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## FCC Agrees To More Fully Consider Impact of Number Portability on Small Business

In June, the Federal Communications Commission (FCC) agreed to work with the Office of Advocacy and more fully consider the impact of number portability on small business. This understanding was reached between Advocacy and the FCC regarding the case of *United States Telecom Association, et al., v. Federal Communications Commission, et al.*

The Office of Advocacy had previously filed a notice with the Court of Appeals for the D.C. Circuit, stating that Advocacy intended to file an *amicus curiae* (“friend of the court”) brief in support of the small business petitioners challenging the FCC rule for non-compliance with the Regulatory Flexibility Act (RFA).

In the agreement worked out between Advocacy and the FCC, Advocacy agreed to withdraw its intent to file. In exchange, the FCC agreed to send a letter urging state regulators to consider the concerns of small rural telecom providers that seek waivers to the new portability rules and further examine the impact of the challenged rule on small businesses.

“I am pleased that Chairman Powell is taking steps to accommodate small business concerns,” said Thomas M. Sullivan, Chief Counsel for Advocacy. “While we continue to support the small business petitioners, the accommodations provide a reason for

*Continued on page 5*



Sen. Charles Grassley (R-Iowa), chairman of the Senate Finance Committee, spoke at a press conference on tort costs for small business hosted by the U.S. Chamber Institute for Legal Reform. A study released by the Chamber in June shows that the tort system costs U.S. small businesses \$88 billion a year. Chief Counsel for Advocacy Thomas M. Sullivan participated in the press conference.

## Regional Roundup

### Kentucky Governor Signs Legislation To Strengthen Small Business Regulatory Flexibility

Kentucky small business owners can plan on having a seat at the table when regulations are written, thanks to a new law signed by Gov. Ernie Fletcher on June 14.

Kentucky's Small Business Regulatory Fairness Initiative (H.B. 609), sponsored by State Representatives James R. Comer and Roger Thomas, enacted several regulatory flexibility provisions:

- Defining small business as an independently owned and operated business with fewer than 150 employees or having gross annual sales of less than \$6 million;
- Ensuring that the Kentucky Commission on Small Business Advocacy is notified and able to comment on proposed regulations that may affect small business;
- Ensuring that any comments submitted by the commission are fully considered by the agency; and
- Giving the agency the ability to waive fines or other penalties that have been levied on small business.

Governor Fletcher counts the Small Business Regulatory Fairness Initiative as a key component of his economic development agenda and recognizes that small business plays an important role in Kentucky's economy. Leading the coalition of small business stakeholders who supported this legislation were Bobby Clark, CEO of Clark Publishing and Communications and chair of the Kentucky Commission on Small Business Advocacy, and Tom Underwood, state director of the Kentucky National Federation of Independent Business. Jim Host, secretary of the Kentucky Commerce Cabinet and executive director of the Kentucky Commission on Small Business Advocacy, will oversee implementation of the new law.



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Kentucky Gov. Ernie Fletcher signed the Small Business Regulatory Fairness Initiative into law on June 14 in Frankfort, Ky. Looking on, from left to right, are Rep. James R. Comer; Rep. Ruth Ann Palumbo; Bobby Clark, chair, Kentucky Commission on Small Business Advocacy; Regional Advocate Pat Gartland; Rep. Roger Thomas; and Chief Counsel for Advocacy Thomas M. Sullivan.

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## Message from the Chief Counsel

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### Entrepreneurship Conference Proceedings Combine Small Business Vision and Expertise in Print and Online

by Thomas M. Sullivan, Chief Counsel for Advocacy

The Office of Advocacy has just added another tool for small business policymakers. With the publication of the “Entrepreneurship in the 21st Century” conference proceedings, a wealth of expert thinking on small business topics is now available in book and video formats.

Advocacy's entrepreneurship conference, held March 26, provided forward-looking perspectives on issues that will shape the small business agenda in years to come. In this way, the conference fulfills Advocacy's mission to supply research demonstrating the impact of public policy on small business. The conference was an opportunity for Advocacy to work with the conference's cosponsor, the Ewing Marion Kauffman Foundation, to bring academics and policymakers together and continue the dialogue on the future of small business.

