§ 520.2 Definitions

* * * * *

Ocean common carrier means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

* * * * *

PART 530—SERVICE CONTRACTS

1. The authority citation for part 530 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1704, 1705, 1707, 1716.

2. In § 530.3 revise paragraph (n) to read as follows:

§ 530.3 Definitions.

* * * * *

(n) *Ocean common carrier* means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

* * * * *

PART 535—AGREEMENTS BY OCEAN COMMON CARRIERS AND OTHERS SUBJECT TO THE SHIPPING ACT OF 1984

1. The authority citation for part 535 is amended to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701–1707; 1709–1710, 1712 and 1714–1718; Pub. L. 105–383, 112 Stat. 3411.

2. Revise § 535.101 to read as follows:

§ 535.101 Authority.

The rules in this part are issued pursuant to the authority of section 4 of the Administrative Procedure Act (5 U.S.C. 553), sections 2, 3, 4, 5, 6, 7, 8, 10, 11, 13, 15, 16, 17 and 19 of the Shipping Act of 1984 (''the Act''), and the Ocean Shipping Reform Act of 1998, Pub. L. 105–258, 112 Stat. 1902.

3. In § 535.104 revise paragraph (u) to read as follows:

§ 535.104 Definitions.

* * * * *

(u) *Ocean common carrier* means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

* * * * *

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–11338 Filed 5–5–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 00–126]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document concerning the Federal-State Joint Board on Universal Service clarifies the method by which quarterly line count data will be incorporated in the new high-cost mechanism for purposes of calculating and targeting support amounts. It also clarifies that, until the Commission adopts new line count input values, forward-looking costs for universal service support purposes shall be estimated using the line count input values adopted in the Tenth Report and Order. Finally, it clarifies that high-cost support shall be available on a regular quarterly basis for competitive eligible telecommunications carriers serving lines in areas served by non-rural incumbent local exchange carriers.

DATES: Effective May 8, 2000.

FOR FURTHER INFORMATION CONTACT: Katie King, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Twentieth Order Reconsideration, CC Docket No. 96–45; FCC 00–126, released on April 7, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, D.C., 20554.

I. Introduction

1. In this Order, we clarify certain aspects of the new high-cost universal service support mechanism for non-rural carriers adopted in the *Ninth Report and Order*, 64 FR 67416 (December 1, 1999), on October 21, 1999. Specifically, we clarify the method by which quarterly line count data will be incorporated in the new high-cost mechanism for purposes of calculating and targeting support amounts.

We also clarify that, until the Commission adopts new line count input values, forward-looking costs for universal service support purposes shall be estimated using the line count input values adopted in the *Tenth Report and Order,* 64 FR 67372 (December 1, 1999). This clarification does not alter the methodology adopted in the *Ninth Report and Order* except to account for line growth when the wire center line count data reported quarterly by the carriers differs from the input values used to estimate forward-looking cost.

Finally, we clarify that high-cost support shall be available on a regular quarterly basis for competitive eligible telecommunications carriers serving lines in areas served by non-rural incumbent local exchange carriers.

II. Discussion

2. In general, there are four stages in the forward-looking high-cost mechanism for non-rural carriers where line count information is required: (1) To estimate forward-looking costs of providing supported services; (2) to determine statewide support amounts; (3) to target those statewide support amounts to individual wire centers; and (4) to determine the per-line support amounts in individual wire centers.

In addition, the interim hold-harmless provision uses line counts to target carrier-by-carrier hold-harmless support amounts to individual wire centers. The interim hold-harmless provision also uses line counts to determine the per-line support amounts in individual wire centers. As discussed, we provide specific guidance on how these line counts are used in the four stages of the forward-looking mechanism and the interim hold-harmless provision.

3. *Estimating Forward-Looking Costs.* We clarify that the line counts used in the model to estimate forward-looking economic costs shall be used to calculate average forward-looking costs in all the cost calculations in the methodology adopted in the *Ninth Report and Order* for determining support. This approach is consistent with the Commission's and the Federal-State Joint Board's decision to use a cost model. The model estimates the forward-looking costs of providing the supported services in each wire center served by non-rural carriers. We clarify that model lines shall be used in

determining the wire center average cost per line, the statewide average cost per line, the nationwide average cost per line, and the national cost benchmark.

The statewide average cost per line is determined by adding the costs in the wire centers in the state and dividing by the number of non-rural model lines in the state. Similarly, the nationwide average cost per line is determined by adding the costs in all states and dividing by the total number of non-rural model lines. The national benchmark equals 135 percent of the nationwide average cost.

