

Status Summary 7-15-21: This draft includes updates from earlier PB discussions. The PB has not reviewed this document since 7-6-21. PB is scheduled to review and discuss this bylaw on 7-27/21. On 8-24, the Board opted to discontinue the review until a Needs Analysis and Wireless Communications Master Plan can be commissioned. 9-14-2021: PB agreed to post this latest draft online to accompany the update announcement about the planned Needs Analysis and Wireless Communications Master Plan; as such, certain sections (noted in document) that will be decided as a part of the Needs Analysis and Wireless Master Plan have been left blank for the time being.

8.18 Wireless Communications Facilities

8.18.1 Purpose. The purpose of this bylaw is to establish general guidelines for the locating of wireless communication towers, antennas, ground equipment, and related accessory structures. The intent of this bylaw is to:

- (1) Accommodate the growing need and demand for wireless communications services.
- (2) Establish review procedures to ensure that applications for communications facilities are reviewed for compliance with federal, state, and local regulations and acted upon within a reasonable period of time as required by applicable state and federal regulations.
- (3) Minimize the impacts of wireless communications facilities on surrounding land uses by establishing standards for location, structural integrity, and compatibility.
- (4) Encourage the location and collocation of communications equipment on existing structures thereby minimizing new visual, aesthetic, and public safety impacts, effects upon the natural environment and wildlife, and reducing the need for additional towers.
- (5) Accommodate the growing need and demand for wireless communications services.
- (6) Respond to the policies embodied in the Telecommunications Act of 1996 in such a manner as not to unreasonably discriminate between providers of functionally equivalent personal wireless services or to prohibit or have the effect of prohibiting personal wireless services.
- (7) Respond to the policies embodied in the Federal Communication Commission's *Declaratory Ruling and Third Report and Order* of September 27, 2018, in such a manner as to not effectively prohibit the provision of wireless services.
- (8) Protect the character of the Town while meeting the needs of its citizens to enjoy the benefits of communications services.

8.18.2 The provisions of this bylaw are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting personal wireless services or be applied in such a manner as to unreasonably discriminate between providers of functionally equivalent personal wireless services.

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8.18.3Definitions. The following definitions are used exclusively in the Wireless Communications Bylaw (and are repeated in Town of Lenox Standard Specifications and Design Manual for Wireless Facilities (the “Design Manual”)), as amended:

ADA - the Americans with Disabilities Act, as amended, and the regulations promulgated thereunder.

antenna - communications equipment that transmits and/or receives electromagnetic radio frequency signals used in the provision of wireless services. Two or more antennas constitute an antenna array.

applicable codes - building, plumbing, electrical and fire codes adopted by the Commonwealth or the Town; requirements of the National Electric Code or the National Electric Safety Code; and the applicable laws, regulations and requirements of the Federal Communications Commission, the Occupational Safety and Health Administration, as well as any other local, state, or federal agency regulating wireless communications, as any may be amended from time to time.

applicant - any person who submits an application and is, or is acting on behalf of, a wireless services provider or wireless infrastructure provider.

application - a written request on a Town wireless communications facility application form submitted by an applicant to the Land Use Department to install or operate a wireless communications facility on public or private property within the Town but not within a right-of-way, whether for a permit to collocate wireless communications facilities on an existing wireless support structure; install a wireless support structure; or install modifications or modify operation of any existing wireless communications facility, as well as all required exhibits and submittals as required by the application form and the applicable fee for the review of such application.

basic use permit - a written authorization that must be obtained by the applicant from the Town to perform an action or initiate, continue, or complete certain types of wireless communications facilities. Application process will be contained in the Specifications Manual.

