

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 582 of the Regular Session

As Engrossed: S2/27/07 S3/12/07

A Bill

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007

SENATE BILL 236

4
5 By: Senator Madison
6 By: Representative Edwards

7
8
9 **For An Act To Be Entitled**

10 AN ACT TO AMEND THE ARKANSAS PUBLIC SAFETY
11 COMMUNICATIONS ACT OF 1985 TO ADD DEFINITIONS; TO
12 LEVY ADDITIONAL SERVICE CHARGES; TO CHANGE THE
13 CMRS EMERGENCY TELEPHONE SERVICES BOARD'S NAME;
14 TO CLARIFY THE BOARD'S DUTIES CONCERNING THE
15 FUNDS COLLECTED FROM LEVIES; AND FOR OTHER
16 PURPOSES.

17
18 **Subtitle**

19 AN ACT TO AMEND THE ARKANSAS PUBLIC
20 SAFETY COMMUNICATIONS ACT OF 1985.

21
22
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

24
25 SECTION 1. Arkansas Code §12-10-303 is amended to read as follow:
26 12-10-303. Definitions.

27 As used in this subchapter:

28 (1) "Automatic location identification" means an enhanced 911
29 service capability that enables the automatic display of information defining
30 the geographical location of the telephone used to place the 911 call;

31 (2) "Automatic number identification" means an enhanced 911
32 service capability that enables the automatic display of the ~~seven~~ ten-digit
33 number used to place a 911 call from a wire line, wireless, voice over
34 internet protocol, or any non-traditional phone service;

35 (3) "Basic 911 system" means a system by which the various



1 emergency functions provided by public and private safety agencies within
2 each political subdivision may be accessed utilizing the three-digit number
3 911, but no available options are included in the system;

4 (4) "Board" means the ~~CMRS~~ Arkansas Emergency Telephone Services
5 Board created by this subchapter;

6 (5) "Chief executive" means the Governor, county judges, mayors,
7 city managers, or city administrators of incorporated places, and is
8 synonymous with head of government, dependent on the level and form of
9 government;

10 (6) "CMRS connection" means each account or number assigned to a
11 CMRS customer;

12 (7)(A) "Commercial mobile radio service" or "CMRS" means
13 commercial mobile service under §§ 3(27) and 332(d), Federal
14 Telecommunications Act of 1996, 47 U.S.C. § 151 et seq., Federal
15 Communications Commission rules, and the Omnibus Budget Reconciliation Act of
16 1993.

17 (B)(i) "Commercial mobile radio service" or "CMRS"
18 includes any wireless two-way communication device, including radio-telephone
19 communications used in cellular telephone service, personal communication
20 service, or the functional and competitive or functional or competitive
21 equivalent of a radio-telephone communications line used in cellular
22 telephone service, a personal communication service, or a network radio
23 access line.

24 (ii) "Commercial mobile radio service" or "CMRS"
25 does not include services whose customers do not have access to 911 or a 911-
26 like service, a communication channel suitable only for data transmission, a
27 wireless roaming service or other nonlocal radio access line service, or a
28 private telecommunications system;

29 (8) "Dispatch center" means a public or private agency which
30 dispatches public or private safety agencies but does not operate a 911
31 public safety answer point;

32 (9) "Enhanced 911 network features" means those features of
33 selective routing which have the capability of automatic number and location
34 identification;

35 (10)(A) "Enhanced 911 system" means enhanced 911 service, which
36 is a telephone exchange communications service consisting of telephone

1 network features and public safety answering points designated by the chief
2 executive which enables users of the public telephone system to access a 911
3 public safety communications center by dialing the digits "911".

