Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	

COMMENTS OF CABLEVISION LIGHTPATH, INC.

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COMMENTS OF CABLEVISION LIGHTPATH, INC.

Cablevision Lightpath, Inc. ("Lightpath") hereby files comments in response to the Federal Communications Commission's ("Commission's") April 27, 2001 Notice of Proposed Rulemaking requesting comment on the establishment of a unified intercarrier compensation regime.[1/] Lightpath supports the Commission's endeavor to consider potential reforms to intercarrier compensation in a comprehensive manner. However, to minimize any disruptions to investment in competitive telephone services, it is critical that any regime adopted preserve the competitive goals that motivated the adoption of the mechanisms already established by the Commission and that it be implemented gradually in order to permit local exchange carriers ("LECs") to recoup investments already made in reliance on the existing compensation scheme.

I. INTRODUCTION AND SUMMARY

Lightpath is a full service, facilities-based, competitive local exchange carrier ("CLEC") that offers a broad range of services to a wide variety of business and residential customers. Using state-of-the-art 5ESS switches, Lightpath provides all forms of switched voice and data services, including basic telephone services, primarily over its own facilities, and currently serves over 109,000 access lines. Cablevision Systems Corp. ("Cablevision") along with its affiliates, including Lightpath, is spending hundreds of millions of dollars to upgrade its network and expand its deployment of two-way interactive digital services. Lightpath has also spent tens of millions of dollars on switching and other facilities to provide telephone services over this upgraded network.

Although the NPRM raises many issues of interest to Lightpath, these comments focus on several issues of particular importance to it as a facilities-based local exchange carrier. The continued success of Lightpath (and other CLECs) in bringing competition to local markets is dependent upon its ability to make and recoup investments in technological improvements that increase the efficiency of its network and its ability to design and offer its own unique services -- independent of ILEC-defined templates -- that are tailored to the needs of their customers.

Accordingly, any proposal that would bind CLECs to ILEC technological or business models by imposing crippling costs upon them for choosing to employ new and more efficient networks and business plans should be rejected. In particular, it would be inefficient and anticompetitive to require CLECs to establish points of presence -- that have no functional or technological purpose -- in every local calling area or to pay for the transport of ILEC-generated traffic over ILEC networks, as implementation of the Geographically Relevant Interconnection Points ("GRIPs") plan would do. Similarly, the Commission should refrain from limiting the ability of CLECs to assign NXX codes in a manner that maximizes the efficiencies of those systems for the benefit of customers. This is especially true in light of the Commission's recent divorce of the characterization of traffic as local or nonlocal from reciprocal compensation determinations, which eliminates any threat of regulatory arbitrage stemming from the exercise of such freedom. Moreover, adoption of the Commission's reaffirmation of existing pro-

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[1/] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket competitive mechanisms, such as the tandem rate rule, will also encourage efficient innovation. Any new intercarrier compensation regime that fails to accommodate these principals would undermine competition in the local exchange market and further threaten the realization of the pro-competitive goals of the Telecommunications Act of 1996.

II. THE ILECS' GEOGRAPHICALLY RELEVANT INTERCONNECTION POINTS PLAN, AND ANY VARIATION OF THAT PLAN, SHOULD BE REJECTED.

The NPRM seeks comment on whether the Commission should limit carriers' current right to interconnect at a single point of interconnection ("POI") within a LATA. Specifically, the Commission asks whether "a carrier should be required either to interconnect in every local calling area, or to pay the ILEC transport and/or access charges if the location of the single POI requires the ILEC to transport a call outside the local calling area."[2/] This proposal, yet another reincarnation of the ILECs' GRIPs plan, which has been rejected by the New York Public Service Commission,[3/] would conflict with the Commission's prior determinations that CLEC networks employing a single switch may be more efficient than ILEC legacy networks, and that such efficiencies should not be discouraged by imposing unnecessary and disproportionately burdensome costs upon CLECs.

