

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)
)
Inquiry Concerning Deployment of Advanced) GN Docket No. 17-199
Telecommunications Capability to All)
Americans in a Reasonable and Timely Fashion)

REPLY COMMENTS OF COMCAST CORPORATION

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October 6, 2017

TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY.....	1
II.	THE STATUTE DIRECTS AND THE RECORD SUPPORTS FOCUSING THE SECTION 706 INQUIRY ON THE <i>PROGRESS</i> OF DEPLOYMENT.....	2
III.	THE COMMISSION SHOULD FIND THAT DEPLOYMENT OF ADVANCED TELECOMMUNICATIONS CAPABILITY IS REASONABLE AND TIMELY	4
IV.	THE COMMISSION SHOULD RESIST CALLS TO STRUCTURE ITS SECTION 706 INQUIRY TO SERVE A PREORDAINED REGULATORY AGENDA.....	8
V.	CONCLUSION	11

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Comcast Corporation (“Comcast”) hereby replies to the comments filed in response to the Section 706 Report Notice of Inquiry (“706 NOI” or “Notice”) adopted by the Federal Communications Commission (“Commission”) in the above-referenced docket.¹ The record supports the adoption of an objective, principled framework for measuring progress in the deployment of advanced telecommunications capability, the conclusion that such deployment is reasonable and timely, and the continuation of the Commission’s efforts to speed deployment to the few remaining areas that lack it.

I. INTRODUCTION AND SUMMARY

The *Notice* offers the Commission the opportunity to correct the mistakes of the past and remake its annual inquiry into a consistent and principled analysis of the reasonableness and timeliness of broadband deployment that is closely tied to its statutory moorings in Section 706 of the Communications Act. As the record indicates, transforming the Section 706 Report into a reliable and timely instrument focused predominately on monitoring and providing useful information on the incremental *progress* of broadband deployment would be much more

¹ *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, Thirteenth Section 706 Report Notice of Inquiry, 32 FCC Rcd. 7029 (2017) (“706 NOI”).

valuable than the results-oriented and agenda-driven exercise engaged in by the previous Commission.

Moreover, based on a more consistent and reliable analysis, the Commission should conclude that advanced telecommunications capability *is* being deployed in a reasonable and timely fashion and should continue its efforts to encourage broadband deployment generally, and particularly in unserved markets. The Commission also should monitor deployment at multiple speeds to provide a more comprehensive view of the marketplace in which the speeds meeting consumers' needs vary across consumers.

II. THE STATUTE DIRECTS AND THE RECORD SUPPORTS FOCUSING THE SECTION 706 INQUIRY ON THE *PROGRESS* OF DEPLOYMENT

As Comcast has previously explained,² and many commenters have echoed,³ the statutory language of Section 706 provides the Commission with a clear directive to “determine whether advanced telecommunications capability *is being deployed* to all Americans in a reasonable and timely fashion.”⁴ This formulation indicates that Congress intended the Commission to measure and analyze the *progress* that has been made in deploying broadband between points in time, rather than looking at a snapshot of the state of deployment at a given moment.⁵ Although the

² Comments of Comcast Corporation, GN Docket No. 12-228, at 10 (Sept. 20, 2012). Unless otherwise noted, all references to Comments are to those filed in docket 17-199 on September 21, 2017.

³ See, e.g., Comments of ADTRAN, Inc. at 3-4; Comments of NCTA – The Internet & Television Association (“NCTA”) at 3-4; Comments of AT&T Services, Inc. (“AT&T”) at 4-5; Comments of USTelecom Association (“USTA”) at 14.

⁴ 47 U.S.C. ¶ 1302(b) (emphasis added).

