

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

| | | |
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| In the Matter of |) | |
| |) | |
| Revision of the Commission's Rules to |) | CC Docket No. 94-102 |
| Ensure Compatibility with Enhanced 911 |) | |
| Emergency Calling Systems |) | |
| |) | |
| Amendment of Parts 2 and 25 to Implement |) | IB Docket No. 99-67 |
| The Global Mobile Personal Communications |) | |
| By Satellite (GMPCS) Memorandum of |) | |
| Understanding and Arrangements; Petition of |) | |
| The National Telecommunications and |) | |
| Information Administration to Amend Part 25 |) | |
| Of the Commission's Rules to Establish |) | |
| Emissions limits for Mobile and Portable |) | |
| Earth Stations Operating in the 1610-1600.6 |) | |
| MHz Band |) | |

REPLY COMMENTS OF VERIZON WIRELESS

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SUMMARY

Many parties filed comments in this proceeding regarding the Commission's proposals for expanding 911 and E911 obligations to additional products and services. Having completed substantial deployment milestones for Phase I and II E911 compliance (and having to meet ongoing obligations to sell handsets and fulfill PSAP requests), Verizon Wireless has first-hand knowledge of and experience with the challenges presented by the Commission's rules. Remarkably, some parties have undertaken substantial compliance efforts well before any FCC-mandated 911 and E911 rules may be established and imposed on them. Where it has legal authority to do so, the FCC must not dismiss these voluntary efforts nor impose onerous regulatory rules and milestone deadlines.

By contrast, other parties, over whom the Commission's authority is clear and whose services meet the test set forth in the Further Notice, have not undertaken substantial efforts to provide 911 and E911, and have no concrete plans for doing so. Verizon Wireless supports ending mobile satellite service providers' exemption from E911 obligations. To the extent the Commission seeks to impose E911 obligations on wireless resellers, legal and policy reasons support imposing any such obligations on them directly – and not on the underlying facilities-based carrier.

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REPLY COMMENTS OF VERIZON WIRELESS

Verizon Wireless hereby submits its reply comments in the above-captioned proceeding regarding expansion of the Commission's 911 rules to various products and services that are not currently required to provide access to emergency services.¹ To guide its consideration of whether to impose existing or devise new 911 obligations, the Commission asked commentors to analyze each service based on whether: (1) it offers real-time, two-way voice service that is interconnected to the public switched network on either a stand-alone basis or packaged with other telecommunications services; (2) the customers using the service or device have a reasonable expectation of access to 911 and E911 services; (3) the service competes with traditional CMRS or wireline local

¹ See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, IB Docket No. 99-67, Further Notice of Proposed Rulemaking, Rel. December 20, 2002 ("E911 FNPRM").

exchange services; and (4) it is technically and operationally feasible for the service or device to support E911.² The Commission also queried whether it has the requisite legal authority to impose 911 rules on certain products and services.³

Verizon Wireless supports the Commission's underlying policy objective of ensuring broad availability of access to emergency services regardless of the type of telecommunications service or product. However, it is not necessary that all services and products provide access in exactly the same manner as long as access is provided effectively and efficiently. Verizon Wireless has long advocated that the FCC apply its E911 rules with flexibility and in a manner that accommodates different technologies. Against this backdrop, it is apparent from the comments that some industry segments and individual providers have much more to do to ensure that their products and services allow effective and efficient access to emergency services, while others have voluntarily provided a high degree of access comparable to that mandated by the Commission of licensed wireless carriers. Verizon Wireless urges the Commission to take into account not only the legal grounds for imposing 911 obligations, but also whether regulation is necessary given the degree of (or absence of) voluntary efforts to provide access to critical emergency services.

I. THERE IS NO ADEQUATE LEGAL BASIS FOR REGULATING MOST TELEMATICS SERVICES

Verizon Wireless hereby incorporates by reference its comments and reply comments filed in the proceeding addressing OnStar's request for a ruling that in-vehicle, embedded telematics devices are not wireless handsets subject to the existing E911

² E911 FNPRM, ¶ 13.