No. 01-92, *Notice of Proposed Rulemaking*, FCC 01-132 (Apr. 27, 2001) (*"NPRM"*).

[2/] *NPRM* ¶ 113.

[3/] *See Application of New York Telephone Company Pursuant to Section 271 of the Telecommunications Reform Act of 1996*, Docket No. 97-01-23, Final Decision (CT DPUC Apr. 11, 2001) (deleting Verizon's GRIP proposal upon review of Verizon's 271 Application because it had not been approved by the New York Public Service Commission ("NY PSC")); *Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*, Case No. 98-C-1357, Recommended Decision on Module 3 Issues By Administrative Law Judge Joel A. Linsider at 204-05 (NY PSC May 16, 2001); *Proceeding on Motion of the Commission to Reexamine Reciprocal Compensation*, Case No. 99-C-0529, Opinion No. 99-10, Opinion and Order Concerning Reciprocal Compensation at 62-63 (NY PSC Aug. 26, 1999) ("*NY PSC Order*") (rejecting GRIPs proposal).

As noted above, the Commission has determined that CLECs should be entitled to connect with ILECs at a single POI per LATA so that they (and their customers) may benefit from the efficiencies generated by their new technologies.[4/] The Commission obviously recognized that establishment of a single interconnection point would result in some traffic -- for both carriers depending upon the circumstances -- having to travel farther than if there were multiple POIs. Nonetheless, the Commission wisely refused to bind CLECs to the legacy network built by the ILECs with revenues generated by rate regulation -- revenues unavailable to CLECs -- and instead permitted CLECs the flexibility to take advantage of new technology and to design unique systems, business plans, and service offerings. Striking a fair balance between ILECs' existing technical requirements and CLECs' evolving needs and potential, the Commission determined that CLECs should be permitted to connect to ILEC networks at any technically feasible point.[5/]

Adoption of the GRIPs plan would hinder CLECs' ability to compete effectively with incumbents by severely restricting their ability to make and recoup the investments necessary to maintain and improve their networks. The proposed plan would force CLECs to choose either to mirror less efficient ILEC technology (thereby forgoing the benefits of the investments that they have already made in superior technology) or to pay for the transport of ILEC traffic over ILEC

4/ *NPRM* ¶ 72 ("Under [the Commission's] current rules, interconnecting CLECs are obligated to provide one POI per LATA"); *see also* 47 U.S.C. § 251(c)(2)-(3); 47 C.F.R. § 51.321; *In the Matter of Application by SBC Communications, Inc. To Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, *Memorandum Opinion and Order*, FCC 00-238 ¶ 78 (June 30, 2000) (concluding that LECs are required to allow CLECs "the option to interconnect at only one technically feasible point in each LATA" and that this obligation allows "new entrants [to] select the 'most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination.'") (*"SBC Order"*).

5/ *See NPRM* ¶ 72; *SBC Order* ¶ 78.

networks so that such traffic may be terminated ultimately on CLEC networks. ILECs, in contrast, would bear no comparable costs (and would receive revenue when transport capability is purchased rather than built), further enhancing their market power. Imposing ILEC transport costs on CLECs, while simultaneously depriving CLECs of compensation for ILEC use of their networks, is entirely inconsistent with existing intercarrier compensation rules,[6/] which recognize that such compensation is essential to the construction, maintenance, and improvement of CLEC networks and, thus, to robust competition in the local exchange market.

In addition to hindering competition, the proposed modification to the current rules would degrade the quality and scope of service to consumers. Requiring CLECs to establish a POI in every rate center where they serve even a single customer would create strong disincentives for CLECs to expand their service areas outside of the most densely populated areas for fear of incurring the significant expense of installing unnecessary and largely unused trunks. This would have a particularly chilling effect on competition for residential service because a CLEC potentially would have to establish a POI or pay for ILEC transport to serve a single remote customer served in one of hundreds of rate centers in a particular LATA -- even a customer being served using extended loops. Thus, adoption of the GRIPs plan, or a variation thereof, would curtail competitive residential service, as well as effectively eliminate the utility of extended loops.

