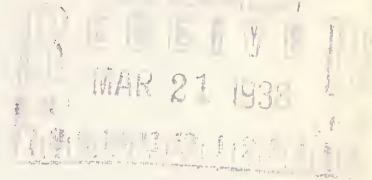


HEINL RADIO BUSINESS LETTER

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B U L L E T I N

FCC ADOPTS McNINCH RESOLUTION FOR MONOPOLY INQUIRY

The Federal Communications Commission at a special meeting today (March 18) adopted an order with respect to an investigation of chain broadcasting and monopoly in the broadcasting industry. The order adopted by the Commission was proposed by Chairman McNinch in a motion seconded by Commissioner Sykes, with the exception of the second "whereas" clause which was inserted on motion of Commissioner Craven. The vote of the Commission on the adoption of this order was Chairman McNinch, Commissioners Craven, Sykes, Brown, Walker and Case in favor, and Commissioner Payne against the adoption of the order.

Commissioner Payne said, "While, of course, I am heartily in favor of investigation of the monopolistic trends in broadcasting, I voted against the substitution of the McNinch Resolution for the Craven Resolution because of my objection to the methods by which that substitution was being made. Commander Craven had spent a great deal of time on his resolution, and I felt it was not only better drawn, but more comprehensive and calculated to be more effective."

The complete order follows:

"Whereas, under the provisions of Section 303 of the Communications Act of 1934 as amended 'the Commission, from time to time, as public convenience, interest, or necessity requires, shall - (1) have authority to make special regulations applicable to radio stations engaged in chain broadcasting;" and,

"Whereas, the Commission has not at this time sufficient information in fact upon which to base regulations regarding contractual relationships between chain companies and network stations, multiple ownership of radio broadcast stations of various classes, competitive practices of all classes of stations, networks and chain companies, and other methods by which competition may be restrained or by which restricted use of facilities may result;

"Now, therefore, it is ordered that the Federal Communications Commission undertake an immediate investigation to determine what special regulations applicable to radio stations engaged in chain or other broadcasting are required in the public interest, convenience, or necessity; such investigation to include an inquiry into the following specific matters, as well as all other pertinent and related matters including those covered in the Report on Social and Economic Data prepared by the Engineering Department of the Federal Communications Commission and filed with the Commission on January 20, 1938:

- "1. The contractual rights and obligations of stations engaged in chain broadcasting, arising out of their network agreements.

- "2. The extent of the control of programs, advertising contracts and other matters exercised in practice by stations engaged in chain broadcasting.
 - "3. The nature and extent of network program duplication by stations serving the same area.
 - "4. Contract provisions in network agreements providing for exclusive affiliation with a single network and also provisions restricting networks from affiliation with other stations in a given area.
 - "5. The extent to which single chains or networks have exclusive coverage in any service area.
 - "6. Program policies adopted by the various national and other networks and chains, with respect to character of programs, diversification, and accommodation of program characteristics to the requirements of the area to be served.
 - "7. The number and location of stations licensed to or affiliated with each of the various national and other networks. The number of hours and the specified time which such networks control over the station affiliates and the number of hours and the specified time actually used by such networks.
 - "8. The rights and obligations of stations engaged in chain broadcasting so far as advertisers having network contracts are concerned.
 - "9. Nature of service rendered by each station licensed to a chain or network organization, particularly with respect to amount of program origination for network purposes by such stations.
 - "10. Competitive practices of stations engaged in chain broadcasting as compared with such practices in the broadcasting industry generally.
 - "11. Effect of chain broadcasting upon stations not affiliated with or licensed to any chain or network organization.
 - "12. Practices or agreements in restraint of trade or furtherance of monopoly in connection with chain broadcasting.
 - "13. Extent and effects of concentration of control of stations locally, regionally or nationally in the same or affiliated interests, by means of chain or network contracts or agreements, management contracts or agreements, common ownership or other means or devices, particularly insofar as the same tends toward or results in restraint of trade or monopoly.
- "It is further ordered that hearings be held in connection with such investigation at such times and places as the Commission shall designate.
- "It is further ordered that a copy of this order be posted in the office of the Secretary and that a copy of the same be mailed to each licensee of a broadcast station and to each chain and network organization."

