

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
High-Cost Universal Service Support)	WC Docket No. 05-337

**REPLY COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

August 11, 2010

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The National Cable & Telecommunications Association (NCTA) hereby submits its reply comments in the above-referenced proceeding. For the reasons explained below, the Commission should quickly move forward with its plans to reform the universal service high-cost support program.

The comments in this proceeding demonstrate overwhelming agreement that high-cost support should transition from supporting traditional voice services to supporting the deployment of broadband services to consumers.¹ It is absolutely critical, however, that this transition be accomplished in a fiscally responsible manner that recognizes that the costs of this program are ultimately borne by consumers. NCTA therefore agrees with the statements of several commissioners that the agency should adopt policies “reforming the Universal Service Fund to

¹ See, e.g., AT&T Comments at 1-3; Blooston Rural Carriers Comments at 27; Border Companies Comments at 9; CenturyLink Comments at 1-2; CoBank Comments at 3; Comcast Comments at 1-2; Communications Workers of America Comments at 1-2; CTIA Comments at 3-4; Farmers Telecommunications Cooperative Comments at 1-2; Fiber-to-the-Home Council Comments at 3-4; Fidelity Telephone Comments at 6; GCI Comments at 1-2; GTA Telecom Comments at 1-2; NATOA and NAF Comments at 4; NECA *et al.* Comments at 3; NTCH Comments at 2; Puerto Rico Telephone Company Comments at 1-2; Qwest Comments at 1-3; Sprint Nextel Comments at 1-2; TCA Comments at 2; TIA Comments at 2; Time Warner Cable Comments at 1-3; U.S. Cellular Comments at 9; USTelecom Comments at 1-3; Verizon Comments at 1, 7; ViaSat Comments at 2; Vonage Comments at 1.

support broadband . . . without increasing the projected size of the Fund.”² Through common sense reforms of the existing high-cost support mechanisms, the Commission can and should ensure that universal service support is used to deploy broadband facilities without placing additional burdens on contributors to the fund. According to the National Broadband Plan, the universal service fund is projected to be \$8.7 billion in 2010.³ This amount should represent the ceiling that contributors provide to support universal service funding.

Predictably, most current high-cost support recipients oppose meaningful reform of the existing high-cost program. These companies would prefer to continue receiving as much high-cost support as possible for as long as possible, regardless of whether the support is necessary or is being used efficiently. The Commission should not allow such self-interest to dissuade it from pursuing the reform agenda set forth in the National Broadband Plan. Every year that the reform process drags on represents a windfall for certain companies at the expense of American consumers.⁴ Despite their protests, these companies, as well as their investors and lenders, have been on notice for years that universal service reform is coming and they have had ample time to plan accordingly.

² *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 09-137, Sixth Broadband Deployment Report, FCC 10-129, at 71 (July 20, 2010) (*706 Report*) (statement of Chairman Genachowski); *see also Rural Health Care Support Mechanism*, WC Docket No. 02-60, Notice of Proposed Rulemaking, FCC 10-125, at 108 (July 15, 2010) (*Rural Health Care NPRM*) (statement of Commissioner McDowell) and *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Notice of Proposed Rulemaking, 25 FCC Rcd 6872, 6952 (2010) (*E-rate NPRM*) (statement of Commissioner Baker).

³ *Connecting America: The National Broadband Plan*, GN Docket No. 09-51, at 150, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf (Omnibus Broadband Initiative, Mar. 16, 2010) (National Broadband Plan).

⁴ *See* Federal Communications Commission Response to United States House of Representatives Committee on Energy and Commerce Universal Service Fund Data Request of June 15, 2010, Part 3, Largest Per-Line Subsidies, by Study Area, <http://energycommerce.house.gov/documents/20100708/Request3.pdf> (last visited Aug. 11, 2010) (showing 10 incumbent LECs that received from \$17,763 to \$6,070 per line in 2009, from \$16,528 to \$5,081 per line in 2008, and from \$16,621 to \$4,380 per line in 2007).

