
**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
High-Cost Universal Service Support) WC Docket No. 05-337
)
Federal-State Joint Board on Universal Service) CC Docket No. 96-45
)

To: The Commission

**COMMENTS OF CTIA–THE WIRELESS ASSOCIATION®
ON THE TENTH CIRCUIT REMAND FNPRM**

Michael F. Altschul
Senior Vice President & General Counsel

Christopher Guttman-McCabe
Vice President, Regulatory Affairs

Scott K. Bergmann
Assistant Vice President, Regulatory Affairs

CTIA–The Wireless Association®
1400 16th Street, NW, Suite 600
Washington, DC 20036
(202) 785-0081

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SUMMARY

CTIA supports the Commission's intention to comprehensively and expeditiously reform the high-cost universal service support systems. Given the Commission's tentative conclusion in the NPRM to undertake comprehensive reform through the National Broadband Plan, CTIA supports the Commission's tentative conclusions to maintain current non-rural high-cost support cost model on an interim basis and not significantly increase the amount of support non-rural carriers receive pending completion of that comprehensive reform. Adding support to the existing mechanisms would only increase the burden on contributors and complicate the transition to a broadband-focused fund.

CTIA agrees with the Commission's observation that the communications marketplace has changed fundamentally since the non-rural high-cost mechanism was adopted – and that these marketplace and technological changes must be the foundation for formulating reform plans. Consumers' use of wireline voice services has fallen precipitously, while use of mobile and broadband services has skyrocketed. Wireless carriers have been the fastest-growing providers of high-speed and advanced service lines in every quarter since 2005. Despite these marketplace and technological changes, the high-cost mechanisms were designed to support wireline voice services in an era of minimal competition. It is time for a new focus.

The Commission can successfully implement section 254, consistent with the Tenth Circuit's direction, by balancing the Act's statutory principles, ensuring that consumers have access to mobile broadband services, and basing support on efficient costs. In assessing compliance with the statutory principles, CTIA supports the Commission's conclusion that it should consider all of the universal service mechanisms – not solely the high-cost mechanism. The reasonable comparability of rates must be balanced against the affordability of rates for all consumers, to ensure that both goals are achieved. To “advance” universal service, CTIA agrees that the Commission should transform the system to support the mobile broadband services that consumers now demand. This type of “service comparability” is the new frontier of universal service policy. Indeed, as Chairman Genachowski has observed, “[t]o be the global leader in innovation 10 years from now, we need to lead the world in wireless broadband.”

The Commission also should renew its commitment to the principle of competitive neutrality, made part of the statutory principles pursuant to section 254(b)(7). The high-cost mechanism's long-standing favoritism towards wireline networks and the CETC cap impede progress and must be eliminated. Indeed, the very premise of the universal service fund is increasingly being turned on its head. The fund – designed to shift support from urban areas to rural areas, and from high income consumers to low income consumers – is increasingly becoming an enormous wealth transfer from wireless carriers to wireline carriers.

As the Commission moves forward with reform, the surest way to craft a universal service mechanism that will serve the goals of the Commission and the statute is to base support on the efficient costs of providing the services that consumers demand. Such a mechanism will be “sufficient” but not excessive, ensuring rates that are both affordable and reasonably comparable. To this end, CTIA has advocated a number of different proposals in recent years, and looks forward to working with the Commission as it responds to the Tenth Circuit and crafts fundamental universal service reform consistent with the National Broadband Plan.

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I. INTRODUCTION

CTIA – The Wireless Association® (“CTIA”)¹ submits the following comments in response to the Commission’s Further Notice of Proposed Rulemaking (“FNPRM”)² proposing interim changes to the non-rural high-cost mechanism to address concerns raised by the Tenth Circuit United States Court of Appeals and anticipating comprehensive universal service reform through the National Broadband Plan process.³ CTIA has long advocated comprehensive reform of the universal service mechanisms, and is encouraged that the Commission plans to

¹ CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular Advanced Wireless Service, 700 MHz, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

² *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, FCC 09-112 (rel. Dec. 15, 2009) (“FNPRM”).