4. *Calculating Statewide Support Amounts.* We clarify that, to the extent that the reported line counts differ from the line counts used in the model to estimate forward-looking costs, statewide support amounts shall be adjusted to reflect any changes between the number of model lines and the number of reported lines. This ensures that the new mechanism provides sufficient support and that support is portable. We shall incorporate the number of lines reported by non-rural carriers on a quarterly basis in calculating statewide support amounts. Statewide support amounts shall be determined by calculating the average per-line support amount in the state and multiplying this support amount by the number of lines reported by non-rural carriers in the state.

5. This clarification of the methodology can be illustrated by using the example in the *Ninth Report and Order* illustrating the targeting of forward-looking support. We assume, in that example, that there are 30 lines in the state, the average cost per line is $30 and thus the total statewide cost as estimated by the model is $900. We assume further that the national benchmark equates to $25 per line. Using the statewide methodology adopted in the *Ninth Report and Order*, the total amount of support provided to carriers in the state would be ($30 − $25)×30 lines×76%=$114 or $3.80 per line of untargeted support. In order to adjust the total statewide support amount to reflect quarterly line counts, we clarify that the average per-line amount of untargeted support shall be multiplied by the number of lines reported by non-rural carriers in the state. For example, assume that non-rural carriers in the state report that they have 35 lines, rather than the 30 lines used in the model to estimate forward-looking costs. Basing support on reported lines, the statewide support amount would be $3.80×35=$133, rather than $3.80×30=$114.

6. *Targeting Forward-Looking Support.* After statewide forward-looking support is calculated as described, that statewide support amount must be targeted to individual wire centers. Under this targeting approach, we clarify that the line counts used in the model to estimate forward-looking economic costs shall be used to target support to high-cost wire centers. This approach is consistent with the Commission's and the Federal-State Joint Board's decision to use a cost model. The model estimates the forward-looking costs of providing the supported services in each wire center served by non-rural carriers. From this information, we identify the high-cost wire centers. Although we do not alter the targeting methodology adopted in the *Ninth Report and Order,* we now clarify that the model is used to estimate relative costs among wire centers, rather than relative support amounts. We also clarify how the per-line targeted support amount should be calculated.

7. As discussed, we have concluded that support amounts should be adjusted to reflect the number of lines reported by non-rural carriers, in those situations when the number of lines used in the model to estimate forward-looking costs differs from the number of reported lines. The example used to illustrate targeting in the *Ninth Report and Order* was based on the assumption that the number of model lines and the number of reported lines did not differ, so we clarify how the targeting calculations will be made, even if the line counts differ. In identifying high-cost wire centers for purposes of targeting support, instead of using pro rata factors based on wire center scale support, we will calculate ratios based on the wire center's cost above the national cost benchmark. As explained, this approach does not change support amounts.

8. This clarification of the methodology is best provided by using the example in the *Ninth Report and Order* to illustrate the targeting of forward-looking support and the example for determining statewide support discussed. Assume that the estimated total cost of $900 in the state is derived from the costs in three wire centers as follows:

Wire Center 1 has 10 lines, with an average cost of $20 per line, and a total cost in the wire center of $200;
Wire Center 2 has 10 lines, with an average cost of $30 per line, and a total cost of $300; and
Wire Center 3 has 10 lines, with an average cost of $40 per line, and a total cost of $400.

As in the example, the statewide average cost per line is $30, the national benchmark is $25, and the statewide support amount is based on an average untargeted support amount of $3.80 per line. Because the number of lines reported by non-rural carriers in the State is assumed to be 35, the statewide support amount is $133. The proportion of the statewide support amount targeted to each wire center is determined by first calculating the ratio of the wire center's estimated cost above the benchmark to the total cost above the benchmark in the State. Therefore, the estimated costs above the benchmark would be as follows:

Wire Center 1 has an average cost below the benchmark, so the cost above the benchmark is $0;
Wire Center 2 has an estimated cost above the benchmark of ($30 − $25)×10 model lines=$50;
Wire Center 3 has an estimated cost above the benchmark of ($40 − $25)×10 model lines=$150; and the total estimated cost above the benchmark in the State is $0+$50+$150=$200.

Then the ratios used to determine the percentage of statewide support each wire center will receive are calculated as follows:

Wire Center 1 receives $0/$200=0%; Wire Center 2 receives $50/$200=25%; and Wire Center 3 receives $150/$200=75%.

Thus, of the $133 of support the State receives, Wire Center 1 receives $0 support; Wire Center 2 receives 25%×$133=$33.25; and Wire Center 3 receives 75%×$133=$99.75.

