

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

In the Matter of	)	
	)	
Modernizing the FCC Form 477 Data Program	)	WC Docket No. 11-10
	)	
Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership	)	WC Docket No. 07-38
	)	
Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering	)	WC Docket No. 08-190
	)	
Review of Wireline Competition Bureau Data Practices	)	WC Docket No. 10-132
	)	

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**REPLY COMMENTS OF VERIZON AND VERIZON WIRELESS**

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**REPLY COMMENTS OF VERIZON<sup>1</sup> AND VERIZON WIRELESS**

**I. INTRODUCTION AND SUMMARY**

The record in this proceeding confirms that the Commission should focus its attention on streamlining its Form 477 data collection process and minimizing the associated burdens – not mandating unnecessary and burdensome new reporting requirements on providers. The Commission already has available to it voluminous data concerning the communications marketplace, both from its own, recently expanded Form 477 process and from other available public and third-party sources. These data sources are more than adequate to

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<sup>1</sup> In addition to Verizon Wireless, the Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

address any of the Commission’s statutory responsibilities. Those few parties that support expanded data collection obligations fail to show that new data are required for the Commission to meet its statutory responsibilities or that existing sources are inadequate. These outliers also do not grapple with the complexities and burdens associated with many of their suggested additions to the Form 477. Therefore, the Commission should reduce, not increase, the data reporting obligations associated with the Form 477.

## **II. THE COMMISSION MUST STREAMLINE, NOT EXPAND, ITS DATA COLLECTION EFFORTS**

As we explained in our opening comments and as other commenters overwhelmingly echo, the Commission is obligated to consider both the burdens on providers and the practical utility of requested data before adding to the already substantial data reporting obligations on providers. Both the President and the Chairman have said as much, and the Paperwork Reduction Act requires it as a matter of law.<sup>2</sup>

Among other things, the Commission must avoid unjustified burdens by coordinating with other government agencies – such as NTIA and the Census Bureau – that are sources of similar data and by considering alternatives such as third-party and public sources of data. For example, commenters overwhelmingly agree that the Commission should use the data collected as part of the NTIA broadband mapping program for information on broadband availability.<sup>3</sup> Indeed, even most of those who support a new data reporting obligation for “availability” suggest that it should not take effect until after the NTIA program terminates.<sup>4</sup>

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<sup>2</sup> 44 U.S.C. § 3501 *et seq.*

<sup>3</sup> *See, e.g.*, CenturyLink, Qwest (“CenturyLink/Qwest”) Comments at 14; United States Telecom Association (USTelecom) Comments at 12; National Cable & Telecommunications Association (NCTA) Comments at 8.

<sup>4</sup> *See* Communication Workers of Aneruca (CWA) Comments at 2, 5; California Public Utilities Commission (“California PUC”) Comments at 4, 6, 7.

Similarly, commenters point to a wide range of *existing* data sources that would provide the Commission with any information it may legitimately need concerning such issues as speed, price, service quality, and customer satisfaction, all without adding burdens on providers that ultimately increase the costs to consumers and divert resources better devoted to broadband deployment.

Moreover, as noted by CTIA and CenturyLink/Qwest,<sup>5</sup> new reporting obligations addressing many of the topics discussed in the NPRM would be inconsistent with the will of Congress reflected in the Broadband Data Improvement Act (BDIA).<sup>6</sup> In that Act, Congress recognized the relevance and significance of data concerning broadband, but also struck a balance concerning the most efficient and reasonable ways for acquiring such data. For example, the BDIA embraced the use of state mapping entities, under the aegis of NTIA, for determining broadband availability, and it settled on consumer surveys (by the Commission and the Census Bureau) to acquire data on issues such as price, customer satisfaction, demographics, and factors affecting broadband adoption. *See* CTIA Comments at 3. It would be manifestly contrary to the BDIA for the Commission to disregard this congressionally-struck balance by turning around and seeking all of the same data through new reporting obligations saddled on providers.

Even if there are particular instances in which the Commission does need additional data not available from existing data sources, the record reflects agreement that targeted and narrowly tailored data collections are preferable to broad, ongoing, industry-wide collections. *See, e.g.,* CenturyLink/Qwest Comments at 3. So, for example, data needed to administer

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<sup>5</sup> *See* CTIA Comments at 3; CenturyLink/Qwest Comments at 5-6.

<sup>6</sup> Pub. L. No. 110-385, 122 Stat. 4096 (2008).

programs that fund additional broadband deployment should be obtained through requests targeted to those providers that choose to receive such funding. Or if the Commission needs particular data to assess the level of competition in an area, it should target specific requests to the relevant providers in the area.