³ *Id.*, ¶¶ 18, 76, 91, 96, 101, 106.

rules.⁴ Several companies commented in this proceeding opposing any new regulations of call center-based telematics services because these services do not meet the Commission's criteria for imposing 911 rules.⁵

Call center-based telematics services are the predominant telematics service across the various providers commenting in this proceeding.⁶ Such services do not satisfy the Commission's test for imposing 911 and E911 obligations because: (1) they are not interconnected to the public switched telephone network ("PSTN");⁷ (2) customers have no expectation of access to 911 because telematics devices operate like a dispatch service⁸ whereby customers expect to reach the call center for a variety of concierge and value-added services, including emergency service; (3) telematics services are an in-vehicle complement, not a substitute or competitor to wireline or CMRS services; and (4) telematics devices present significant technical and operational challenges for supporting 911 and E911.⁹ Further, telematics providers assert that the Commission lacks an adequate statutory basis to regulate call center-based telematics services.¹⁰

⁴ See Verizon Wireless Comments and Reply Comments in WT Docket No. 94-102, filed January 24, 2003 and February 7, 2003, respectively.

⁵ Toyota Comments at 6; ATX Comments at 19; Mercedes-Benz Comments at 17; OnStar Comments at 15.

⁶ Toyota Comments at 4-7; Mercedes-Benz Comments at 18; ATX Comments at 22-24; BMW Comments at 1-2.

⁷ ATX correctly states that call center-based telematics do not fit the FCC's definition of an interconnected service. Section 20.3 defines an interconnected service as a service that is interconnected with the public switched network, or interconnected with the public switched network through an interconnected service provider, *that gives subscribers the capability to communicate to or receive communication from all other users on the public switched network*. Call center-based telematics does not meet this last criteria of the definition. See 47 C.F.R. § 20.3 (emphasis added).

⁸ However, these services do not strictly meet the FCC's definition of a dispatch service as defined in Section 22.99 of the Commission's rules. 47 C.F.R. § 22.99.

⁹ Toyota Comments at 6-16; ATX Comments at 21-24; Mercedes-Benz Comments at 17-18;

¹⁰ Toyota Comments at 13-17; ATX Comments at 19-27; Mercedes-Benz Comments at 17-24; OnStar Comments at 15-18.

Most call center-based telematics services are not commercial mobile services as defined by the Act or by the Commission's rules because they do not provide interconnected access to the PSTN.¹¹ Commentors assert that telematics services are more analogous to an information service, and telematics devices are not customer premises equipment.¹² To the extent this description applies, it does not appear that telematics services provide their customers with interconnected access to the PSTN and thus are not commercial mobile services under Section 332, which is the basis for treating applicable services as common carriers subject to Title II.

II. THE COMMISSION SHOULD END MSS PROVIDERS' EXEMPTION FROM E911 OBLIGATIONS

The record in this proceeding clearly demonstrates that the Commission should impose basic and enhanced 911 services on MSS providers.¹³ The Commission's proposed criteria for determining whether to impose 911 and E911 criteria are all met for MSS: MSS providers such as ICO, Globalstar, Iridium and Motient, all provide (or intend to provide) "real-time, two-way voice service that is interconnected to the public switched network;" customers "have a reasonable expectation of access to 911 and E911 services; MSS "competes with traditional CMRS" services; and it is technically and operationally feasible for MSS to support E911. Verizon Wireless herein addresses primarily the latter two criteria, which raised the most significant issues in the comments.

¹¹ 47 U.S.C. § 332(d); 47 C.F.R. § 20.3.

¹² Toyota Comments at 13-17; ATX Comments at 20; Mercedes-Benz Comments at 17-20. Although commentors analogize telematics to an information service, they argue that the Commission should refrain from regulation as it has done for most information services. They further maintain that the Commission cannot assert ancillary jurisdiction because there is no specific or express statutory obligation for which ancillary authority is required (to effectively perform the statutory mandate). *See* ATX Comments at 25 and Mercedes-Benz Comments at 20 (citing United States v. Southwestern Cable Co., 329 U.S. 157, 178 (1968)).