As described in NCTA’s initial comments, the Commission should act quickly to reduce current high-cost support, particularly in areas experiencing unsubsidized competition, and initiate a broadband funding mechanism for unserved areas using a competitive procurement process. The Commission can begin these reforms now – it need not and should not wait until every decision about long term reform of the universal service fund and intercarrier compensation is made, as some parties seem to suggest. In conjunction with these steps, the Commission should improve its ability to determine the extent to which universal service funds are necessary in a particular geographic area to achieve the congressional goal of universal access to broadband. The Commission must develop the capability to compare high-cost support distributions with broadband deployment statistics for a given geographic area, something it cannot easily do today, and it must gather data on the level of rate regulation, if any, to which high-cost support recipients are subject, so that it can better determine whether federal subsidies continue to be necessary for providers whose rates may no longer be constrained by regulation.

I. THE COMMISSION SHOULD ADOPT THE COMMON SENSE REFORMS PROPOSED IN THE NOTICE

A. The Commission’s Proposals Are Appropriately Designed To Cover All Types Of Providers

As Chairman Genachowski explained in a recent speech, “there are many hard issues we will need to work through to modernize USF.”⁵ The current regime has been in place for over a decade and many companies have grown to depend on these federal subsidies, even where they may no longer be needed. And even with the nearly \$40 billion in high-cost support that has been distributed over the last decade, there are still areas of the country that currently have no broadband service.

⁵ Prepared Remarks of Chairman Julius Genachowski, Federal Communications Commission, 47th Annual OPASTCO Summer Convention and Trade Show, Seattle, Washington, at 4, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-300473A1.doc (July 28, 2010).

As the initial comments demonstrate, most beneficiaries of the current regime favor “reform” that increases their existing support and reduces the support received by others.⁶ Fortunately, the Commission can rise above these industry rivalries by focusing on the consumer impact of high-cost support reform and proceeding along the path set forth in the *Notice* and the National Broadband Plan. The two keys to the Commission’s proposal are: (1) eliminating bloated and unnecessary high-cost support mechanisms for legacy services, which will enable the Commission to provide funding for new broadband infrastructure; and (2) spreading those reductions across all types of providers.⁷ As a number of Commissioners have acknowledged, it is important to limit the runaway growth in high-cost support. The Chairman has repeatedly stated that universal service reform should be adopted without increasing the size of the fund.⁸ Commissioner McDowell has also stated his strongly held belief that universal service reform should include measures to control the size of the fund.⁹ Commissioner Baker has also

⁶ See, e.g., CenturyLink Comments at 2-3 and 40-42 (arguing for additional support for wireline networks while also arguing for the elimination of support to competitive ETCs); Rural Cellular Association Comments at 20-22 (arguing for additional support for wireless facilities while advocating a cap on Interstate Common Line Support (ICLS) for incumbent LECs); USTelecom Comments at 12-16 (incumbent LECs proposing to increase their existing high-cost model support while immediately eliminating competitive ETC support).

⁷ *Connect America Fund*, WC Docket Nos. 10-90 and 05-337, GN Docket No. 09-51, Notice of Inquiry and Notice of Proposed Rulemaking, 25 FCC Rcd 6657, 6668, 6678-82, ¶¶ 24, 53-62 (Apr. 21, 2010) (*Notice*).

⁸ See *Rural Health Care NPRM*, FCC 10-125 at 105-106 (“Without increasing the projected size of the overall universal service fund, [the proposed rural health care] program would invest up to \$400 million annually to enable doctors, nurses, hospitals, and clinics to deliver world-class health care to patients, no matter where they live” and “[The proposed RHC program] establishes a fiscally prudent program to invest in infrastructure for health care connectivity, without increasing costs to consumers”); *FCC Chairman Julius Genachowski Announces Launch of Universal Service Working Group*, News Release, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-298775A1.doc (June 14, 2010) (“[Creation of a universal service working group] reflects the FCC’s commitment to smart and fiscally prudent policies that eliminate inefficiencies and target universal service support effectively to have the greatest possible impact.”); Prepared Remarks of Chairman Julius Genachowski, Federal Communications Commission, “A National Broadband Plan for Our Future,” at 4 http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296911A1.doc (Mar. 16, 2010) (Implementing the National Broadband Plan’s proposals by “reforming the Universal Service Fund from yesterday’s communications to tomorrow’s in a prudent, determined way by cutting, capping, and transforming”).

