**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
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| Build America: Eliminating Barriers to Wireline Deployment | ) | WC Docket No. 25-253 |
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# REPLY COMMENTS OF USTELECOM – THE BROADBAND ASSOCIATION


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# REPLY COMMENTS OF USTELECOM – THE BROADBAND ASSOCIATION

USTelecom – The Broadband Association ("USTelecom")[1] submits these reply comments in response to the Commission's Notice of Inquiry in the above-captioned proceeding seeking input on how to eliminate barriers to wireline deployment.[2]

## I. INTRODUCTION AND SUMMARY

The record in this proceeding presents a clear and consistent picture: states and localities continue to impose requirements that materially inhibit the deployment and operation of modern communications networks, and Commission action under Section 253 is warranted to address these barriers.[3] Commenters widely recognize that many of the challenges documented in the initial round of comments—ranging from financial demands untethered from actual costs to

[1] USTelecom is the premier trade association representing service providers and suppliers for the communications industry. USTelecom members provide a full array of services, including broadband, voice, data, and video over wireline and wireless networks. Its broad membership ranges from international publicly traded corporations to local and regional companies and cooperatives, serving consumers and businesses across the country.

[2] *Notice of Inquiry on State and Local Permitting of Broadband Infrastructure*, WC Docket No. 24-240, FCC 25-66 (rel. July 18, 2025) ("Permitting NOI").

[3] As USTelecom has explained elsewhere, Commission action is also warranted to address the barriers to network modernization posed by state carrier-of-last-resort requirements and state refusals to allow or timely review provider eligible telecommunications carrier relinquishment requests. *See, e.g.*, Comments of USTelecom – The Broadband Association, WC Docket Nos. 25-209 & 25-208 (filed Sept. 29, 2025); Reply Comments of USTelecom – The Broadband Association, WC Docket Nos. 25-209 & 25-208 (filed Nov. 18, 2025); Comments of USTelecom – The Broadband Association to the U.S. Dep't of Justice Anticompetitive Regulations Task Force, ATR-2025-0001 (filed May 27, 2025).

procedural delays that inject uncertainty into deployment planning—persist across many jurisdictions and undermine efforts to expand and upgrade communications infrastructure.

Local government commenters offer legal interpretations of Section 253 that would leave these barriers largely unchecked. Their readings of the statute depart from its text, ignore the limits courts have repeatedly placed on Sections 253(b) and (c), and discount the Commission's established authority under Section 253(d) to prevent actions that materially inhibit the deployment of networks capable of providing telecommunications services. The record instead demonstrates that restrictions materially inhibiting the deployment and use of facilities supporting telecommunications services fall squarely within Section 253(a)'s scope, and that the exceptions in subsections (b) and (c) cannot be stretched to shield the unreasonable permitting practices described in this proceeding.

Given this record, the Commission should move forward with establishing national standards that bring greater coherence, predictability, and competitive neutrality to state and local permitting regimes. The record supports adopting guardrails to ensure permitting fees are cost-based, application reviews are reasonable and uniform, and Section 253's preemptive effect is clarified. Taking these steps will reduce uncertainty, promote investment, and accelerate broadband deployment in communities across the country.

## II. THE RECORD CONFIRMS THE COMMISSION HAS CLEAR AUTHORITY UNDER SECTION 253 TO ADDRESS BARRIERS TO WIRELINE INFRASTRUCTURE DEPLOYMENT

### A. The record demonstrates broad support for the Commission's application of the "material inhibition" standard for evaluating compliance with Section 253(a)

Many commenters agree that state and local requirements fall within Section 253(a)'s prohibition when they materially inhibit the ability to deploy, upgrade, or operate broadband and

telecommunications networks.[4] These commenters further emphasize that Commission precedent with respect to wireless deployment, including the *Small Cell Order*, correctly applied the material inhibition test and that the same analysis applies with equal force to wireline deployment.[5]

Commenters also explain that Section 253(a) applies to networks capable of commingling broadband and telecommunications services because the same underlying facilities support both services. Providers build and operate integrated fiber networks that simultaneously carry both telecommunications traffic and broadband traffic, and restrictions on the deployment or use of those facilities necessarily affect the ability to provide telecommunications services.[6] For this reason, commenters uniformly reject any attempt to narrow Section 253(a) to requirements affecting only facilities that exclusively deliver telecommunications services.

