



March 30, 2009

Mr. Robert A. Morin
Secretary General
CRTC
Ottawa, ON K1A 0N2

Online: <http://support.crtc.gc.ca>

**CRTC Broadcasting Notice of Public Hearing CRTC 2009-113
“Licence renewals for private conventional television stations”**

Dear Mr. Morin,

INTRODUCTION

1. This is the submission from the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) on CRTC 2009-113 “Licence renewals for private conventional television stations” filed on behalf of our 21,000 members.
2. ACTRA brings to this submission the unique perspective of professional performers working in the English-language recorded media in Canada. In addition, ACTRA represents the interests of thousands of singers and musicians through the work of ACTRA Performers’ Rights Society that collects and distributes royalties from the public performance of musical recordings.
3. ACTRA’s submission also represents the views of more than 17,000 members of the American Federation of Musicians, Canada.
4. In order to ensure that these perspectives are fully considered in this important proceeding, ACTRA requests an opportunity to appear before the Commission at the public hearing commencing April 27, 2009.
5. This submission is about English-language services and programming. We do not comment on French-languages services or programming.
6. Canadian English-language drama is uniquely vulnerable as a result of our geographic proximity to the biggest producer of English-language audiovisual

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materials in the world and the beneficial economies of scale enjoyed by U.S. producers. Canadians have always had access to these foreign programs, both directly from U.S. television networks and indirectly from Canadian broadcasters. Simply put, Canadian English-language dramatic programming must compete directly with high-quality U.S. programming that is ‘dumped’ into Canada and sold to Canadian broadcasters at only a fraction of its actual production cost.

7. ACTRA believes it is essential to uphold the *Broadcasting Act* by ensuring:
 - a. that Canadian creative resources are predominantly used on the public airwaves and in other public spaces; and
 - b. that Canadians have access to a reasonable supply of high-quality English-language programming choices particularly scripted drama and comedy programs and series, in every medium.
8. ACTRA is compelled to participate in the CRTC’s consultation process because the livelihood of our members is dependent on a robust domestic television, film and new media production, distribution and exhibition system. We are also motivated by a belief in the creative potential of Canadians, in our ability to tell and perform Canadian stories and in the inherent need for Canadians to be able to see and hear ourselves in all media.
9. Canada has developed a sophisticated system of regulatory measures, public institutions and funding programs designed to ensure that Canadian choices are available to both domestic and global audiences. These widely-supported measures attempt to level the playing field for Canadians facing the dual challenge of living next door to the world’s largest producer of recorded entertainment and information programming, and the high costs of producing quality programs.
10. While some are inclined to paint regulation as a villain, it is clear to ACTRA that regulation is the lifeline for our industry. Regulations give Canadians a voice that would otherwise be drowned out and they support the very broadcasters who now plea for reduced regulatory control. The strength of our domestic TV industry, of our unique voice and our livelihoods is only as strong as the regulations that govern our broadcasting industry.

EXECUTIVE SUMMARY

11. ACTRA and our colleagues in the CCAU (Coalition of Canadian Audiovisual Unions) have invested much time and resources in anticipation of the opportunity presented by the licence renewal hearings to address the ongoing crisis in Canadian English-language drama. In fact, it was this very crisis that inspired the creation of the CCAU. Together we have undertaken numerous studies, made copious submissions and countless presentations before the Commission, the

public and the government to make the case for creators and to stand up for our culture.