[6/] The current rules expressly preclude an ILEC from charging carriers for local traffic that originates on an ILEC's network. *See NPRM* ¶ 112 (citing *In the Matter of Joint Application by SBC Communications, Inc. et al. for Provision of In-Region InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, *Memorandum Opinion and Order*, FCC 01-29 ¶ 235 (Jan. 22, 2001) (citing 47 C.F.R. ¶ 51.703(b); *In the Matters of TSR Wireless, LLC et al v. U.S. West*, 15 FCC Rcd. 11166 (2000)*, pet. for review docketed sub nom., Qwest v. FCC*, No. 001-1376 (D.C. Cir. Aug. 17, 2000)). They also require that an ILEC compensate other carriers for transport and termination for local traffic that originates on the network facilities of the ILEC. *See id*. (citing 47 CFR § 51.701(c)-(e)).

Rewarding ILECs for engaging in inefficient and anticompetitive behavior, as the GRIPs plan would do, would be antithetical to the Telecommunications Act's and the Commission's goal of increasing competition in the local exchange market, and ultimately would limit the choices consumers have in the marketplace. Rather than distort the intercarrier compensation system to fit the incumbents' technological model, as adoption of the GRIPs plan would require, the Commission's policies should continue to encourage all carriers to improve the efficiency of their networks and require carriers to bear responsibility for transporting traffic generated by their own customers.

III. CLECS SHOULD HAVE THE SAME RIGHT TO SET RATES FOR TRAFFIC FLOWING OVER THEIR SYSTEMS THAT ILECS ENJOY.

The Commission asks what, if any, action should be taken regarding the supposed misuse of virtual NXX codes by CLECs.[7/] As a threshold matter, Lightpath notes that CLECs have not been misusing NXXs as the ILECs contend, but rather have been providing exactly the same services to their customers that incumbents have offered their customers for years. In any event, the Commission's recent conclusion that the local/nonlocal character of traffic does not impact the determination of reciprocal compensation obligations[8/] eliminates the supposed motivation

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7/ *NPRM* ¶ 115 (seeking comment "on the use of virtual central office codes (NXXs), and their effect on the reciprocal compensation and transport obligations of interconnected LECs").

8/ *See ISP Intercarrier Compensation Order* ¶ 34 (distinguishing the current reciprocal compensation analysis from its prior analysis by noting its emphasis on the relationship between sections 251(b)(5) and 251(g) rather than upon the "local" nature of the traffic and expressly "refrain[ing] from generically describing traffic as local because the term 'local,' not being a statutorily defined category, is particularly susceptible to varying meanings and, significantly, is not a term used in section 251(b) or section 251(g)."); *id.* ¶ 46 (modifying prior holding that termination of local traffic triggered reciprocal compensation obligations and holding instead that "all telecommunications not excluded by section 251(g)" terminated and transported on another carrier's network trigger reciprocal compensation obligations and rejecting use of the term local because it "created unnecessary ambiguities."); *id.* ¶ 54 (asserting that the Commission "no longer construes section 251(b)(5) using the dichotomy set forth in the for such "misuse" -- an attempt to obtain illicit reciprocal compensation payments by characterizing nonlocal calls as local. Because virtual foreign exchange ("FX") traffic is subject to reciprocal compensation, regardless of whether a call bears a local or nonlocal NXX code or whether the originating and terminating end users are located within the same local calling area, previous concerns about regulatory arbitrage no longer support any limitation on CLECs' ability to offer the type of differentiated service offerings necessary to compete effectively with incumbents in the local exchange market.[9/]

In the *ISP Intercarrier Compensation Order*, the Commission determined that the precise sort of geographically based limitation the ILECs propose is unsupported by statutory language, and it would be contrary to the promotion of local competition to read such a requirement into the Telecommunications Act. In that Order, the Commission determined that all telecommunications traffic transported to and terminated on another carriers' network triggers

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Declaratory Ruling between 'local' traffic and interstate traffic" and clarifying that "the proper analysis hinges on section 251(g) which limits the reach of the reciprocal compensation regime mandated in section 251(b)").