¹³ Comments of AT&T Wireless at 2-4; Benton County Emergency Services E911 Program Comments; CTIA Comments at 5-6; NENA/NASNA Comments at 6-9.

Regardless of whether the Commission formally adopts these criteria, in the absence of meaningful voluntary compliance, public interest objectives require that the Commission end MSS licensees' blanket exemption from Section 20.18's E911 requirements.

A. Issues of Technical Feasibility Can Be Resolved and Should Not Preclude Adoption of E911 Requirements for MSS Providers

Information provided by the MSS industry itself indicates that technical feasibility obstacles to E911 deployment can be overcome. MSV, for example, is far more optimistic about the technical feasibility of E911 for MSS providers than other commentors.¹⁴ Iridium notes that it already “can automatically include the calling party's number when it routes the subscriber's emergency call to the established statewide default point” and can already “locate the caller within approximately 10 kilometers 90% of the time” – capabilities not unlike existing Phase I regulations.¹⁵ Globalstar reports a similar location information capability.¹⁶ As to more accurate Phase II capabilities, SkyBitz notes that “MSS operators are exploring [GPS-based] solutions for ALI” and discusses its own “GLS” technology.¹⁷ ICO does not assert that the technology is technically infeasible, only that feasibility requires “substantial system retrofits that would add significant recurring and non-recurring costs to an already capital intensive undertaking.”¹⁸ While expressing concern for RF interference issues between

¹⁴ See MSV Comments at 18-22.

¹⁵ See Iridium Reply Comments at 5-6; 47 C.F.R. § 20.18(d) (requiring ANI and cell site sector information). Iridium's assessment of ANI capabilities seems to contradict that of other MSS providers, although Globalstar acknowledges that “ANI could be implemented in a shorter time frame than ALI, depending upon the local interconnection to the gateway.” See Globalstar Comments at 11; ICO Comments at 5; *see also* Stratos Comments at 4 (ANI is technically possible).

¹⁶ See Globalstar Comments at 6-7.

¹⁷ See SkyBitz Comments at 2-9.

¹⁸ ICO Comments at 4.

the 1.6 GHz MSS band and the GPS receive band, Globalstar states that a GPS-based “solution may work for MSS at 2 GHz.”¹⁹

Moreover, as AT&T Wireless notes, “[a]t the time the Commission developed the E911 rules for terrestrial wireless carriers, it recognized that they were aspirational and technically challenging.”²⁰ Verizon Wireless’ GPS-equipped handset-based solution was untested at the time the Commission adopted the initial rules.²¹ Terrestrial carriers were expected to coordinate with vendors, as well as PSAPs and their state and local government benefactors, on issues such as interoperability, trunking arrangements, and technical solutions²² – a process which took considerable time but ultimately has proven successful. Even OnStar, a relative newcomer to FCC policies and rules, has now stepped up to the challenge of providing Phase I, and is developing the technology necessary for Phase II, within a reasonable timeframe.²³ There is no reason why MSS providers cannot or should not make similar efforts.

For the most part, MSS providers instead focus on the economic and marketing factors affecting MSS deployment.²⁴ Verizon Wireless certainly does not dismiss the significance of these factors, as they have proven relevant and challenging to its own

¹⁹ See Globalstar Comments at 9.

²⁰ AT&T Wireless Comments at 3-4.

²¹ See *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Memorandum Opinion and Order, 12 FCC Rcd 22665, 22724-25 (1997) (“E911 Reconsideration Order”).

²² See *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676, 18678, ¶ 2 (1996) (“E911 First Report and Order”); *Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Second Memorandum Opinion and Order, 14 FCC Rcd 20850, ¶ 55 (1999) (“E911 Second MO&O”).

²³ OnStar Comments at 6-7 & 16. OnStar has merely requested in another proceeding that the FCC not impose the existing schedule developed for compliance by wireless handsets. See *Petition by OnStar*, CC Docket No. 94-102, December 3, 2002.