⁵ See, e.g., *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, Eighth Broadband Progress Report, 27 FCC Rcd. 10342, 10520 (2012) (Dissenting Statement of Commissioner Pai) (“Our metric . . . is progress – not

Commission has aberrantly persisted in misinterpreting this directive in its past few reports by looking at total achievement toward ubiquitous deployment, it now proposes to adopt an approach that is in accordance with the statutory language.⁶ As many commenters have rightly indicated, the Commission should adopt this proposal and evaluate progress by comparing broadband deployment year-to-year and across years to determine whether each year progress is being made to deploy broadband to more Americans.⁷

Similarly, to meet its statutory obligations, the Commission should focus its Section 706 inquiry on evaluating the “availability” and “deployment” of “advanced telecommunications capability to all Americans” – i.e., “high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.”⁸ As NCTA explained, “the Section 706 inquiry is not the appropriate context for the Commission to examine factors that go beyond deployment into other areas.”⁹

total achievement – and Congress emphasized the point by using the progressive present tense in its command . . . in Section 706.”); AT&T Comments at 4-5; USTA Comments at 14.

⁶ 706 NOI ¶ 30.

⁷ See, e.g., Comments of Colorado State Broadband Office at 5 (Sept. 7, 2017); AT&T Comments at 4-5; Comments of CTIA at 2-3; NCTA Comments at 3; USTA Comments at 14-15.

⁸ 47 U.S.C. ¶ 1302(b); see NCTA Comments at 3 n.6.

⁹ NCTA Comments at 3-4; USTA Comments at 12-13; Comments of Verizon at 12-17.

III. THE COMMISSION SHOULD FIND THAT DEPLOYMENT OF ADVANCED TELECOMMUNICATIONS CAPABILITY IS REASONABLE AND TIMELY

The record demonstrates the immense progress the industry has made in deploying advanced telecommunications capability.¹⁰ As NCTA explained, “Any rational analysis of the U.S. broadband market necessarily must conclude that advanced telecommunications capability is being deployed in a reasonable and timely fashion.”¹¹ The Commission’s and industry data demonstrate that (1) deployment in urban areas (even defining “broadband” or “advanced telecommunications capability” based on aspirationally high speeds) is now nearly ubiquitous and has become so at a rapid pace, consistently affording consumers living in these areas access to increasingly faster speeds, and that (2) significant strides are being made in deployment to rural areas.¹² In the four and a half years from December 2011 to June 2016, the share of Americans without access to fixed broadband at 25/3 Mbps dropped precipitously nationally and in urban areas and more than halved in rural areas – i.e., that share decreased from 28 percent to 7 percent nationally, from 19 percent to 2 percent in urban areas, and from 65 percent to 28 percent in rural areas.¹³ Moreover, compared with other consumer technologies, including

¹⁰ See, e.g., CTIA Comments at 3-16 (“Today, both the availability of mobile wireless broadband to almost the entire nation, and the incredible array of innovative services that continue to emerge in reliance on this availability, necessitate a positive finding under Section 706.”); USTA Comments at 2 (“The vast majority of Americans have available broadband services that allow them access to information, entertainment, employment options, and other services and products that they have come to expect and rely on.”); NCTA Comments at 9-10.

¹¹ NCTA Comments at 9.

¹² See, e.g., Patrick Brogan, *U.S. Broadband Availability Mid-2016*, USTelecom Research Brief at 10-11 (Aug. 25, 2017) (“USTA Report”), attached to USTA Comments; CTIA Comments at 4-6; Verizon Comments at 3-9.

¹³ Compare 706 NOI ¶ 41, with *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, 2015

communications technologies, residential Internet services have been deployed (and adopted) at a relatively rapid pace.¹⁴

Although these data demonstrate that the industry has made tremendous strides in delivering broadband to the overwhelming majority of consumers, more work is needed to facilitate robust broadband deployment in the remaining areas where it is not available, especially in rural areas where the population density and resulting economics make broadband much more challenging to deploy. This remaining shortfall, however, provides no reasonable

Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, 30 FCC Rcd. 1375 ¶ 84 tbl.7 (2015); *see also* USTA Report at 11 & chart 9 (providing statistics showing similar penetration levels by household).