The newly published conference proceedings contain a summary of each of the conference panels, biographies of panelists, and an appendix of the slides, charts, and graphs that were included in each presentation. The complete panels and the keynote address were also captured on videotape and are available in video format on Advocacy's website at [www.sba.gov/advo](http://www.sba.gov/advo).

Five broad issues at the heart of the conference continue to shape the future for small businesses: the importance of innovation, demographic trends, the financial environment, obstacles faced by entrepreneurs, and the importance of quality data and research. These issue areas have helped shape the current stance of small business, and the conference put them in a context for discussion among

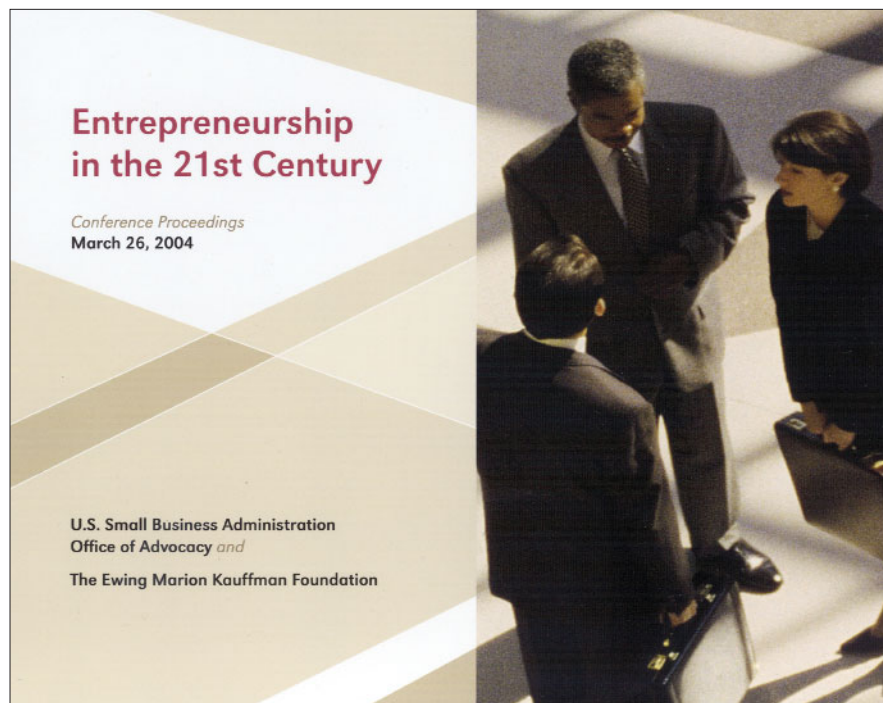
participants and, with the publication of these proceedings, the broader public.

Many Advocacy studies have found that small businesses are a key source of innovation; Paul Almeida, Maryann Feldman, and Melissa Schilling were among the conference presenters who looked at the current state of small business innovation, focusing much of their discussion on the clustering of knowledge. They noted that industry clusters allow for the concentration of knowledge through social networks among peer industries and academia. Such ties also breed “serial entrepreneurs,” who reinvest profits in new enterprises.

Robert Fairlie and other presenters looked at challenges to business ownership for minority entrepreneurs, while Patricia Greene of the Diana Project identified some of the hurdles women entrepreneurs face.

Allen Berger, Gregory Udell, and other speakers on small business finance examined the ways technology and bank consolidation have combined to change small business financial markets. Treasury Secretary John Snow and others looked at policy challenges, including regulation, access to health insurance, and a variety of other issues. The conference also reiterated a perennial challenge—the lack of current data and its effect on small business policymaking.

In its broadbrush approach to small business research, the conference was an important building block for future small business policymaking. To learn more about the conference, visit [www.sba.gov/advo](http://www.sba.gov/advo). To obtain a copy of the conference proceedings of “Entrepreneurship in the 21st Century,” contact the Office of Advocacy, (202) 205-6533 or [advocacy@sba.gov](mailto:advocacy@sba.gov).