²⁴ Iridium Reply Comments at 6 (discussing low volume of MSS handsets in circulation and handset turnover); ICO at 5 (substantial system retrofits and significant recurring and non-recurring costs); Globalstar at 9-10; Stratos at 5.

E911 deployment efforts. These factors are, however, relevant only to an appropriate deployment schedule and enforcement approach, not to whether MSS providers should be subject to E911 requirements in the first instance. In addition, the PSAP interconnection issues raised by a number of commenting parties²⁵ appear to be more a matter of working out sensible routing arrangements with state and local governments rather than incurring burdensome trunking costs.²⁶ Moreover, *all* terrestrial cellular and broadband PCS licensees are subject to the Section 20.18 requirements regardless of size. Indeed, the Commission has routinely declined to exempt smaller carriers from the E911 rules.²⁷ Thus, low subscribership is not a basis for exempting MSS providers from E911 obligations.

As CTIA notes, “there is no reason to assume that” the potential costs, weight and size of GPS-equipped handsets “is any greater (and it may indeed be less) than what is required to provide” existing Phase II capabilities.²⁸ Terrestrial carriers utilizing GPS-equipped handset-based solutions faced many challenges several years ago at the time of the FCC’s technology-forcing E911 decision. Now wireless carriers, such as Verizon Wireless and Sprint PCS, have borne much of the cost of initial development and

²⁵ ICO Comments at 5, 7, 9; Globalstar Comments at 8.

²⁶ See Iridium Reply Comments at 4 (“propos[ing] that MSS systems automatically route 911 and other emergency calls directly to a single statewide established default point” which “then route[s] the call to the appropriate local emergency authority.”)

²⁷ The Commission has found that “[a] delay in response caused by a small entity could result in the same fatal consequences as a delay caused by a large entity.” *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petition of City of Richardson Texas*, Order, 16 FCC Rcd 18982, 19002 (2001) (“Richardson Order”). [The Richardson Order also found that all entities must comply with the E911 rules, regardless of size, “in light of the critical nature of [the] E911 rules and the need for ubiquitous, reliable emergency services.” See Richardson Order at 19003.]; See E911 Second MO&O, ¶¶ 57-58 (finding that elimination of the cost recovery rule would accelerate deployment of E911 service to rural areas even though rural carrier operating costs may be higher); See E911 First Report and Order, ¶ 84 (rejecting concerns raised by rural carriers that providing ALI in some rural areas would not be technologically and economically feasible, holding instead that E911 service is in the public interest).

²⁸ See CTIA Comments at 6.

deployment of such solutions. ICO itself “acknowledges that the costs for addressing these issues may have decreased since” it addressed the issue earlier in the proceeding.²⁹

B. Competition Between MSS and Terrestrial CMRS Alone Warrants that MSS Providers Be Subject to E911 Obligations

Perhaps most significantly, there can be no serious question that MSS providers compete with terrestrial CMRS providers. The Commission largely reached this same determination when it initially adopted the current E911 rules in 1996,³⁰ and as numerous commenters acknowledge, the Commission’s recent grant of “ancillary terrestrial component” or “ATC” authority to incumbent MSS providers renders this determination even more acute.³¹ In the ATC proceeding, ICO touted the emergency service benefits of MSS services, and stated that ATC can remedy “the sort of seamless convenience and safety that urban PCS subscribers take for granted” and that ATC “could reduce the price of a standard user transceiver by more than 80 percent, bring the cost of the MSS user equipment into a range of comparability with terrestrial handheld phones.”³² Globalstar stated that “a thriving MSS industry is crucial to the successful roll out of IMT-2000 services” and “MSS providers will be among the first telecommunications providers to provide 3G services domestically.”³³

Nevertheless, in its comments, ICO cites to the Commission’s Order granting MSS providers ATC authority as a basis for its conclusion that terrestrial CMRS and

²⁹ See ICO Comments at 5 n.10.

³⁰ *E911 First Report and Order*, ¶ 83.