¹⁴ *See, e.g.*, Rita Gunther McGrath, *The Pace of Technology Adoption Is Speeding Up*, Harvard Business Review (Nov. 25, 2013), <https://hbr.org/2013/11/the-pace-of-technology-adoption-is-speeding-up> (citing Nicholas Felton, *Consumption Spreads Faster Today*, N.Y. Times (Feb. 10, 2008), <http://www.nytimes.com/imagepages/2008/02/10/opinion/10op.graphic.ready.html>) (demonstrating that it took less than 15 years for Internet penetration to reach 60 percent of U.S. households, whereas it took more than 50 years for the telephone and more than 20 years for electricity to reach that same penetration); Michael DeGusta, *Are Smart Phones Spreading Faster Than Any Technology in Human History?*, MIT Technology Review (May 9, 2012), <https://www.technologyreview.com/s/427787/are-smart-phones-spreading-faster-than-any-technology-in-human-history/> (explaining that, while “[i]t took almost a century for landline phones to reach saturation, or the point at which new demand falls off,” it took the Internet just over 10 years to reach that point). Analyzing reasonable and timely deployment from this comparative perspective is consistent with the approach that the Commission took in its early Section 706 Inquiries. *See, e.g.*, *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Third Report, 17 FCC Rcd. 2844 ¶ 124 (2002) (“Overall, we note that the penetration of advanced services is generally comparable, or higher, than the historical rates of penetration for other technologies, such as the telephone or television. For example, the telephone took 36 years and the television took 17 years to reach 30 percent of Americans.”); *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Report, 14 FCC Rcd. 2398 ¶¶ 32-33 (1999) (comparing the progress in deployment levels between advanced telecommunications capability, cellular service, color television, black-and-white television, and telephone service, and finding that advanced telecommunications capability deployment equaled or exceeded those technologies’ deployment in the first two years).

basis for the Commission to conclude that “advanced telecommunications capability” is *not* being deployed on a reasonable and timely basis. Instead, it simply reaffirms the Commission’s appropriately targeted efforts to facilitate broadband deployment in areas where private investment or existing deployment subsidies have not yet made it a reality.¹⁵

Such efforts are now in full swing with Chairman Pai’s digital empowerment agenda and the steps the Commission has already initiated under his leadership to achieve broadband deployment to all Americans.¹⁶ Chairman Pai has already made the goal of narrowing the “digital divide” between urban and rural areas central to Commission policy and has begun to make progress toward it.¹⁷ Indeed, the Commission devoted the month of April to infrastructure issues with a special focus on rural availability.¹⁸ The Commission also formed the Broadband Deployment Advisory Committee to make “recommendations . . . on how to accelerate the

¹⁵ See NCTA Comments at 4 (“[A]ny assessment of current gaps in broadband coverage should account for the intended results of [Connect America Fund (“CAF”)] funding and not continue to treat the areas receiving CAF support as if they were truly unserved.”); see also Doug Brake, *A Policy Maker’s Guide to Rural Broadband Infrastructure*, Information Technology & Innovation Foundation, at 2 (Apr. 2017), <http://www2.itif.org/2017-rural-broadband-infrastructure.pdf> (recommending, among other things, that “[s]ubsidies should focus first on supplying a single network for unserved populations before supporting upgraded speeds of existing slower networks”).

¹⁶ See Ajit Pai, Chairman, FCC, *Remarks at the Kansas Broadband Conference 3* (Sept. 21, 2017), http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0921/DOC-346838A1.pdf (“In a connected global economy, we can’t leave millions of Americans sitting on the sidelines. Some say we can’t afford to bring high-speed connectivity to places like rural Kansas. I say we can’t afford not to. That’s why the FCC is pursuing an aggressive agenda to extend digital opportunity to all Americans, particularly in rural areas.”).