CRAVEN-McNINCH FEUD SEEN IN FCC DISCORD

A rift in the Federal Communications Commission that may create as much of an uproar as the family scraps in the TVA and the Bituminous Coal Commission was disclosed this week as Chairman Frank R. McNinch battled to retain control of a situation packed with political dynamite.

Commdr. T.A.M. Craven, former Chief Engineer of the FCC, suddenly loomed as a rival to McNinch's leadership by reason of his insistence that the Commission at once launch an investigation of monopoly charges frequently hurled at the broadcasting industry.

With the Commission as badly split as in the most hectic days of the late Chairman Anning S. Prall, members were turning to members on Capitol Hill for an airing of the discord while maintaining an official silence themselves.

It is not unlikely that President Roosevelt himself will have to step in to put an end to the intra-Commission bickering unless a compromise is reached on the demand of Commissioner Craven for an immediate FCC investigation.

Up to this time Administration leaders on Capitol Hill have been successful in blocking resolutions for a sweeping investigation of the FCC and the radio industry. Their strongest argument has been that Chairman McNinch should be given a chance to "clean house" before Congress takes a hand.

Administration leaders in Congress admit that they cannot withstand the demands for a Congressional investigation much longer, unless the Commission itself agrees to conduct a probe.

"If the Commission does not do something about investigating the radio monopoly", said Chairman Connor, of the House Rules Committee, which has held up the Connery resolution, "I assure you I shall do everything to cause a Congressional investigation."

While rumors of bitter fighting among the Commissioners in closed meetings have been circulating for several weeks, Commissioner Craven's demand for a vote on his resolution to set up a committee of three Commissioners to investigate the monopoly charges brought the scrap into the open.

Following four hours of wrangling on Wednesday, Commander Craven made public his resolution, which Chairman McNinch had tried to have tabled. The following day Representative McFarlane (D.), of Texas, aired the feud on the House floor.

Judge Eugene O. Sykes, veteran member of the Commission, and Norman S. Case, former Governor of Rhode Island, lined up with Chairman McNinch on a preliminary test vote to table the Craven resolution. Siding with Commissioner Craven were George Henry Payne, Paul Walker and Thad H. Brown.

Although the motion to table was defeated 4 to 3, the Commission deferred action on the resolution itself while Chairman McNinch sought to effect a compromise.

Representative McFarlane in his address in the House said the opposition of Commissioners Sykes and Case to the inquiry is "perhaps understandable when one recalls that these two gentlemen comprised the Broadcasting Division" of the Commission prior to its abolition by Chairman McNinch in last Fall's reorganization.

The Texas Congressman added that "it is rather pleasing to note that four members of this Commission . . . have at last risen to their responsibility."

He said it was his "understanding" that Chairman McNinch had been ordered by the President at a White House conference last week "to have the Commission investigate the alleged monopoly which exists in radio broadcasting."

Oddly enough, Chairman McNinch himself in an address to the National Association of Broadcasters last month stated that he would recommend to the FCC that it investigate the monopoly charges. Commissioner Craven, however, apparently was quicker to the trigger.

Chairman McNinch and his supporters, it is understood, tried to refer the Craven resolution to the Law Department for study, but Commander Craven declared that it would result in several months' delay.

"The time has come to establish the truth or falsity of charges of short-comings of the existing application of radio to the services of the public", he said.

The text of the Craven resolution follows:

"Whereas there was filed with the Commission on January 20, 1938, a report relating to the social and economic aspects of broadcasting, wherein was strongly urged the necessity for additional data and further study of facts with reference to a number of important phases of the broadcasting industry, including monopolistic trends, competitive practices, and contractual relationships between chain companies and network stations; and

"Whereas it has been charged that certain monopolistic practices or trends which would result in monopoly in radio broadcasting exist or may exist; and

"Whereas the Federal Communications Commission has not undertaken to make available complete facts and data which would establish the truth or falsity of such charges: Therefore

"It is ordered, That the Federal Communications Commission immediately investigate these charges and that a committee consisting of three Commissioners be appointed by the Commission to conduct hearings and otherwise to fulfill the requirements of this order."