4 (B) The service directs 911 calls to appropriate public
5 safety answering points by selective routing based on the geographical
6 location from which the call originated and provides the capability for
7 automatic number identification and automatic location identification;

8 (11) "Exchange access facilities" means all lines provided by
9 the service supplier for the provision of local exchange service, as defined
10 in existing general subscriber services tariffs;

11 (12) "Governing authority" means county quorum courts and
12 governing bodies of municipalities;

13 (13) "911 public safety communications center" means the
14 communications center operated on a twenty-four (24) hour basis by one of the
15 operating agencies defined by this subchapter and as designated by the chief
16 executive of the political subdivision which includes the public safety
17 answering point and dispatches one (1) or more public safety agencies;

18 (14) "Non-traditional phone service" means any service that:

19 (A) Enables real-time voice communications from the user's
20 location to customer premise equipment;

21 (B) Permits users to receive calls that originate on the
22 public-switched telephone network or to terminate calls to the public-
23 switched telephone network; and

24 (C) Has the capability of placing a 911 call;

25 (15) "Non-traditional phone service connection" means each
26 account or number assigned to a non-traditional phone service customer;

27 (16)(A) "Operating agency" means the public safety agency
28 authorized and designated by the chief executive of the political subdivision
29 to operate a 911 public safety communications center.

30 (B) Operating agencies are limited to offices of emergency
31 services, fire departments, and law enforcement agencies of the political
32 subdivisions;

33 (17) "Prepaid wireless telephone service" means a wireless
34 telephone service:

35 (A) For which no monthly invoices are issued; and

36 (B) Which is activated in advance by payment for a finite

1 dollar amount of service or for a finite set of minutes that terminate:

2 (i) Upon use by the customer and delivery by a CMRS
3 provider or reseller of an agreed upon amount of service corresponding to the
4 total dollar amount paid in advance; or

5 (ii) Within a certain period of time following the
6 initial purchase or activation unless additional payments are made;

7 (18) "Private safety agency" means any entity, except a public
8 safety agency, providing emergency fire, ambulance, or emergency medical
9 services;

10 (19) "Public safety agency" means an agency of the State of
11 Arkansas or a functional division of a political subdivision which provides
12 fire fighting, rescue, natural, or human-caused disaster or major emergency
13 response, law enforcement, and ambulance or emergency medical services;

14 (20) "Public safety answering point" means the location at which
15 911 calls are initially answered;

16 (21) "Public safety officers" means specified personnel of
17 public safety agencies;

18 (22) "Service supplier" means any person, company, or
19 corporation, public or private, providing exchange telephone service or CMRS
20 service throughout the political subdivision;

21 (23) "Selective routing" means the method employed to direct 911
22 calls to the appropriate public safety answering point based on the
23 geographical location from which the call originated;

24 (24) "Service user" means any person, company, corporation,
25 business, association, or party not exempt from county or municipal taxes or
26 utility franchise assessments who is provided landline telephone service, ~~or~~
27 CMRS service, voice over internet protocol service, or any non-traditional
28 phone service with the capability of placing a 911 call in the political
29 subdivision; ~~and~~

30 (25)(A) "Tariff rate" means the rate or rates billed by a
31 service supplier as stated in the service supplier's tariffs and approved by
32 the Arkansas Public Service Commission, which represents the service
33 supplier's recurring charges for exchange access facilities, exclusive of
34 all:

35 (i) Taxes;

36 (ii) Fees;

1 (iii) Licenses; or
 2 (iv) Similar charges whatsoever.
 3 (B) The tariff rate per county may include extended
 4 service area charges only if an emergency telephone service charge has been
 5 levied in a county and a resolution of intent has been passed by a county's
 6 quorum court that defines tariff rate as being inclusive of extended service
 7 area charges;

8 (26) "Voice over internet protocol connection" means each
 9 account or number assigned to a voice over internet protocol customer;

10 (27) "Voice over internet protocol service" means any service
 11 that:

12 (A) Enables real-time voice communications;

13 (B) Requires a broadband connection from the user's
 14 location;

15 (C) Requires internet protocol compatible customer premise
 16 equipment;

17 (D) Permits users to receive calls that originate on the
 18 public-switched telephone network or to terminate calls to the public-
 19 switched telephone network; and

20 (E) Has the capability of placing a 911 call.; and

21 (28) "Wireless telecommunications service provider" means a
 22 provider of commercial mobile radio services:

23 (A) As defined in 47 U.S.C. § 332(b), as it existed on
 24 January 1, 2006, including all broadband personal communications services,
 25 wireless radio telephone services, geographic area specialized and enhanced
 26 specialized mobile radio services, and incumbent wide area specialized mobile
 27 radio licensees that offer real time, two-way voice service interconnected
 28 with the public-switched telephone network; and

29 (B) That either

30 (i) Is doing business in the state of Arkansas, or

31 (ii) May connect with a public safety communications
 32 center.