While the League of Oregon Cities disputes the applicability of Section 253(a) to broadband infrastructure,[7] the record demonstrates that restrictions on fiber deployment impede the provision of telecommunications services delivered over the same network.[8] Providers consistently explain that fiber is deployed as a shared platform that supports all network

[4] *See, e.g.*, Comments of ACA Connects at 6–13 ("ACA Comments"); Comments of NCTA at 2–6 ("NCTA Comments"); Comments of NTCA at 3–7 ("NTCA Comments"); Comments of ITIF at 3 ("ITIF Comments"); Comments of the U.S. Chamber of Commerce at 2–3 ("U.S. Chamber Comments") (each supporting application of the material-inhibition standard under Section 253(a)).

[5] *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, 33 FCC Rcd 9088, 9102–06 ¶¶ 35–43 (2018) ("*Small Cell Order*"); *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Report and Order, 33 FCC Rcd 3102, 3116–20 ¶¶ 35–45 (2018) ("*Moratoria Order*").

[6] *See* ACA Comments at 9-10; Comments of INCOMPAS at 18–23 ("INCOMPAS Comments"); Comments of CONNECT-AI at 19-24 ("CONNECT-AI Comments"); NCTA Comments at 2–6.

[7] *See* Comments of League of Oregon Cities at 10–12 ("League of Oregon Cities Comments") (asserting that Section 253(a) does not apply to broadband-related requirements).

[8] *See* ACA Comments at 9–10; INCOMPAS Comments at 18–23; NCTA Comments at 2–6.

functions, and barriers to deploying or upgrading that platform therefore materially inhibit the provision of telecommunications services.[9]

### B. The record demonstrates real, recurring barriers that materially inhibit deployment

The record contains extensive, consistent evidence that state and local practices continue to materially inhibit the deployment and upgrading of broadband and telecommunications networks. Commenters identify three categories of recurring barriers: (1) excessive and non-cost-based fees (including in-kind exactions); (2) multi-layered and unpredictable permitting delays; and (3) broadband-related rules that impede the provision of telecommunications services over commingled networks.

*First*, commenters document a wide range of excessive, non-cost-based fees imposed by state and local jurisdictions. Many provide examples of recurring fee practices—including per-foot or percentage-of-revenue assessments, market-rent theories, duplicative charges, and conditions unrelated to administrative costs—that materially inhibit broadband deployment.[10] Commenters also show that in-kind exactions, such as required contributions of dark fiber or conduit, free or subsidized connections to public facilities, and facility upgrades or relocations at the provider's expense, function as compensatory demands and therefore impose burdens equivalent to monetary fees.[11]

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[9] *See id.* (explaining that fiber infrastructure is shared across multiple services and that barriers to fiber deployment impede telecommunications traffic carried over the same facilities).

[10] *See* ACA Comments at 22–26; NCTA Comments at 9–12; Comments of WTA Comments at 10–14 ("WTA Comments"); Comments of T-Mobile at 9–12 ("T-Mobile Comments"); Comments of CableSouth at 5–12 ("CableSouth Comments"); INCOMPAS Comments, Annex B; CONNECT-AI Comments at 15–17.

[11] *See* NTCA Comments at 8–9; ACA Comments at 26–28; T-Mobile Comments at 12; INCOMPAS Comments, Annex B.

*Second*, the record shows that multi-layered, unpredictable, and frequently sequential permitting processes materially delay deployment. A number of comments identify examples of lengthy approval cycles, unclear or evolving requirements, duplicative agency review, and open-ended tolling practices that create substantial uncertainty and delay.[12] Commenters explain that such unpredictability, even when not an express moratorium, impairs project planning, drives up costs, disrupts investment timelines, and ultimately constrains broadband and telecommunications service availability.