William S. Paley, President of the Columbia Broadcasting System, while promising cooperation in an inquiry that may be ordered denied that CBS is in any sense monopolistic.

"Since its entry into the field in 1927, Columbia has grown to a network of 114 stations of which eight are owned and one is leased by CBS", Mr. Paley said. "The remainder have voluntarily associated themselves with Columbia, and thus received national and international programs not locally available."

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15 CHARGES AGAINST RADIO READ IN THE HOUSE

Fifteen "indictments" of the Federal Communications Commission and the broadcasting industry were made in the House on Thursday by Representative McFarlane (D.), of Texas, while the FCC was fighting over the Craven monopoly resolution.

The list of charges, which was not read on the floor but was placed in the Record at the end of Representative McFarlane's brief speech, are as follows:

"Let us review some of these known existing evils that no one in Congress has yet defended.

"(1) It was demonstrated that radio censorship and dictatorship exists, not by the Government or any Federal agency but by the vested interests and the radio monopoly.

"(2) That radio and motion pictures, the main means of controlling and molding public opinion, are in the hands of the Telephone and Radio Trust, with television about to be added.

"The Natural Resources Committee pointed out that television may become a wonderful boon or if misused and misregulated a horrible monster. To permit the present Communications Commis-

sion, as it has in the past regulated radio, or rather mis-regulated, is a thing that Congress must prevent, and one way we can do it is by cleaning up the radio cesspool.

"(3) That the public are in the process of being fleeced by stock racketeering in radio securities.

"(4) Specific evidence was presented to show that the S.E.C. is helpless to cope with the present Columbia Broadcasting System's stock-issue registration and distribution, which has the appearance of fleecing an innocent investing public; neither can it cope with the issuance of securities by R.C.A., which controls all of the stock of N.B.C.

"(5) That the trafficking in radio frequencies for which broadcasting companies pay the Government nothing, has proven a flourishing racket.

"(6) That the FCC was on the verge of giving two frequencies allotted to the Navy to the Columbia Broadcasting System. A situation which has all the appearances of another Teapot Dome.

"(7) That the FCC officials have admitted the present existence of the radio monopoly and its racketeering practices and are either unwilling or unable to protect the public and enforce the law. And this monopoly costs the Government \$2,262,375 annually to maintain the Federal Communications Commission to grant free licenses to this monopoly to enable this monopoly to take from the public through advertising over \$140,000,000 annually, with no regulation of the advertising rates to be charged.

"(8) That unfair competition prevails whereby privileged individuals, with unusual political connections, are enriched by millions of dollars through the continued holding of so-called experimental licenses.

"(9) That the consent decree of 1932 contains elements so suspicious that they fairly shout for complete exposure.

"(10) That two governmental agencies, the FCC and the FTC, specifically instructed to protect the public against monopoly and monopolists, are either unable or unwilling to enforce the law.

"(11) That the Radio Trust has a complete monopoly of the 40 cleared channels.

"(12) That 93 percent of all the broadcast power is in the hands of this monopoly.

"(13) That radio control of newspapers is a widespread evil.

"(14) That the illegal monopoly conditions existing before the consent decree of 1932 were not changed by that decree and still flourish.

"(15) The dissemination of indecent, vulgar, nightmare broadcasting programs, which excite the children so they cannot sleep and nauseates the grown-ups in thorough disgust of such programs."

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SPECIAL EXPERIMENT ON MILEAGE RULE RECOMMENDED

A special experiment to determine whether or not there will be interference resulting from the simultaneous operation of two broadcasting stations at less than the mileage separation proscribed by the Federal Communications Commission was recommended this week by Examiner Robert L. Irwin.

Reporting on an application from the Westchester Broadcasting Corporation, which operates WFAS at White Plains, N. Y., for authority to experiment with simultaneous operation with WBRB, at Red Bank, N. J., on 1210 kc., Examiner Irwin recommended that a permit be granted.

