

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Original

In re: Petition of BellSouth Telecommunications, Inc. for emergency relief to compel Sprint-Florida, Incorporated to provide directory listings of Sprint's customers in Florida.

DOCKET NO. 990930-TL

In re: Petition of Orlando Telephone Company to compel Sprint-Florida, Incorporated and BellSouth Telecommunications, Inc. to accept its White Page Directory Listing and Directory Assistance Information orders.

DOCKET NO. 991037-TP
ORDER NO. PSC-99-2126-PCO-TP
ISSUED: October 26, 1999

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.

ORDER DENYING MOTION TO DISMISS,
DECLINING TO GRANT EMERGENCY RELIEF, AND
CONSOLIDATING DOCKETS

BY THE COMMISSION:

BACKGROUND

On July 16, 1999, BellSouth Telecommunications, Inc. (BellSouth) filed a Petition for Emergency Relief against Sprint-Florida, Incorporated (Sprint) to compel Sprint to provide BellSouth with the directory listings of Sprint's customers in Florida. Consequently, Docket No. 990930-TL was established, and the matter was set for hearing on April 17, 2000. On August 5, 1999, Sprint filed a Motion to Dismiss BellSouth's Petition for failure to state a cause of action. On August 17, 1999, BellSouth filed its Response to Sprint-Florida, Incorporated's Motion to

DOCUMENT NO. 99-2126-TP

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FLORIDA PUBLIC SERVICE COMMISSION

Dismiss. On September 3, 1999, Sprint filed its Answer of Sprint-Florida, Incorporated to BellSouth's Petition.

On August 4, 1999, Orlando Telephone Company, Inc. (OTC) filed a Petition against both BellSouth and Sprint regarding the companies' "method of providing directory assistance and white page directory listing information." As a result, Docket No. 991037-TP was established. On September 2, 1999, BellSouth filed its Answer and Response to Petition of Orlando Telephone Company. Sprint did not file a response to OTC's Petition.

MOTION TO DISMISS

A. BellSouth's Petition for Emergency Relief

As stated previously, on July 16, 1999, BellSouth filed a Petition for Emergency Relief against Sprint. In its Petition, BellSouth requests that we compel Sprint to "provide BellSouth with the directory listings of Sprint's customers in Florida." BellSouth alleges that by letter dated December 10, 1998, pursuant to FCC Order No. 98-271 and 47 CFR Sec. 51.217, it advised Sprint that it "would begin providing Sprint's directory listings to third parties, including Alternative Local Exchange Companies (ALECs)." BellSouth also states that by letter dated December 23, 1998, Sprint advised that it was not necessary for third parties to have access to its listings from BellSouth. BellSouth states that by letter dated May 28, 1999, it then advised Sprint that Commission Order No. PSC-98-1484-FOF-TP, issued November 5, 1998, required BellSouth to "make all directory listings contained in BellSouth's database, including those of other local exchange companies, available to requesting ALECs and that this would occur effective June 9, 1999." According to BellSouth, Sprint, by letter dated June 3, 1999, advised that "unless BellSouth compensated Sprint for Sprint's directory listings provided to third parties, Sprint would require BellSouth to remove all Sprint listings from BellSouth's databases immediately." BellSouth further states that on June 17, 1999, Sprint ceased sending new and updated directory listing information to BellSouth, causing BellSouth to remove the existing Sprint directory listing information from its databases "in light of the strong possibility that the information was no longer accurate."

B. Sprint's Motion to Dismiss

On August 5, 1999, Sprint filed a Motion to Dismiss BellSouth's Petition for failure to state a cause of action. In its Motion, Sprint argues that even if all the factual allegations made by BellSouth were deemed true, "on its face the Petition does not describe actions or omissions by Sprint which are in violation of any cited FPSC rule or order." While Sprint admits that it is no longer sending directory assistance listings to BellSouth, it asserts that the only rule cited by BellSouth, Rule 25-4.040(5), Florida Administrative Code, imposes no obligation "on a supplier of numbers . . . to provide listings so that the LEC serving the LEC's territory can discharge its obligations." Sprint further states that the rule "speaks only to (1) BellSouth's own obligation to provide directory assistance in the area where BellSouth furnishes service and (2) to the internal obligation of BellSouth to insure that its own listings are updated within 48 hours from within the BellSouth service ordering completion process."