[9/] *See, e.g., DPUC Investigation into the Unbundling of the Southern New England Telephone Company's Local Telecommunications Network*, Docket No. 94-10-02, Decision at 68-69 (CT DPUC Jan. 17, 1996) ("Connecticut UNE Decision") (acknowledging that incumbent providers cannot be allowed "to dictate the definition of local service" because such control "would prove to be too restrictive and contradictory to the stated intent of the Department to foster [the] product innovation and market differentiation" necessary for true competition, and consequently defining "local service" by reference to NXX codes "allows each provider to determine its unique local calling area(s)"); *In the Matter of the Application of Ameritech Michigan To Revise Its Reciprocal Compensation Rates and Rate Structure and To Exempt Foreign Exchange Service from Payment of Reciprocal Compensation*, Case No. U-12696, Opinion and Order at 11 (MI PSC Jan. 23, 2001) (asserting that "the discretion that CLECs exercise in designing their local calling areas is a competitive innovation that enables them to provide valuable alternatives to an ILEC's traditional service" and declining to restrict that discretion where "the end result would be an unnecessary restriction on the services that customers want and need.").

reciprocal compensation unless it is expressly exempted under 47 U.S.C. § 251(g).[10/] Thus, the only relevant question for reciprocal compensation purposes is whether the traffic in question -- virtual FX traffic or otherwise -- is exempted under Section 251(g). FX traffic does not fall within any of the categories of traffic exempted under that section (interexchange access, information access, or exchange services for such access provided to IXCs or ISPs)[11/] and, therefore, when such traffic is terminated on another LEC's network, it triggers reciprocal compensation obligations. As the *ISP Intercarrier Compensation Order* concludes, once that determination has been made, no further inquiry -- particularly one focusing on the local or nonlocal nature of the traffic -- is contemplated by the Telecommunications Act.

IV. THE TANDEM RATE RULE FOSTERS COMPETITION AND SHOULD NOT BE MODIFIED IN ANY WAY THAT WOULD REDUCE LEC INCENTIVES FOR EFFICIENT INNOVATION.

The tandem rate rule, as embodied in Section 51.711(a)(3), is strongly pro-competitive and should be modified only if those changes protect or enhance the existing rule's encouragement of efficient investment, innovation, and compensation for the use of a carrier's network.[12/] Under the current rule, CLECs are entitled to the ILEC tandem rates "when interconnecting carriers utilize new switch technologies that serve a geographic area comparable to that served by the ILEC's tandem switch."[13/] Although reaffirming the validity of the tandem

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10/ *See ISP Intercarrier Compensation Order* ¶ 46.

11/ *See id.* ¶¶ 31-34 (describing the categories of traffic exempted from reciprocal compensation obligations under § 251(g)).

12/ 47 C.F.R. § 51.711(a)(3).

13/ *NPRM* ¶ 102 (summarizing the *Local Competition Order*, 11 FCC Rcd at 16042).

rate rule[14/] and clarifying that the rule does not require CLECs to satisfy a functional equivalency test in order to obtain the tandem rate, the NPRM asks whether the tandem rate rule should be reevaluated and, specifically, whether Section 51.711(a)(3) should be amended to incorporate a "functional equivalency test."[15/]

To the extent that such a modification is intended to "give states greater flexibility in applying a tandem interconnection rate to networks using newer, more efficient technologies," [16/] and satisfaction of such a test would constitute an additional means by which a carrier could obtain the tandem rate for providing capability similar or superior to an ILEC's tandem switch, Lightpath would support such a change. The tandem rate rule in its current form fosters competition, encourages innovation and increased efficiency, and minimizes the expenditure of regulatory and industry resources. Thus, Lightpath opposes modification of the rule to the extent it would increase the barriers that a CLEC must overcome in order to obtain the tandem rate.

