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1 P R O C E E D I N G S

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3 JUDGE MACE: Let's be on the record in the
4 case of AT&T Communications of the Pacific Northwest,
5 Inc., versus Verizon Northwest, Inc., Docket No.
6 UT-020406. This is a hearing to hear argument on
7 various motions to compel as well as to discuss
8 questions related to protective orders.

9 My name is Theo Mace. I'm an administrative
10 law judge working for the Washington Utilities and
11 Transportation Commission. I am holding the hearing
12 today and am sitting in for Administrative Law Judge
13 Marjorie Schaer, who has been assigned as the presiding
14 judge in this case. Let me indicate, today is January
15 28th, and we are meeting here at the offices of the
16 Washington Utilities and Transportation Commission in
17 Olympia, Washington.

18 I would like to have the oral appearances of
19 counsel now for the record. The short form is fine,
20 except for you, Ms. Friesen. I would appreciate it if
21 you would enter the long form of an appearance. Let's
22 begin with AT&T then.

23 MS. FRIESEN: Thank you, Judge Mace. This is
24 Letty Friesen, and it's spelled L-e-t-t-y, Friesen,
25 F-r-i-e-s-e-n. I'm appearing today on behalf of AT&T

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1 Communications of the Pacific Northwest, Inc.

2 JUDGE MACE: I need to have your full
3 address, your phone number, your fax number, and your
4 e-mail, if you would be so kind.

5 MS. FRIESEN: I am located at 1875 Lawrence
6 Street in Denver, Colorado. My suite number is 1500.
7 My zip code is 80202. My telephone number is (303)
8 298-6475, and my e-mail address is lsfriesen@att.com.

9 JUDGE MACE: Ms. Endejan?

10 MS. ENDEJAN: Judy Endejan from Graham and
11 Dunn appearing for Verizon Northwest, Inc.

12 JUDGE MACE: Mr. Cromwell?

13 MR. CROMWELL: Robert Cromwell on behalf of
14 public counsel.

15 MS. SMITH: Shannon Smith for Commission
16 staff.

17 JUDGE MACE: Thank you. Where to begin. We
18 have had some discussions off the record amongst the
19 parties today about the matters that are pending before
20 us. I want to address first the question of the AT&T
21 motion to compel discovery of Verizon and the corollary
22 question of the terms of a protective order. I
23 understand that Verizon has responded to these
24 discovery requests and that Verizon is satisfied with
25 using the ordinary protective order that the Commission

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1 uses to protect confidential information. Am I correct
2 in that, Ms. Endejan?

3 MS. ENDEJAN: Yes, Your Honor.

4 JUDGE MACE: Ms. Friesen, is it correct that
5 Verizon has responded and that the issue of your motion
6 to compel discovery of Verizon is resolved?

7 MS. FRIESEN: That is correct, Your Honor,
8 and AT&T would withdraw that motion.

9 JUDGE MACE: Thank you. Then I think we have
10 the question of Verizon's motion to compel discovery of
11 AT&T, and I'm wondering where we stand on that issue.

12 MS. ENDEJAN: I believe that's still
13 unresolved, and that's probably going to be the
14 remainder of the hearing.

15 JUDGE MACE: Very well. Then Verizon is the
16 proponent of the motion, so why don't you go ahead.

17 MS. ENDEJAN: Yes, Your Honor. We filed on
18 January 22nd a motion to compel responses to certain
19 specified AT&T data requests that are set forth in our
20 motion. The bottom line with all of these data
21 requests are, I guess, several points.

22 The first point is if you read the complaint
23 in this case, AT&T has claimed it's challenging only
24 Verizon's switched access rates, etcetera, but if you
25 look at the actual claims for relief, what they have

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1 put at issue is the fact that they claim that AT&T has
2 been subjected to undue prejudice and competitive
3 disadvantage; basically, that they have been harmed by
4 what they allege are violations of certain statutes and
5 prohibitions against rate discrimination as well as
6 violation of the Commission's imputation standards.