C. BellSouth's Response

On August 17, 1999, BellSouth filed its Response to the Motion to Dismiss. According to BellSouth, Sprint misinterprets its claims. It states that BellSouth has an obligation under FCC Order 98-271 and 47 C.F.R. §51.217 to permit any competing provider of local exchange service to have access to its Directory Assistance database, including the listings provided to BellSouth by Sprint. BellSouth asserts that Sprint, on the other hand, has an obligation to provide its directory listings, including extended area service listings, to BellSouth pursuant to its contract with BellSouth and pursuant to Rule 25-4.040(5), Florida Administrative Code. BellSouth, therefore, maintains that its Petition "states a cause of action and that the Commission has the authority under state law and the Commission's rules, to grant the relief requested."

D. Decision

BellSouth's Petition should be viewed in the light most favorable to BellSouth, in order to determine whether its request is cognizable under the provisions of Chapter 364, Florida Statutes. As stated by the Court in Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993), "[t]he function of a motion to dismiss is to raise as a question of law the sufficiency of facts alleged to state a cause of action." In determining the sufficiency of the petition, we have confined our consideration to

the petition and the grounds asserted in the motion to dismiss. See Flye v. Jeffords, 106 So. 2d 229 (Fla. 1st DCA 1958). Furthermore, we have construed all material allegations against the moving party in determining if the petitioner has stated the necessary allegations. See Matthews v. Matthews, 122 So. 2d 571 (Fla. 2nd DCA 1960).

Section 251(b)(3) of the Communications Act of 1934, as amended in 1996 (the Act), imposes the duty upon all local exchange carriers to provide to competing providers "nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays." Likewise, a portion of the FCC rule implementing this provision, 47 C.F.R. §51.217(c)(3), provides:

(i) Access to directory assistance. A LEC shall permit competing providers to have access to its directory assistance services so that any customer of a competing provider can obtain directory listings, except as provided in paragraph (c)(3)(iii) of this section, on a nondiscriminatory basis, notwithstanding the identity of the customer's local service provider, or the identity of the provider for the customer whose listing is requested.

(ii) Access to directory listings. A LEC shall provide directory listings to competing providers in readily accessible magnetic tape or electronic formats in a timely fashion upon request. A LEC also must permit competing providers to have access to and read the information in the LEC's directory assistance databases.

Section 271 of the Act prohibits Bell operating companies from originating interLATA traffic until they meet certain requirements. Of relevance here, Section 271(c)(2)(B)(vii)(II) requires nondiscriminatory access to "directory assistance services to allow the other carrier's customers to obtain telephone numbers." FCC Memorandum Opinion and Order No. 98-271, issued October 13, 1998, in FCC Docket No. 98-121, addresses BellSouth's application for authorization under Section 271 to provide interLATA services in Louisiana. The Order denies BellSouth's application on the basis that BellSouth failed to satisfy many of the statutory requirements

of Section 271. With regard to the requirement that BellSouth provide nondiscriminatory access to directory assistance, the Order states that "BellSouth does not demonstrate that it provides other carriers with the same access to these services that it provides to itself." The Order further states:

248. Access to BellSouth's Directory Assistance Databases . . . [A] competing carrier may wish to supply its own operator services and directory assistance. When this is the case, BellSouth must either provide access to BellSouth's directory database on a "read only" or "per dip" basis, or provide the entire database of subscriber listings to be incorporated into the competing carrier's directory assistance database.

* * *

249. BellSouth fails . . . to demonstrate . . . that it provide[s] the subscriber listing information in its directory assistance database in a way that allows competing carriers to incorporate that information into their own databases. To comply with this requirement, a LEC, including a BOC, must provide a requesting carrier with all the subscriber listings in its operator services and directory assistance databases except listings for unlisted numbers.

250. BellSouth concedes that the database provided to competing carriers does not contain all the listings that are in BellSouth's own directory assistance and operator services databases. It contends that it is precluded from providing the excluded listings because it has contracts with certain independent companies and competitive LECs that prevent it from including those carriers' subscribers' listings in the database. BellSouth claims that it is actively pursuing "contract modifications to permit it to provide all listings," and that it will provide competing carriers or independent

companies' listings in the database if such companies are willing to waive the restrictive parts of their agreements. It claims that, as a result of these negotiations, most agreements now permit such listings. Although we are encouraged by BellSouth's progress in renegotiating its agreements, we find that, based on BellSouth's own admission, BellSouth fails to demonstrate that it complies with section 51.217(c)(3)(i) of the Commission's rules.

While BellSouth maintains that it has an obligation under both 47 C.F.R. §51.217 and FCC 98-271 to provide all directory assistance listings in its database, including Sprint's listings, to third parties, Sprint takes a different view in its December 23, 1998, letter:

Sprint does not agree with BellSouth's interpretation of the FCC's Second Louisiana Order, FCC 98-271 and does not agree to allow BellSouth to provide Sprint listings to third parties. The portion of the Order cited by BellSouth is taken out of context and provides no support for the proposition that BellSouth may unilaterally change its agreement with Sprint. . . [I]t is clear that the FCC never ordered BellSouth to provide the listings, but rather stated that it was BellSouth's obligation to provide the listings if BellSouth wanted to meet the guidelines under Sections 271. [Emphasis added].