⁹ See *Rural Health Care NPRM*, FCC 10-125 at 108 (“Additionally, I would be remiss if I did not reiterate my strong desire that the Commission identify and finalize reforms that provide savings in other areas of the Universal Service Fund. It is critical that the Commission undertake this examination in a comprehensive manner so that any reforms that we may implement in the rural health care arena do not simply result in runaway

expressed concern about universal service fund growth.¹⁰ The Commission should immediately implement the National Broadband Plan’s recommendation to ensure that universal service support disbursements do not exceed their current levels in 2010 dollars.¹¹

The comments contain strong support for the methods proposed in the *Notice* to reduce existing high-cost support, i.e., capping high-cost support at 2010 levels;¹² eliminating Interstate Access Support;¹³ freezing Interstate Common Line Support (ICLS) on a per-line basis while moving rate-of-return regulated LECs to price cap regulation;¹⁴ and eliminating competitive ETC support,¹⁵ albeit on the same timeframe as incumbent LEC support is eliminated.¹⁶ These proposals are well designed to spread reductions across all types of providers – incumbents and competitors, wireless and wireline, rural and non-rural, on a competitively neutral basis.

growth of the overall Universal Service Fund.”); *E-rate NPRM*, 25 FCC Rcd at 6950 (“I will be interested to review comments on [the proposal to index the E-rate funding cap to inflation] and note that any final changes that we make to any one part of the system should be made in the context of comprehensive reform so that we do not inadvertently expand the growth of the overall fund.”); *Notice*, 25 FCC Rcd at 6869 (In reforming universal service, “[t]he Commission should contain the growth of the Fund”).

¹⁰ See *E-rate NPRM*, 25 FCC Rcd at 6952 (“As we consider changes to the E-rate going forward, I continue to have concerns that our efforts to modernize the various components of the Universal Service Fund should not result in further growth in the overall size of the Fund.”); *Notice*, 25 FCC Rcd at 6871 (“I have expressed concerns about the ballooning size of the Fund and I am convinced that some hard choices will have to be made to keep it under control.”)

¹¹ National Broadband Plan at 150 (“The FCC needs to proceed with measured steps to assure that as it advances the nation’s broadband goals, it does not increase the USF contribution factor, which is already at a public historic high. Unless Congress chooses to provide additional public funding to accelerate broadband deployment, the FCC should aim to keep the overall size of the fund close to its current size (in 2010 dollars)”).

¹² See, e.g., American Cable Association Comments at 3-7; AT&T Comments at 20-21; Comcast Comments at 3-4; COMPTTEL Comments at 6; CTIA Comments at 13-16; Qwest Comments at 22-23; Time Warner Cable Comments at 5-7; T-Mobile Comments at 5-7; Verizon Comments at 7-11; Windstream Comments at 22-25.

¹³ See, e.g., Comcast Comments at 5-6; CTIA Comments at 18-19; NASUCA NPRM Comments at 12; Sprint Nextel Comments at 13; Time Warner Cable Comments at 9; T-Mobile Comments at 8.

¹⁴ See, e.g., COMPTTEL Comments at 15-16; CTIA Comments at 16-18; NASUCA NPRM Comments at 12; Sprint Nextel Comments at 12-13; Time Warner Cable Comments at 8-9; T-Mobile Comments at 7-8; Verizon Comments at 18-19; Windstream Comments at 33-37.

¹⁵ See, e.g., CenturyTel Comments at 40-42; Comcast Comments at 6-7; NASUCA NPRM Comments at 16-18; Qwest Comments at 23-24; USTelecom Comments at 14-16; Windstream Comments at 26-33.

¹⁶ See, e.g., CTIA Comments at 10-12; Sprint Nextel Comments at 11-12, 14; U.S. Cellular Comments at 26-27.