12. Since the CRTC's *1999 Television Policy* let broadcasters off the hook with respect to content and expenditure requirements, our members and our culture have suffered. In effect, Canadian culture was sacrificed in order to allow private broadcasters to race to the bottom, doing the minimum to meet their already minimal obligations to contribute to a system that has served them so profitably for so many years.
13. As anxious as we are to reverse the *1999 Television Policy* and have the CRTC impose on licensees strict programming and expenditure requirements for Canadian drama, ACTRA appreciates that this is not the time for a long-term licence renewal. While we are interested in exploring the Chair's concept of a 1:1 ratio for foreign to Canadian program spending for the conventional broadcasters, providing that appropriate drama spending and scheduling rules are part of the package, ACTRA appreciates it cannot be part of a one-year renewal.
14. We are disappointed that the opportunity for a fulsome review of the licences for the conventional private broadcasters has been postponed. However we appreciate that changing technology and the economic downturn have combined to create short-term challenges and a potential upheaval, not only in Canada but around the world.
15. Waiting one year before a comprehensive review provides the opportunity for the economy to improve and the ability to look at station groups as a whole. ACTRA applauds the Commission's decision to assess licence renewal applications by ownership group rather than on a sectoral basis and we look forward to participating in that process in April 2010.
16. In the interim, at great sacrifice to our members who have been suffering for the past 10 years, ACTRA will accept waiting one more year for strict programming and expenditure requirements to be imposed on the private over-the-air broadcasters (OTAs).
17. We propose a "status quo" one-year licence renewal, requiring applicants to maintain the level of spending on Canadian drama, in real dollars, as they spent in this renewal year.
18. ACTRA asserts that the problems faced by the private conventional broadcasters today are over-stated, self-inflicted and temporary. They are not in any way caused by regulations which obligate those broadcasters to contribute to achieving the objectives of the *Broadcasting Act*. We also remind broadcasters that they benefit substantially from certain regulations, including simultaneous

substitution rules, must-carry requirements and others. The Commission must reject all demands for 'regulatory relief' from licensees.

19. In the long-term, ACTRA will not cede our fundamental belief in the need for strong regulation; the objectives of the *Broadcasting Act* cannot, and will not, be reached without it. To that end, when the Commission undertakes its review in April 2010, ACTRA will be demanding that the Commission impose strong content and spending requirements for Canadian drama programs and series on all private over-the-air broadcasters.

THE PAST TEN YEARS

20. ACTRA members have been suffering as a result of the crisis in English-language Canadian drama. Performers are directly impacted by the rules and regulations that govern Canada's broadcasting system. That fact became blindingly clear in the wake of the CRTC's disastrous *1999 Television Policy*.
21. When the Commission eliminated the drama expenditure requirements and expanded the definition of 'priority programming', it put Canadian TV drama in the intensive care unit, where it remains today. The consequences of the *CRTC's 1999 Television Policy* may not have been intended, but they cannot be disputed.
22. English-language Canadian TV drama has all but disappeared as broadcasters have been able to fill their schedules with inexpensive made-in Hollywood programs instead of Canadian drama while still satisfying Canadian content requirements with cheap reality and magazine programming. In 1999, broadcasters aired 12 one-hour fully-Canadian English-language TV dramas, totalling 186 hours of programming. Fast-forward to fall 2007 when there was not one new one-hour fully-Canadian drama on either CTV or Global. Only in the past 10 months, in advance of anticipated licence renewals, have private OTA broadcasters finally begun to increase their investments in producing new Canadian drama.
23. Since 1999, overall program spending by private broadcasters has increased but spending on Canadian drama has declined. In 2000, English-language private OTA broadcasters spent \$62.1 million on Canadian drama. By 2008, that number had dropped to \$53.8 million. At the same time, spending on foreign and U.S. programming increased from \$422.3 million in 2000 to an all-time high of \$737.7 million in 2008.¹

¹ CRTC. *Statistical and Financial Summaries for Private Conventional Television, 2004-2008*, February 10, 2009. Given that the CRTC does not publicly release English-language data separate from total data, we have estimated the English-language data as 105% of Canadian data outside Quebec to reflect the fact that there are only a handful of English-language TV stations in Quebec.

24. Despite the grand promises that arise when it comes time for acquisition approval or licence renewals, the fact is private over-the-air broadcasters view Canadian programming as a burden. They will only invest in it to the extent to which they are obligated to by regulation.
25. It's quite telling that 42% of Canadians believe the CRTC has the primary responsibility to preserve Canadian content on TV and only 16% trust private broadcasters to do it.²
26. A healthy independent audiovisual production sector is vital to our members and our economy. In 2007/08, the film and TV industry represented \$5.2 billion in production, making it a critical part of Canada's \$85 billion cultural industries.³ In 2008, the film and television industry generated 131,600 jobs, including 51,700 full-time jobs directly in production, and a further 79,900 spin-off full-time jobs in other industries in the Canadian economy.⁴
27. Canadian drama is also culturally important. In order to know ourselves we must be able to tell and see our own stories – written, directed, produced and starring Canadians on our airwaves. Our airwaves belong to us, the public. Broadcasters have grown rich because we allow them to exploit the airwaves. Their obligation in exchange for this privilege is to contribute to our cultural identity by supporting, promoting, airing and celebrating fully Canadian stories.
28. While broadcasters may be tempted to shave dollars off the bottom line by running cheaper reality-style programming, it is scripted drama that still consistently pulls in big numbers. Even with more entertainment choices than ever before, on the internet and on mobile devices, TV is still the most popular and influential cultural medium – and drama is still the most watched form of TV content.
29. Seventy-one percent of Canadians believe it is important to have access to Canadian TV programming distinct from U.S. programs.⁵ Last summer, the Canadian drama *Flashpoint* was the top-rated series in both Canada and the U.S, proving again that when funded, promoted and scheduled properly (when people are watching), Canadian drama will succeed. We find it ludicrous that,