33
 34 SECTION 2. Arkansas Code §12-10-318 is amended to read as follow:

35 12-10-318. Emergency telephone service charges - Imposition -
 36 Liability.

1 (a)(1)(A) When so authorized by a majority of the persons voting
2 within the political subdivision in accordance with the law, the governing
3 authority of each political subdivision may levy an emergency telephone
4 service charge in the amount assessed by the political subdivision on a per-
5 access-line basis as of January 1, 1997, or the amount up to five percent
6 (5%) of the tariff rate, except that any political subdivision with a
7 population of fewer than twenty-seven thousand five hundred (27,500)
8 according to the 1990 Federal Decennial Census may, by a majority vote of the
9 electors voting on the issue, levy an emergency telephone charge in an amount
10 assessed by the political subdivision on a per-access-line basis as of
11 January 1, 1997, or an amount up to twelve percent (12%) of the tariff rate.

12 (B) The governing authority of a political subdivision
13 that has been authorized under subdivision (a)(1)(A) of this section to levy
14 an emergency telephone service charge in an amount up to twelve percent (12%)
15 of the tariff rate may decrease the percentage rate to not less than four
16 percent (4%) of the tariff rate for those telephone service users that are
17 served by a telephone company with fewer than two hundred (200) access lines
18 in this state as of the date of the election conducted under subdivision
19 (a)(1)(A) of this section.

20 (2)(A) Upon its own initiative, the governing authority of the
21 political subdivision may call such a special election.

22 (B)(i) The special election shall occur on the second
23 Tuesday of any month, ~~except as provided in subdivision (a)(2)(B)(ii) of this~~
24 ~~section~~ unless the second Tuesday of the month is a legal holiday in which
25 event the special election shall be held on the third Tuesday of the month.

26 (ii) A special election held in a month in which a
27 presidential preferential primary election, preferential primary election,
28 general primary election, or general election is scheduled to occur shall be
29 held on the date of the presidential preferential primary election,
30 preferential primary election, general primary election, or general election.

31 ~~(2)(A)(i)(iii)(a)~~ If a special election is held on
32 the date of the presidential preferential primary election, preferential
33 primary election, or general primary election, the issue or issues to be
34 voted upon at the special election shall be included on the ballot of each
35 political party.

36 ~~(ii)(b)~~ However, a separate ballot containing

1 only the issue or issues to be voted upon at the special election shall be
2 prepared and made available to a voter requesting a separate ballot.

3 ~~(B)(iv)~~ No voter shall be required to vote in a
4 political party's presidential preferential primary election, preferential
5 primary election, or general primary election in order to be able to vote in
6 the special election.

7 ~~(b)~~ A special election scheduled to occur in a month in which the
8 second Tuesday is a legal holiday shall be held on the third Tuesday of the
9 month.

10 (b)(1)(A)(i) There is levied a commercial mobile radio service
11 emergency telephone service charge in an amount of fifty cents (50¢) ~~forty~~
12 ~~cents (40¢)~~ per month per commercial mobile radio service connection that has
13 a place of primary use within the State of Arkansas.

14 ~~(B)(i)(ii)(a)~~ A commercial mobile radio service provider
15 may determine, bill, collect, and retain an additional amount to reimburse
16 the commercial mobile radio service provider for enabling and providing 911
17 and enhanced 911 services and capability in the network and for the
18 facilities and associated equipment.

19 ~~(ii)(b)~~ The commercial mobile radio service
20 provider may add any amounts implemented under this subdivision ~~(b)(1)(B)~~
21 (b)(1)(A)(ii) to the fifty cents (50¢) ~~forty cents (40¢)~~ levied in
22 subdivision (b)(1)(A)(i) of this section so that the commercial mobile radio
23 service emergency telephone service charges appear as a single line item on a
24 subscriber's bill.

25 (B)(i) There is levied a service charge of fifty cents
26 (50¢) per month on prepaid wireless telephone service subscribers whose
27 mobile set telephone numbers are assigned to the State of Arkansas.