Commented [LF1]: Process to be outlined in Specifications Manual?

breakpoint technology - the engineering design of a monopole wherein a specified point on the monopole is designed to have stresses concentrated so that the point is at least five percent (5%) more susceptible to failure than any other point along the monopole so that in the event of a structural failure of the monopole, the failure will occur at the breakpoint rather than at the base plate, anchor bolts, or any other point on the monopole.

collocate or collocation - to install, mount, maintain, modify, operate, or replace wireless communications facilities on or adjacent to a wireless support structure.

communications facility – a wireless communications facility, as defined below.

communications service – cable service, as defined in 47 U.S.C. 522(6), as amended; information service, as defined in 47 U.S.C. 153(24), as amended; telecommunications service, as defined in 47 U.S.C. 153(53), as amended; mobile service, as defined in 47 U.S.C. 153(33), as amended; or wireless service other than mobile service.

communications service provider - a cable operator, as defined in 47 U.S.C. 522(5), as amended; a provider of information services, as defined in 47 U.S.C. 153(24), as amended; a telecommunications carrier, as defined in 47 U.S.C. 153(51), as amended; or a wireless provider;

concealed facility - a wireless communications facility that is designed in a manner that it is not readily identifiable as a wireless communications facility, and further is designed to be aesthetically compatible with

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existing building(s) and uses on a site and in the neighborhood or similar area.

FCC - the Federal Communications Commission of the United States.

fee - a one-time charge paid to the Town by the applicant with the application.

historic district - a group of buildings, properties, or sites that are designated as an historic district by the Town as set forth in the Lenox Historic District Bylaw.

interference- The effect of unwanted energy due to one or a combination of emissions, radiations, or inductions upon reception in a radio communication system, manifested by any performance degradation, misinterpretation, or loss of information which could be extracted in the absence of such unwanted energy.

law - a federal, Massachusetts or local statute, regulation (including applicable codes, as defined above), ordinance, order or rule.

modification – a change of equipment or design to an existing wireless communications facility that involves the addition of new equipment, the exchange of new equipment for existing equipment where the new equipment has a greater weight or larger size than the existing equipment, the addition of any new transmission lines or replacement of existing transmission lines with new lines of greater dimension, or the increase in any amount of the height or girth of the wireless communications facility.

person - an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization.

small wireless facility - a wireless communications facility that meets both of the following qualifications:

- (i) each antenna is located inside an enclosure of no more than three (3) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three (3) cubic feet; and
- (ii) all other ancillary wireless equipment associated with the facility is cumulatively no more than twenty-eight (28) cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

special use permit - a written authorization that must be obtained by the applicant from the Town to perform an action or initiate, continue, or complete certain types of wireless communications facilities as further defined in Section **8.19** of the Town of Lenox Bylaw.

wireless communications facility – means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (i) equipment associated with wireless communications; and (ii) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. "Wireless communications facility" does not include (i) the structure or improvements on, under, or within which the equipment is collocated or (ii) wireline backhaul facilities. A wireless communications facility under this bylaw shall also include a small wireless facility, which is not located within a Town right-of-way.

wireless infrastructure provider - any person authorized to provide telecommunications services in the commonwealth that builds or installs wireless communications transmission equipment, wireless facilities, wireless support structures, or utility poles and that is not a wireless services provider but is acting as an agent or a contractor for a wireless services provider for the application submitted to the Town.

wireless services - any services provided to the general public, including a particular class of customers, and

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made available on a nondiscriminatory basis using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided it is using wireless facilities.

wireless services provider - a person who provides wireless services.

wireless support structure - a freestanding structure, such as a monopole; tower, either guyed or self-supporting; billboard; or other existing or proposed structure designed to support or capable of supporting wireless facilities.

8.18 .4 Town Standards

(A) Exempt Facilities. The following items are exempt from the standards for wireless communication facilities notwithstanding any other provisions:

- (1) Satellite earth stations used for the transmission or reception of wireless communications signals with satellites that are one (1) meter (39.37 inches) or less in diameter in all residential zones and two (2) meters or less in all other zones.
- (2) A temporary wireless communications facility, upon the declaration of a state of emergency by federal, state, or local government, and a written determination of public necessity by the Town designee; except that such facility must comply with all federal and state requirements. No communications facility shall be exempt from the provisions of this Section beyond the duration of the state of emergency.
- (3) A government-owned communications facility erected for the purposes of installing antenna(s) and ancillary equipment necessary to provide communications for public health and safety.
- (4) A temporary wireless communications facility for the purposes of providing coverage of a special event, and subject to federal and state requirements. Said communications facility may be exempt from the provisions of this Section up to one week before and after the duration of the special event.
- (5) Amateur radio towers solely used for licensed amateur services up to 70 feet in height.