By Order No. PSC-98-1484-FOF-TP, issued November 5, 1998, in Docket No. 980281-TP, this Commission addressed the complaint of MCI Metro Access Transmission Services, Inc. (MCI) against BellSouth for breach of the parties' interconnection agreement. MCI argued that BellSouth was not providing access to all of BellSouth's Directory Assistance database listing information in compliance with the parties' agreement. BellSouth argued that it could not provide access to all the listings in its Directory Assistance database because it had to honor its agreements with several ALECs, including Sprint, not to disclose their particular listings to third party companies without their authorization. We concluded that the provision of the complete Directory Assistance

database listings did not require BellSouth to divulge any specific LEC's directory listings, and therefore, would not violate the non-disclosure agreements. Accordingly, BellSouth was ordered to provide "all listings included in [its] Directory Assistance database, excluding the identity of subscribers' local service providers."

Following the issuance of Order No. PSC-98-1484-FOF-TP, Sprint, in a letter to BellSouth dated June 3, 1999, conceded that BellSouth did indeed have an obligation under the orders to provide its entire Directory Assistance listings database to requesting third parties. Sprint still maintained, however, that those orders did not require the provision without compensation to Sprint:

Sprint agrees that BellSouth has an obligation to release listings in its directory databases to third parties. However, nowhere in the FCC rules or the Florida Order or FCC Docket No. 98-121 does it say that BellSouth shall provide those listings to third parties, with no compensation to Sprint as the owner of the listings.

In its Motion to Dismiss, Sprint now argues that even if BellSouth has an obligation to provide BellSouth's listings database to third parties, no obligation has been imposed upon Sprint to provide Sprint's listings to BellSouth. Sprint states that the only Commission rule cited by BellSouth, Rule 25-4.040(5), Florida Administrative Code, has never been interpreted to "impose an obligation on a supplier of numbers (i.e., a LEC outside of BellSouth's service territory) to provide listings so that the LEC serving the LEC's territory can discharge its obligations." BellSouth maintains that Sprint does indeed have an obligation pursuant to the contract between the parties and Rule 25-4.040(5).

Rule 25-4.040(5), Florida Administrative Code, provides, in pertinent part:

Directory Assistance operators shall maintain records of all telephone numbers (except for non-published telephone numbers) in the area for which they have the responsibility of furnishing service. . . All new or changed listings shall be provided to directory assistance operators within 48 hours after

connection of service, excluding Saturdays,
Sundays and holidays.

It appears that the objective of Rule 25-4.040(5), Florida Administrative Code, is the same as that of Section 251(b)(3) of the Act, 47 C.F.R. §51.217(c)(3)(i) and (ii), FCC Order 98-271 and PSC-98-1484-FOF-TP, which is that all customers should have access to all listings through directory assistance, notwithstanding their local service provider. Therefore, we shall not read the rule narrowly to impose no obligation upon Sprint to supply its listings to other LECs, including BellSouth. We believe that Sprint already has this obligation under 47 C.F.R. §51.217(c)(3)(i) and (ii), because the rule applies to all LECs.

Sprint is correct in that there has been no interpretation of Rule 25-4.040(5), Florida Administrative Code, to date; however, we believe that a broad reading of the rule is appropriate. The phrase, "In the area for which they have the responsibility of furnishing service", shall be interpreted to mean that a LEC has a responsibility, not just for the directory assistance listings of its customers in its territory, but for all customers of the entire local service area (especially when expanded calling scopes are involved). This interpretation mandates the sharing of directory assistance listings between LECs in the same local service area for the benefit of the customer. If the rule was interpreted any other way, it would lead to absurd results. On the one hand, BellSouth would be obligated to provide its listings to third party requestors so that all customers would have access to listings through directory assistance, notwithstanding their local service provider, but on the other hand, Sprint would not be required to give its listings to BellSouth in the first place, defeating entirely the purpose of the rule.