*Third*, commenters show that rules nominally directed at broadband deployment often materially inhibit telecommunications services that can be delivered over the same network infrastructure. Many in the record explain that fiber networks support both broadband and telecommunications functions, and that restrictions on broadband deployment—such as engineering mandates, network design constraints, or facility-placement rules—therefore directly impede the ability to provide telecommunications services.[13]

### C. Local government interpretations of Sections 253(b) and (c) are inconsistent with precedent

Local government commenters advance interpretations of Sections 253(b) and (c) that conflict with the statutory text, Commission precedent, and court decisions. Several local

[12] *See* NCTA Comments at 7–9; INCOMPAS Comments, Annex A; WTA Comments at 5–10; T-Mobile Comments at 7–9; CONNECT-AI Comments at 11–31.

[13] *See* ACA Comments at 9–10 (explaining that fiber facilities are deployed as integrated networks supporting both broadband and telecommunications services, and that requirements imposed on broadband deployment necessarily affect the provision of telecommunications services over the same infrastructure); NCTA Comments at 2–4 (describing how engineering mandates and facility-placement restrictions applied to broadband infrastructure directly constrain the ability to deploy and operate telecommunications networks); INCOMPAS Comments at 18–20 (explaining that rules targeting broadband facilities often impose network design constraints that impede telecommunications services carried over shared fiber networks); CONNECT-AI Comments at 24 ("Interpreting Section 253 to apply to only networks that are initially planned to include the provision of telecommunications services would needlessly narrow the statute to exclude those networks that eventually provide telecommunications services based on customer demand after deployment.").

government commenters treat subsections (b) and (c) as broad safe harbors insulating most state and local requirements from preemption. However, courts and the Commission have long held that these subsections operate only as narrow exceptions to Section 253(a)'s prohibition on requirements that materially inhibit the ability to provide telecommunications service.[14]

The League of Oregon Cities asserts that the Commission lacks authority to interpret Section 253(c) and its scope.[15] But Section 253(d) expressly directs the Commission to preempt state or local requirements that prohibit or have the effect of prohibiting the provision of telecommunications service. The Commission cannot execute this duty without determining whether a challenged requirement falls within Section 253(c)'s exception. Courts have recognized that exercising preemption necessarily requires the Commission to interpret Section 253(c).[16]

Several local government commenters further contend that nondiscriminatory requirements cannot violate Section 253(a).[17] This argument is inconsistent with well-established precedent. Courts have repeatedly held that Section 253(a)'s application is not limited to requirements that discriminate and that instead, nondiscriminatory state or local actions may still materially inhibit deployment.[18] The question under Section 253(a) is whether

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[14] *See, e.g.*, *TCG New York, Inc. v. City of White Plains*, 305 F.3d 67, 76–80 (2d Cir. 2002); *Qwest Corp. v. City of Santa Fe*, 380 F.3d 1258, 1267–71 (10th Cir. 2004) (both treating subsections (b) and (c) as narrow exceptions).

[15] *See* League of Oregon Cities Comments at 3–4.

[16] *See White Plains*, 305 F.3d at 76–77 (recognizing Commission authority to interpret Section 253 in exercising preemption duties); *City of Auburn v. Qwest Corp.*, 260 F.3d 1160, 1178–79 (9th Cir. 2001).

[17] *See* League of Oregon Cities Comments at 13–20; Joint Comments of U.S. Conference of Mayors, National League of Cities, National Association of Counties, and NATOA at 3–6 ("Local Government Associations Joint Comments"); Comments of the California Public Utilities Commission at 6–10 ("CPUC Comments"); Comments of the City of Dallas at 3 ("City of Dallas Comments").

[18] *See White Plains*, 305 F.3d at 76–80; *Level 3 Communications, LLC v. City of St. Louis*, 477 F.3d 528, 532–34 (8th Cir. 2007); *Puerto Rico Telephone Co. v. Municipality of Guayanilla*, 450 F.3d 9, 18–20 (1st

a requirement materially inhibits or limits the ability of any competitor to compete in a fair and balanced legal and regulatory environment—not whether it applies uniformly to all providers.