Regarding the proposed experiment, he says:

"The applicant has engaged a qualified engineer to make a field contour map based upon measurements to be made at the 0.5, 1 and 2 millivolt per meter contours of each of the stations involved on 1210 kilocycles. While such measurements are being made there will be a one-minute interruption in the transmission period of Station WFAS so that both the composite signal and the signal delivered by Station WBRB may be measured. In this manner the existing ratios may be carefully studied.

"The operation of Station WFAS as proposed will not cause objectionable interference to the normally protected contour of any existing station. Stations WINS and WNEW have applications pending to increase their power assignment to 5 kilowatts during the daytime. If the applications of Stations WFAS, WINS and WNEW were granted, the operation of WFAS would limit that of WINS to its 3 millivolt per meter contour and WNEW to its 1.7 millivolt per meter contour. The latter stations would be limited to the extent shown by the operation of WFAS on its present operating assignment. The granting of the present application from Station WFAS would merely increase the number of hours in which WINS and WNEW experience the interference without increasing the magnitude of the interference."

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CONNOLLY DENIES HEARST RADIO DEALS

Reports current in radio circles that William Randolph Hearst is negotiating to dispose of his radio properties, including ten broadcasting stations, were denied this week by Joseph V. Connolly, Chairman of the Board of Hearst Radio, Inc., according to the New York Times.

"The only Hearst station involved in a sale is KEHE, Los Angeles", Mr. Connolly said. "Report of the sale or prospective sale of WINS, New York; KOMA, Oklahoma City; KSTA, San Antonio; WACO, Waco, and KNOW, Austin, is untrue.

"We have from time to time received offers for our stations, but KEHE is the only one we have sold and that to Earle C. Anthony of Los Angeles, owner of KFI and KECA. He has signed a contract, but execution of the deal has not been completed. The figure is \$400,000."

While the Federal Communications Commission has received no applications for transfers from Hearst, authors of the reported negotiations insisted that a deal was under way although not consummated.

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NEW APPELLATE COURT FOR FCC PROPOSED

A court to hear appeals from rulings and orders of the Federal Communications Commission, the Board of Tax Appeals, Federal Trade Commission, Interstate Commerce Commission and similar Government organizations would be established under a bill introduced this week by Senator Logan (D.), of Kentucky.

The court would be known as the United States Court of Appeals for Administration, and would sit in the District of Columbia except when circumstances required that it sit elsewhere. A Chief Justice and 10 Associates appointed by the President for life or during good behavior would compose the court, with salaries of \$12,500 annually. The court's rulings would be subject to review only by the United States Supreme Court.

Appeals from FCC decisions now go to the U. S. Court of Appeals for the District of Columbia.

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"ZENITH NURSE" RECALLS DARLINGTON'S DEVICE OF 1930

Announcement of the development of the "Zenith Radio Nurse" last week by the Zenith Radio Corporation caused E. S. Darlington, of the General Electric Company, who is in charge of the short-wave broadcasting there, to dig into his files this week and produce a story of a similar device that he rigged up in his home in 1930 as an aid in bringing up his young daughter.

Then merely engineer in the General Electric laboratories, Mr. Darlington first developed a scheme for keeping tabs on his infant when she cried at night. Later he worked out an ingenious arrangements for transmitting parental orders to the child via short-waves.

The first invention, as described in a General Electric publicity release in October, 1930, said:

"When the Darlington infant arrived Darlington pere decided to put some of his mechanical ingenuity at work to bear some of the burdens of the householder. The baby, according to the best modern precepts, sleeps in a different room than the parents. Because of this isolation from the first-born there were hours of worry and sleeplessness. The baby might be crying or falling out of the crib or enduring the pains to which infants are subject.

"The answer was very simple. A telephone transmitter, used as a microphone was rigged up by the crib-side and connected by wire to an amplifier and a loud speaker close to the ear of the father. At the first cry of the baby, father is awake and alert. A phonograph at his side is turned on and a lullaby sounds through a loud speaker near the crib. If the lullaby fails to soothe, the father knows that some other form of attention is required, perhaps a bottle of warm milk, and then and not until then he enters the baby's boudoir."

Five years later when Jean Darlington grew a little older, her father rigged up a short-wave communication system in his home so as to save the family the trouble of looking around the neighborhood for her at meal time.