A. The Tandem Rate Rule Fosters Competition, Encourages Innovation, Improves Efficiency, and Minimizes the Expenditure of Regulatory and Industry Resources.

As the Commission previously determined in its adoption of Section 51.711(a)(3), in most circumstances, the tandem interconnection rate is the correct proxy rate to be applied when a CLEC terminates ILEC-originated traffic on its network. The tandem rate rule specifically provides that "[w]here the switch of a carrier other than an incumbent LEC serves a geographic

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14/ *Id.* ¶¶ 105, 107; *see also U.S. West Communications, Inc. v. Washington Utils. and Transp. Comm'n*, D.C. No. CV-97-05686-BJR (9th Cir. July 3, 2001).

15/ *Id.* ¶¶ 105, 107 n.173 (noting that CLECs are entitled to the tandem switch rate if they satisfy the comparable geographic area test and that the rule does not currently require satisfaction of a "functional equivalency test," but asking whether language in the *Local Competition Order* directing states to consider whether new technologies provide similar functions in determining the application of proxy rates should be incorporated into the rule).

area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate."[17/] This test properly focuses on the comparative capabilities offered by CLECs and ILECs rather than upon the particular network architectures or technology used by the carriers, and thereby fosters competition by sending efficient economic signals. Such a compensation method ensures that CLECs are fairly compensated for providing equivalent capabilities (and that network investments are properly recouped). Moreover, as the Commission has previously noted, such a compensation scheme encourages LECs to increase their efficiency and reduce costs because they are permitted to capture the difference between the tandem rate set by the ILEC and the actual costs of termination.[18/] In addition, the application of a straight-forward and generic rule determining payment between carriers minimizes both the regulatory and industry resources devoted to rate determinations, thereby promoting competition and efficiency.

B. The Tandem Rate Rule Should Not Be Modified to Require Satisfaction of Any Test In Addition to the "Comparable Geographic Area" Test.

16/ *Id.* ¶ 107 n.173.

17/ 47 C.F.R. § 51.711(a)(3).

18/ The Commission has stated that symmetric rates give a LEC "correct incentives to minimize its own costs of termination because its termination revenues do not vary directly with changes in its own costs." *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 - Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, *First Report and Order*, 11 FCC Rcd. 15499, 16040-41 ¶ 1086 (Aug. 8, 1996), *aff'd in part and vacated in part sub nom.*, *Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utils. Bd. v. FCC*, 120 F.2d 753 (8th Cir. 1997), *aff'd in part and remanded, AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) (*"Local Competition Order"*).

Noting that several states -- relying on language in the *Local Competition Order*[19/] -- have mistakenly incorporated a "functional equivalence" test into their interpretation of the tandem rate rule, the *NPRM* requests comment on whether such a test should be adopted.[20/] To the extent that the functional equivalency test would simply mirror the "comparable geographic area" test set forth by the Commission's rules or be based closely upon the "functional equivalence" principals discussed in the *Local Competition Order*,[21/] Lightpath does not object to the incorporation of such a test. Lightpath opposes, however, any modification of the current rule that would result in diverse "functional equivalency" tests that would act as additional hurdles to the "comparable geographic area test."[22/]

In particular, if the Commission decides to modify the tandem rate rule to incorporate a functional equivalency test, it should base the new requirement upon the New York Public Service Commission's reciprocal compensation model.[23/] That scheme retains the focus of the Commission's current framework on fairly compensating CLECs that provide equivalent or

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19/ *Id.* at 16042 ¶ 1090.

20/ *See NPRM* ¶ 107, n.173 (clarifying that CLECs are entitled to the tandem rate upon satisfaction of the comparable geographic area test and noting the inconsistency of state "functional equivalency" tests with Section 51.711(a)(3)).