7 The data requests here, and I can go over
8 them one by one, if you would like. I don't know how
9 you want to handle that, but these are intended to
10 provide Verizon with information about AT&T's situation
11 and its claim that it has been harmed. In order to do
12 that, we, for instance, need to know what percentage of
13 the access market Verizon constitutes for AT&T. In
14 other words, how much harm are we causing AT&T versus
15 other providers of switched access services.

16 There are a lot of allegations made by
17 Dr. Selwyn in his testimony that our data requests are
18 designed to inquire about information that might, in
19 effect, test those allegations. The test here that has
20 been applied in this case to date has been fairly
21 broad. AT&T filed a motion to compel against Verizon
22 in December, and pretty much at that time, Judge Schaer
23 said that for purposes of discovery, she is going to
24 assume that all discovery requests propounded in good
25 faith by the parties, which I don't think anybody

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1 claims these aren't, are relevant.

2 We recognize that down the road at time of
3 hearing that there is a different issue in terms of
4 whether or not any information might be admissible, but
5 the standard before this commission in its practice has
6 been fairly broad. I cite in the brief the
7 Commission's opinion that in discovery, for discovery
8 purposes, production should occur, even if the
9 information sought may be redundant or marginally
10 relevant. That's the view the Commission has had.
11 Verizon has had to respond to, and I've just got two of
12 the binders here with me, to very extensive and
13 detailed data requests propounded by AT&T that have
14 been quite burdensome to Verizon but which Verizon,
15 nonetheless, has compiled the relevant data.

16 So it seems that discovery is a two-way
17 street, and if Verizon is to have any opportunity to
18 meaningfully cross-examine the AT&T witnesses on the
19 positions they've maintained in the complaint and in
20 the prefile testimony of Selwyn, then we need the
21 information that we are asking for in these discovery
22 requests that go to AT&T's allegations of market
23 domination, financial and competitive harm. We need to
24 know what their mix of facilities here in Washington is
25 to test their allegations about the impact Verizon is

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1 having on AT&T. We need to know how Verizon Northwest
2 compares with other sources of access provided to AT&T
3 in the Northwest.

4 These are all relevant areas of inquiry if we
5 are to be allowed to legitimately attack, question, or
6 otherwise probe the veracity of what they claim in
7 their complaint and in the testimony of Lee Selwyn, so
8 accordingly, I also believe that's what is good for the
9 goose is good for the gander.

10 In this case, Verizon has been compelled to
11 provide information that we claimed was irrelevant
12 because it didn't even relate to the company Verizon
13 Northwest, Inc., but related to the affiliates. In
14 this case, the data requests that we are seeking
15 information on pertain directly to AT&T Communications
16 of the Northwest and called for the compilation of data
17 and information that should be no more burdensome to
18 compile than what it was for Verizon to compile similar
19 information about minutes of use, etcetera.

20 So I guess that I would urge the Commission
21 here and Your Honor to look at these data requests and
22 say in light of the very serious allegations made by
23 AT&T here that Verizon should be given some fairly
24 broad latitude in terms of looking at the actual
25 numbers, show us the numbers, to see whether or not

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1 what they are claiming has any real substance.

2 JUDGE MACE: Can I just interrupt for a
3 minute here?

4 MS. ENDEJAN: Sure.

5 JUDGE MACE: In some of the pleadings I read
6 about this, there is a reference to a Discovery Request
7 No. 29, and I didn't find a copy of that anywhere in my
8 materials.

9 MS. ENDEJAN: I have a copy here, and I
10 apologize. That was because I was busy with another
11 case last week, and when I indicated which ones were to
12 be copied, I gave them to my assistant and tabbed them,
13 and I didn't tab No. 29.

14 JUDGE MACE: If I could take a look at that,
15 I would appreciate it, and then the other question has
16 to do with Discovery Request No. 30. AT&T responds
17 that since it's not required to do these LRIC studies,
18 it has not done them, and I'm wondering if Verizon in
19 the face of that response continues to request
20 information about that.