³ *Qwest Corp. v. FCC*, 398 F.3d 1222 (10th Cir. 2005) (“*Qwest II*”).

recommend such reforms in the National Broadband Plan.⁴ Given the Commission’s tentative conclusion in the NPRM to undertake comprehensive reform through the National Broadband Plan, CTIA supports the Commission’s tentative conclusions to maintain current non-rural high-cost support cost model on an interim basis and not significantly increase the amount of support non-rural carriers receive pending completion of that comprehensive reform. Adding support to the existing mechanisms would only increase the already considerable burden on contributors and complicate the transition to a broadband-focused fund.

As CTIA has previously argued, universal service reform must be a critical element of the National Broadband Plan and is urgently needed to better direct scarce public resources to the mobile and broadband services that consumers demand and need. Whether the Commission conducts reform through the Tenth Circuit Remand proceeding or the National Broadband Plan, the challenge is essentially the same: to comprehensively reform its universal service mechanisms in a manner that both satisfies the statutory principles of section 254 and provides consumers access to the services that they need to succeed.

If the Commission does not adopt comprehensive reform through the Tenth Circuit Remand proceeding, it should nonetheless proceed expeditiously. The current high-cost universal service rules – particularly for rural incumbent carriers – are ill-suited to the current marketplace and to meeting the nation’s communications goals. Moreover, the current rules create barriers to innovation and tilt the competitive playing field.

⁴ FNPRM at ¶¶ 1, 12. Indeed, in this proceeding CTIA specifically urged the Commission to address high-cost universal service reform in the context of the National Broadband Plan. Comments of CTIA, WC Docket No. 05-337 (filed May 8, 2009) (“CTIA NOI Comments”) at 6.

Indeed, based on their current trajectory, the high-cost universal service mechanisms are veering off course from their original design in which urban areas supported rural areas and higher income consumers supported low income consumers. Rather, due to growing disparities in contributions and distributions, the universal service fund will increasingly represent a cross-industry wealth transfer, with wireless providers (and their consumers) providing massive funding and competitive advantage to wireline carrier networks. These trends jeopardize the competitively- and technologically-neutral approach that the Commission initially embraced in its implementation of the Section 254. CTIA encourages the Commission to repurpose its universal service programs to make better use of scarce public resources, to promote innovation, and to embrace technological and market changes.

II. COMPREHENSIVE REFORM OF UNIVERSAL SERVICE MUST FOCUS ON CONSUMERS AND REFLECT FUNDAMENTAL TECHNOLOGICAL AND MARKETPLACE CHANGES

CTIA agrees with the Commission's observation that the communications marketplace has undergone significant changes since the Commission originally adopted the non-rural high-cost mechanism in 1999.⁵ U.S. consumers are demonstrating an overwhelming demand for mobility and broadband. The number of wireless subscribers has increased five-fold since adoption of the current universal service support mechanisms, while ILEC lines and minutes of use continue to decline steadily. In 1997, there were approximately 55 million wireless telephone subscribers.⁶ Since that time, consumers have continued to rapidly adopt mobile wireless services. According to CTIA's Semi-Annual Survey, the number of wireless

⁵ *Id.* at ¶ 10.

⁶ *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, Third Annual CMRS Competition Report*, 13 FCC Rcd 19,746 app. B, at B-2 (1998).

subscribers is now at 276.6 million.⁷ Moreover, by the first half of 2009, nearly a quarter of Americans (22.7%) had “cut the cord” and used wireless phone service as their only phone service.⁸

Wireless providers are now providing not only mobile voice but also mobile broadband services, and consumers are rapidly adopting these new services. The Commission’s data show that since 2005 mobile wireless providers have been the fastest-growing providers of both high-speed lines (over 200 kbps in at least one direction) and advanced service lines (over 200 kbps in both directions).⁹ With more than 59 million high speed subscribers, mobile wireless broadband now accounts for 45 percent of all broadband connections in the United States.¹⁰ Data from the Pew Internet & American Life Project reveal that, in December 2007, 58 percent of adults have used mobile devices for non-voice activities, and 41 percent of adults have logged onto the Internet wirelessly.¹¹ This growth in wireless broadband adoption underscores the idea that since consumers in urban areas have had the opportunity to embrace the power of wireless

⁷ See June 2009 CTIA Semi-Annual Wireless Industry Survey, *available at* <http://www.ctia.org/advocacy/research/index.cfm/aid/10316> (last accessed Oct. 21, 2009) (“CTIA Survey Summary”).