In instances in which the Commission nonetheless determines that new, more general, data reporting obligations are necessary, it should reject the suggestion of those parties seeking to have themselves carved out of such obligations. For example, some rural providers, satellite providers, or VoIP providers seek to be exempted from some or all of the Form 477 process.<sup>7</sup> If a data collection is justified at all, however, it will only be useful to the Commission if it is complete. If a new data collection lacks data for a particular subset of VoIP providers, rural providers, or providers using certain technologies, then the resulting data set would paint a misleading picture of the overall competitive marketplace. *See, e.g.*, AT&T Comments at 5.

### **III. EXPANDED REPORTING OBLIGATIONS ARE UNNECESSARY**

The record in this proceeding broadly confirms that no new reporting obligations are necessary at this time. Only a small, handful of commenters support expanded data collection obligations, and none responds to the well-documented complexities and burdens of their requests, nor demonstrates that such requirements are justified or lawful in light of existing data sources, the burdens associated with expanded obligations, and the Commission's statutory responsibilities.

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<sup>7</sup> *See, e.g.*, Comments of Texas Statewide Telephone Coop., Inc. at 10; Comments of Hughes Network Systems at 2; Comments of the Voice on the Net Coalition at 3.

## 1. **Information Concerning Deployment**

The record overwhelmingly demonstrates that additional reports concerning the deployment of communications networks would be wholly redundant of the efforts already underway in conjunction with NTIA's broadband mapping program and could not be justified in light of the associated burdens. Broadband providers uniformly agree that the NTIA program is the best source for availability data, and that parallel reporting efforts at the Commission would only increase burdens without justification and distract from efforts to improve the accuracy of the NTIA map. *See, e.g.,* CenturyLink/Qwest Comments at 14; USTelecom Comments at 12; NCTA Comments at 8.

In fact, even many of the parties supporting new reporting obligations related to availability suggest that such reporting should not kick in until after the NTIA mapping initiative terminates. *See, e.g.,* CWA Comments at 2; California PUC Comments at 6. And while Free Press suggests that the Commission should start collecting availability data now, even it suggests that the Commission's focus should be on essentially collecting the same data currently being collected as part of the NTIA program. *See* Free Press Comments at 2. These comments demonstrate that any new availability reporting obligations would be wholly redundant of NTIA's data, and therefore could not be justified under the Paperwork Reduction Act or the President's and Chairman's recent directives on reducing regulatory burdens. Moreover, it would be premature to adopt reporting requirements that do not take effect for several years. By the time that NTIA mapping program expires, assuming that it does expire, the location of the few, remaining unserved areas should be well identified, and any data collection efforts could be focused more squarely on those areas.

Finally, the Massachusetts Department of Telecommunications and Cable (“Massachusetts DTC”) suggests that deployment data be collected using Geographic Information Service standards, instead of the census block level being used by NTIA. *See* Massachusetts DTC Comments at 2. But given all of the work underway at the granular census block level, it would be wasteful and unjustified to now introduce a different level of granularity for these purposes. Not only would doing so increase the burdens for all involved, but it would also increase the chances of mistakes as providers and mapping entities juggle competing data sets.

## 2. **Speed Data**

The record confirms the infeasibility of any new reporting obligations related to “actual speeds,” even as a small number of commenters continue to push for such a requirement.<sup>8</sup>

As the Commission is well aware based on its experience working on speed measurements through its Sam Knows project, accurately measuring “actual speeds” is a complex and burdensome task. *See* Free Press Comments at 5 (noting that “this incredibly valuable experiment is expensive, and is unlikely to be repeated”). Achievable speeds at any given time and place also are affected by factors completely unrelated to a provider’s network, such as the congestion in the provider’s network, speeds of backbone Internet providers, server performance for web-based transactions, the speeds of applications run by end users, and the time of day. And specific to mobile wireless broadband service, achieved speeds depend upon factors such as the number of customers being served by the same cell site, the user’s distance from that site, the user’s location (*e.g.*, indoor v. outdoor), and battery

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<sup>8</sup> *See, e.g.* CWA Comments at 5-6; New Jersey Division of Rate Counsel Comments at 11.

power level. Moreover, as the Commission’s recent “Need for Speed” notice acknowledges, the Commission is still considering the difficult questions concerning the types of metrics for speed or other performance characteristics that could prove useful to consumers.<sup>9</sup> None of the parties urging the Commission to collect “actual speed” data provides any meaningful response to these challenges.