21 MS. ENDEJAN: I think, unfortunately, Your
22 Honor, that what we were really intending to talk about
23 was Data Request No. 29 and not No. 30. So that was an
24 error on our part, because Data Request 29 seeks
25 information on imputation tests that AT&T has advocated

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1 or performed elsewhere, and the relevancy to that
2 is what they are claiming -- well, it's a little
3 unclear what they are claiming, but they are claiming
4 we violated this commission's imputation standards,
5 which our witnesses will testify we have complied with,
6 and AT&T is apparently advocating some other form of
7 imputation standard, so we need to know what they are
8 advocating elsewhere, and I will get a copy of that.

9 MS. SMITH: I guess I have a question now
10 about the question that Judge Mace had just for point
11 of clarification. I didn't quite understand what the
12 status is of Verizon's Data Request No. 30. Are you
13 seeking to compel --

14 MS. ENDEJAN: We are not seeking to compel on
15 30. We are seeking really to compel on No. 29, and
16 that was an error on our part, and I will make copies
17 of this. Data Request No. 29 states, "Please provide
18 all studies, documents, and analysis that AT&T has
19 developed on imputation tests in all other
20 jurisdictions outside Washington for itself and other
21 carriers," and the response was that AT&T objects to
22 this request on the grounds that it is not reasonably
23 calculated to lead to the discovery of admissible
24 evidence and is overbroad and unduly burdensome.

25 JUDGE MACE: Thank you. That is sufficient.

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1 I just wanted to know what the substance of it was.

2 Have you completed your argument then?

3 MS. ENDEJAN: I have, Your Honor, unless you
4 would like me to walk through each data request.

5 JUDGE MACE: Not at this point.

6 Mr. Cromwell, does Public Counsel wish to address this
7 motion?

8 MR. CROMWELL: No.

9 JUDGE MACE: Ms. Smith, does Commission staff
10 intend to address it?

11 MS. SMITH: We don't intend to address it.
12 Although, if I may reserve any comments until after
13 we've heard the argument of AT&T.

14 JUDGE MACE: Very well. Ms. Friesen?

15 MS. FRIESEN: Thank you, Your Honor. I think
16 at the outset, it's important to recognize that
17 discovery is not limitless; that there are some
18 boundaries; that every question asked is not, per se,
19 relevant, and that's a standard that Verizon is trying
20 to sell today.

21 The fact of the matter is, as you work
22 through each of these questions, you will see that the
23 questions ask for material that is not at issue, and I
24 can use Data Request No. 5 as an example. It asks for
25 AT&T to list and describe all of the services it offers

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1 in the State of Washington. Well, all of the services
2 that AT&T offers in the State of Washington are not at
3 issue. They are not relevant to what Verizon's access
4 rates are. They are not relevant to anything that
5 Verizon seeks to try and make them relevant to in Lee
6 Selwyn's testimony or elsewhere.

7 So part of the problem we have with these
8 discovery requests is that they are enormously
9 overbroad and they are enormously burdensome. So we
10 would ask that you take a good look at each of these
11 requests and judge them for what they are asking for in
12 light of what this case is really about.

13 This case is really about whether or not
14 Verizon's access rates in its territory are just and
15 reasonable and whether or not Verizon is imputing those
16 access rates to itself correctly. It has absolutely
17 nothing to do with imputation tests cross-country or
18 other studies that AT&T has done elsewhere. It's a
19 very specific and targeted complaint, and that's really
20 what's at issue here today --

21 JUDGE MACE: I would like to interrupt for
22 just a moment, if I may. I would like to ask with
23 regard to your argument that the responses would be
24 burdensome for you to provide. I remember reading in
25 one portion of your written response that you thought

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1 some of this information would take weeks to provide.
2 Can you point me in the direction of which information
3 it is precisely that would take weeks to provide?