The League of Oregon Cities also argues that permitting and franchising processes are categorically preserved under Section 253(c).[19] But Section 253(c) protects only fair and reasonable, cost-based compensation and does not exempt from review other types of burdens, including delays, procedural barriers, or conditions unrelated to managing the public rights-of-way or that impede deployment.[20] Courts have likewise declined to treat Section 253(c) as a broad shield for any requirement imposed in the context of permitting or franchising.[21]

Local government filers additionally assert that, under *Loper Bright*, the Commission may not interpret Section 253.[22] Their argument overlooks that the Commission's authority to administer Section 253 derives not from *Chevron* deference but from express statutory delegation. Courts continue to accord weight to agency interpretations under *Skidmore*, particularly where the agency's analysis is grounded in expertise and the statutory structure.[23]

Finally, the League of Oregon Cities points to historical revenue-based franchise fees to argue that Section 253(c) permits non-cost-based compensation.[24] But Commission precedent and subsequent judicial decisions uniformly hold that Section 253(c) limits compensation to

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Cir. 2006); *Santa Fe*, 380 F.3d at 1269–71 (each holding that nondiscriminatory requirements may still materially inhibit service under Section 253(a)).

[19] *See* League of Oregon Cities Comments at 17–20.

[20] *See Guayanilla*, 450 F.3d 9, 18–20 (1st Cir. 2006); *Level 3*, 477 F.3d 528, 533–34 (8th Cir. 2007).

[21] *See e.g., Portland*, 969 F.3d 1020, 1037–39 (holding that Section 253(c) does not broadly insulate permitting or franchising requirements from review and permits only recovery of reasonable, actual costs associated with rights-of-way management).

[22] *See, e.g.*, League of Oregon Cities Comments at 3—5; CPUC Comments at 8–9.

[23] *See Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2264–65 (2024).

[24] *See* League of Oregon Cities Comments at 26–31.

actual and reasonable costs. Courts have rejected attempts to justify market-rate, revenue-based, or other above-cost charges under Section 253(c).[25]

## III. THE RECORD SUPPORTS ADOPTING COST-BASED LIMITS ON FEES AND IN-KIND OBLIGATIONS

The record overwhelmingly confirms that state and local fee practices frequently exceed the actual administrative costs of managing the rights-of-way and materially inhibit network deployment. Many commenters agree that Section 253(c) permits only cost-based compensation and that a uniform, cost-based framework is essential to creating predictable, investment-supporting deployment conditions.[26] These submissions reinforce the longstanding view that fees untethered from actual administrative costs distort deployment decisions and frustrate Congress's objectives in Section 253.

As USTelecom explained in its initial comments, excessive and non-cost-based fees take multiple forms, including per-foot assessments, percentage-of-revenue fees, market-rent constructs, and duplicative or layered permitting charges. Commenters provide extensive examples of how these fee structures affect deployment economics, demonstrating that above-cost fees can exceed construction costs, undermine deployment feasibility, and materially alter whether providers pursue projects.[27] The record thus strongly supports the Commission's adoption of a cost-based standard that prevents the imposition of fees that function as unreasonable barriers to timely and efficient deployment.

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[25] *See Portland*, 969 F.3d at 1038–39; *Guayanilla*, 450 F.3d at 18–20; *Level 3*, 477 F.3d at 533–34.

[26] *See, e.g.*, ACA Comments at 22–28; NCTA Comments at 10; NTCA Comments at 3–7; ITIF Comments at 3–4; U.S. Chamber Comments at 3.

[27] *See, e.g.*, ACA Comments at 25; NCTA Comments at 9–12; WTA Comments at 5–16; CableSouth Comments at 5–11; INCOMPAS Comments, Annex B; CONNECT-AI Comments at 15–17.

The record likewise confirms USTelecom's position that in-kind obligations constitute compensation and therefore must satisfy Section 253's cost-based requirement. Commenters provide examples such as mandatory contributions of spare conduit or fiber, free connections for public buildings, additional facility upgrades, and unfunded relocation requirements.[28] These in-kind demands impose financial burdens equivalent to—or greater than—monetary fees and operate as compensatory conditions on access to the rights-of-way. Consistent with Section 253(c), such obligations must be justified by actual and reasonable costs of rights-of-way management, and the record demonstrates that many are not.