² Pollara. *Canadians' Views On De-regulating Cable and Other TV Distributors*, Prepared for ACTRA, the Communications, Energy and Paperworkers Union of Canada, Friends of Canadian Broadcasting, Stornoway Communications, and the Writers Guild of Canada, March 2008.

³ Conference Board of Canada. *Valuing Culture: Measuring and Understanding Canada's Creative Economy*, August 28, 2008.

⁴ CFTPA. *The Guide 2009*, February 2009.

⁵ Harris-Decima. *Canadian Attitudes towards Canadian Programming and CTF Issues*. Prepared for the CFTPA, WGC, DGC, and ACTRA, January 2008.

while U.S. networks are responding to the economic crisis by purchasing more Canadian drama series, including *The Listener* and *The Bridge*, Canadian conventional broadcasters are responding with demands for relief from the very regulations that make these series possible.

30. As the guardian of the *Broadcasting Act*, the CRTC has a duty to step in and repair the devastation caused by the *1999 Television Policy*. As the *Act* states, the broadcasting system should serve to “safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada. It is also clear that each broadcaster must make maximum use, and in no case less than predominant use of Canadian creative and other resources in the creating and presentation of programming.” Private networks must “contribute significantly to the creation and presentation of Canadian programming.”
31. ACTRA and our coalition partners have been anxiously waiting for the opportunity to correct the *Policy’s* failures. While it is frustrating to have our members’ hardship put on hold for another year, we acknowledge that it would not be in the interest of our broadcasting system to make long-term changes at a time of economic uncertainty and industry adjustment.

CURRENT CLIMATE

32. ACTRA does not dispute that Canada’s over-the-air broadcasters are impacted by the current global financial upheaval. However, the extent of their challenges is largely self-inflicted. In an orgy of self-indulgence, they have bid up the price of U.S. programs, sometimes buying a series not because they want to show it, but to prevent their competitor from acquiring it. They have also spent billions of dollars acquiring new broadcasting properties so they could become oligopolies and have done so by borrowing money at a time when interest rates were high. If the OTA business is in critical condition, it is because CTV, Rogers and Canwest Global have tried to kill it by carelessly overspending acquiring U.S. programming and competitors.
33. With respect to the economy, ACTRA shares the position that CRTC Commissioner Molnar has taken:

“We must not lose sight of the fact that, sooner or later, the global markets will rebound. The Canadian economy will shift back into a period of growth. And new opportunities will arise, both as a result of this renewed economic activity and the new technologies for broadcasting content.”⁶

⁶ CRTC Commissioner Candice J. Molnar. *Remarks to the Broadcasters Association of Manitoba*, March 19, 2009.