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## Regulatory News

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### New Bill Would Restore “Existing Business Relationship” Provision

On June 23, the Office of Advocacy sent letters to the chairmen and ranking members of the House Committee on Energy and Commerce and the Subcommittee on Telecommunications and the Internet in support of H.R. 4600, the Junk Fax Prevention Act of 2004.

The bill, introduced by Rep. Fred Upton (R-Mich.), aims to reinstate the “existing business relationship” exception to the “do-not-fax” rules. This exception allowed businesses and associations to send faxes to clients and members without express written consent. Supporters of the bill hope to obtain passage before Jan. 1, 2005, when the FCC’s stay of the do-not-fax rule expires. At a June hearing on the bill, Upton stated, “The logistical and financial costs of the new FCC rules, particularly to

small businesses and nonprofit associations, would be enormous, staggering.” Rep. Upton is chairman of the Subcommittee on Telecommunications and the Internet.

Advocacy’s letter stated that “H.R. 4600 would fix problems that often times occur when one-size-fits-all regulations are applied to small business. . . . We think H.R. 4600 provides a balanced resolution for small entities that rely upon fax communications in their day-to-day operations while providing a significant new measure of relief to consumers and small businesses alike who do not wish to receive unsolicited faxes.”

Advocacy’s current and previous letters on the do-not-fax issue are posted on the following webpages:

- June 23, 2004, letter: [www.sba.gov/advo/laws/comments/barton04\\_0623.pdf](http://www.sba.gov/advo/laws/comments/barton04_0623.pdf)

- Nov. 21, 2003, letter: [www.sba.gov/advo/laws/comments/fcc03\\_1121.html](http://www.sba.gov/advo/laws/comments/fcc03_1121.html)

- Aug. 25, 2003, petition: [www.sba.gov/advo/laws/comments/fcc03\\_0825.html](http://www.sba.gov/advo/laws/comments/fcc03_0825.html)

The do-not-fax rule’s harmful impact on small businesses is also explained in a fact sheet prepared by Advocacy in connection with the Nov. 21 letter. This can be found at [www.sba.gov/advo/laws/comments/factsfcc03\\_1121.pdf](http://www.sba.gov/advo/laws/comments/factsfcc03_1121.pdf)

For more information, contact Assistant Advocate Eric Menge, (202) 205-6949, or [eric.menge@sba.gov](mailto:eric.menge@sba.gov).

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### EPA Proposes One-year Extension of Compliance Deadline for Oil Spill Prevention Requirements

On June 17, the Environmental Protection Agency (EPA) proposed to extend for one year the deadline for complying with oil spill prevention requirements imposed by the July 2002 amendments to EPA’s Spill Prevention, Control and Countermeasures (SPCC) rule. The SPCC rule sets requirements to prevent discharges of oil from certain facilities from reaching U.S. waters. Advocacy welcomed the proposed extension, which was the subject, in part, of Advocacy’s June 10 letter to EPA seeking relief of unnecessary regulatory burdens imposed by the amendments on hundreds of thousands of small businesses, including farms, construction sites, and car dealerships.

Since publication of the SPCC amendments in 2002, Advocacy has worked closely with EPA’s Oil

Program Center to address small facility concerns regarding the amendments, which, among other things, require small businesses to have professional engineers review and certify their SPCC plans. The requirement for certification by a professional engineer alone could

cost small businesses more than \$500 million. In its June 10 letter, Advocacy commended the EPA in anticipation of the proposed extension and recommended that EPA issue an interim final rule to

*Continued on page 5*

### Keep Current with Rulemakings and Deadlines Through “Regulatory Alerts”

The Office of Advocacy regularly posts links to documents that have been published in the *Federal Register* and may significantly affect small businesses. These notices can be found on Advocacy’s Regulatory Alerts webpage, [www.sba.gov/advo/laws/law\\_regalerts.html](http://www.sba.gov/advo/laws/law_regalerts.html). The site contains summaries of pending rule proposals that Advocacy staff have identified as possibly having an impact on small business. The format is meant to be easy for small businesses to scan on a regular basis. Each item contains a link to the *Federal Register* announcement of the notice of proposed rulemaking and directs users to the proper site to comment directly on the proposals. Small businesses commenting on regulatory proposals are also asked to share their comments with the Office of Advocacy.