Rather than requiring the reporting of metrics that do not exist or that cannot be readily measured, the Commission should continue working through its ongoing proceedings to better glean information concerning speeds of wireline and wireless broadband services. Until those efforts are complete, it is too soon to say that useful standards for measuring “actual speeds” will emerge, much less standards that would lend themselves to a data reporting process and that could be derived without excessive burdens. Indeed, even some of the parties advocating for data collection concerning “actual speeds” seem to acknowledge the necessity for addressing these issues in the context of those other, ongoing proceedings. *See, e.g.*, CWA Comments at 5; California PUC Comments at 8-9. The Commission should maintain its focus on those proceedings and other sources for speed and other performance data rather imposing new reporting obligations.

The Commission also should reject Free Press’s proposal to collect “contention ratio” in place of “actual speed” data. Free Press Comments at 5-6. While Free Press suggests that providers could “easily . . . calculate” such ratios and should report them on a census tract basis, it is wrong. *Id.* at 6. Such a requirement would be extremely complex and burdensome, with no offsetting benefits. As we explained in our opening comments, even putting aside the challenges in determining for each different technology employed which

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<sup>9</sup> *See Consumer and Governmental Affairs Bureau Seeks Comment on “Need for Speed” Information for Consumers of Broadband Services*, Public Notice, CG Docket No. 09-158; DA 11-661 (April 11, 2011).

facilities are devoted to which subscribers and which services within each census tract, a “contention ratio” would mean nothing to the typical consumer and little, if anything, to most policymakers. Moreover, given the different technologies used to provide broadband, and the many variables that would go into determining a “contention ratio,” the resulting data are unlikely to be of any practical use or relevance.

### 3. **Subscribership Data.**

The record confirms that the Commission should not change the level of granularity for the reporting of broadband subscribership data. In fact, even proponents of expanded reporting obligation generally concede that the current, census-tract-level broadband data is adequate for the Commission’s purposes. *See, e.g.* Free Press Comments at 9; Massachusetts DTC Comments at 8. While the California PUC suggests a shift to “address level” subscribership data, it provides no purpose that would be served by that move – much less a purpose outweighing the additional burden on providers. California PUC Comments at 11. The California PUC also does not account for the privacy implications associated with reporting address-level subscribership data, as well as the extreme, competitive sensitivity of such information. The Commission should therefore not increase the granularity of current subscribership reporting obligations.

The Commission should also reject Free Press’s suggestion that Commission staff use subscribership data to calculate HHI values for each census tract. *See* Free Press Comments at 11. As an initial matter, this suggestion goes beyond the scope of this proceeding – it does not address reporting obligations but instead the Commission’s analysis of data. In any event, the type of laborious exercise suggested by Free Press would be a waste of the Commission’s resources and would be difficult to perform in an accurate manner. For

example, accounting for the increasing reliance on mobile broadband options would make HHI calculations at the granular census tract level difficult to perform accurately.

#### 4. Pricing Data

For all the reasons explained in our opening comments, the Commission should not expand the Form 477 collection process to require price reporting. In this competitive marketplace, the specific prices that consumers pay change rapidly and vary based on factors such as promotions, bundled discounts, term commitments, and the unique circumstances of prospective customers. Other parties, including private analysts, are in a better position to collect data regarding the prices that customers pay for broadband service and in fact already provide reports on exactly that information.<sup>10</sup> There is no reason for the Commission to duplicate this effort and require price reporting on these competitive services. Such information suffices for any legitimate Commission purpose – including for assessing the “comparability” of services, should universal service funding programs be extended to broadband. And, given the competitiveness of the marketplace and the lack of retail rate regulation, there is no other purpose to be served by requiring price reporting.

Minimizing or ignoring the complexity and burdens associated with accurately determining and reporting prices, a few parties suggest approaches for the Commission’s consideration. None would accurately reflect the range of choices available to consumers or

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<sup>10</sup> See, e.g., [www.broadband.com](http://www.broadband.com) (providing searchable map that includes broadband pricing); Jonathan Atkin, et al., RBC Capital Markets Wireless Update, at 4-5, 13-24 (March 1, 2011); Simon Flannery, et al., Morgan Stanley Research North America, at 2 (Nov. 3, 2010); John C. Hodulik, et al., UBS Investment Research: Telecommunications, at 24-28, 30 (March 15, 2011); HSBC Global Research, Global Telecoms, Media & Technology, “SuperFrequonomics,” at 19, 21-24 (Sept. 2010); David W. Barden, et al., Bank of America Merrill Lynch Wireline & Wireless Telecom Services, “Battle for the Bundle: Cable Keeps the Pressure on Telco,” at Tables 5-8 (July 20, 2010).