(B) ~~Permits~~ Required. Wireless communications facilities and modifications thereto shall be permitted as follows:

- (1) Basic Use Permit. Required of facility types set forth in the Use Table in Subsection 8.18.4 (C) below in the zoning districts indicated below and identified as “BU”, along with equipment modifications (except modifications qualifying as “substantial change”), and tower replacement/upgrades no more than 10% taller than the original tower. The Zoning Board of Appeals shall grant Basic Use Permits through a majority vote.
- (2) Special Permit. Required of facility types set forth in the Use Table in

Commented [LF2]: KMV reminds us: If it can't be denied and requires just an administrative approach – not a ZBA function.

Commented [3]: In another reference below, it says Land Use director can allow a modification. But if a BU is required shouldn't this be part of the BU process?

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Subsection 8.18.4 (C) below in the zoning districts indicated below and identified as “BA”, along with tower replacement/upgrades more than 10% taller than the original tower, or modifications to existing towers that constitute a substantial change as defined in Subsection 8.18.5(5) below. The Zoning Board of Appeals may grant Special Permits only through a supermajority vote.

- (3) **Use Table*** BU = Basic Use Permit; BA = Special Permit; N- = Not Permitted

(*Eligible Facility Collocations per 47 USC §1455 administratively approved as a Basic Use Permit)

Zoning District	R-1A	<u>R-3</u>	<u>R-15</u>	<u>R-30</u>	<u>C</u>	<u>C-1A</u>	<u>C-3A</u>	<u>I</u>
New Concealed Antenna on Existing Tower or Building	<i>Completion of the Use Table is pending, to be informed by the planned Needs Analysis and Wireless Master Plan and subsequent discussion.</i>							
New Concealed Tower								
New Non-Concealed Antenna on Existing Tower or Structure								
Existing Tower or Antenna Substantial Change								
New Non-Concealed Tower								

Commented [LF4]: The Use Table as detailed here is under discussion as the comments reveal. The final permit requirements are yet to be discussed and determined.

Commented [6]: iii. above says non-concealed antenna not in the right of way is only allowed on tower, light pole or electric pole. so take out Building maybe say Structure instead

(C) Processing Timelines for Basic Use Permit and Special Permit

- (1) Tolling and Sufficiency.
- (i) Determination of Sufficiency. For all wireless communications facility applications, determination of sufficiency must occur within ten (10) days of submittal. The applicant shall receive written notice of incompleteness within ten (10) days of

submittal.

- (ii) If an application is determined incomplete and the applicant receives written notice within ten (10) days of submittal, the processing timeline, or “shot clock”, for the application shall toll and shall not restart until the applicant re-submits the materials necessary to make the application complete.
- (2) An application for a Basic Use Permit shall be approved or denied within ninety (90) days of receipt of an application by the Town, except for eligible facility request modifications and collocations pursuant to subsection 8.18 .5 (2) which shall be approved or denied within sixty (60) days of an application. The time periods herein shall be tolled while an application is incomplete. Completeness of an application and the tolling periods shall be interpreted pursuant to the Federal Communications Commission’s Report and Order in Docket 13-238 released October 21, 2014, as amended and the Federal Communications Commission’s Third Report and Order in Docket 17-79 and 17-84 released September 27, 2018 as amended.
- (3) An Application for a Special Permit shall be approved or denied within one hundred fifty (150) days of the Town’s receipt of any application.. The time periods herein shall be tolled while an application is incomplete. Completeness of an application and the tolling periods shall be interpreted pursuant to the Federal Communications Commission’s Report and Order in Docket 13-238 released October 21, 2014, as amended.