Local government commenters assert that Section 253(c) authorizes rent-based or revenue-based compensation, but these arguments conflict with Commission precedent.[29] As USTelecom noted, both the *Small Cell Order* and subsequent judicial decisions confirm that Section 253(c) permits only the recovery of reasonable, actual costs and does not allow market-based or revenue-based charges.[30] The record strongly supports this interpretation and underscores the need for Commission action to eliminate fee structures that exceed cost.[31]

Arguments advanced by the League of Oregon Cities and others that historical franchise-fee practices justify non-cost-based compensation similarly fail to align with Section 253's

[28] *See, e.g.*, NCTA Comments at 12–15; NTCA Comments at 9–12; ACA Connects Comments at 26–28; T-Mobile Comments at 12; INCOMPAS Comments, Annex B.

[29] *See* League of Oregon Cities Comments at 25–31; Local Government Associations Joint Comments at 3–4; Joint Comments of Rural County Representatives of California, California State Association of Counties, and Cal Cities at 2–3 ("California Joint Comments"); CPUC Comments at 8–9.

[30] *Small Cell Order* ¶¶ 42–43; *Portland*, 969 F.3d at 1038–39.

[31] *See, e.g.*, ACA Comments at 17 (explaining economic impact of above-cost fees and documenting how such charges impact deployment decisions); NCTA Comments at 9–12 (providing examples demonstrating that non–cost-based fees impede broadband investment); INCOMPAS Comments at 11–14 & Annex B (offering evidence of how excessive or duplicative fees alter project feasibility and delay deployment); CONNECT-AI Comments at 15–17 (discussing broader economic impact and opportunity costs imposed by above-cost and in-kind obligations).

statutory framework.[32] Section 253(c) does not reflect a rent-based or proprietary-revenue model; rather, it establishes a narrow exception permitting localities to recover the fair and reasonable costs associated with rights-of-way management.[33] As the record demonstrates, charging above-cost fees or imposing in-kind demands unrelated to actual local administration materially inhibits deployment and is inconsistent with Section 253's text and purpose.

## IV. THE RECORD SUPPORTS NATIONAL SHOT CLOCKS AND ENFORCEMENT REMEDIES FOR PERMITTING DELAYS

The record overwhelmingly affirms the concerns USTelecom identified regarding the lack of predictable, timely, and transparent permitting processes. Many commenters support timelines incorporating the same core elements USTelecom proposed: clear completeness criteria, limited tolling, reasonable and uniform review periods, and enforceable consequences for missed deadlines.[34] The absence of defined timelines allows extended delays that materially inhibit deployment and create uncertainty that frustrates network planning and investment.

As USTelecom and others documented, multi-agency and sequential review structures frequently generate prolonged delays that materially inhibit deployment. Numerous filings in the record identify multi-year delays caused by duplicative or sequential agency review, as well as examples from states where undefined timelines or opaque internal procedures cause significant project uncertainty or even abandonment.[35] These filings reinforce USTelecom members'

[32] *See* League of Oregon Cities Comments at 25–31.

[33] *See Guayanilla*, 450 F.3d at 18–20.

[34] *See, e.g.*, ACA Comments at 20–22; NCTA Comments at 8–9; NTCA Comments at 9–11; WTA Comments at 2; ITIF Comments at 3; U.S. Chamber of Commerce Comments at 3.

[35] *See, e.g.*, ACA Comments at 18–22; NCTA Comments at 7–9; INCOMPAS Comments, Annex A; *see generally* WTA Comments.

collective on-the-ground experience that unpredictable permitting windows undermine planning, investment, and timely execution of broadband deployment projects.

Local government commenters assert that permitting delays arise from safety or engineering complexity,[36] but this claim does not overcome the substantial record evidence demonstrating that extended or repetitive review processes are unnecessary to ensure safety or proper construction oversight. As USTelecom and others explained, providers support reasonable safety-related and mutually agreed upon tolling, but open-ended, iterative, or sequential delays function as de facto moratoria and materially inhibit service.[37] Nothing in the local government filings shows that the prolonged delays documented across the record are required to meet legitimate safety objectives.