If we adopted Sprint's view and interpreted our rule to impose no obligation upon Sprint to provide its directory assistance listings to BellSouth, a customer calling BellSouth's directory assistance in Orlando, for example, may have difficulty obtaining the listing of a Sprint customer living in Altamonte Springs, absent a private agreement between the companies, even though both customers are within the same local service area. Sprint has conceded that BellSouth does indeed have an obligation to provide its entire directory assistance listings database to third party requestors pursuant to Section 251(b)(3) of the Act, 47 C.F.R. §51.217(c)(3)(i) and (ii), FCC Order 98-271 and PSC-98-1484-FOF-TP, but the objective of these regulatory requirements -- customer

access to directory assistance listings, notwithstanding the provider -- would be thwarted if Sprint was not also under any obligation to provide its listings to competing carriers so that "directory assistance operators . . . [could] maintain records of all telephone numbers . . . in the area for which they have the responsibility of furnishing service." See Rule 25-4.040(5), Florida Administrative Code.

Based on the foregoing, BellSouth has stated a cause of action for which we may grant relief. Therefore, Sprint's Motion to Dismiss is hereby denied.

EMERGENCY RELIEF

Although Docket No. 990930-TL has been set for hearing on April 17, 2000, we have considered what emergency relief, if any, BellSouth should be granted pending final disposition of this matter.

As stated previously, BellSouth asserts that after it advised Sprint that it would begin providing Sprint's directory assistance listings to third parties, including ALECs, Sprint ceased sending new and updated directory listings to BellSouth. As a result, BellSouth states, it removed the existing Sprint directory listing information from its database because of the strong possibility that the information was no longer accurate. BellSouth argues that Sprint's refusal to provide its directory listings to BellSouth and the resulting purge of Sprint's listings from BellSouth's database has impaired its ability to provide customer service, impaired competition, and is not in the best interest of the public.

In its Answer, Sprint argues that this issue arises out of an agreement between the parties, and that it does not provide for Commission jurisdiction in resolving disputes arising under it:

The circumstances that BellSouth obviously seeks to place before the Commission in this legally deficient Petition arise out of the *Directory Assistance Agreement Between BellSouth and Sprint* ("contract") whose terms do not provide that the FPSC has jurisdiction to resolve disputes under it. While the subject matter of the contract (DA listings) is related to matters over which the Commission has generally exercised some level

of jurisdiction, the dispute here is a private contractual matter over which the FPSC has traditionally found that it has no jurisdiction.

Sprint further argues that central to its agreement with BellSouth was the provision that its database not be resold. Sprint states that only after BellSouth sought Section 271 authority and "set into motion events that upset the balance achieved in the negotiated contract," did the contract no longer make economic sense to Sprint. According to Sprint, BellSouth can still act in the public interest and enter into a contract amendment that commits to compensating Sprint for listings that it resells to third parties.

We believe that the heart of the dispute between the parties is whether Sprint should be compensated for its directory listings that are included in BellSouth's database when BellSouth sells its database to third parties. Neither of the parties have raised compensation as an issue in this case. Order No. PSC-98-1484-FOF-TP, which ordered BellSouth to provide its entire Directory Assistance listings database to MCI was also silent as to compensation. Nonetheless, we believe that the parties may well benefit from the negotiation of new contract terms which may or may not provide for reciprocal compensation because our decision herein, as well as the MCI Order, effectively renders null and void any current contract provision between the parties which may deem to prohibit the resale of Sprint's Directory Assistance listings by BellSouth. The parties should also keep in mind our belief that Sprint has as much obligation to provide its Directory Assistance listings database to BellSouth and other LECs as BellSouth does to Sprint and other LECs.

The compensation issue notwithstanding, we considered the possible adverse impact upon the customers affected by the dispute between BellSouth and Sprint, and the need for emergency relief pending final disposition of this matter. At the October 5, 1999 Agenda Conference, BellSouth conceded that, although the information would not be as accurate as when it receives direct feeds from Sprint, a customer calling its local directory assistance operator for the listing of a Sprint customer would automatically be passed through to BellSouth's national directory assistance if the number could not be found in the local database. We were informed that this has been, and remains, the current situation in North Florida, where Sprint and BellSouth do not have

an agreement for the mutual exchange of directory assistance listings. We are persuaded that no emergency relief is necessary at this time because customers calling BellSouth's directory assistance operators can still obtain listings of Sprint customers from BellSouth's national directory assistance.

Accordingly, we hereby decline to grant BellSouth any emergency relief upon its Petition.

CONSOLIDATION

As stated previously, on August 4, 1999, Orlando Telephone Company, Inc. (OTC) filed a petition against both BellSouth and Sprint regarding the companies' "method[s] of providing directory assistance and white page directory listing information." As a result, Docket No. 991037-TP was established, but not set for hearing pending our decision at the October 5, 1999 Agenda Conference.