### IRS Offers to Refund Penalty to Encourage Use of Electronic Payroll Tax Payments

On May 24, the Internal Revenue Service announced an incentive program to induce employers to use the IRS's Electronic Federal Tax Payment System (EFTPS) for payroll tax deposits using Form 941. Under the new program, any employer who: 1) has recently paid a deposit penalty; 2) voluntarily signs up and uses EFTPS for one year (four consecutive quarters); and 3) makes all Form 941 payments on time, can receive abatement of a failure-to-deposit penalty paid within one year prior to the four-quarter "compliance period."

Last summer, the IRS had announced that it would mandate that most businesses migrate to EFTPS for payroll taxes, because Forms 941 and payroll tax deposit issues continued to be the "highest volume and most adjusted set of transactions for small business."

The Office of Advocacy has long resisted mandatory EFTPS participation, advising the IRS that an incentive-based approach was preferable. Advocacy believes the IRS's new approach is a better approach—a carrot, not a stick. Approximately 1 million employers currently do not use EFTPS to pay payroll tax deposits.

Small businesses can use EFTPS online, over the phone, or even using batch software if enough payments are involved. To learn more about EFTPS and the new incentive program, go to [www.irs.gov](http://www.irs.gov) and search for "IR-2004-70" or contact Jerry Parshall at the Office of Advocacy, (202) 401-9787.

### If It Sounds Too Good To Be True...

If you or your small business receives advice or a solicitation to "run" accounts receivable or your own personal services through a corporation owned by a retirement plan (such as a Roth IRA), you should know that IRS has targeted such structured "sheltering" of income as an abusive transaction. Also receiving close scrutiny are pension plans with death benefits overfunded by excessive life insurance, with proceeds of life insurance going to both death beneficiaries and other plan participants. For more on this, visit the EP Abusive Tax Transactions section on the IRS Retirement Plans webpage at [www.irs.gov/ep](http://www.irs.gov/ep). The section provides additional information about retirement plan abuse and details the IRS's efforts to shut down those transactions deemed abusive.

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### EPA Deadline, from page 4

provide immediate regulatory relief related to the requirements for: 1) small facilities, 2) integrity testing, 3) motive power and oil-filled equipment, and 4) asphalt cement and hot-mix asphalt. These recommendations could result in significant cost savings to small businesses with no adverse impact on the environment.

Advocacy will continue to work with EPA in an effort to revise the regulations to address the concerns of small businesses while protecting the environment.

For more information, you may review Advocacy's June 10 comment letter on Advocacy's website at <http://www.sba.gov/advo/laws/comments> or contact Assistant Chief Counsel Kevin Bromberg, [kevin.bromberg@sba.gov](mailto:kevin.bromberg@sba.gov), (202) 205-6964.

### Number Portability, from page 1

Advocacy not to file an *amicus* brief," he added.

On June 18, FCC Commissioner Michael K. Powell sent a letter to the National Association of Regulatory Utility Commissioners, urging state commissions to consider the burdens on small businesses and to grant appropriate relief from portability requirements. Commissioner Powell's letter, which references concerns raised by Advocacy, can be read on Advocacy's website, [www.sba.gov/advo](http://www.sba.gov/advo).

Although the Office of Advocacy reached an agreement with the FCC, the RFA challenge to an FCC memorandum opinion and order on telephone number portability continues. The small business petitioners contend that the FCC did not fulfill its obligations under the RFA because it did

not consider the impact of its rule on small businesses, nor did it consider alternatives to reduce the burden on them. The agreement reached between Advocacy and the FCC does not address the merits of the underlying case. Oral arguments on the RFA challenge are set for November. Should the small business petitioners prevail, it is likely that the court would remand the rule to the FCC.

Advocacy is working closely with the FCC to implement the agreement and to ensure that the voice of small business is heard in future FCC deliberations. For more information, visit Advocacy's webpage at [www.sba.gov/advo](http://www.sba.gov/advo) or contact Eric Menge at (202) 205-6949 or [eric.menge@sba.gov](mailto:eric.menge@sba.gov).