9. We clarify that we shall use the number of reported lines, rather than model lines, to calculate the targeted per-line support amount available in the wire center. Otherwise, support amounts could differ depending upon whether the line is provided by an incumbent local exchange carrier or by a competitive eligible telecommunications carrier.

Using the example, we know that, of the $133 statewide support amount, $33.25 is targeted to Wire Center 2, and $99.75 targeted to Wire Center 3. Assume that the 35 reported lines are distributed as follows:

Wire Center 1 has 15 reported lines;
Wire Center 2 has 6 reported lines; and
Wire Center 3 has 14 reported lines.

Dividing the support amounts available in each wire center, by the number of reported lines results in the following per-line support amounts:

Wire Center 1 receives $0 per line;
Wire Center 2 receives $33.25/6=$5.54 per line; and
Wire Center 3 receives $99.75/14=$7.125 per line.

This methodology produces a competitively neutral result, whereas, using model lines to calculate the per-line support would not. This can be illustrated with one of the wire centers in the example. If model lines were used to calculate the per-line support amount in Wire Center 3, the per-line amount would be $99.75/10=$9.975. If the incumbent local exchange carrier were serving all lines, the incumbent, in effect, would be receiving $99.75/14=$7.125 per line. If a competitor were serving one line and receiving $9.975 in support, the incumbent local exchange carrier would receive $6.905 per line for serving the remaining 13 lines (($99.75 − $9.975=$89.775)/13). To ensure that all non-rural carriers in a wire center receive the same per-line support amount for the lines they serve, we clarify that the total wire center support amount shall be divided by the number of reported lines in that wire center.

10. *Targeting Hold-Harmless Support.* We similarly clarify how hold-harmless support is targeted to high-cost wire centers. Although hold-harmless support is not based upon costs estimated by the model, it is consistent with our decision to target hold-harmless support to high-cost wire centers to use model lines in identifying high-cost wire centers, as we do for targeting forward-looking support. In addition, we clarify that the portable per-line amount of targeted hold-harmless support shall be determined by dividing the total hold-harmless support amount targeted to the wire center by the number of lines reported in that wire center.

11. We use the example presented in the *Ninth Report and Order* to illustrate the targeting of hold-harmless support. We use model lines to determine relative costs among wire centers and reported lines to determine the per-line support amount available in each wire center. We assume that a State has a single carrier with three wire centers in the State. Assume that the model estimates the average forward-looking cost per line in each wire center as follows:

Wire Center 1—$15,
Wire Center 2—$20,
Wire Center 3—$25.

Assume that these cost estimates were based on input values of 10 lines in each wire center. Thus, the statewide average cost per line is ($150+$200+$250)/30 lines=$20. Assume further that the national benchmark equates to $22 per line, and therefore the carrier receives no support under the forward-looking methodology in part 54 of our rules, which averages costs at the statewide level. Also assume that the carrier receives a total of $90 of interim hold-harmless support as determined pursuant to part 36 of our rules.

Under the targeting approach, the hold-harmless support is distributed first to the wire center that the model estimates to have the highest costs in the State until that wire center's average costs, net of support, equal the average costs in the next most expensive wire center. This process continues in a cascading fashion until all support has been distributed. In this example, the first $50 of hold-harmless support would be distributed to Wire Center 3, so that the average forward-looking cost in Wire Center 3, net of hold-harmless support, is reduced to $250 − $50=$200, an average cost of $200/10 lines=$20 per line. This places Wire Center 3 on equal footing with Wire Center 2, which also has an average cost of $200/10 lines=$20 per line. The remaining hold-harmless support, $90—$50 = $40, would be divided between the wire centers, so that the average cost as estimated by the model, net of hold-harmless support, would be the same in Wire Center 2 and Wire Center 3, that is, $18 per line.

Thus, Wire Center 2 would receive a total of $20 in support and Wire Center 3 would receive a total of $50+$20=$70 in support. The average forward-looking cost in Wire Center 2, net of hold-harmless support, is reduced to $200 − $20=$180, an average cost of $180/10 lines=$18 per line. The average forward-looking cost in Wire Center 3, net of hold-harmless support, is reduced to $250 − $70=$180, an average cost of $180/10 lines=$18 per line.

Now assume that the carrier reports that Wire Center 2 has 6 lines and that Wire Center 3 has 14 lines. The portable per-line support amount in Wire Center 2 would be $20/6 lines=$3.33 per line. The portable per-line support amount in Wire Center 3 would be $70/14 lines=$5.00 per line.