34. Indeed, despite panicked cries to the contrary, this is not the end of TV as we know it. In 2008, private conventional television broadcasters in Canada made a profit on their operations. While low by historical standards, they still made a profit.
35. The softening of advertising revenues came on the heels of years and years of often record-breaking profits, and even then, the decline in revenues doesn't appear to be cataclysmic. According to the CRTC's *Statistical Summaries*, in 2008 private conventional TV broadcasters made total revenues of \$2.1 billion, a 1.5% decline from the previous year. Local advertising, which totalled \$387.3 million, remained almost unchanged, and national advertising sales fell to \$1.47 billion, a decrease of only 3%.
36. ACTRA notes as well that revenues for specialty and PPV broadcasters reached record levels in 2008 and remained extremely robust into this year, as evidenced by their financial results released by the CRTC on March 26, 2009.⁷ These figures prove that the sky isn't falling on Canada's TV industry. While some parts of the industry are currently facing challenges, the health of the specialty channels gives weight to the idea that you need to take a look at the industry as a whole.
37. It is also ACTRA's belief that new media does not pose a fatal threat to OTA broadcasting; it will not replace conventional broadcasting anytime soon as it is just another means of delivery and an ancillary platform. While the OTA distribution model may prove less influential over time, and the days of double-digit growth in conventional advertising revenues may be gone, conventional broadcasting will not disappear tomorrow. YouTube will not replace NBC or CTV as a means of mass advertising.
38. New technology and different ways of delivering programming content will require adjustments and we can expect some bumps along the way. But already, OTA broadcasters are beginning to embrace the new media distribution technologies and are looking for appropriate business models, as they should. Conventional TV will remain the principal vehicle to deliver a mass audience to advertisers, whether that TV is delivered OTA or over the internet.
39. ACTRA is extremely concerned by private broadcasters' repeated claims that their current economic challenges are the result of regulation. These are dangerous falsehoods, which if believed, might incline the Commission to provide regulatory relief under the false impression that deregulation will allow Canada's broadcasting industry to thrive. What's more, we note that broadcasters are very selective about which regulations they want relief from; we don't see any proposing to eliminate the simultaneous substitution rule that has made them so profitable for decades.

⁷ CRTC. *Statistical and Financial Summaries for Canadian specialty, pay and pay-per-view television and video-on-demand services*, March 26, 2009.

40. Private broadcasters bleat about the yoke of Canadian content and point to obligations to broadcast Canadian programming as the source of their woes. This is an absurd claim, especially as we know that Canadian private broadcasters pay the lowest license fees in the world. They spend embarrassingly little on Canadian content, particularly drama. Under the current regulations, English-language private OTA broadcasters were still able to spend 61% more on foreign programming than on Canadian – \$739.7 million versus \$452.8 million – in 2008. That’s a lot of money and a lot of jobs being shipped out of Canada.
41. We note that small specialty, pay, pay-per-view television and video-on-demand services spend twice as much as conventional broadcasters on Canadian programming and reap healthy profits. The latest figures released by the Commission showed the sector spent \$1.1 billion on Canadian programming, an increase of 11.3% from \$954.5 million in 2007. At the same time revenues continue to grow to a record \$2.9 billion, up 7.6% from the previous year.
42. ACTRA also rejects the broadcasters’ contention that the CRTC’s regulatory obligations respecting local news and information programming are the cause of the current problems.
43. Rather than taking responsibility for their own financial predicaments, the licensees’ applications and recent statements read like a series of doomsday pulp fiction novels riddled with not-so veiled threats.
44. CTVglobemedia’s licence renewal application claims: “Should the impairment of conventional broadcasting be permanent with no regulatory relief in sight, we would have to seriously consider exiting the conventional business.”
45. Paul Sparkes, Executive Vice-President, Corporate Affairs, CTVglobemedia made the following statement when announcing they would not be applying for renewal of the CKNX-TV Wingham and CHWI-TV Wheatley licences (and its rebroadcaster in Windsor):

*"This decision was difficult but necessary. The traditional economic model for Canadian television is broken. The financial pressures facing our conventional television operations are further compounded by the Commission's decision to turn down requests to implement a fee-for-carriage regime for local television in October 2008.... Unfortunately, we may need to consider similar actions in other local markets given the current regulatory framework."*⁸

⁸ CTVglobemedia. Press release, February 25, 2009.

46. Rogers' licence renewal application is quite a study in revisionism. When Rogers went before the CRTC for approval of its purchase of CityTV in 2007, it noted that while the business of over-the-air television brought challenges, it was optimistic about the industry's potential. Rogers expressed a keen interest in sticking it out and making the long-term investment required to build a successful property and contribute to the overall good of the Canadian broadcasting industry:

"We know there are no quick fixes and no easy solutions. This will be a slow rebuilding process...At Rogers, we have always tried to take a longer view, and have made significant, long-term investments for the development of high-quality, audience-intensive Canadian media services.

We made the decision to first buy the A channels, and then CityTV, because of our fundamental belief that only free over-the-air television can draw the mass audiences that are necessary to support the production of the highest quality programming.