A newspaper feature article at the time described the working of the system thus:

"When the engineer wants his daughter to come home he merely turns to a portion of the apparatus of his private experimental radio station, twists a little knob and says, in a mild voice, as though conversing with someone at his elbow, 'Jean, dinner', or 'Time for your bath.'

"Without fail and within a very few minutes, depending on how far the youngster has strayed from the paternal roof, she will come trotting home.

"This happy result is achieved through the little rubber-tired cart that Jean takes about with her wherever she goes to play. Rigged to the cart is a light, but thoroughly efficient, combination radio receiver and amplifier, or loud speaker. This is attuned to the correct wave.

"The radio engineer's daughter does not, necessarily, play with this cart all the time, but she always takes it along and parks it near where she is playing. Mr. Darlington could reach her with his voice through this arrangement if Jean were five miles away. Ordinarily she does not go more than three or four blocks from her home. She may be playing fifty feet from where she has parked her wagon, and the loud speaker solves that, because she can then hear her father's voice. Or some other child may hear the broadcast and run and notify Jean that her daddy wants her."

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RADIO DEFAMATION - IS IT LIBEL OR SLANDER?

Defamation uttered over a broadcasting is, from a legal standpoint, comparable to malicious gossip repeated over a backyard fence, in the opinion of Edward J. Hickey, Jr., an attorney in the Department of Justice.

"Radio defamation", he asserted, "whether extemporaneously interpolated or read from prepared continuity, constitutes slander rather than libel".

His views, first published in the Georgetown University Law Journal, were carried in the Congressional Record March 17th in an extension of remarks by Senator Bone (D), of Washington. They are supported by numerous court decisions.

"The question naturally arises - Why is it so important to decide whether radio defamation is libel or slander - what difference does it make? In answer to this it may be said that the distinction between the tort of libel and that of slander becomes important", he adds. "Any defamatory matter shown to be libel is, if untrue, actionable without proof that it has actually caused detriment to the person who is the subject thereof. In other words, once a plaintiff establishes defamatory matter as libel, the law will presume damage, and the allegation is therefore actionable per se. On the other hand, defamation amounting to slander, does not entitle the person defamed to maintain an action unless, either he can establish the slanderous words to be within the three categories

of imputation which are slanderous per se, or show that the words have resulted in some actual detriment to the complainant. Such actual detriment is called special damage, and it must be shown to amount to an actual pecuniary loss, a loss of some definite material advantage which is directly relative to the words complained of. Such damage is very often difficult to prove, and it is through an appreciation of this fact that we can better understand a plaintiff's desire to sound his action for radio defamation.

"If it now be accepted that the damage defamation may cause is not determinative of its character, it remains to indicate that speech read from written copy enjoys no more preferred status than that orally interpolated. The basis of the purported distinction proceeds on the premise that the reading over the air of written defamatory matter amounts to a publication of a libel. As it is the form of the imputation that determines the character of the defamation, and as that form must be permanent to constitute libel, it is difficult to see how the utterance of a radio commentator meets the requirements, whether he speak impromptu or reads from prepared script. In either case, as to the utterance, the form is just the same, the ebullition of fleeting moments, as the spoken work quickly 'dissolves'. To constitute a publication of the written matter it must necessarily follow that the defamatory script be circulated as such, for only in this way can the repetitions born of permanency be established. If for hypothesis, a defamatory script be circulated among the radio station announcers and engineers, and then later broadcast, it is submitted that such an act would constitute libel within the limited space of the radio station, and slander as to the station's audience."

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SIXTH POWER RATIFIES ANTI-PROPAGANDA PACT

The Union of South Africa has acceded to the broadcasting Convention which was drawn up in September 1936, World-Radio reports. Now that six powers have ratified or acceded, the Convention comes into force. The other five are Great Britain, India, Australia, Denmark, and New Zealand.

The Convention binds the signatories to eschew all broadcasting propaganda of a character likely to disturb international relations, and particularly news known to be false.