justify the associated burdens. For example, Free Press suggests that providers report “published, stand-alone, non-promotional, non-contractual price” by speed tier within each Census Tract, with additional adjustments for any associated early termination fees for contracts consumers may enter. Free Press Comments at 4. While slightly less convoluted, the California PUC and Massachusetts DTC make similar proposals, suggesting that particular stand-alone and bundled prices be reported. *See* California PUC Comments at 10; Massachusetts DTC Comments at 6. While these suggestions would result in a flood of new data into the Commission – particularly if the data were sliced and diced as thinly as some of these parties suggest, with multiple permutations within each census tract – little if any of such data would be useful to the Commission or would bear resemblance to the prices actually being paid by consumers. Ignoring the various benefits of promotional offerings, bundled services, and other similar approaches that are popular with consumers would provide a misleading picture of the competitive broadband marketplace.

For similar reasons, Free Press’s additional proposals of requiring price per Megabit or average revenue per user data<sup>11</sup> would be complex and ultimately of little practical use, particularly given the way that many consumers now shop for services. Computing those numbers would involve many of the analytical difficulties discussed above – what would the “price” per Megabit be in a marketplace with dynamic pricing practices over a bundle of services? – but would bear even less resemblance to the prices of concern to consumers. Rather than creating such contrived data, the Commission should consider existing public and third-party data sources to the extent it has a need to consider broadband pricing at all.

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<sup>11</sup> *See* Free Press Comments at 4.

## 5. Service Quality and Consumer Satisfaction

The record here confirms that the Commission should not adopt new service quality or consumer satisfaction reporting obligations. There has been no showing of widespread service quality or consumer satisfaction concerns, much less problems not already captured by existing data sources and that warrant burdensome, new reporting obligations.

Indeed the Commission's own survey of consumers demonstrates that the vast majority of consumers are satisfied with their services. For example, the Commission's survey found that 92% of consumers were either very or somewhat satisfied with the reliability of their services, that 91% were very or somewhat satisfied with the speed of their services, that 82% were very or somewhat satisfied with their providers' customer service, and that 93% were very or somewhat satisfied with their services overall.<sup>12</sup> While these numbers should come as no surprise given the heated competition for broadband consumers, they belie the need for new reporting obligations to ferret out service quality or customer satisfaction problems where few exist. In any event, as numerous commenters note,<sup>13</sup> the Commission already has access to a wide range of data concerning such issues that would highlight problems were they to arise.

Notwithstanding the lack of any demonstrated need for service quality or consumer satisfaction reporting or acknowledgement of the burdens associated with new reporting requirements, a handful of state regulators together with CWA and Free Press urge the Commission to put in place a broad, new reporting obligation akin the old ARMIS reports

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<sup>12</sup> FCC Working Paper, "Broadband Satisfaction: What consumers report about their broadband Internet provider," [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-303263A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-303263A1.pdf), at 2 (Dec. 2010).

<sup>13</sup> See, e.g., CTIA Comments at 21; AT&T Comments at 31; see also Verizon Comments at 23.

and to extend such reports to broadband. *See* Michigan Public Service Commission Comments at 2; California PUC Comments at 12; CWA Comments at 8; Free Press Comments at 8; New Jersey Division of Rate Counsel Comments at 7-8. As Verizon explained in the pending proceeding considering whether to impose ARMIS-type reporting on all providers, taking this step would serve no purpose in today's marketplace and provide no practical utility to the Commission or to consumers.<sup>14</sup>

The idea that the ARMIS reports would be relevant or useful in today's communications marketplace is wrong. Even if the reporting obligations were applied to all providers – thus addressing one of the obvious deficiencies in the old ARMIS regime, which only collected data from a small subset of providers – the ARMIS infrastructure and service quality reports would still be obsolete. For example, the meaningless metrics in the ARMIS infrastructure reports include traditional switches equipped with SS7 technology, total sheath kilometers of loop and interoffice cables, kilometers of aerial wire and outside plant cables, and the length of traditional trenches and ducts. The ARMIS service quality reports are similarly byzantine and would not be useful to consumers.