To achieve its goal of ensuring that high-cost support is repurposed to support deployment of broadband facilities, the Commission must hold firm to its proposal to reduce ICLS. ICLS is not currently subject to any cap and, as a result, has increased substantially since its inception, from \$173 million in 2002 to more than \$1.5 billion in 2009.¹⁷ USAC projects ICLS disbursements to increase to \$1.76 billion in 2010, even with the Commission's cap on support to competitive ETCs in place.¹⁸ As Verizon noted in its comments, this increase in ICLS is unsustainable and inconsistent with falling prices for communications services overall.¹⁹

As the Commission recognizes in the *Notice*,²⁰ constraining growth in ICLS requires a transition away from the use of rate-of-return regulation, which promotes inefficiencies and encourages providers to inflate their costs. In areas where an incumbent LEC is experiencing competition for voice and broadband services, continuing to provide a guaranteed 11.25 percent rate of return to these providers is no longer a sound policy. Support to these companies can be put to better use in ensuring that broadband facilities are deployed to the most consumers in the most efficient manner.

B. The Commission Can Ensure That Consumers Will Not Be Harmed By Universal Service Reform

Some companies that benefit from the current high-cost support regime argue that the reforms proposed by the Commission could have disastrous consequences for rural incumbent

¹⁷ Universal Service Monitoring Report, CC Docket Nos. 98-202, 96-45, Federal and State Staff of the Federal-State Joint Board on Universal Service, Table 3.1 (2009) (reporting \$173 million in ICLS disbursed in 2002); Universal Service Administrative Company 2009 Annual Report, <http://www.usac.org/res/documents/about/pdf/usac-annual-report-2009.pdf>, at 40 (last visited Aug. 11, 2010) (reporting \$1,536,646,000 in ICLS disbursed in 2009).

¹⁸ Universal Service Administrative Company Federal Universal Service Support Mechanisms Fund Size Projections for Fourth Quarter 2010, <http://www.usac.org/about/governance/fcc-filings/2010/Q4/4Q2010%20Quarterly%20Demand%20Filing.pdf>, at 13 (Aug. 2, 2010).

¹⁹ Verizon Comments at 12.

²⁰ *Notice*, 25 FCC Rcd at 6679-80, ¶¶ 55-56.

LECs.²¹ The Commission should ignore these scare tactics and keep in mind that high-cost support is meant to benefit consumers, not rural LECs. To eliminate the risk that consumers would inadvertently be harmed by the proposed reforms, the Commission should prioritize reductions in existing high-cost support to areas that are subject to competition. As Verizon stated in its comments, “Congress did not envision the USF as a vehicle to fund competition in high cost areas.”²²

Reductions in areas experiencing unsubsidized competition should be prioritized because consumers in those areas will have service options even if high-cost support to the incumbent provider is reduced. As described in our initial comments, the Commission can accomplish this by adopting the proposal contained in NCTA’s 2009 petition for rulemaking or by incorporating this principle into the specific reforms proposed in the *Notice*. For example, NCTA explained that the Commission could consider the level of unsubsidized competition as a factor in determining how long a transition period is needed for phasing out IAS support to non-rural carriers. At a minimum, the Commission should identify areas where competitors serve the entire study area with broadband and voice service and establish a schedule for eliminating support in those areas.

While some incumbent LECs have raised concerns about NCTA’s competition-based approach, those concerns miss the mark. For example, CenturyLink is incorrect in asserting that 25 percent of a study area would not be served under NCTA’s proposal.²³ Under NCTA’s proposal, when 75 percent or more of a study area is subject to competition from a wireline

²¹ See, e.g., Farmers Telephone Cooperative Comments at 3-8 (arguing that the proposals to cut and cap support would negatively impact the company’s cash flows); FWA Comments at 10-14 (arguing that the proposals will substantially reduce rural LEC revenues); JSI Comments at 11-12 (arguing that proposals to cut and cap high-cost support will adversely impact rural LEC cash flows).

²² Verizon Comments at 4.