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MCDONALD EXPLORES LANDS SIGHTED BY COLUMBUS

Commdr. Eugene F. McDonald, Jr., President of the Zenith Radio Corporation, who is now on his way home after a two months' cruise aboard his yacht "Mizpah", reports some of his experiences in the section of the world first sighted by Columbus.

The following radiogram came from Trinidad:

"Tonight waiting for the Zenith Foundation Program, we are lying in Scotland Bay on the western coast of Trinidad, temperature about 80. Here we can look westward and see a northern tip of South America. Columbus reached Trinidad and saw the same sight of South America but thought it was just another island and went on back to Spain without bothering to call. Since leaving Miami on February 3rd we have called at Havana and Isle of Pines which we put into because of weather; then Montego Bay in Jamaica, where the finest bathing beach in the Caribbean exists; then to Kingston, Jamaica. We then went on to Ciudad, Trujillo, Dominican Republic, where we entertained and were entertained by President Trujillo and his Secretary of State and Secretary of Foreign Affairs. President Trujillo wanted us to stay longer and use his Summer home Sans Souci. He also sent the Army band down to entertain us in the evening and during our entire stay we had Government cars and escorts at our disposal. Then on to Ponce Puerto Rico which was the antithesis of the cleanliness and prosperity that we had witnessed in the Dominican Republic.

"From there we sailed for the delightful Dutch Island of Saba which is nothing but a volcano with no harbor. Doctor and Mrs. Keeler, Gene Kinney and I went ashore in the dinghy and had a good ride over the rollers but landed right side up on the 25 ft. rocky beach of Saba. We climbed 900 ft. in the air to the village named Bottom, built in the crater of an extinct volcano. Cleanliness and relative prosperity were apparent on this little Dutch Island and I was delighted to find the Brigadier General, who has 4 soldiers under his command, the proud possessor of a Zenith farm radio with a wincharger. We paid our respects to the Dutch Governor and he, in turn, came down to the Mizpah, had dinner on board and spent the night with us, returning to his upstairs home in the morning. From there we called on the island of Barbuda one of the 64 wrecks since 1865. We approached the island at night but anchored 13 miles off in 12 fathoms of water, turned our searchlights toward the island and fished. We caught a five foot shark, which we turned loose after killing him, and then caught an eleven foot shark and found inside of him not only the five foot shark but also the octopus which I had shot with my revolver.

"In the morning we went in with the port launch and practically all of its thousand inhabitants were down at the wharf in the lagoon to meet us, but the only white man on the island, the warden, was not there. We found him out on the beach waving an English flag and carrying an official book of rules telling what to do in case of a wreck which he firmly believed the yacht was.

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"We next called on the French Island of Guadeloupe spending a delightful day there. We then moved on a few miles south to the British Island of Dominica, and witnessed a native carnival and no shops or stores open. Even the harbormaster and the quarantine officers were dancing and singing along the streets with the rest of the people. All were colored, wearing screen masks to make them look like whites. At times hundreds of these chanting masqueraders gathered around our automobile, making it impossible to proceed, but were good natured every way.

"The next day we had an interesting drive over the French Island of Martinique from the port of Fort de France to the partially rebuilt city of St. Pierre at the base of Mount Pelee. In Fort de France we saw two staged fights between the mongoose and the fer de lance, one of our deadliest snakes. Needless to say the mongoose won both times.

"Then to the British island of St. Lucia, a clean and prosperous island with mountainous and glorious tropical scenery. Then to the island of Barbuda, interesting but too citified, and well termed the most British of the British possessions. From Barbuda, we called on Robinson Crusoe's island of Tobago, whose natives are nearly all black. They are unspoiled because tourist boats never call there. It's a beautiful little island which we hated to leave.

"And now we are on the island of Trinidad and from Port of Spain we shall make one or two calls at South America in Venezuela and will then head north. These islands of the Caribbean are beautiful and interesting but frankly as cruising ground I still like Georgian Bay best."

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An increase in power from 100 to 100-250 watts for KWOS, Jefferson City, Mo. was recommended to the Federal Communications Commission this week by Examiner Robert L. Irwin. KWOS is operated by the Tribune Printing Co., which publishes the Jefferson City Tribune.

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