### Advocacy Posts New Research Solicitations

Advocacy is soliciting research proposals via several Requests for Quotations (RFQs). The deadline for submitting proposals for all topics except graduate research is July 20. The deadline for graduate study proposals is July 30. Here are the topics for the current RFQs:

#### **Business Employment**

**Dynamics.** Advocacy would like to encourage new research on an important new database from the Bureau of Labor Statistics which contains establishment births, closures, contractions and expansions and the employment changes by these establishment categories. (See <http://www.bls.gov/bdm/home.htm> for more about this data source.)

**Credit Scoring.** The use of credit scoring by commercial banks has become more prevalent during the past several years. This study will explore the impact of this practice on small businesses.

**Fast Growth Companies.** So-called “gazelles” are a small percentage of all companies but are often believed to be the engine of economy-wide growth. This study will cut through the hype associated with fast-growth companies, to show more concrete results on their status and value to the economy.

**Government Outsourcing.** As more assignments once performed by government employees are being outsourced to the private sector under OMB Circular A-76, this study will look at the impact on small firms. In particular, it will assess which firms are benefiting from these contracts.

**Retrospective Study on Small Business Regulatory Costs.** This research will retrospectively examine the costs of one federal rule on industry. The study will look at the accuracy of the agency’s estimates of the costs to small business as disclosed in the final regulatory

flexibility analyses that accompanied the publication of the final rule.

**Regional and/or Globalization Research.** These studies would examine one of a variety of topics relevant to small businesses, including the impact of global competition or free trade agreements, local small business philanthropy, state regulatory compliance costs, promoting inner city entrepreneurship, or regional economic development.

**Rural Small Businesses.** This study will look at the economic impact of entrepreneurs in rural communities and discuss differences with their urban peers. Federal and state policies that promote small business creation in rural areas should also be examined.

**Other Topics.** Studies may examine such topics as antitrust issues; angel investors; characteristics of family, minority, veteran, and/or women-owned businesses; health care coverage; innovation; tax burden; and youth entrepreneurship programs.

**Graduate Research.** Ph.D. candidates and other graduate students are invited to submit proposals to obtain funds for research on small business topics. (Proposal deadline: July 30.)

**How to Obtain a Bid Package.** The proposal solicitations and synopses are listed in FedBizOpps ([http://www2.eps.gov/spg/SBA/postdatePrevDays\\_1.html](http://www2.eps.gov/spg/SBA/postdatePrevDays_1.html)). (If this link is not active, go to [www.fedbizopps.gov](http://www.fedbizopps.gov) and search for Small Business Administration listings.) It is important that all respondents follow the instructions provided for submitting proposals.

### Finance Research Simplified

*Entrepreneur.com* compiles many lists of resources for entrepreneurs—sources of venture capital, fastest-growing companies, top cities for business—to name a few. Just recently, it added “Best Banks for Entrepreneurs.” Users can type the name of the state they are interested in, and this interactive web engine will give them a list of one to a dozen small-business-friendly banks, complete with location and phone number.

To create this service, *Entrepreneur.com* relied on the Advocacy report, *Small Business and Micro Business Lending in the United States: 2002 Edition*, published in December 2003. Advocacy is delighted to see this detailed listing made so accessible to users of the *Entrepreneur.com* website. Visit [www.entrepreneur.com/bestbanks](http://www.entrepreneur.com/bestbanks) for the interactive tool. The complete study is available at: [www.sba.gov/advo/stats/lending/2002/sbl\\_study.pdf](http://www.sba.gov/advo/stats/lending/2002/sbl_study.pdf).

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## Research Notes

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### Veteran-Owned Businesses Received More Federal Contract Dollars than Reported

Veteran-owned firms received substantially more federal contract dollars than official figures show, according to a study released in June by the Office of Advocacy. The discrepancy results from inconsistent coding of contracts across federal agencies and from difficulties in identifying veteran-owned businesses.