(D) Fees for Wireless Communications Facility Applications

Application processing fees for wireless communications facilities shall be paid at the time of application in accordance with the Town of Lenox Fee Schedule.

8.18 .5 General Requirements

(1) **Location Preference of New Antenna Array and New Towers.** Locating a new antenna array or a new tower shall be in accordance with the below preferred locating alternatives order. Where a lower ranked alternative is proposed, the applicant must provide in its application relevant information demonstrating that despite diligent efforts to adhere to the established hierarchy within the search area, higher ranked options are not technically feasible, practical, or justified given the location of the proposed wireless communications facility.

Location preferences are as follows:

- (i) New concealed attached antenna or collocated antenna on an existing tower or building on Town property;
- (ii) New concealed attached antenna or collocated antenna on an existing tower or building not on Town property;
- (iii) New Concealed freestanding tower on Town property;
- (iv) New Concealed freestanding tower not on Town property;
- (v) Non-concealed attached antenna on an existing tower on Town property;

Commented [LF7]: Considering how to best locate the use table and not restate use table here.

Commented [LF8]: Note to reviewers: An **antenna array (or array antenna)** is a set of multiple connected **antennas** which work together as a single **antenna**, to transmit or receive radio waves. ... An **antenna array** can achieve higher gain (directivity), that is a narrower beam of radio waves, than could be achieved by a single element.

Question for AL: Are there ever cases of a single antenna or only an “array”? Generally – AL notes that most towers have 3 antennas (or an array) Very occasionally 1 antenna might be added

Note: added to antenna definition

- (vi) Non-concealed attached antenna on an existing tower not on Town property;
 - (vii) Substantial changes to an existing tower or existing antenna on a building on Town property;
 - (viii) Substantial changes to an existing tower or existing antenna on a building not on Town property;
 - (ix) Non-concealed freestanding tower or antenna on a building on Town property;
 - (x) Non-concealed freestanding tower or antenna on a building not on Town property.
- (2) Height Limitation. New towers constructed within the Town shall not exceed a maximum height above ground level (AGL) of one hundred (100) feet, subject to the provisions of Subsection 8.18.6 below.
- (3) Collocation and other modifications to existing facilities pursuant to Section 6409 of the Middle-Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. §1445(a)).
- i. Modifications to facilities that involve the addition, removal, and/or replacement of transmission equipment that do not substantially change the physical dimensions of an existing tower, antenna support structure, or building shall be subject to the streamlined procedures set forth for a Basic Use Permit.
 - ii. For the purpose of this Section 8.18, “substantial change” means the following:
 - 1). The mounting of the proposed antenna on the tower or building would increase the existing height of the tower or building by more than 10%, or by the height of one additional antenna array with separation between the top of the nearest existing antenna to the base of the proposed antenna not to exceed twenty (20) feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or
 - 2). The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved (not to exceed four) or more than one new equipment shelter; or
 - 3). The mounting of the proposed antenna would involve adding an appurtenance to the body of the tower or building that would protrude from the edge of the tower or building more than twenty (20) feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or

Commented [9]: This requires an SP under 8.14.4.b.2, right? is language in there inclusive of antennas?

Commented [10]: contradicted elsewhere

Commented [11]: contradicted elsewhere

Commented [12]: I guess I understand why you cited BU required here, but note: in other places where BU is required, we don't cite it there -- but in 8.18.4.b. I wonder if there's a way to be consistent...

Commented [13]: so what are these streamlined procedures - see notes below

Commented [14]: Note, there is the full bylaw, sections such as this one 8.18.5 and subsections

Commented [pk15]: t

Commented [16]: I think we should use "bylaw" when referring to the entire bylaw. We should cite a section/subsection by number in other cases if applicable

AL- is this referring to the full bylaw or this specific section?