¹⁷ *Id.*

¹⁸ Ajit Pai, FCC Chairman, *Infrastructure Month at the FCC*, FCC Blog (Mar. 30, 2017), <https://www.fcc.gov/news-events/blog/2017/03/30/infrastructure-month-fcc> (stressing that efforts to promote infrastructure investment are “critical to closing the digital divide in our country and bringing high-speed Internet access to more rural Americans”).

deployment of high-speed Internet access,”¹⁹ and has launched two proceedings to accelerate the provision of broadband by removing state and local regulatory barriers to deployment, in which it is currently weighing the comments of the diverse array of stakeholders.²⁰

Undoing the classification of broadband Internet access service as a Title II service – as the Commission has proposed – also will aid this effort, since the regulatory overhang from this inappropriate classification has dampened investment and innovation for ISPs large and small, including in rural areas.²¹ Most recently, the Commission unanimously approved an order

¹⁹ *FCC Announces the Establishment of the Broadband Deployment Advisory Committee and Solicits Nominations for Membership*, Public Notice, 32 FCC Rcd. 1037 (2017).

²⁰ *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, 32 FCC Rcd. 3266, ¶ 1 (2017); *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking and Notice of Inquiry, 32 FCC Rcd. 3330, 3385 (2017) (statement of Chairman Ajit Pai) (stating that removing barriers to infrastructure deployment “can help close the digital divide in our country”).

²¹ *See* Comments of The Wireless Internet Service Providers Association, WC Docket No. 17-108, at iv (July 17, 2017) (“A recent WISPA member survey reveals new costs imposed on small providers, with more than 80 percent of survey respondents reporting that Title II regulation has caused delay or reduction of network expansion and services, and/or allocation of significant financial resources to comply with the new rules.”); Letter from 70 WISPs, to FCC Chairman Ajit Pai, FCC Commissioner Mignon Clyburn, FCC Commissioner Michael O’Rielly, WC Docket No. 17-108, at 1 (May 9, 2017) (“Unfortunately, our relative lack of size and scale frustrates our ability to attract the additional private capital that would enable us to more rapidly expand our networks to help bridge the urban-rural digital divide and to densify our networks to improve the consumer experience through higher speeds and better performance. Our challenges are exacerbated by the Title II Order the FCC adopted in 2015, which has significantly increased compliance burdens and regulatory risk through heavy-handed regulation that is rife with uncertainty.”); Reply Comments of American Cable Association, WC Docket No. 17-108, at ii (Aug. 30, 2017) (“Direct adverse economic impacts of the Title II decision identified include cutbacks in the scope of planned network upgrades, delays in embarking upon existing network upgrades and expansions, delays in engaging in full system rebuilds, and decisions to refrain from investing to expand broadband into rural unserved areas.”); *see also* Comments of Comcast Corporation, WC Docket No. 17-108, at 27-34 (July 17, 2017) (explaining that classifying BIAS as a Title II service undermines broadband investment); Reply Comments of Comcast Corporation, WC Docket No. 17-108, at 12-16 (Aug. 30, 2017).

streamlining its current rules governing non-geostationary satellite orbit fixed-satellite service systems in an effort to “pave[] the way for greater broadband offerings in the United States, particularly in remote and rural areas.”²² These concrete actions – rather than a results-driven negative finding in the *706 NOI* proceeding engineered primarily to justify the imposition of additional regulations on ISPs – are the appropriate response to the still-persistent urban/rural broadband deployment divide.