4 MS. FRIESEN: The minutes of use where we
5 have to go back for six years --

6 JUDGE MACE: Can you point me to a number of
7 the discovery request?

8 MS. FRIESEN: Yes. I think those are Data
9 Requests 6 through 10. Although, I've got to say that
10 10 is more of a catch-all.

11 JUDGE MACE: How much time, exactly, would it
12 take you to provide that information?

13 MS. FRIESEN: I'm told that it may take
14 months, depending on how much we have to divide and
15 whether or not we have to go back for six years.

16 JUDGE MACE: It seems to me that another part
17 of your argument was that in the form that Verizon is
18 asking this information, it would take months to
19 provide. Is there some other form that this
20 information is in that you could provide it, or perhaps
21 have you discussed this with Verizon in terms of what
22 form might be acceptable to them that would be less
23 onerous for you to provide?

24 MS. FRIESEN: No, we haven't had that
25 particular discussion, and I would suggest that if we

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1 provide them the minutes as they appear in our data
2 bases -- in other words, as our business records are
3 kept -- that we could certainly get them faster than if
4 we had to go and reorganize them, but we wouldn't try
5 and undermine their ability to understand what we were
6 giving them, certainly.

7 JUDGE MACE: Ms. Endejan?

8 MS. ENDEJAN: Your Honor, it's never been
9 Verizon's position that they had to provide us the data
10 in a particular specified format. Our position has
11 been that they have the information contained in a way
12 that they normally keep these business records. That
13 would probably be satisfactory to Verizon.

14 It's the data that the company is concerned
15 about, not any particular format that would require
16 manipulation of computer spreadsheets, etcetera,
17 because we provided similar information on units to
18 AT&T. This is a big company, as is Verizon. They have
19 people that track this kind of information, so if we
20 could get this information the way the company tracks
21 it, that would probably be satisfactory.

22 JUDGE MACE: Go ahead, Ms. Friesen. I'm
23 sorry I interrupted you, but I wanted to get to that
24 piece of information before you went ahead.

25 MS. FRIESEN: Thank you, Your Honor, and I

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1 will be brief with finishing up, because I think at the
2 heart of the problem is really examining the scope of
3 these discovery requests and determining whether or not
4 they fit within the parameters of the case that's at
5 issue, so AT&T would simply ask that you take a good
6 look at these, and if we are to submit anything under
7 these that they be limited in scope to that which is
8 really relevant to this case, and with that, I will
9 stop so that we can hopefully go through the individual
10 questions themselves.

11 JUDGE MACE: I did not intend to go through
12 the individual questions, unless you desire to do so.

13 MS. FRIESEN: I would like to go through a
14 few of them, the minutes-of-use question. I'm not sure
15 of what relevance it is for us to collect six years of
16 minutes of use. I'm not sure minutes of use are
17 relevant in the first instance. I don't believe they
18 are. In particular, I don't believe they are with
19 respect to other access providers besides Verizon. So
20 for Questions 7, 8, 9, I think those are absolutely
21 irrelevant. Verizon can't do anything with those
22 minutes, and those aren't at issue in this proceeding.
23 It's a lot of work to try and collect that stuff.

24 With respect to No. 6 itself, here again,
25 they are at least limiting it to the minutes that AT&T

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1 has with respect to Verizon, bearing in mind that it's
2 Verizon's access rates that are at issue. So there, we
3 would say, No; why do we need six years of this stuff?
4 Then the only other couple of requests I would like to
5 point out, No. 5 in particular, I really don't
6 understand the relevance of any of this and don't
7 believe that any burden has been met to show that it's
8 relevant.

9 So with that, I would just refer you back to
10 the response that we filed in our position and ask that
11 you consider that in light of the burden that's being
12 placed on AT&T, and actually, the real scope of this
13 case.

14 JUDGE MACE: Before I ask if Staff has a
15 response, Ms. Endejan, I would like to ask you why
16 Verizon is seeking six years of minutes-of-use
17 information?