³¹ See AT&T Wireless Comments at 3; Sprint Comments at 2-3; APCO Comments at 6; NENA/NASNA Comments at 8. *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band and the 1.6/2.4 GHz Bands*, Report and Order and Notice of Proposed Rulemaking, FCC 03-15 (rel. Feb. 10, 2003) (“ATC Order”).

³² See ICO Comments in IB Docket 01-185, filed Oct. 22, 2001, at 19, 23.

³³ See Unofficial Bondholders Committee of Globalstar, L.P. Reply Comments in IB Docket 01-185, filed Nov. 13, 2001, at 36.

MSS providers do not compete with one another.³⁴ In that decision, the Commission determined that “the operating, functional, and cost characteristics of MSS . . . are sufficiently different” and the two services will not “be close substitutes for each other for the vast majority of customers.”³⁵ ICO, however, overstates the significance of the Commission’s statement. Differences between terrestrial wireless and wireline services could be characterized in much the same way,³⁶ yet a fundamental purpose of the Section 20.18 rules is to minimize the difference between the two services for E911 purposes.³⁷ Indeed, the Commission decided to impose E911 obligations on certain SMR providers merely “because these carriers *may have significant potential* to offer near-term direct competition to cellular and broadband PCS carriers.”³⁸ MSS providers, particularly in an ATC regime, also have such potential.

More fundamentally, the Commission’s ATC rules are intended to enhance the economic viability of MSS providers, whereas the E911 rules serve the fundamentally different objective of promoting public safety – an objective equally relevant to both terrestrial and MSS CMRS providers’ customers. Thus, the Commission should view “competing CMRS providers” covered by the E911 rules broadly.

³⁴ See ICO Comments at 4 (citing *ATC Order*, ¶ 229); see also MSV Comments at 17. Globalstar similarly argued that “MSS providers will not compete directly with CMRS providers in their core business” and the two “will never truly be direct competitors.” Unofficial Bondholders Committee of Globalstar, L.P. Reply Comments in IB Docket 01-185, filed Nov. 13, 2001, at 38, 42.

³⁵ *ATC Order*, ¶ 229.

³⁶ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Notice of Inquiry, WT Docket No. 02-379, FCC 02-327 (rel. December 13, 2002), (noting that “[h]istorically, most consumers used their mobile phones as a mobile complement to their wireline phones by using their mobile handsets only when away from their homes or places of work.” (¶ 53).

³⁷ *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Notice of Proposed Rulemaking, 9 FCC Rcd 6170, ¶ 37 (1994).

³⁸ E911 First Report and Order, ¶ 81 (emphasis added).

III. FACILITIES-BASED CARRIERS SHOULD NOT BE BURDENED WITH ENSURING 911 COMPLIANCE BY THEIR RESELLER COMPETITORS

Despite the inapplicability of existing E911 rules to non-licensees, Virgin Mobile USA (“VMU”) has voluntarily elected to provide public access to emergency services via AGPS-capable handsets on a somewhat more aggressive schedule than that imposed by the Commission on Tier III carriers.³⁹ VMU’s efforts demonstrate that resellers can reasonably and feasibly obtain compliant handsets in the marketplace and provide them to their customers. There is no practical need for the Commission to impose additional E911 obligations on the underlying facilities-based licensee. Moreover, requiring the licensee to be responsible for another competitor’s compliance is unsound public policy.

Specifically, requiring facilities-based licensees to be responsible for all phones utilizing their networks effectively requires them to prescribe the types of handsets that can be sold by resellers and oversee their compliance. Just as Verizon Wireless monitors and ensures that all its direct and indirect retail channels are selling and activating a certain percentage of AGPS compliant handsets that were tested and approved for its network, it will be forced to do the same for its resellers, including detailed reports to verify compliance – notwithstanding that Verizon Wireless has no control over resellers’ business decisions. Verizon Wireless also engages in other proprietary business practices designed to promote the sale and activation of AGPS handsets. What if resellers’ sales and activations rates drag down our overall percentages needed for compliance? The unintended consequences that could flow from the Commission’s proposal will place resellers and licensees alike in an untenable position and may invite the types of practices

³⁹ VMU Comments at 3-5.

strictly guarded against by the former resale rule.⁴⁰ Verizon Wireless strongly agrees with VMU's statement that each entity should be responsible for ensuring its own compliance with applicable Commission-imposed milestones for handset sales.⁴¹ The Commission's proposition is not desirable for either party concerned.