28 (ii) Providers of prepaid wireless telephone service
29 shall collect and remit the service charge under one of the following
30 methods:

31 (a) The CMRS provider shall collect on a
32 monthly basis the fifty cents (50¢) service charge from each prepaid wireless
33 telephone service customer whose account balance is equal to or greater than
34 the amount of the service charge; or

35 (b) The CMRS provider shall divide the total
36 earned prepaid wireless telephone service revenue received by the CMRS

1 provider with respect to each prepaid wireless telephone service customer in
2 the state within the monthly 911 reporting period by fifty dollars (\$50.00)
3 and multiply the quotient by the service charge amount.

4 (iii) In the case of prepaid wireless telephone
5 service:

6 (a) The monthly wireless 911 surcharge imposed
7 by subdivision (b)(1)(B) of this section shall be remitted based upon each
8 prepaid wireless telephone associated with this state for each wireless
9 service customer that has a sufficient positive balance as of the last day of
10 each month;

11 (b) The surcharge shall be remitted in any
12 manner consistent with the wireless provider's existing operating or
13 technological abilities, such as customer address, location associated with
14 the mobile telephone number, or reasonable allocation method based upon other
15 comparable relevant date; and

16 (c)(1) If direct billing is not feasible, the
17 prepaid subscriber's account may be reduced by the surcharge amount or an
18 equivalent number of minutes.

19 (2) However, collection of the wireless
20 911 surcharge under subdivision (b)(1)(B)(iii)(c) of this section does not
21 reduce the sales price for any tax collected at the point of sale.

22 (C) There is levied a voice over internet protocol
23 emergency telephone service charge in an amount of fifty cents (50¢) per
24 month per voice over internet protocol connection that has a place of primary
25 use within the State of Arkansas.

26 (D) There is levied a non-traditional telephone service
27 charge in an amount of fifty cents (50¢) per month per non-traditional
28 service connection that has a place of primary use within the State of
29 Arkansas.

30 (E) Except for prepaid wireless telephone service, the
31 service charge levied in subdivision (b)(1)(A) of this section and any
32 additional amounts implemented under subdivision (b)(1)(B) of this section
33 and collected by commercial mobile radio service providers who provide mobile
34 telecommunications services as defined by the Mobile Telecommunications
35 Sourcing Act, Pub. L. No. 106-252, as in effect on January 1, 2001, shall be
36 collected pursuant to the Mobile Telecommunications Sourcing Act.

1 ~~(C)(2)(A)~~ The ~~fees~~ service charges collected by ~~commercial~~
2 ~~mobile radio service providers under subdivisions~~ under subdivision (b)(1)(A)
3 of this section, less administrative fees under subdivision ~~(b)(3)~~ (c)(3) of
4 this section, shall be remitted to the ~~CMRS~~ Arkansas Emergency Telephone
5 Services Board within sixty (60) days after the end of the month in which the
6 fees are collected.

7 ~~(D)(B)~~ The funds collected pursuant to ~~this~~ subdivision
8 (b)(1)(A) shall not be deemed revenues of the state and shall not be subject
9 to appropriation by the General Assembly.

10 ~~(E)~~ The fee levied in subdivision (b)(1)(A) of this
11 ~~section and any additional amounts implemented under subdivision (b)(1)(B) of~~
12 ~~this section and collected by commercial mobile radio service providers who~~
13 ~~provide mobile telecommunications services as defined by the Mobile~~
14 ~~Telecommunications Sourcing Act, Pub. L. No. 106-252, as in effect on January~~
15 ~~1, 2001, shall be collected pursuant to the Mobile Telecommunications~~
16 ~~Sourcing Act.~~

17 ~~(2)(A)(c)(1)~~ There is established the ~~CMRS~~ Arkansas Emergency
18 Telephone Services Board consisting of the following:

19 ~~(i)(A)~~ The Auditor of State or his or her designated
20 representative;

21 ~~(ii)(B)~~ Two (2) representatives selected by a majority of
22 the commercial mobile radio service providers licensed to do business in the
23 state; and

24 ~~(iii)(C)~~ Two (2) 911 system employees selected by a
25 majority of the public safety answering point administrators in the state.