⁸ United States Centers for Disease Control and Prevention, “Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January – June 2009,” (rel. Dec. 16, 2009), *available at* <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200912.htm>.

⁹ HIGH-SPEED SERVICES FOR INTERNET ACCESS: STATUS AS OF JUNE 30, 2008, Industry Analysis and Technology Division, WTB (Aug. 2009) at tbls. 1-2.

¹⁰ *Id.* at tbl. 2.

¹¹ John Horrigan, Associate Director, Pew Internet & American Life Project, Data Memo, *Mobile Access to Data and Information 1* (Mar. 2008), *available at* <http://www.pewinternet.org/Press-Releases/2008/Mobile-Access-to-Data-and-Information.aspx>.

broadband, the Commission’s universal service programs should be directed at providing “reasonably comparable” access for rural consumers.¹²

Wireless voice and broadband services also are contributing mightily to the U.S. economy, through the massive capital investments of wireless providers, by creating high-paying, skilled jobs across the country, and with billions of dollars of direct and indirect benefits flowing from the innovative wireless services and applications consumers demand.¹³ These services are also increasingly being harnessed through an array of applications directed at education, health care, efficient energy use, and public safety goals. As Chairman Genachowski has observed, “[t]o be the global leader in innovation 10 years from now, we need to lead the world in wireless broadband.”¹⁴

The current high-cost universal service mechanisms do not reflect these technological and marketplace changes. Its focus on supporting wireline voice networks in an environment of minimal cross-platform competition is now outdated.

The changes to the telecommunications marketplace are also evidenced not only in adoption patterns but also through the relative contributions of the wireless industry to the universal service fund. Indeed, wireless contributions to the universal service fund have grown

¹² See 47 U.S.C. § 254(b)(3).

¹³ See Letter from Christopher Guttman-McCabe to FCC Chairman Julius Genachowski, GN Docket No. 09-51 (July 9, 2009); Nicholas P. Sullivan, New Millennium Research, *Cell Phones Provide Significant Economic Gains for Low-Income American Households: A Review of Literature and Data from Two New Surveys*, 5 Nicholas P. Sullivan (Apr. 2008), available at http://newmillenniumresearch.org/archive/Sullivan_Report_032608.pdf.

¹⁴ Prepared Remarks of Chairman Julius Genachowski, “Innovation in a Broadband World,” The Innovation Economy Conference, Washington, DC (Dec. 1, 2009) at 7 available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-294942A1.pdf.

rapidly. In 1997, wireless contributions made up only 3.3 percent of the contribution base.¹⁵ Now, as of the third quarter 2009, wireless carriers contribute 43.1 percent of the fund.¹⁶ But distributions from the high-cost fund have not yet caught up with these tectonic shifts in consumer preference. Although wireless carriers now serve more than twice as many customers as the number of wireline lines, incumbent LECs receive roughly three times the support available to wireless providers. And while wireless subscribership continues to climb, this distribution disparity is likely to widen as wireless carriers are now subject to an artificial cap on overall support, restricting wireless carriers from receiving support commensurate with the provision of wireless services in high-cost areas and reducing support per consumer over time.¹⁷

The Commission's reform of universal service must correct these disparities and embrace the new technological and marketplace realities by focusing on efficient support for mobile broadband services. Ubiquitous mobility, and mobile broadband specifically, must be an important goal of the FCC's universal service rules and policies.