In its Petition, OTC raises two issues regarding Sprint's and BellSouth's practices, which it claims are having "serious negative impact on all subscribers both business and residence." First, OTC states that Sprint is not providing its directory assistance listings to BellSouth and vice versa:

Historically, Sprint/United provided directory assistance information for all customers within their franchise territory to BellSouth. In most cases this customer information was available to the BellSouth D.A. operators within 48 hours. In mid-June of this year, Sprint/United stopped providing this information to BellSouth. Conversely, BellSouth stopped providing this information to Sprint/United.

Second, OTC asserts that its customers residing in Sprint's territory and receiving new service between May and July are not being included in the BellSouth white pages directory, distributed in November, even though the actual BellSouth deadline for inclusion in the directory is not until July 22. OTC blames this problem on the fact that neither BellSouth nor Sprint will accept customer listings from a LEC, other than an ILEC, when the customers live outside of their respective service territory:

With regard to white page directory listing information, Sprint/United sold their current database for the Orlando area to BellSouth in mid-May. The BellSouth directory didn't close until July 22nd. This means that any new customers in the Sprint/United franchise area that are connected between mid-May and late July are not included in the new BellSouth directory that is distributed in November. Sprint/United plans to buy the BellSouth white page information in August for their directory that will be delivered in December.

BellSouth has adopted the position that they will not accept white page listing or directory assistance information orders from customers outside of their franchise territory from anyone other than an ILEC. Sprint/United appears to have adopted the same position. Let us point out that neither company has any problem with accepting this information from CLEC's when the CLEC customer is located within their respective franchise areas.

Rule 28-106.108, Florida Administrative Code, states that "[i]f there are separate matters which involve similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party." The issue of Sprint's obligation to provide its directory assistance listings to BellSouth is common to both dockets, and all of the parties involved -- BellSouth, Sprint, and OTC -- have all agreed that consolidation of that particular issue would be appropriate; however, with regard to the white pages listings, both Sprint and BellSouth maintain that this issue should be bifurcated as an unrelated matter. We believe that consolidation of Dockets Nos. 990930-TL and 991037-TP would "promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights" of any party. The matter of which issues are appropriate is properly within the discretion of the prehearing officer.

Accordingly, Dockets Nos. 990930-TL and 991037-TP are hereby consolidated.

ORDER NO. PSC-99-2126-PCO-TP
DOCKETS NOS. 990930-TL, 991037-TP
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Based on the foregoing, it is

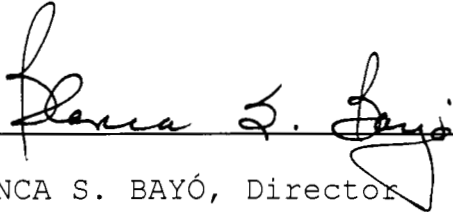
ORDERED by the Florida Public Service Commission that Sprint-Florida, Incorporated's Motion to Dismiss BellSouth Telecommunications, Inc.'s Petition for Emergency Relief in Docket No. 990930-TL is hereby denied. It is further

ORDERED that BellSouth Telecommunications, Inc.'s request for emergency relief in Docket No. 990930-TL is denied. It is further

ORDERED that Dockets Nos. 990930-TL and 991037-TP are hereby consolidated. It is further

ORDERED that Dockets Nos. 990930-TL and 991037-TP shall remain open pending the outcome of the hearing.

By ORDER of the Florida Public Service Commission this 26th day of October, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

DMC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

M E M O R A N D U M

OCTOBER 25, 1999

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RECORDS AND REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (CLEMONS) *pmc JK*

RE: DOCKET NO. 990930-TL - PETITION OF BELLSOUTH TELECOMMUNICATIONS, INC. FOR EMERGENCY RELIEF TO COMPEL SPRINT-FLORIDA, INCORPORATED TO PROVIDE DIRECTORY LISTINGS OF SPRINT'S CUSTOMERS IN FLORIDA.

DOCKET NO. 991037-TP - PETITION OF ORLANDO TELEPHONE COMPANY TO COMPEL SPRINT-FLORIDA, INCORPORATED AND BELLSOUTH TELECOMMUNICATIONS, INC. TO ACCEPT ITS WHITE PAGE DIRECTORY LISTING AND DIRECTORY ASSISTANCE INFORMATION ORDERS.

2126-PCD

Attached is an ORDER DENYING MOTION TO DISMISS, DECLINING TO GRANT EMERGENCY RELIEF, AND CONSOLIDATING DOCKETS, to be issued in the above-referenced docket. (Number of pages in order - 14)

DMC/anc
 Attachment
 cc: Division of Communications (Favors, Wolfe)
 I: 990930or.dmc

*~~9+9~~
see 1+13*

*Wolfe
Faxed
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