26 (2)(B) The responsibilities of the board shall be as follows:

27 ~~(i)(A)~~ To establish and maintain an interest-bearing
28 account in which will be deposited revenues from the service charges levied
29 ~~on commercial mobile radio service connections~~ under subdivision (b)(1)(A) of
30 this section;

31 ~~(ii)(B)~~ To manage and disburse the funds from the account
32 levied under subdivision (b)(1)(A) of this section in the following manner:

33 ~~(a)(i)~~ Not less than forty-nine percent (49%) of the
34 total monthly revenues collected and remitted under subdivision (b)(1)(A) of
35 this section shall be distributed on a population basis to each political
36 subdivision operating a 911 public safety communications center which has the

1 capability of receiving commercial mobile radio service 911 calls on
2 dedicated 911 trunk lines for expenses incurred for the answering, routing,
3 and proper disposition of ~~commercial mobile radio service~~ 911 calls,
4 including payroll costs and training costs associated with wireless, voice
5 over internet protocol, and non-traditional 911 calls;

6 ~~(b)(ii)(a)~~ (b)(ii)(a) Not more than forty-nine percent (49%) of
7 the total monthly revenues collected and remitted under subdivision (b)(1)(A)
8 of this section shall be held in the interest-bearing account ~~solely for the~~
9 ~~purposes of complying with applicable requirements of Federal Communications~~
10 ~~Commission docket # 94-102.~~

11 (b) These funds may be utilized by the public
12 safety answering points for the following purposes in connection with
13 compliance with the Federal Communications Commission requirements:
14 upgrading, purchasing, programming, and installing necessary data, basic 911
15 GIS mapping, hardware, and software, including any network elements required
16 to supply enhanced 911 phase II cellular, voice over internet protocol, and
17 other non-traditional telephone service.

18 (c) Invoices must be presented to the board in
19 connection with any request for reimbursement and be approved by a majority
20 vote of the board to receive reimbursement.

21 (d) Any invoices presented to the board for
22 reimbursements of costs not described by this section may be approved only by
23 a unanimous vote of the board. ~~In no event shall any invoice be reimbursed~~
24 ~~for costs not related to compliance with applicable requirements of Federal~~
25 ~~Communications Commission docket # 94-102;~~

26 ~~(e)(iii)~~ (e)(iii) Not more than one percent (1%) of the fees
27 collected under subdivision (b)(1)(A) of this section may be utilized by the
28 board to compensate the independent auditor and for administrative expenses;

29 ~~(d)(iv)~~ (d)(iv) All interest received on funds in the
30 interest-bearing account shall be disbursed as prescribed in subdivision
31 ~~(b)(2)(C)(i)~~ (c)(2)(B)(i) of this section; and

32 ~~(e)(1)(v)(a)~~ (e)(1)(v)(a) All cities and counties receiving funds
33 under this section shall submit to the board no later than March 1 of each
34 year an explanation and accounting of the funds received and expenditures of
35 those funds for the previous calendar year.

36 ~~(2)(b)~~ (b) The board may require any other

1 information necessary to ensure the funds have been properly utilized
2 according to this section.

3 ~~(3)(c)~~ Failure to submit the proper accounting
4 information and failure to utilize the funds in a proper manner may result in
5 the suspension or reduction of funding until corrected;

6 ~~(iii)(a)(C)(i)~~ To promulgate regulations necessary to
7 perform its duties prescribed by this subchapter.

8 ~~(b)(ii)~~ In determining the population basis
9 for distribution of funds under subdivision ~~(b)(2)(B)(ii)(a)~~ (c)(2)(B)(i) of
10 this section, the board shall determine, based on the latest federal
11 decennial census, the population of all unincorporated areas of counties
12 operating a 911 public safety communications center which has the capacity of
13 receiving commercial mobile radio service, voice over internet protocol
14 service, or non-traditional 911 calls on dedicated 911 trunk lines and the
15 population of all incorporated areas operating a 911 public safety
16 communications center which has the capability of receiving commercial mobile
17 radio service, voice over internet protocol service, or non-traditional 911
18 calls on dedicated 911 trunk lines and compare the population of each of
19 those political subdivisions to the total population;

20 ~~(iv)(D)~~ To submit annual reports to the office of the
21 Auditor of State outlining fees collected and moneys disbursed to public
22 safety answering points under subdivision (b)(1)(A) of this section; and

23 ~~(v)(a)(E)(i)~~ To retain an independent third-party auditor
24 for the purposes of receiving, maintaining, and verifying the accuracy of any
25 proprietary information submitted to the board by commercial mobile radio
26 service providers.