III. THE COMMISSION CAN SUCCESSFULLY IMPLEMENT SECTION 254 BY BALANCING THE ACT'S STATUTORY PRINCIPLES, ENSURING THAT CONSUMERS HAVE ACCESS TO MOBILE BROADBAND SERVICES, AND BASING SUPPORT ON EFFICIENT COSTS

The Commission can satisfy the concerns of the Tenth Circuit by balancing the statutory principles in section 254, basing support on efficient costs, and targeting support toward the new and innovative services that consumers demand, such as mobile broadband. In *Qwest II*, the

¹⁵ Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, *Telecommunications Industry Revenues: 2007*, at 3 (rel. Sept. 3, 2009), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293261A2.pdf.

¹⁶ *Id.*

¹⁷ *High-Cost Universal Service Support*, WC Docket No. 05-337, Order, 23 FCC Rcd 8834 (2008) (subsequent history omitted) ("CETC Cap Order").

Tenth Circuit directed the Commission to consider all of the principles in section 254(b) in crafting “sufficient” mechanisms that not only will preserve but also advance universal service.¹⁸ Whether responding to the Tenth Circuit’s *Qwest II* decision or revising universal service rules in the context of the National Broadband Plan, the Commission should review its rules comprehensively by taking into account the realities of the current market environment, defining statutory terms in a manner that considers and balances the Act’s principles, and targeting support to ensure that incumbents and competitors receive no more support than is necessary to achieve the goals of universal service.

The Commission is correct that it should consider all of the universal service support mechanisms – not solely the high-cost mechanism – when determining whether support is sufficient to meet the principles in section 254.¹⁹ To this end, it is appropriate that the Commission is taking a comprehensive review of these mechanisms through the National Broadband Plan. In addition, the Commission must also evaluate the statutory principles in section 254(b) holistically, balancing competing principles against one another.²⁰ For example, in creating support mechanisms that ensure reasonable comparability of services, the FCC must also ensure that its rules do not affect the affordability for consumers who are net contributors to the universal service fund.²¹

CTIA provided a detailed analysis of how the Commission should comply with the statutory principles in section 254 in its comments in response to the Commission’s Notice of

¹⁸ *Qwest II*, 398 F.3d at 1233-37. Section 254(b)’s principles apply not only to the non-rural high-cost fund, but also to the much larger rural high-cost fund. *See* 47 U.S.C. § 254(b).

¹⁹ FNPRM at ¶ 31.

²⁰ *See id.* at ¶ 33.

²¹ *See id.*

Inquiry in this proceeding,²² but the following discussion provides a roadmap for the FCC to both satisfy the Tenth Circuit's concerns and modernize universal service.

A. Affordability and Reasonable Comparability of Rates Must Be Balanced Against One Another

Consistent with the Commission's implementation of discrete support mechanisms to advance the different statutory goals in section 254,²³ the non-rural high-cost mechanism is designed to address primarily section 254(b)(3), which states that consumers in all regions of the nation should have access to reasonably comparable services at reasonably comparable rates.²⁴

As CTIA explained in its NOI comments, a high-cost mechanism satisfies the "affordability" principle if rural rates are reasonably comparable with – but not necessarily the same as – urban rates.²⁵ Indeed, the Act does not require identical rates in urban and rural areas. Rather, section 254(b)(3) merely requires rates that are "reasonably comparable."²⁶ Thus, it is not unreasonable for a customer in a high-cost, rural area to pay more for telecommunications service than a customer in a lower cost urban area. Such rates create incentives for competitive entry by more efficient carriers. Based on this analysis, CTIA agrees with the Commission's observation that the statute does not require the Commission to make rural rates comparable to the "lowest urban rate."²⁷ Indeed, the Commission has acknowledged that, under the current mechanisms, incumbent LEC rates in rural areas are often lower than incumbent LEC rates in

²² See generally CTIA NOI Comments.

²³ See *supra* note 19 and associated text.

²⁴ 47 U.S.C. § 254(b)(3).

²⁵ CTIA NOI Comments at 10-12.