Similarly, while providers support reasonable tolling related to genuinely incomplete applications, the record contradicts assertions that application errors are the primary cause of permitting delays.[38] Even when mistakes occur, they often result from the lack of predictability and consistency in permitting processes.[39] Some permitting regimes are so detailed and complex that they are prone to inadvertent errors;[40] others are vague and subject to ad hoc interpretation;[41]

[36] *See* League of Oregon Cities Comments at 13–17; Local Government Associations Joint Comments at 3–4; California Joint Comments at 2–3 (all asserting that longer timelines stem from safety, engineering, and related review requirements).

[37] *See* USTelecom Comments at 14–15; ACA Connects Comments at 20–22; NCTA Comments at 7–9; NTCA Comments at 9–11.

[38] *See* ACA Comments at 19–22; NTCA Comments at 9–11; WTA Comments at 5–16 (each explaining that permitting delays typically stem from local process issues rather than applicant error).

[39] *See* NCTA Comments at 7; INCOMPAS Comments, Annex A (providing examples that demonstrate that lack of predictability and consistency in local permitting processes generating avoidable errors).

[40] *See* WTA Comments at 5–166; USTelecom Comments at 12 (noting that overly complex and multi-layered local procedures frequently cause inadvertent application mistakes).

[41] *See* NCTA Comments at 7; INCOMPAS Comments, Annex A (documenting vague or inconsistently applied local requirements that lead to misinterpretation and error).

and still others involve undisclosed or informal practices that providers cannot anticipate.[42] Yet even incomplete applications, whatever their cause, need not materially inhibit deployment if states and localities quickly review applications and alert the applicant of the problem. Tolling rules modeled on those adopted in the *Small Cell Order* would introduce greater predictability, transparency, and efficiency for both providers and local governments.[43]

Consistent with this record, USTelecom urges the Commission to adopt clear, enforceable shot clocks. No more than 60 days should be presumed reasonable to review and issue decisions on permit applications for standard broadband construction projects, and no more than 90 days for complex projects. These timelines should begin at the first mandatory procedural step the applicant must take, whether a pre-application requirement or the filing of the application itself. If no decision is issued within the applicable timeframe, the permit should be deemed granted. And any denial should include a written explanation sufficient to prevent jurisdictions from summarily rejecting applications solely to satisfy the shot clock.[44] Such guardrails, grounded in the Commission's prior determinations in the *Small Cell Order*, would provide the structure necessary to avoid delays that materially inhibit service.

The record also supports the enforcement mechanisms USTelecom proposed to ensure that timelines are meaningful. Multiple commenters endorse remedies such as deemed-granted outcomes when deadlines expire, rebuttable presumptions of material inhibition for untimely decisions, and streamlined Section 253(d) review for jurisdictions that chronically fail to meet

[42] *See* INCOMPAS Comments, Annex A; ACA Comments at 15–16 (giving examples of undisclosed or informal local practices that providers cannot anticipate).

[43] *Small Cell Order* ¶¶ 42–43.

[44] *See* USTelecom Comments at 15; *see also Small Cell Order* ¶¶ 42–43.

reasonable timelines.[45] These filings confirm that, without enforcement, timelines risk becoming aspirational rather than effective in preventing unreasonable delay.

## V. CONCLUSION

The record confirms that the Commission has clear authority under Section 253 to address state and local requirements that materially inhibit the deployment and operation of modern networks. The record also supports Commission action to establish standards that ensure fees and in-kind obligations reflect actual costs, that permitting processes operate within predictable and reasonable timeframes, and that meaningful enforcement mechanisms prevent delay from undermining deployment. Advancing Chairman Carr's Build America agenda requires a regulatory framework that removes uncertainty, promotes investment, and ensures fair and efficient access to rights-of-way. USTelecom therefore urges the Commission to move forward with these permitting reforms to speed the construction of modern wireline communications infrastructure nationwide.

[45] *See* ACA Comments at 6, 32; NTCA Comments at 11; WTA Comments at 2.

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