ See *Frontier-Verizon Order* at n. 121.

IV. CONCLUSION

The Commission has consistently denied third-party attempts to frustrate business transactions by use of the Commission's process. Straitshot's attempt to disrupt this Transaction by using the Commission proceeding to influence a pending, unrelated dispute should be rejected by the Commission. Straitshot has not raised any public interest issue related to the Transaction, although it tries to substitute its own interest as public interest and create a "public interest" argument with empty and speculative allegations of anti-competitive behavior and customer mistreatment by an unrelated non-party to the Transaction. Further, Straitshot's proposed condition for approving the Transaction is unrelated to the proposed assignment and is beyond the scope of this proceeding. Applicants respectfully request that the Commission dismiss the comments filed in this proceeding and grant the Applicants' request for assignment authority.

Respectfully submitted,



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Dated: June 9, 2011

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Joint Reply Comments of TelePacific Managed Services and IXC Holdings, Inc. was sent via electronic mail on June 9, 2011 to:

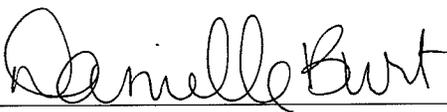
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