²⁶ 47 U.S.C. § 254(b)(3).

²⁷ FNPRM at ¶¶ 39-40.

urban areas.²⁸ This suggests that current subsidy levels are at least sufficient (and may be more than enough) to ensure reasonably comparable and affordable rates that permit widespread access to basic telephone service.²⁹

As noted above, CTIA agrees with the Commission that it is also necessary to find a balance between “reasonable comparability” and “affordability” by taking into account the affordability of rates in areas where customers are net contributors.³⁰ Particularly as the contribution factor continues to grow, the Commission must consider the burden on universal service contributors. As the FNPRM observes, the Tenth Circuit has concluded that “excessive subsidization arguably may affect the affordability of telecommunications services, thus violating the [affordability] principle.”³¹

As CTIA explains below, the FCC’s most pressing challenge now is addressing the advancement of universal service through service comparability, particularly by focusing on mobile broadband services.³²

B. The Commission Can Best “Advance” Universal Service by Ensuring Service Comparability

The Tenth Circuit court made much of the requirement that the Commission not only “preserve” but also “advance” universal service.³³ CTIA agrees with the Commission that it can

²⁸ *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Notice of Inquiry, 24 FCC Rcd 4281, 4287 ¶ 14 (2009) (“NOI”). In addition, the NPRM correctly notes that the current high telephone subscribership penetration rate in the U.S. is 95.7%, the highest reported rate since the Census Bureau began collecting such data. FNPRM at ¶ 32.

²⁹ *Id.* at ¶ 34.

³⁰ FNPRM at ¶ 33. *See also supra* note 20 and associated text.

³¹ FNPRM at ¶ 34 (quoting *Qwest II*, 398 F.3d at 1234).

³² *See infra* Section II.B.

³³ *Qwest II*, 398 F.3d at 1236.

best satisfy this statutory directive by extending universal service support to encompass the new services that consumers now demand.³⁴ To this end, the Commission should re-direct universal service funding toward services such as mobile broadband. This would facilitate access by consumers in rural and high-cost areas to services that are “reasonably comparable” to those available to their urban counterparts. The records in this proceeding and the National Broadband Plan proceeding make clear that mobile broadband services are highly valued by consumers and that they are important part of the broadband ecosystem.³⁵ As CTIA has observed, given the pervasive availability of wireline telephone service in rural areas, achieving this type of “service comparability” is one the key remaining universal service challenges,³⁶ and the best way to “advance” universal service.

C. Comprehensive Reform Should Restore Competitive and Technological Neutrality

The revised high-cost support system must comport with the principle of competitive neutrality, adopted by the Commission pursuant to section 254(b)(7).³⁷ In its implementation of the statutory universal service principles in 1997, the Commission concluded that universal service mechanisms should “neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology or another.”³⁸ Similarly, the United States Court of Appeals for the Fifth Circuit stated that the universal service “program must treat all market participants equally – for example, subsidies must be portable – so that the

³⁴ FNPRM at ¶ 41. *See also id.* at ¶ 36.

³⁵ *See supra* Section I.

³⁶ CTIA NOI Comments at 9.

³⁷ 47 U.S.C. § 254(b)(7).

³⁸ *Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8801 ¶ 47 (1997) (subsequent history omitted).*

market, and not local or federal regulators, determines who shall compete for and deliver services to customers.”³⁹

Favoritism towards wireline networks violates the principle of competitive neutrality and belittles the emerging role of wireless providers in the broadband marketplace.⁴⁰ The Commission should not perpetuate any longer than necessary the status quo – which dedicates over three billion dollars of uncapped funding to incumbent LEC services, yet subjects wireless providers to an arbitrary cap. In keeping with section 254(b)(7), the Commission should move quickly to adopt comprehensive reform, rather than allowing a purportedly “interim” cap to deprive rural wireless and broadband customers of “sufficient” support for “reasonably comparable” services.