18 MS. ENDEJAN: I think it's simply to do a
19 historical analysis of how their access costs have
20 changed or contributed to their allegations of
21 sustained competitive harm by Verizon's alleged
22 monopolization of the intraLATA toll market, and the
23 only way I understand it, and I'm not the subject
24 matter expert here, is you need a certain degree of
25 historical data to assess whether or not there has been

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1 harm, for instance, caused by Verizon, caused by market
2 forces, caused by other things that might lead to
3 increased costs, decreased costs. We don't know, and I
4 think that's kind of the issue here.

5 JUDGE MACE: Does this six-year period
6 correspond to data that Verizon submitted to AT&T?

7 MS. ENDEJAN: I believe that it does, and
8 don't quote me on this, but a lot of the information
9 that AT&T asked for, I think, goes back to right around
10 the time of the 1996 Telecom Act when sort of
11 everything changed. So I think that if we are going to
12 be mixing apples and apples and oranges and oranges, we
13 wanted to correlate to the same time period.

14 MS. FRIESEN: If I might chime in here, I
15 don't believe Verizon has provided AT&T with six years
16 of minutes-of-use data.

17 JUDGE MACE: My review of those discovery
18 questions had to do with, for example, total intrastate
19 minutes of use in a recent 12-month period. My brief
20 review or my notes that are a summary, I grant you, of
21 the AT&T discovery questions, doesn't indicate any
22 period as long as six years. Is it correct or
23 incorrect that those discovery questions dealt with a
24 six-year period, Ms. Friesen?

25 MS. FRIESEN: I'm recalling off the top of my

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1 head right now the requests for some minutes of use
2 from Verizon did not go back for six years.

3 MS. ENDEJAN: Some of the costs do, Your
4 Honor. AT&T data requests us to seek information on
5 long-run incremental costs for billing and collection
6 for each occasion on which that cost has been
7 calculated since 1985, so we have something in there.
8 I could go back --

9 JUDGE MACE: That's sufficient. I wanted to
10 get an idea of what was the equivalent on the other
11 side.

12 MS. ENDEJAN: I think that the bottom line is
13 we need some level of historical data is what I'm
14 advised in this case in order to assess the allegations
15 here.

16 Now, I recognize that, obviously, AT&T has a
17 different view of what is at issue in this case than we
18 do, and I think that what counsel for either party says
19 is relevant or irrelevant is not for us to define
20 necessarily for purposes of warding off discovery
21 requests. The fact that AT&T brought this complaint
22 against Verizon also placed their units at issue and
23 their claims of competitive harm. The only way we can
24 look at that is to look at their data just as they are
25 looking at our data.

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1 If six years is really too unreasonable, I'm
2 happy to go back and ask my client, Could we do it with
3 three years.

4 JUDGE MACE: Thank you. Ms. Friesen, do you
5 have anything else at this point?

6 MS. FRIESEN: No, Your Honor.

7 JUDGE MACE: Then let me turn to Commission
8 staff.

9 MS. SMITH: No, thank you. We don't have a
10 position on this motion.

11 JUDGE MACE: I would like to take a brief
12 adjournment, ten minutes, and then I will come back and
13 make a ruling on the record.

14 (Recess.)

15 JUDGE MACE: I've taken a few minutes to
16 think over the arguments that have been made by counsel
17 with regard to the Verizon motion to compel discovery
18 responses of AT&T. I am going to grant the motion with
19 at least one qualification and that is that AT&T may
20 file the minutes-of-use information that we discussed
21 during the course of the argument in the format that
22 they appear in AT&T's databases.

23 I have read Judge Schaer's ruling on the AT&T
24 motion to compel responses. I'm persuaded that her
25 recitation of the standard with regard to discovery is

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1 a correct one to apply in this proceeding. I think
2 that the question as to admissibility is one that will
3 be dealt with at hearing, but other than that,
4 discovery is a fairly broad-ranging process and
5 certainly would encompass the responses that Verizon
6 seeks in this proceeding.