27 ~~(b)(ii)~~ Due to the confidential and proprietary
28 nature of the information submitted by commercial mobile radio service
29 providers, the information shall be retained by the independent auditor in
30 confidence, shall be subject to review only by the Auditor of State, and
31 shall not be subject to the Freedom of Information Act of 1967, § 25-19-101
32 et seq., nor released to any third party.

33 ~~(e)(iii)~~ The information collected by the
34 independent auditor shall be released only in aggregate amounts that do not
35 identify or allow identification of numbers of subscribers or revenues
36 attributable to an individual commercial mobile radio service provider.

1 (3) Commercial mobile radio service providers, voice over
2 internet protocol, or other non-traditional communications providers shall be
3 entitled to retain one percent (1%) of the fees collected under subdivision
4 (b)(1)(A) of this section as reimbursement for collection and handling of the
5 charges.

6 ~~(4)(A)(d)(1)~~ Notwithstanding any other provision of the law, in no
7 event shall any commercial mobile radio, voice over internet protocol, or
8 non-traditional service provider, its officers, employees, assigns, or agents
9 be liable for civil damages or criminal liability in connection with the
10 development, design, installation, operation, maintenance, performance, or
11 provision of 911 service.

12 ~~(B)(2)~~ Nor shall any commercial mobile radio, voice over
13 internet protocol, or non-traditional service provider, its officers,
14 employees, assigns, or agents be liable for civil damages or be criminally
15 liable in connection with the release of subscriber information to any
16 governmental entity as required under the provisions of this subchapter.

17 ~~(e)(e)~~ The service charge shall have uniform application and shall be
18 imposed throughout the political subdivision to the greatest extent possible
19 in conformity with availability of the service in any area of the political
20 subdivision.

21 ~~(d)(1)(f)(1)~~ An emergency telephone service charge, except with regard
22 to the commercial mobile radio service emergency telephone service charge,
23 shall be imposed only upon the amount received from the tariff rate exchange
24 access lines.

25 (2)(A) If there is no separate exchange access charge stated in
26 the service supplier's tariffs, the governing authority shall, except with
27 regard to the commercial mobile radio service emergency telephone service
28 charge, determine a uniform percentage not in excess of eighty-five percent
29 (85%) of the tariff rate for basic exchange telephone service.

30 (B) This percentage shall be deemed to be the equivalent
31 of tariff rate exchange access lines and shall be used until such time as the
32 service supplier establishes such a tariff rate.

33 (3)(A) No service charge shall be imposed upon more than one
34 hundred (100) exchange access facilities per person per location.

35 (B) No service charge shall be imposed upon more than one
36 hundred (100) voice over internet protocol connections per person per

1 location.

2 ~~(B)~~(C) Trunks or service lines used to supply service to
3 commercial mobile radio service providers shall not have a service charge
4 levied against them.

5 (4) Any emergency telephone service charge, including the
6 commercial mobile radio service emergency telephone service charge, shall be
7 added to and may be stated separately in the billing by the service supplier
8 to the service user.

9 (5) Every billed service user shall be liable for any service
10 charge imposed under this subsection until it has been paid to the service
11 supplier.

12 ~~(e)~~(g) The political subdivision may pursue against a delinquent
13 service user any remedy available at law or in equity for the collection of a
14 debt.

15
16 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
17 General Assembly of the State of Arkansas that declining landline 911
18 surcharges have caused an immediate loss of revenues for public safety
19 answering points and additional revenues are vital to the continuing
20 operations of those public safety answering points. Therefore, an emergency
21 is declared to exist and this act being necessary for the preservation of the
22 public peace, health, and safety shall become effective on:

23 (1) The date of its approval by the Governor;

24 (2) If the bill is neither approved nor vetoed by the Governor,
25 the expiration of the period of time during which the Governor may veto the
26 bill; or

27 (3) If the bill is vetoed by the Governor and the veto is
28 overridden, the date the last house overrides the veto.

29

30 /s/ Madison

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APPROVED: 3/28/2007

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