At bottom, these ARMIS reports were before, and would again be, useless. And the Commission recognized as much when it eliminated the reports. In its *Recordkeeping and Reporting Forbearance Order*, the Commission found that the ARMIS infrastructure and

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<sup>14</sup> *See* Comments of Verizon, Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering; Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements; Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c), et al., WC Docket Nos. 08-190, 07-139 & 07-204 (Nov. 14, 2008); Reply Comments of Verizon, *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering; Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements; Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c), et al.*, WC Docket Nos. 08-190, 07-139 & 07-204 (Dec. 15, 2008).

service quality reports were outdated vestiges of a rate-of-return federal regulatory regime that was abandoned more than 15 years ago in favor of price caps.

We agree with the petitioners that ARMIS Reports 43-05, 43-06, 43-07, and 43-08 were not originally designed to ensure that carriers' rates, terms, and conditions were just and reasonable or not unjustly or unreasonably discriminatory. These ARMIS reports were adopted to monitor the theoretical concern that price cap carriers might reduce service quality or network investment to increase short-term profits, rather than being designed to address the rates, terms, and conditions under which carriers offered their services. . . Thus, we do not find these ARMIS reports necessary today to ensure that carriers' charges, practices, classifications or regulations are just and reasonable and are not unjustly or unreasonably discriminatory.<sup>15</sup>

Whether generated by a few providers that file ARMIS reports or by the many providers that file the Form 477, the ARMIS infrastructure and service quality data is irrelevant in today's competitive communications market.

Not only would new ARMIS-type reports be useless, the burdens of reporting the underlying data would dwarf any conceivable benefits. To produce the ARMIS infrastructure and service quality reports when those requirements were in place, Verizon alone dedicated the equivalent of six, full-time employees to generating the reports annually; approximately 70 employees were directly involved in the data gathering process; and hundreds of other employees are involved in providing the relevant data. In addition, providers must train data owners, review previous reports, conduct extensive validation efforts to ensure accuracy, and complete an attestation process to verify the data. These employees and resources focused on ARMIS reporting activity would otherwise be dedicated

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<sup>15</sup> *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering; Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements; Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c), et al.*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 23 FCC Rcd 13647, ¶ 8 (2008) (quotations and citations omitted).

to supporting the next generation services that consumers expect and demand. Expanded reporting would actually harm the public interest by slowing innovation and roll-out of new services in the industry because many providers will be required to allocate scarce resources to regulatory compliance.

Finally, while not suggesting that providers generate any *new* reports concerning service quality, California Association of Competitive Telecommunications Companies (CALTEL) suggests that the Commission require providers that make such reports to the states to also furnish a copy to the Commission. CALTEL Comments at 2. CALTEL also tries to make much of some outages and delays that took place during a severe winter storm event that occurred in parts of California in December 2010. *See id.* at 5. The collection of such reports would serve little purpose, however, given the variations that would be present from state to state and provider to provider. Moreover, the fact that such reporting obligations do not apply equally to all relevant providers – as CALTEL acknowledges – would undermine the usefulness of any such data. *See id.* at 16. Moreover, the Commission should not base broad, industry-wide and ongoing reporting obligations on difficulties that resulted from a severe, record-breaking storm that caused an unusually high number of outages.

#### **IV. APPROPRIATE PROTECTIONS ARE ESSENTIAL FOR SENSITIVE DATA**

Finally, broadband providers that commented in this proceeding unanimously confirm the importance of protecting the myriad sensitive data that are included on the Form 477. Given the wealth of information that the Commission collects in the Form 477 process, it is essential that the Commission remain vigilant in protecting providers' competitively sensitive and confidential data in order to ensure that reporting requirements do not harm competition

or threaten the security of communications networks or the privacy of subscribers.

Therefore, the Commission should maintain its current approach to protecting confidential information, in responses to Form 477, including its support for requests for confidential treatment.

While a small number of commenters, including Free Press and the New Jersey Division of Rate Counsel,<sup>16</sup> continue to deny the sensitivity of any data provided in this process, they raise no bases for disregarding the consistent conclusion of Congress, the courts, the Commission, and NTIA that providers' sensitive data must be protected. *See* Verizon Comments at 31-32. As increasingly granular data have been demanded by the Commission, providers' reasonable concerns regarding the sensitivity of data – from the standpoint of competitiveness, network security, and subscriber privacy – have become all the more significant.

#### **IV. CONCLUSION**

The Commission should not adopt burdensome, new reporting obligations on providers, and instead should streamline the existing Form 477 data collection process.

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<sup>16</sup> *See* Free Press Comments at 12; New Jersey Division of Rate Counsel Comments at 12

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