Commented [pk17]: re note to AL above, this is how I get confused; continue to think we should refer to sections or subsections by number if they are what's being referred to; say bylaw or bylaw number if it's the overall bylaw that applies

- 4). The mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site by more than 30 linear feet in any direction.

 - iii. Increases to height allowed by Subsection 8.18.5(3)(ii) above to an existing tower shall be based on the maximum height allowed by the original approval (if applicable) of the existing tower and shall not affect any existing tower lighting. Concealed attached antennas located on a roof top, not constructed exclusively for wireless service, shall not be considered a tower and shall be limited to the maximum height approved.

 - iv. Additional equipment shall maintain the appearance intended by the original facility, including, but not limited to, color, screening, landscaping, camouflage, concealment techniques, mounting configuration, or architectural treatment. Notwithstanding this provision, the Land Use Director or their designee may approve a modification where maintaining the original design is not feasible, provided that the applicant provides evidence demonstrating that the modification’s design or configuration is necessary, does not defeat the existing concealment technique in the view of a reasonable person, and is the least obtrusive means of accomplishing the objective.
- (4) Tower Replacement/Upgrade. Existing towers may be replaced or upgraded pursuant to this Section 8.18, provided that the replacement or upgrade accomplishes a minimum of one of the following: 1) reduces the number of towers; 2) reduces the number of nonconforming towers; 3) replaces an existing tower with a new concealed tower to improve either network functionality or structural integrity; 4) replaces an existing non-concealed tower with a concealed tower. Replacements and upgrades are subject to the following requirements:
- i. Breakpoint Technology. A replacement tower shall use breakpoint technology in the design.
 - ii. Landscaping. At the time of replacement or upgrade, the tower equipment compound shall be brought into compliance with any applicable landscaping requirements.
 - iii. Setbacks. A replacement of an existing tower shall not be required to meet new setback standards so long as the new tower and its equipment compound are no closer to any property lines or dwelling units as the tower and equipment compound being replaced, even if the old tower had nonconforming setbacks.
- (5) Concealed & Non-concealed Attached Antenna. Antennas may be mounted onto a building or support structure that is not primarily constructed for the purpose of holding attached antennas, subject to the following standards:
- i. The top of the concealed attached antenna shall not extend more than fifteen

Commented [LF18]: KMV: Out of whack – may be referring to allowance section to avoid interference (ii. (1) and (3). for inclement weather protection/or connection...

Commented [19]: let’s remember to check all such references if we change our numbering protocol

Commented [20]: In another place we say ZBA approves BU. KMV: Suggest we decide who is deciding on these permits and any exceptions or conditions: ZBA, LU Dir, etc.

Should this be the Town or its designee to allow for future change?

Commented [LF21]: Is this where we add in “screening” language or refer to Design Manual?

(15) feet above the existing or proposed building or structure to which it is attached. Notwithstanding this provision, the height of the antenna shall not extend more than eight (8) feet above the maximum allowed height for a structure in the zone in which it is located.

- ii. Non-concealed antenna attachments outside of a public right-of-way shall be allowed only on electrical transmission towers, utility poles, and existing light stanchions in the zoning districts set forth in the Use Table above and approval by the utility company. Additional height may be allowed to accommodate the minimum safety separation necessary from electrical lines, as required by the National Electrical Safety Code and the utility provider.
- iii. Except for non-concealed attached antennas, feed lines and antennas shall be designed to architecturally match the façade, roof, wall, and/or structure on which they are fixed or otherwise blend with the existing structural design, color, and texture.
- iv. Where the proposed attached antennas do not meet the standards set forth by subsections (i) through (iii) above, a **Special Permit is required**, with a neighbor **notification radius of TBD feet.**

8.18 .6 **Wireless Communications Facility Variance.**

This Section shall apply exclusively to wireless communications facilities to evaluate the necessity and compatibility of requests to exceed the height requirements in Section 8.18.5 (2) above as part of a Special Permit. In order to authorize a wireless communications facility height variance, the Zoning Board of Appeals must find that:

- (1) Variance is Necessary to Provide Reasonable Coverage or Capacity. A gap in coverage or capacity of the provider’s network exists such that users are regularly unable to connect to the service network, or are regularly unable to maintain a connection; and
- (2) Minimum Adjustment. The proposed facility is designed to meet the minimum height requirement necessary for effective functioning of the provider’s network.