²³ CenturyLink Comments at 14.

provider that does not receive high-cost support, support would be eliminated to providers in that portion of the study area.²⁴ Current high-cost support recipients in the study area would have the opportunity, however, to demonstrate a need for support to serve the remaining portion of the study area that is not subject to competition.²⁵

Another option the Commission could consider would be to prioritize reductions in high-cost support based on average income levels. When average income levels in a study area exceed the national average income level by a certain amount, e.g., where income is double the national average, support would be eliminated or reduced accordingly. Loss of support to providers under this approach would not harm low-income consumers because universal service support under the low-income mechanisms would be available for eligible low-income consumers in these areas.

II. THE COMMISSION SHOULD USE REPURPOSED FUNDS TO PROVIDE SUPPORT TO AREAS UNSERVED BY BROADBAND

The Commission should use the funds available through reductions in existing high-cost support to fund the deployment of broadband facilities to consumers in unserved areas. These unserved areas should be identified based on information that entities file in response to the FCC Form 477,²⁶ or, in the future, on the broadband map that NTIA is in the process of preparing. As NCTA and others have explained, promulgation of a cost model to determine the level or distribution of support would be a lengthy process.²⁷ Rather than developing a cost model for

²⁴ National Cable & Telecommunications Association Petition for Rulemaking, Reducing Universal Service Support In Geographic Areas That Are Experiencing Unsupported Facilities-Based Competition, WC Docket No. 05-337, at 17-20 (filed Nov. 5, 2009) (NCTA Petition).

²⁵ *Id.*

²⁶ In identifying unserved areas, the Commission should rely on current data from the FCC Forms 477, rather than data from 18 months earlier, as was the case with the Commission's most recent *706 Report*. *706 Report*, FCC 10-129 (Report issued in July 2010 based on data from December 2008).

²⁷ NCTA Comments at 17-20; ITTA Comments at 9-12; Verizon Comments at 27-30.

distributing support for broadband in *unserved* areas, a cost model process might be better suited as a tool to use in determining how much support is needed, if any, in areas that currently have access to broadband and that currently may be receiving support from the existing high-cost support mechanisms for voice services. In any event, to distribute high-cost support for broadband in unserved areas, rather than using a cost model approach, the Commission should adopt a competitive procurement process in which applicants would submit proposals for support to serve areas where consumers currently do not have access to broadband facilities.

Under this approach, the Commission would promulgate competitively neutral criteria for evaluating proposals and applicants would be able to tailor their proposals based on their networks' attributes. For example, under this approach no technology would be favored by the mandated use of a particular geographic area, such as a study area or an MSA.²⁸

III. THE COMMISSION NEEDS DATA TO BETTER ASSESS THE NEED FOR HIGH-COST SUPPORT IN PARTICULAR AREAS

One issue that did not receive sufficient attention in the *Notice* is the change in data collection that will be necessary as the Commission begins to phase out existing high-cost support mechanisms and begins to support broadband deployment through the universal service program. NCTA proposes two specific steps the Commission should take to address this concern.

A. The Commission Needs The Ability To Compare Broadband Deployment To High-Cost Support Distributions Using A Common Geographic Metric

The National Broadband Plan recognized that “[w]hile some companies receiving High-Cost support have deployed broadband-capable infrastructure to serve most of their customers,

²⁸ See AT&T Comments at 10.

others have not.”²⁹ Developing a better picture of which companies receiving high-cost support have deployed broadband capable infrastructure would help the Commission to better target support to unserved areas. However, universal service support traditionally has been distributed on the basis of incumbent LEC study areas or wire centers “for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”³⁰ Those facilities and services for the most part have not included broadband.³¹ Meanwhile, broadband deployment and adoption typically are reported on the basis of counties (as in the Commission’s recent *706 Report*),³² census tracts (as in the Commission’s reports based on FCC Form 477 data),³³ or census blocks (as in the nationwide broadband map that NTIA is preparing).³⁴

The disconnects between the purpose of high-cost support and broadband infrastructure deployment, and between the geographic areas used for the distribution of high-cost support and the geographic areas used for reporting of broadband deployment and adoption create a challenge for directly linking high-cost support with broadband deployment. To enable the Commission and the public to better monitor the use of high-cost support, the Commission must develop the ability to compare broadband deployment and high-cost support distribution using a common geographic metric. The Commission also must find a way to compare data from NTIA and RUS regarding census blocks that have received ARRA funding with areas receiving high-cost support. Only by finding ways to compile and report all of this data on a common basis will

²⁹ National Broadband Plan at 141 (footnote omitted).