12. *Reporting Quarterly Line Counts.* As discussed, the line counts used in the model to estimate forward-looking costs are trued-up to 1998 ARMIS line counts. As of December 30, 1999, non-rural incumbent local exchange carriers and competitive eligible telecommunications carriers seeking to receive support are now required to file updated line counts every quarter. USAC shall determine statewide support amounts by calculating the average per-line support amount in the state and multiplying the average support amount by the number of lines reported by non-rural carriers in the State. For the year 2000, forward-looking support will be distributed for the first and second quarters of the year 2000 based on the line counts non-rural carriers filed on December 30, 1999. Similarly, forward-looking support for the third and fourth quarters of the year 2000, will be based on the line counts non-rural carriers file on March 30, 2000, and July 31, 2000, respectively.

13. Although section 54.307(b) of the Commission's rules refers to an annual July 31st deadline for the submission of competitive eligible telecommunications carriers' line count data, we clarify that high-cost support shall be available on a regular quarterly basis for competitive eligible telecommunications carriers serving lines in areas served by non-rural incumbent local exchange carriers. In the *Ninth Report and Order,* the Commission adopted uniform, mandatory quarterly reporting requirements for all carriers seeking support for serving lines in non-rural areas. To ensure ''equitable, non-discriminatory, and competitively neutral treatment[,]'' support must be available to all eligible telecommunications carriers on a quarterly basis, rather than on an annual basis. Therefore, competitive eligible telecommunications carriers serving lines in non-rural areas may submit line count data under the filing schedule described in § 54.307(c) and receive support on a regular quarterly basis. This approach is consistent with our decision to require uniform quarterly reporting and is essential to ensure portability of support among carriers. We amend § 54.307 accordingly.

III. Procedural Matters

A. Regulatory Flexibility Act Certification

14. The Regulatory Flexibility Act (RFA) requires an Initial Regulatory Flexibility Analysis (IRFA) whenever an agency publishes a notice of proposed rulemaking, and a Final Regulatory Flexibility Analysis (FRFA) whenever an agency subsequently promulgates a final rule, unless the agency certifies that the proposed or final rule will not have ''a significant economic impact on a substantial number of small entities,'' and includes the factual basis for such certification. The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''

In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The SBA defines a small telecommunications entity in SIC code 4813 (Telephone Communications, Except Radiotelephone) as an entity with 1,500 or fewer employees.

15. In the *Ninth Report and Order,* the Commission certified pursuant to the RFA that the final rules adopted in that order would not have a significant economic impact on a substantial number of small entities. We concluded that the *Ninth Report and Order* adopted a final rule affecting only the amount of high-cost support provided to non-rural LECs. Non-rural LECs generally do not fall within the SBA's definition of a small business concern because they are usually large corporations or affiliates of such corporations. In a companion Further Notice of Proposed Rulemaking adopted in this docket, the Commission prepared an IRFA seeking comment on the economic impacts on small entities. No comments were received in response to that IRFA.

16. The rule changes adopted by this order implement our clarifications to the *Ninth Report and Order,* as described in the text of this *Twentieth Order on Reconsideration.* The changes adopted in this order will affect only non-rural LECs. As mentioned, non-rural LECs generally do not fall within the definition of a small business concern. Therefore, we certify pursuant to Section 605(b) of the RFA, that the final rules adopted in this order will not have a significant economic impact on a substantial number of small entities. The Consumer Information Bureau, Reference Information Center, will send a copy of the *Twentieth Order on Reconsideration,* including a copy of this final certification, to the Chief Counsel for Advocacy of the SBA in accordance with the RFA. In addition, this certification and order will be published in the **Federal Register**. Finally, the Commission's Consumer Information Bureau, Reference Information Center, will send a copy of the *Twentieth Order on Reconsideration,* including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.

B. Effective Date of Final Rules

17. We conclude that the amendments to our rules adopted herein shall be effective May 8, 2000. In this order, we make minor amendments to the rules adopted in the *Ninth Report and Order*, which implement a new forward-looking high-cost support mechanism, effective January 1, 2000. Making the amendments effective 30 days after publication in the **Federal Register** would jeopardize the implementation of the new mechanism. Accordingly, pursuant to the Administrative Procedure Act, we find good cause to depart from the general requirement that final rules take effect not less than 30 days after their publication in the **Federal Register**.

IV. Ordering Clauses

18. The authority contained in sections 1–4, 201–205, 214, 218–220, 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, and section 1.108 of the Commission's rules, the Twentieth Order on Reconsideration is adopted.

19. Part 54 of the Commission's rules, 47 CFR Part 54, is amended as set forth, effective May 8, 2000.

20. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Twentieth Order on Reconsideration, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Universal service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Final Rules

Part 54 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otheriwse noted.