IV. THE COMMISSION SHOULD RESIST CALLS TO STRUCTURE ITS SECTION 706 INQUIRY TO SERVE A PREORDAINED REGULATORY AGENDA

Some commenters seek to enlist the Commission in signing on to their cramped view of broadband deployment and competition by engaging in the same regulatory goalpost-moving exercise as did the previous Commission. For example, a few commenters urge the Commission to adopt a speed benchmark for fixed broadband services that perpetuates the past Commission’s flawed approach of establishing a benchmark based on theoretical and future aspirational uses rather than the statutory definition of “advanced telecommunications capability” as applied to the here and now. The Commission should reject such proposals as antithetical to its objective to “creat[e] a predictable, objective framework [it] can use going forward” in its Section 706 Inquiry.²³

Calls to raise the speed benchmark, in some cases by a drastic amount, are, in reality, a siren song to give into “the temptation to slant the report’s findings to support a broader

²² Press Release, FCC, FCC Modernizes Rules to Facilitate Deployment of Next Generation Satellite Systems, IB Docket No. 16-408 (Sept. 26, 2017), https://apps.fcc.gov/edocs_public/attachmatch/DOC-346893A1.docx .

²³ *706 NOI* ¶ 12.

agenda.”²⁴ Reflecting this dynamic, the previous Commission more than *sextupled* its previous speed standard (specifically, the downstream portion) to adopt the current 25/3 Mbps benchmark. As a result of this increase, “the number of competing broadband providers in any given area fell precipitously” and “[w]hat previously seemed ‘reasonable and timely’ suddenly wasn’t,” thus furthering the former chairman’s regulatory agenda.²⁵ But the temptations to misuse this proceeding are hard for some to resist: INCOMPAS, for example, now proposes to *quadragintuple* (i.e., increase 40-fold) the current standard by raising it from 25/3 Mbps to 1 Gbps.²⁶ The only utility of this proposal is to highlight INCOMPAS’s desire to have this proceeding veer off track toward the thicket of more heavy-handed and unnecessary regulation.

To this end, in both this and the *Restoring Internet Freedom* proceeding, INCOMPAS has filed an analysis by Dr. David Evans that uses the 25/3 Mbps fixed broadband benchmark as a basis to analyze competition.²⁷ Leaving aside that the 25/3 Mbps benchmark is an arbitrary cut-off as explained below, any factually-based analysis of the marketplace demonstrates that Americans already have access to a growing number of offerings over varied transmission media, including fixed wireless, satellite, and mobile wireless, which are increasingly capable of

²⁴ Blair Levin & Larry Downes, *How Good Is Your Broadband? The FCC Needs to Know*, Wash. Post (Sept. 13, 2017), <https://www.washingtonpost.com/news/innovations/wp/2017/09/13/how-good-is-your-broadband-the-fcc-needs-to-know/> (“Levin & Downes Op-Ed”).

²⁵ *Id.*

²⁶ See Comments of INCOMPAS at 19-20.

²⁷ David S. Evans, *Economic Findings Concerning the State of Competition for Wired Broadband Provision to U.S. Households and Edge Providers* (Aug. 29, 2017), attached as Exhibit A to INCOMPAS Comments, GN Docket No. 17-199, and as Exhibit B to Reply Comments of INCOMPAS, WC Docket No. 17-108 (Aug. 30, 2017).

very fast speeds.²⁸ More importantly, Dr. Evans’ analysis ignores the fact that speeds lower than 25/3 Mbps can and do meet the needs of many consumers.²⁹ As Dr. Christian Dippon explains, “[f]or many people, 10 Mbps service, or even 3 Mbps, is more than adequate.”³⁰

Of course, arbitrarily excluding broadband speeds below 25/3 Mbps produces dramatically different statistical deployment results. For example, in June 2016, the percentage of developed census blocks in which one or more providers reported deploying residential fixed connections was 79 percent for connections with speeds of at least 25/3 Mbps, but was 100 percent for connections with speeds of at least 10/1 Mbps.³¹ Blind adherence to the prior Commission’s 25/3 Mbps speed threshold also perversely suggests that millions of consumers who receive broadband funded by the Commission’s Connect America Fund Phase II program