³⁰ 47 U.S.C. § 254(e); 47 C.F.R. § 54.7.

³¹ Although high-cost support does not currently fund broadband services directly, “high-cost support for voice services indirectly supports the deployment of broadband capable networks” under some high-cost support mechanisms. *Notice*, 25 FCC Rcd at 6678-79, ¶53 and n.119.

³² *706 Report*, FCC 10-129 at Appendix C.

³³ *Id.*, Appendix D.

³⁴ *State Broadband Data and Development Grant Program*, NTIA, Notice of Funds Availability, 74 Fed. Reg. 32545, 32549 (July 8, 2009).

the Commission be able to create a complete picture of where government support for broadband is being directed and whether it is being appropriately targeted to those areas most in need, something that it has never done before but which is long overdue.

B. The Commission Should Collect Data On Retail Rate Regulation Of Intrastate Services

A second hole in the Commission's data collection from high-cost support recipients is the lack of information regarding the rate regulation regime, if any, that applies to the various services provided over supported networks. The central premise of the high-cost support regime is that, absent government funding, carriers would need to raise rates to unreasonable levels to recover the cost of providing supported services. The assumption that support is necessary to offset costs that cannot be recovered from consumers may be reasonable in areas where rates are artificially constrained by cost-based regulation. But that assumption no longer holds in areas where regulators have determined that competition exists and deregulation is appropriate, allowing providers to charge whatever rate the market will bear.

As NCTA explained in its rulemaking petition, the link between high-cost support and reasonable retail rates has been almost completely severed.³⁵ Most recipients of high-cost support now provide multiple services over their networks and the majority of these services are not subject to any form of rate regulation, let alone cost-based regulation. Services subject to federal jurisdiction, for example, including multichannel video service, Internet access service, and long distance voice service, currently are not subject to retail rate regulation.³⁶

³⁵ NCTA Petition at 4-5.

³⁶ The only federal constraint on retail pricing is the SLC cap, but that cap is irrelevant whenever local exchange service is deregulated or offered in a bundle with any other deregulated service. In either case, the provider is essentially free to set whatever price it wants for the bundle.

The situation is less clear at the state level. As NCTA explained, in many states retail local exchange services no longer are subject to cost-based regulation.³⁷ But the details of the applicable regulatory regime vary by state, by carrier, and by service area. And because the Commission collects no data regarding the regulatory regime that applies to companies collecting federal high-cost support, it has no way to monitor whether support is necessary to offset costs that cannot be recovered through retail rates, nor can it assess carrier claims that rates might increase if support is reduced.

As the Commission prepares to undertake major changes in the existing high-cost support mechanisms, it is long past time to correct this gap in its knowledge. The Commission should require high-cost recipients to report on what type of rate regulation, if any, they are subject to in areas for which they are currently receiving high-cost support. These reports should specify the services that are regulated, the circumstances under which such regulation applies, and the geographic scope of such regulation. By identifying areas where rates no longer are constrained by cost-based regulation, the Commission will be able to establish a much clearer picture of where high-cost support is needed to preserve reasonable rates and where such support no longer is necessary.

³⁷ NCTA Petition at 15-16.

CONCLUSION

NCTA urges the Commission to move forward with its proposed common sense reforms, which are long overdue, so that high-cost funds can be redirected immediately to areas where broadband deployment is lacking without increasing the overall size of the universal service fund. By keeping its focus on consumers, rather than on current recipients of voice-based high-cost support, the Commission can redistribute support from areas where unsubsidized competition exists to areas that, absent support, would not be served by broadband. In addition, and to ensure that universal service funds are used appropriately and only where necessary, the Commission should gather additional data to better determine where high-cost support is needed to achieve the goal of universal access to broadband.

Respectfully submitted,

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