Facilities-based licensees have a tremendous burden already for upgrading their networks for E911, deploying Phase I and II with requesting PSAPs in varying stages of readiness, and selling AGPS compliant handsets, all by prescribed deadlines and upon pain of enforcement action. Focus and attention should not be diverted away from these critical tasks to yet another E911 obligation – an obligation better placed on the responsible entities directly.⁴²

TracFone states that the FCC lacks authority under Section 201(b) to impose E911 obligations on resellers, which it asserts is largely an intrastate service.⁴³ Mobile wireless service, by its nature, has long been recognized as a service that operates without respect to state lines.⁴⁴ Section 332 expresses Congress's recognition of this fact, and

⁴⁰ For example, VMU expressed concern that the FCC's proposal would incent licensees to not only dictate the types of handsets sold, but also the prices at which such units could be sold, and other aspects of resellers' operations. Handset features and pricing are two very important ways in which wireless carriers compete in the marketplace. Even if reseller handset sales and activation rates were counted separately as suggested by VMU, the licensee would still be too closely involved in ensuring compliance by its competitor. VMU Comments at 9.

⁴¹ *Id.*

⁴² Similarly, the FCC seeks comment on prepaid service. E911 FNPRM, ¶¶ 98-102. In the wireless context, prepaid service merely describes a billing arrangement whereby customers can prepay for wireless service in minute increments and avoid a long-term service contract and credit checks. The prepaid customer's handset (used with a card containing prepaid minutes) has a unique ESN on a carrier's network. The prepaid card records the remaining number of prepaid minutes and is matched to the particular handset and ESN – and can be replenished to provide additional minutes only in combination with the particular handset to which it was associated. Verizon Wireless offers prepaid minutes through its stores, agents and on a wholesale basis. Verizon Wireless's agents are managed as part of its indirect retail sales channel. However, resellers' compliance with E911 handset rules, whether they offer service on a prepaid or post-paid basis, should be required of the resellers themselves, not the underlying carrier.

⁴³ See TracFone Comments at 6.

⁴⁴ *In Re: Wireless Telephone Radio Frequency Emissions Products Liability Litigation*, MDL No. 1421, CIVIL NO. 01-MD-1421, 2003 WL 758710 (D.Md. March 5, 2003).

consequently its intent that mobile wireless services are largely regulated by the FCC to achieve substantial national uniformity.⁴⁵

E911 is a federally mandated service. The government mandated requirements regarding the provision of wireless 911 and E911 – including performance deadlines and approval of technical solutions – are determined by the FCC.⁴⁶ Furthermore, it is well-settled that resellers are commercial mobile service radio providers within the meaning of Section 3(n) and 332 of the Act.⁴⁷ The FCC’s rationale for concluding that mobile resale is included within the category of mobile services for purposes of regulation under Section 332, was appropriate “since resale of mobile service can only exist if there is an underlying licensed service.”⁴⁸ To the extent the FCC derives its authority to require commercial mobile radio services to be compliant with its 911 and E911 rules from Sections 332 and 201(b), there is no persuasive distinction that would require different regulatory treatment as between facilities-based wireless providers and wireless resellers. The goal of promoting public safety applies equally to the customers of both facilities-based wireless and wireless resellers.

⁴⁵ *Id.*

⁴⁶ *See* 47 C.F.R. § 20.18.

⁴⁷ *See* 47 C.F.R. § 20.7, citing 47 U.S.C. §§ 153(n) and 332. *See Implementation of Sections 3(n) and 332 of the communications Act, Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd 1411 (1994).

⁴⁸ *Id.*, ¶37.

IV. CONCLUSION

Verizon requests that the Commission proceed in manner consistent with the foregoing comments.

Respectfully submitted,

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