7 MS. ENDEJAN: Your Honor, may I ask that you
8 are going to specify that the information provided by
9 AT&T as it appears in the databases, if they could
10 provide a code or key so we would know how to interpret
11 it?

12 JUDGE MACE: Of course. That would have to
13 be provided so it would be comprehensible to you.

14 MS. ENDEJAN: Right.

15 JUDGE MACE: I want to make sure that I've
16 covered all the information here. So my understanding
17 is if that information that Verizon seeks is provided
18 in the format that AT&T uses that that will eliminate
19 the concern with the amount of time required to provide
20 the amount of information requested.

21 MS. FRIESEN: Your Honor, the time that is
22 required is also a function of the number of years we
23 have to go back, so --

24 JUDGE MACE: Let me just say this. I'm
25 hoping that your response with regard to putting this

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1 in a format that will be helpful to you and to Verizon
2 will work here because I have been advised by Judge
3 Schaer that moving the hearing date from March 3rd is
4 not possible, and so somehow, this discovery process
5 has to be accomplished within the time period we have
6 available before the hearing.

7 MS. FRIESEN: We will certainly give it our
8 best shot, and I will talk to our folks today to see if
9 they can expedite.

10 JUDGE MACE: Very well. The other thing I
11 want to address is this question of the rebuttal filing
12 date being moved. I want to reiterate that the
13 Commission policy is that once a rebuttal filing date
14 is moved for one party, that extension applies to all
15 parties.

16 I understand, however, in this case, that
17 AT&T will respond or will make a rebuttal filing on
18 this coming Friday and that Staff's filing date will be
19 pursuant to Judge Schaer's motion. Is that correct,
20 Ms. Friesen?

21 MS. FRIESEN: That's correct, Your Honor.

22 JUDGE MACE: Very well. Is there anything
23 else the parties want to address at this point?
24 Actually, there is one more thing that comes to mind,
25 and that is the question of confidentiality. I

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1 understand that AT&T argued that some of the
2 information requested might present confidentiality
3 concerns. Does AT&T intend to use the protective order
4 that's in place in this proceeding, or is there some
5 heightened level of confidentiality that AT&T would
6 seek with regard to the information it's going to
7 provide?

8 MS. FRIESEN: Your Honor, I think the
9 protective order in place is sufficient for us. That
10 is an issue of third-party data that we will have to
11 get adequate release to give to Verizon.

12 JUDGE MACE: I'm not sure what that means.

13 MS. FRIESEN: To the extent that there is any
14 data that implicates other access providers which
15 happens to be confidential and depending upon how we
16 turn it over, we will have to get their release to do
17 it, assuming it's just not our own data.

18 JUDGE MACE: I'm not clear. You are going to
19 be able to use the protective order that's in place; is
20 that correct?

21 MS. FRIESEN: That's correct. The issue we
22 were discussing in reference to our discovery responses
23 wasn't the particular protective order is insufficient.
24 It was that we have to address data that's coming and
25 maybe employing other access providers' information,

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1 because that's what Verizon has asked for in Questions
2 7, 8, 9. Do you understand?

3 JUDGE MACE: You are not saying you are
4 refusing to provide that information.

5 MS. FRIESEN: Right.

6 JUDGE MACE: Very well. To the extent there
7 is some issue with regard to providing third-party
8 information, I'm assuming that you would bring that to
9 the attention of Judge Schaer. Otherwise, I'm
10 expecting that you would provide that information.

11 MS. FRIESEN: That's correct, Your Honor.

12 JUDGE MACE: Is there anything else we need
13 to address at this point?

14 MS. ENDEJAN: No, Your Honor.

15 JUDGE MACE: Thank you very much. This
16 hearing is adjourned until the prehearing conference.

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18 (Prehearing concluded at 2:22 p.m.)

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