8.18 .7 Supplemental Review. The Town reserves the right to require a supplemental review for any Permit processed under this Section 8.18, subject to the following:

- (1) Where due to the complexity of the methodology or analysis required to review an application for a Permit (Basic Use or Special) or a Variance as provided above, the Town may require the applicant to pay for a technical review by a third party expert, the costs of which shall be borne by the applicant and be in addition to other applicable fees. Schedules of current fees are listed in the Town of Lenox Fee Schedule.
- (2) Based on the results of the expert review, the approving authority may require changes to the applicant’s application or submittals.

Commented [22]: see Variance section related to height - bit of a conflict

Commented [pk23]: AL - pls advise

Commented [LF24]: (600') but does this apply ONLY to this specific set of standards – or to any request for SP?

KMV Suggests that PB members reconsider Use Table while looking at Town Zoning map. If an existing tower is located in an R district – and coverage could be done with modifications to existing tower or a new non-concealed antenna..... NP??? Which is where a variance/or SP exception come into play....

Commented [pk25]: Another issue here; ii and iii both refer to height, which is controlled by variance elsewhere in the bylaw

Commented [26]: Note that in Concealed and Nonconcealed Antenna requirements just above, only an SP seems to be required to waive the height requirement. As such, should this section really only apply to Towers? Or, take out ii. from SP mention in Concealed and Nonconcealed Antenna and force all height into variances.

- (3) The supplemental review may address any or all of the following:
 - i. The accuracy and completeness of the application and any accompanying documentation.
 - ii. The applicability of analysis techniques and methodologies.
 - iii. The validity of conclusions reached.
 - iv. Whether the proposed wireless communications facility complies with the provisions set forth in this bylaw (8.18).
 - v. Whether the proposed facility is designed to meet the minimum height requirement necessary for effective functioning of the provider's network.

8.18.8 RFI Study. Any time after the installation of the proposed wireless communications facility, the Town may perform a site-specific radio frequency propagation and exposure study to determine if the wireless communications facility remains in compliance with applicable FCC Rules (OET Bulletin 65 and 47 CFR §1.1310) regarding radio frequency exposure standards. In the event the results demonstrate that the wireless communications facility is not in compliance with the applicable rules, the applicant shall immediately discontinue operation of the facility upon notification from the Town and modify the facility to bring it into compliance before restarting operations. In the event of results demonstrating noncompliance with the applicable FCC Rules, the applicant shall also be obligated to reimburse the Town for the cost of the study.

8.18.9 Abandonment (Discontinued Use)

- (1) Towers, wireless communications facilities, antennas, and the equipment compound shall be removed, at the owner's expense, within 180 days of cessation of use.
- (2) An owner wishing to extend the time for removal or reactivation shall submit an application stating the reason for such extension. The Town may extend the time for removal or reactivation up to 60 additional days upon a showing of good cause. If the tower or antenna is not removed within this time, the Town may give notice that it will contract for removal within 30 days following written notice to the owner. Thereafter, the Town may cause removal of the tower with costs being borne by the owner.
- (3) Upon removal of the tower, wireless communications facility, antenna, and equipment compound, the development area shall be returned to its natural state and topography and vegetation consistent with the natural surroundings or consistent with the current uses of the surrounding or adjacent land at the time of removal, excluding the foundation, which shall be reduced to below finished grade.
- (4) All applicants shall, upon grant of a Basic Use Permit or Special Permit, furnish a performance bond or irrevocable letter of credit naming Town of Lenox as beneficiary in the sum of \$50,000.00 ("Performance Bond") which shall provide

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language, inter alia, stating it is for the purpose of assuring the removal of the permitted wireless communications facility in the case of abandonment as contemplated herein.

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