We recognize that over-the-air television will have to take on increasing risk in order to continue to add value, and to protect its position in the value chain that brings content to audiences. We believe that will take scale and investment, from large, committed Canadian players, to ensure that the system is not bypassed in its entirety."⁹

47. We agreed with them at that time and we still share that perspective. Unfortunately Rogers' sunny optimism and "long-term" commitment has lasted all of 18 months. Whereas less than two years ago Rogers positioned itself as a growing national player with a key role in building Canada's broadcasting system, it now claims to be but a small local broadcaster that cannot compete with the other OTAs and therefore should not be subject to the same rules. It is in that spirit that it proposes eliminating priority programming rules for CityTV and spending \$0 – *nothing* – on Canadian drama in 2010 as part of their licence application.

48. Canwest is perhaps the most egregious offender. In its licence renewal application, Canwest joins those threatening to pick up their marbles and leave the schoolyard: "Conventional television has two highly unprofitable businesses: Canadian drama and local/news programming, our view is that we can no longer live with that paradigm."

49. Canwest also urges the Commission to ignore more than a quarter century of steady and sometimes spectacular profits, and instead look at six months of minor decline: "By looking too far in the rear-view mirror, the Commission could

⁹ Rogers Broadcasting Limited. *Response to Interventions – Application by Rogers Broadcasting Limited for the Acquisition of the CityTV Stations*, August 13, 2007.

inadvertently accelerate sector decline by imposing unrealistic licence obligations.... We already operate under one of the most onerous regulatory regimes in the world.”

50. The billions of dollars of debt they racked up purchasing Hollinger and Alliance Atlantis Communications Inc. is the primary reason Canwest finds itself in such dire straights. To blame Canadian content regulations, particularly when they only spent \$14.1 million on Canadian drama last year, is ridiculous. If they want to blame any programming expenditures, they might look to the millions they spend on U.S. programming. But, they should really look in the mirror and acknowledge they made a very bad deal in 2007.

51. The regulatory relief being sought by OTAs is nothing short of crass opportunism. As is the use of the current downturn as a shield to shut down or sell-off stations that have been marginally unprofitable for years. They are using the economic downturn to hold the CRTC hostage on the issue of fee-for-carriage, to threaten local services and to liberate them of regulation that they never wanted in the first place. However, they fail to admit that the same regulatory system they now find to be such a burden, is the one which has allowed them to make consistently good profits.

52. The great part of the OTA broadcasters’ economic woes is largely self-inflicted, caused by aggressive mergers and acquisitions financed through massive borrowing when interest rates were high, and their gross overspending on U.S. programs and series. Thus, when the advertising market softened, they had no flexibility to adapt and ride out the temporary downturn.

53. After decades of growth, it seems absurd that private conventional broadcasters cannot ride out 1.5% decline in total revenues. If this is indeed the case, and they find themselves in full financial crisis six months into an economic downturn, they have only themselves to blame.

CRTC’S QUESTIONS

Local programming

54. We believe that the current obligations should remain for the one-year licence renewal period.

55. ACTRA acknowledges that there is an ongoing crisis in local programming – this is not a new phenomenon, certain local stations have struggled for years. However, we believe that local programming is an absolutely critical service; Canadians must be able to tune in and know what is happening in their own communities, and see local stories brought to life.

56. We support the new Local Programming Improvement Fund. While we would hope that some may be used to produce original, local drama, there is a critical need for support for local news and information programming.

Priority programming

57. ACTRA would urge that the current levels of priority programming be maintained for the one-year renewal. We would strenuously oppose the elimination of existing priority program obligations. When the licenses of each ownership group are up for renewal in 2010, ACTRA will seek increases in the amount of priority programming.

English-language Canadian programming expenditures

58. As we have expressed on numerous occasions before the Commission, ACTRA shares the Commission's concern over the continuing reduction, by English-language conventional television licensees, in Canadian programming expenditures as a proportion of total programming expenditures. In 2000, private OTA broadcasters' spending on English-language Canadian and foreign programming was close to par at 25% and 29% of ad revenues respectively. Just eight years later the gulf had widened drastically to 27% and 44%.