21/ The *Local Competition Order* suggests that the tandem rate may be applicable to "technologies (*e.g.,* fiber ring or wireless networks) [that] perform functions similar to those performed by an incumbent LEC's tandem switch." *See Local Competition Order* at 10641-42 ¶ 1090.

22/ Although Lightpath has not objected to the application of the functional equivalency test before state commissions interpreting Section 51.711(a)(3) prior to the Commission's clarification in the current *NPRM* that such a requirement is inconsistent with the existing rules, Lightpath believes that the tandem rate rule as interpreted by the Commission is more pro-competitive and efficient -- as discussed above -- than the state interpretations incorporating the functional equivalency test. *See NPRM* ¶ 107 n.173 (noting the inconsistency of state "functional equivalency" tests with 47 C.F.R. § 51.711).

23/ *See generally NY PSC Order*.

superior capability to that offered by ILEC tandem switches, while addressing the concerns of both originating and terminating carriers regarding imbalances in the termination of traffic that have developed since the adoption of the current reciprocal compensation scheme.

V. IF THE COMMISSION ADOPTS A NEW INTERCARRIER COMPENSATION SCHEME OR ELIMINATES ANY OF THE PRO-COMPETITIVE PROVISIONS SUPPORTED BY THESE COMMENTS, IT SHOULD DELAY IMPLEMENTATION OF THAT DECISION TO MINIMIZE HARMFUL DISRUPTION TO INDUSTRY AND CONSUMERS.

Substantial changes to intercarrier compensation schemes should be implemented in such a manner as to minimize harm to the legitimate investment expectations of carriers, permit carriers to develop and implement new business plans, and ease any resulting price shocks to customers caused by a shift in compensation arrangements. As the Commission recognized in its recent order reforming the CLEC access charge regime, dramatic shifts in the compensation schemes upon which carriers have based their business relationships, strategies, and investments can create substantial and harmful disruption to both the carriers themselves and consumers.[24/] Adoption of any of the modifications to the existing intercarrier compensation scheme discussed by Lightpath in these comments would require facilities-based CLECs such as Lightpath to substantially restructure their relationships with ILECs and reformulate their business plans and strategies to compensate for lost revenues and foreclosed service options. A significant transition period must be granted to allow CLECs to adjust to such changes without incurring potentially disastrous costs or imposing sharp increases in prices on customers. Lightpath

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24/ *See in the Matter of Access Charge Reform: Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, FCC 01-146 ¶¶ 5, 62 (Apr. 27, 2001) (asserting that its multi-year transition mechanism "is vitally important to avoid too great of a dislocation in the CLEC segment of the industry" and to avoid unnecessary damage to competition from imposing "too great of a revenue shock to a particular group of carriers" without adequate opportunity to recoup investments and develop new business plans).

believes that a minimum of four years, from the date publication of any new scheme or requirements in the Federal Register, would be necessary to transition fully to any new regime.

VI. CONCLUSION

For the foregoing reasons, Lightpath opposes any modification to the existing compensation scheme that would frustrate the recovery of past investments in network improvements or deter innovation in technology to serve consumers. The Commission, therefore, should not impose upon CLECs the unnecessary and inefficient requirements that would result from adoption of the incumbents' GRIPs proposal, limit CLECs' ability to assign NXX numbers in a manner that maximizes their ability to offer the unique services necessary to satisfy consumer needs and compete effectively with ILECs, or deprive CLECs of the mutual benefits (such as payment of tandem rates) that should result from their interconnection agreements with incumbents. Moreover, any shift from the current intercarrier compensation scheme should be done gradually to avoid unnecessary and harmful disruption to carriers and consumers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Catherine Carroll, hereby certify that on this 21st day of August, 2001, a copy of the foregoing was filed on the Federal Communications Commission's Electronic Comment Filing System, and on the following parties listed below via overnight delivery:

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