²⁸ See, e.g., Joan Engebretson, *Fixed Wireless Market Report: Subscribers to Double to 8 Million by 2021, Generating \$5.2B*, telecompetitor.com (Sept. 25, 2017), <http://www.telecompetitor.com/fixed-wireless-market-report-8-million-subscribers-by-2021/>; Comments of ViaSat at 2 (Sept. 22, 2017) (noting that ViaSat offers “services currently achieving the 25/3 Mbps speed threshold and expected to reach 100-plus Mbps following the recent launch of ViaSat-2 on June 1, 2017”); Sascha Segan, *Fastest Mobile Networks 2017*, PC Magazine (June 19, 2017), <https://www.pcmag.com/Fastest-Mobile-Networks> (demonstrating, through speed tests run continuously during a tour of thirty U.S. cities, that AT&T, Verizon, and T-Mobile all offer LTE speeds with average speeds greater than 25 Mbps, and that the LTE networks of AT&T, Verizon, T-Mobile, and Sprint all achieve maximum download speeds higher than 175 Mbps).

²⁹ NCTA has detailed the many other defects that beset Dr. Evans’ analysis. See Letter from Matthew A. Brill & Matthew T. Murchison, Latham & Watkins LLP, Counsel for NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-108, GN Docket No. 17-199 (Oct. 5, 2017).

³⁰ Christian M. Dippon, *Public Interest Repercussions in Repealing Utility-Style Title II Regulation and Reapplying Light-Touch Regulation to Internet Services* 10, attached as Appendix C to Comments of Comcast Corp., WC Docket No. 17-108 (July 17, 2017).

³¹ *Id.* at 12 tbl.2.

(with its 10/1 Mbps baseline definition of broadband),³² or the four million low-income Americans who have benefited from receiving service through Comcast’s celebrated Internet Essentials program (which is currently offering speeds of 15 Mbps),³³ are not actually enjoying advanced telecommunications capability.

In recognition that different speeds meet the needs of different consumers, the Commission should adopt several commenters’ suggestion that it “track progress at multiple speed thresholds.”³⁴ Additionally, the Commission should aim to use the most recent data available and regularly release its analyses of this data.³⁵ Making available timely and more comprehensive statistics about broadband deployment will ensure that policymakers have reliable and pertinent information at their disposal to assess how best to proceed in meeting the needs of all Americans.

V. CONCLUSION

Based on the foregoing and on the other substantial comments filed in this proceeding, the Commission should: (1) focus its inquiry on the *progress* being made in deploying advanced

³² *Connect America Fund; ETC Annual Reports and Certifications; Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Obsolete ILEC Regulatory Obligations that Inhibit Deployment of Next-Generation Networks*, Report and Order, 29 FCC Rcd. 15644 ¶ 4 (2014).

³³ David L. Cohen, Senior Executive Vice President and Chief Diversity Officer, *Comcast Announces New Internet Essentials Program Milestones and Enhancements*, Comcast Voices Blog (Aug. 15, 2017), <http://corporate.comcast.com/comcast-voices/comcast-announces-new-internet-essentials-program-milestones-and-enhancements>.

³⁴ *See, e.g.*, NCTA Comments at 5-7; USTA Comments at 18-19; Comments of Deere & Company at 4-5.

³⁵ Although the Commission should not fundamentally change its Section 706 Inquiry into an agnostic broadband dashboard, as Blair Levin and Larry Downes recently suggested, their point is well taken that it would be useful for the Commission to provide up-to-date data in a dashboard that could be commonly used and interpreted by policymakers and stakeholders. *See* Levin & Downes Op-Ed.

telecommunications capability, consistent with the language and intent of Section 706; (2) find that advanced telecommunications capability is being reasonably and timely deployed; (3) continue to develop and implement solutions to increase the availability of broadband in unserved rural areas; and (4) track and report on broadband deployment progress at multiple speed benchmarks, including some lower than 25/3 Mbps. Taking these reasonable steps will not only more faithfully implement congressional objectives in enacting Section 706, but will also make the Section 706 Inquiry a more useful and reliable undertaking that will aid the Commission and industry in their earnest efforts to close the remaining deployment divide in this country.

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