59. The situation is even more dire when you look at spending on drama. In 2008, OTA broadcasters spent 3% of their ad revenues on Canadian English-language drama and 29% on foreign, mostly U.S., drama. They spent nine times more on U.S. drama than they did on English-language Canadian drama.

60. We were relieved to hear that the Commission intends to address these concerns in 2010 by implementing effective regulatory mechanisms to "ensure that broadcasters' private ownership groups with television licences contribute appropriately to the creation of Canadian programming."

61. ACTRA finds the Chair's concept of a 1:1 ratio for foreign to Canadian program spending to be extremely interesting, particularly with the *Broadcasting Act's* obligation for the content in the system to be "predominantly Canadian." While it is impractical to impose such requirements at this time in the context of a one-year licence renewal, we see that it has merit for future consideration.

62. We would be interested in seeing how a 1:1 ratio would work for private conventional broadcasters, but would oppose its application to include specialty and pay services that may be part of the same ownership group. We also think this would not be in keeping with the *Act* which requires "each element" to contribute to the creation and presentation of Canadian programming. We would also still require that there be a special allotment for dramatic, scripted series.

63. In the past ACTRA and our CCAU colleagues have tabled a proposal that would have private OTA broadcasters spend 7% of their gross advertising revenues on Canadian drama. This formula has numerous benefits. A common formula would put broadcasters on a level playing field and the ratio would be sensitive to fluctuations in revenue cycles. When ad revenues increase, the amount spent on drama would also increase and during a downturn, the broadcasters' spending obligation would decrease.
64. For this one-year period, ACTRA asks that the Commission require each applicant to maintain the level of spending on Canadian drama, in real dollars, as they spent in this renewal year.

Independent production

65. ACTRA supports the current rules requiring that at least 75% of priority programming be produced by independent producers. This is in keeping with the *Broadcasting Act*, Section 3, which specifically states that "the programming provided by the Canadian broadcasting system should...include a significant contribution from the Canadian independent production sector."

Terms of Trade

66. ACTRA is not a party to the Terms of Trade negotiations. However we fully support independent producers' efforts to reach equitable terms for trade agreements in order to secure fairer deals for program rights. We regard terms of trade as an essential component of a broader regulatory strategy aimed at ensuring a vibrant Canadian production sector that continues to have the creative and financial capacity to produce great Canadian programming.

Disclosure of aggregate financial data

67. It is absolutely critical going forward that full aggregate financial data be publicly available in order to ensure transparency, equality of treatment, and informed public participation in the licence renewal process.
68. ACTRA, along with our CCAU colleagues, made a special request to the Commission in writing for additional complete financial and historical data from licensees for the benefit of this process. We are extremely disappointed that the Commission deemed it not to be 'in the public interest' to provide that information. ACTRA appreciates the opportunity to participate in this process, but feels that it has done so with one-hand tied behind its back. This process has not been transparent, fair, predictable or timely.

69. The Commission has expressed concerns about the amount being spent by OTAs on foreign programming and has expressed interest in considering a 1:1 spending ratio. It therefore seems logical that it would fully disclose those expenditures by providing aggregate information broken down by for non-Canadian programming. We urge the Commission to require broadcasters to supply and then to make available, the full 10 years of historical data since the last comprehensive licence renewals. It must be broken down by Canadian versus U.S./foreign spending by programming genre, for each applicant. It is not possible to make comments about the potential implications of such a formula on each ownership group without knowing what their spending pattern has been.

70. In future, the Commission must provide the detailed information necessary permit intervenors to participate fully in CRTC processes. ACTRA believes that it is not only in the 'public interest' to have access to the full range of information to consider applications for use of public airwaves, it is a public right.

CONCLUSION

71. ACTRA accepts that a comprehensive review would be difficult at this time. In that spirit, we urge the Commission not to make any regulatory changes to conditions of licences or provide any regulatory relief. Regulations didn't cause the current industry challenges. They will most certainly not be the cure.

72. ACTRA supports one-year status quo licence renewals for the applicants, requiring applicants to maintain the level of spending on Canadian drama, in real dollars, as they spent in this renewal year.

73. Thank you for this opportunity. We look forward to appearing at the public hearings starting on April 27, 2009 and participating in subsequent proceedings on this issue.

Thank you.



Stephen A. Waddell
National Executive Director

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