D. Support Based on Efficient Costs Best Balances the Principles in Section 254

As CTIA has long argued, adopting a reformed high-cost support mechanism based on efficient costs is the best way to ensure that the mechanism achieves all of the statutory principles in section 254(b). Specifically, support based on efficient costs balances the mandates to ensure sufficient support so that consumers in rural, high-cost areas have access to affordable and reasonably comparable services, against the burden on consumers that ultimately pay for universal service. The high-cost mechanism should be measured as “sufficient” if it is adequate, but not larger than necessary, to satisfy the goals of the Act. A sufficient mechanism would

³⁹ *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 616 (5th Cir. 2000).

⁴⁰ *See supra* Section I.

permit customer in rural and high-cost areas to receive comparable services at comparable rates, without overburdening the customers who ultimately support universal service.⁴¹

In prior comments in this proceeding, CTIA has advocated both short-term and long-term proposals that would base support on efficient costs. CTIA urges the Commission to consider these options carefully in its re-assessment of high-cost universal service support. Pending comprehensive reform, and to the extent that the Commission decides to respond narrowly to the Tenth Circuit's remand, CTIA has encouraged the Commission to retain a forward-looking high-cost mechanism for non-rural carriers, and has proffered numerous proposals to update and improve the current forward-looking cost methodology.⁴²

As is now widely recognized, the current multi-part high-cost mechanism not only ignores the market's shift to mobility and broadband but actively creates disincentives for carriers to invest in innovative technologies and services. CTIA believes that a high-cost support mechanism based on efficient costs will be specific and predictable and, as discussed above, would give carriers an incentive to deploy cutting edge technologies and services.

As described in numerous filings, CTIA has advocated both short-term and long-term proposals that would base support on efficient costs. While CTIA has encouraged the Commission to retain a forward-looking high-cost mechanism for non-rural carriers pending comprehensive reform, CTIA encourages the Commission to consider transitioning all eligible

⁴¹ *See supra* Section II.A.

⁴² *See, e.g.*, Comments of CTIA, WC Docket No. 05-337 (filed Nov. 26, 2008); Comments of CTIA, WC Docket No. 05-337 (filed April 17, 2008).

carriers to new mechanisms that target support for mobile and broadband services based on efficient costs.⁴³

CTIA has also supported market-based approaches, including certain industry-wide competitive bidding or reverse auction proposals that would achieve the goals of universal service while improving upon the current inefficient rural high-cost universal service mechanisms that often do not target support where it is needed. CTIA has even submitted a specific proposal for implementation of an appropriate competitive bidding mechanism to award universal service support.⁴⁴ However, these efforts need to be comprehensive, inclusive of both wireline and wireless recipients at the same time, not simply additional “interim” methods designed solely to drive down wireless support. Finally, CTIA has also encouraged the Commission to consider adopting dedicated mechanisms that would support both the deployment of advanced wireless infrastructure and the maintenance of such infrastructure in high-cost areas.⁴⁵

CTIA has offered each of these proposals in the spirit of constructive engagement and looks forward to working with the Commission as it finalizes its National Broadband Plan recommendations and its response to the Tenth Circuit.

⁴³ See, e.g., Comments of CTIA, WC Docket No. 05-337 (filed Nov. 26, 2008) at 16.

⁴⁴ James Stegeman, Dr. Steve Parsons, Robert Frieden, and Mike Wilson, “Controlling Universal Service Funding and Promoting Competition Through Reverse Auctions,” *attachment to Reply Comments of CTIA*, WC Docket No. 05-337 (filed Nov. 8, 2006).

⁴⁵ See, e.g., Comments of CTIA, WC Docket No. 05-337 (filed Nov. 26, 2008) at 9-15.

IV. CONCLUSION

CTIA urges the Commission to act consistently with these comments in responding to the Tenth Circuit and in ultimately reforming its high-cost universal service support systems.

Respectfully submitted,

By: /s/ Scott K. Bergmann

Scott K. Bergmann
Assistant Vice President, Regulatory Affairs

Michael F. Altschul
Senior Vice President & General Counsel

Christopher Guttman-McCabe
Vice President, Regulatory Affairs

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