2. Amend § 54.307 by revising paragraphs (b) and (c) to read as follows:

§ 54.307 Support to a competitive eligible telecommunications carrier.

* * * * *

(b) In order to receive support pursuant to this subpart, a competitive eligible telecommunications carrier must report to the Administrator the number of working loops it serves in a service area pursuant to the schedule set forth in paragraph (c) of this section. For a competitive eligible telecommunications carrier serving loops in the service area of a rural telephone company, as that term is defined in § 51.5 of this chapter, the carrier must report the number of working loops it serves in the service area. For a competitive eligible telecommunications carrier serving loops in the service area of a non-rural telephone company, the carrier must report the number of working loops it serves in the service area and the number of working loops it serves in each wire center in the service area. For universal service support purposes, working loops are defined as the number of working Exchange Line C&WF loops used jointly for exchange and message telecommunications service, including C&WF subscriber lines associated with pay telephones in C&WF Category 1, but excluding WATS closed end access and TWX service.

(c) For a competitive eligible telecommunications carrier serving loops in the service area of a rural telephone company, as that term is defined in § 51.5 of this chapter, the carrier must submit no later than July 31st of each year the data required pursuant to paragraph (b) of this section as of December 30th of the previous calendar year, and the carrier may update on a quarterly basis the data required pursuant to paragraph (b) of this section according to the schedule. For a competitive eligible telecommunications carrier serving loops in the service area of a non-rural telephone company, the carrier must submit the data required pursuant to paragraph (b) of this section according to the schedule.

(1) No later than July 31 of each year, submit data as of December 30th of the previous calendar year;

(2) No later than September 30th of each year, submit data as of March 30th of the existing calendar year;

(3) No later than December 30th of each year, submit data as of July 31st of the existing calendar year;

(4) No later than March 30th of each year, submit data as of September 30th of the previous year.

3. Amend § 54.309 by revising paragraphs (a)(1), (a)(2), (a)(4), (b)(1), (b)(2), (b)(3) and (b)(4) to read as follows:

§ 54.309 Calculation and distribution of forward-looking support for non-rural carriers.

(a) * * *

(1) For each State, the Commission's cost model shall determine the statewide average forward-looking economic cost (FLEC) per line of providing the supported services. The statewide average FLEC per line shall equal the total FLEC for non-rural

carriers to provide the supported services in the State, divided by the number of switched lines used in the Commission's cost model. The total FLEC shall equal average FLEC multiplied by the number of switched lines used in the Commission's cost model.

(2) The Commission's cost model shall determine the national average FLEC per line of providing the supported services. The national average FLEC per line shall equal the total FLEC for non-rural carriers to provide the supported services in all States, divided by the total number of switched lines in all States used in the Commission's cost model.

* * * * *

(4) Support calculated pursuant to this section shall be provided to non-rural carriers in each State where the statewide average FLEC per line exceeds the national cost benchmark. The total amount of support provided to non-rural carriers in each State where the statewide average FLEC per line exceeds the national cost benchmark shall equal 76 percent of the amount of the statewide average FLEC per line that exceeds the national cost benchmark, multiplied by the number of lines reported pursuant to § 36.611, § 36.612, and § 54.307 of this chapter.

* * * * *

(b) * * *

(1) The Commission's cost model shall determine the percentage of the total amount of support available in the State for each wire center by calculating the ratio of the wire center's FLEC above the national cost benchmark to the total FLEC above the national cost benchmark of all wire centers within the State. A wire center's FLEC above the national cost benchmark shall be equal to the wire center's average FLEC per line above the national cost benchmark, multiplied by the number of switched lines in the wire center used in the Commission's cost model;

(2) The total amount of support distributed to each wire center shall be equal to the percentage calculated for the wire center pursuant to paragraph (b)(1) of this section multiplied by the total amount of support available in the state;

(3) The total amount of support for each wire center pursuant to paragraph (b)(2) of this section shall be divided by the number of lines in the wire center reported pursuant to § 36.611, § 36.612, and § 54.307 of this chapter to determine the per-line amount of forward-looking support for that wire center;

(4) The per-line amount of support for each wire center pursuant to paragraph (b)(3) of this section shall be multiplied by the number of lines served by a non-rural incumbent local exchange carrier in that wire center, or by an eligible telecommunications carrier in that wire center, as reported pursuant to § 36.611, § 36.612, and § 54.307 of this chapter, to determine the amount of forward-looking support to be provided to that carrier.

* * * * *

[FR Doc. 00–11100 Filed 5–5–00; 8:45 am]

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