Official statistics from the Federal Procurement Data System (FPDS) indicate that veteran-owned businesses were awarded 0.6 percent of total prime contract dollars in fiscal year (FY) 2002 and 0.4 percent in FY 2001. However, according to the new analysis, vet-

eran-owned businesses received at least 1.7 percent of prime contract dollars in FY 2002 and 1.6 percent in FY 2001.

“Today America’s veterans received some good news,” said Chief Counsel Thomas M. Sullivan. “The grim federal procurement numbers for veteran-owned businesses just got a little better. But many federal agencies still have a long way to go to reach their procurement goals, particularly their 3 percent goal for service-disabled veteran-owned businesses,” he said.

Among the study’s findings is the fact that thousands of companies flagged as veteran-owned in

the Department of Defense’s Central Contractor Registry, in the SBA’s ProNet file, and by Dun & Bradstreet are not coded as veteran-owned in the General Service Administration’s master prime contract file. Consequently, the FPDS substantially understated the number of veteran-owned businesses.

The complete text of *Characteristics of Federal Government Procurement Spending With Veteran-Owned Businesses, FY 2000–FY 2003 (3Q)*, by Eagle Eye Publishers, is available on Advocacy’s website at [www.sba.gov/advo/research/rs239tot.pdf](http://www.sba.gov/advo/research/rs239tot.pdf).

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### Study Indicates Small Firms May Be More Reliant On E-Procurement

A second study released by Advocacy in June indicates that small firms may rely more on e-procurement tools for obtaining federal contracts than their larger counterparts do. The report, *Trends in Electronic Procurement and Electronic Commerce and Their Impact on Small Business*, was written by Innovation & Information Consultants.

Dr. Chad Moutray, Chief Economist for the Office of

Advocacy, released the findings during a session at the Business Matchmaking Workshop in Detroit. The event was co-sponsored by the SBA and Hewlett-Packard (HP). Business Matchmaking is the largest small business initiative in SBA history. This public/private partnership between the SBA and HP provides a major economic stimulus to small businesses by decentralizing the procurement process and taking contract oppor-

tunities to the streets of America.

The authors noted that certain barriers appear to prevent small businesses from more effective use of e-procurement. These include shifts in the government’s e-procurement system, the expense of monitoring procurement offerings, and confusion over multiple points of entry to procurement systems.

For the complete report, visit Advocacy’s website, [www.sba.gov/advo/research/rs240tot.pdf](http://www.sba.gov/advo/research/rs240tot.pdf).

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### Innovative Small Business Brownfields Policy Found Outside the U.S.

Viewing small businesses as “clients” instead of “culprits” is a better approach to brownfields cleanup, according to Carol Armstrong’s study, *Small Businesses as Culprits and Clients: A Comparison of Brownfield Redevelopment in Los Angeles and Kuala Lumpur*. The Advocacy-sponsored study found that the innovative “client” approach used in Kuala Lumpur, Malaysia, could offer lessons for the United States, particularly as compared with the

“culprit” approach exemplified by Los Angeles, Calif.

“Brownfield blight depresses communities and is an obstacle to the survival of existing businesses and to the attraction of new ones, particularly in urban areas,” said Chief Counsel Thomas M. Sullivan. “Public policy that sees small business as culprits rather than clients will continue to force them to shy away from brownfield redevelopment, to the detriment of communities across the country,” he said.

“Brownfields” typically refer to industrial or commercial facilities that are abandoned, idled, or underused and whose expansion or redevelopment is complicated by real or perceived environmental contamination. The study also found that although many brownfield cleanup and technical assistance programs exist, most small firms are unaware of these and are therefore unlikely to take advantage of them. The report is available at [www.sba.gov/advo/research/rs238tot.pdf](http://www.sba.gov/advo/research/rs238tot.pdf).

# Small Business: Your issues are our issues at the SBA Office of Advocacy.

Access Advocacy Listservs for the latest regulatory alerts and small business statistics. Email notices will provide a hotlink to the new material, so your in-box won't fill up with large documents. At <http://web.sba.gov/list>, check:

- Advocacy Communications
- Advocacy Newsletter
- Advocacy Press
- Advocacy Research



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