

**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
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

**OPPOSITION OF WINDSTREAM COMMUNICATIONS, INC.
TO PETITIONS FOR RECONSIDERATION**

Windstream Communications, Inc., on behalf of itself and its affiliates (collectively “Windstream”), submits the following comments in opposition to aspects of several Petitions for Reconsideration of the Commission’s recent *Report and Order* in the above-captioned proceedings.¹ First, the Commission should deny Verizon’s Petition that requests adoption of

¹ See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, CC Docket Nos. 01-92 and 96-45, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, GN Docket No. 09-51, and WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking (rel. November 18, 2011) (*Report and Order*).

general technical feasibility and industry standards exceptions to the new call signaling rules.² As the Commission noted in considering and declining to adopt such sweeping exceptions in the *Report and Order*, the Commission’s established waiver procedures provide an effective, efficient process by which providers can obtain necessary relief in connection with the new call signaling rules, and any general exceptions would potentially undermine the rules and could lead to costly disputes and litigation.³ Second, the Commission should reject several Petitions that seek to expand the circumstances in which Connect America Fund (“CAF”) support for areas currently served by price cap companies would be precluded due to the presence of alleged “unsubsidized competition.”⁴ These Petitions propose methodologies that would be inconsistent with the overall framework adopted by the Commission and would undermine the Commission’s goal that all consumers have access to robust voice and broadband service.

I. THE COMMISSION ALREADY CONSIDERED AND DECLINED TO ADOPT SWEEPING EXCEPTIONS TO ITS CALL SIGNALING RULES, AND IT SHOULD REJECT VERIZON’S ATTEMPT TO RESURRECT ITS PRIOR REQUESTS FOR THESE EXCEPTIONS.

Recognizing that “gamesmanship with regard to calling party information is rife” and that the record demonstrates a proliferation of schemes to mask intrastate traffic to avoid higher

² Petition for Clarification or, In the Alternative, for Reconsideration of Verizon, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208 (December 29, 2011) (Verizon Petition).

³ *Report and Order* at ¶ 723 (stating that the Commission “agree[s] with the concern expressed by some commenters that any exceptions would have the potential to undermine the rules” and it “decline[s] to adopt any general exceptions to our new call signaling rules”).

⁴ See NTCH, Inc. Petition for Reconsideration, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208 (December 29, 2011) (NTCH Petition); ViaSat, Inc. Petition for Reconsideration, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208 (December 29, 2011) (ViaSat Petition); Petition for Partial Reconsideration of the Wireless Internet Service Providers Association, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208 (December 29, 2011) (WISPA Petition).

access charges,⁵ the Commission wisely adopted a clear rule requiring carriers to transmit call signaling information unaltered.⁶ The Commission acknowledged that some parties, including Verizon, proposed general technical feasibility and industry standards exceptions to the call signaling rules,⁷ but expressly declined to adopt such exceptions, expressing concern that the exceptions “would have the potential to undermine the rules” and “that disputes concerning the applicability of exceptions could arise and lead to costly disagreements or litigation.”⁸ Despite the fact that the Commission already has considered and rejected its arguments, Verizon resurrects its requests in a Petition for Reconsideration. The Commission, again, should decline to adopt Verizon’s recommended exceptions.

As the Commission notes in the *Report and Order*, its established waiver procedures provide an effective, efficient process by which providers can obtain any necessary relief in connection with the new call signaling rules.⁹ Indeed, within approximately 60 days of the Order’s release, AT&T and CenturyLink both assessed their ability to comply with call signaling rules and submitted waivers requests for the limited instances where they believed compliance

⁵ *Report and Order* at ¶ 709.

⁶ *See id.* at ¶¶ 710-720.

⁷ *Id.* at ¶ 722.

⁸ *Id.* at ¶ 723.

⁹ *Id.*

was not feasible.¹⁰ The Commission has already put both of these waiver petitions – which Windstream does not oppose – out for comment.¹¹

Verizon provides no specific reason why it, unlike its industry peers, cannot similarly avail itself of the same waiver process, other than asserting that the underlying call signaling rules are “faulty” and “irrational”¹² and that “analysis necessary to meet the Commission’s standard for a waiver . . . will take time and will require a significant investment of additional resources.”¹³ Verizon’s Petition, in fact, actually highlights the likelihood that a general technical feasibility or industry standards exception would swallow the rule, which is precisely why the Commission rejected such exceptions in the first place. Verizon’s proposed exceptions essentially shift the burden of proof from the carrier asserting the exception to the terminating carrier, who has no way of verifying or disproving the applicability of the exception. As the Commission correctly notes, call signaling rules with broad, general exceptions likely will lead

¹⁰ AT&T Inc. Petition for Limited Waiver, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208 (December 29, 2011); CenturyLink, Inc. Petition for Limited Waiver, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208 (January 23, 2012).

¹¹ Public Notice, Wireline Competition Seeks Comment on AT&T Petition for Limited Waiver of Call Signaling Rules, CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51; WC Docket Nos. 03-109, 05-337, 07-135, 10-90; WT Docket No. 10-208 (January 10, 2012); Public Notice, Wireline Competition Seeks Comment on CenturyLink Petition for Limited Waiver of Call Signaling Rules, CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51; WC Docket Nos. 03-109, 05-337, 07-135, 10-90; WT Docket No. 10-208 (January 30, 2012);

¹² See Verizon Petition at 12 (noting that current waiver procedures are “insufficient to save the faulty rules” and “the Commission ‘cannot save an irrational rule by tacking on a waiver procedure’”) (internal citation omitted).

¹³ See *id.* (complaining that “Verizon employees alone have already spent hundreds of hours attempting to identify those situations in which a waiver may be required” and that “further analysis necessary to meet the Commission’s standard for a waiver . . . will take time and will require a significant investment of additional resources”).

to more disputes and litigation rather than improving the ability of carriers to accurately identify and bill for traffic and guarding against phantom traffic arbitrage.¹⁴

The problem of traffic arriving for termination with insufficient or inaccurate identifying information is significant and growing. Purposeful phantom traffic schemes are rampant, but even the most reputable carriers can, without malicious intent, cause or contribute to difficulties that the call signaling rules are designed to address. The Commission's new rules take a critical step toward ameliorating this problem by holding carriers to a default obligation to transmit call signaling information unaltered, subject to limited relief through a clear waiver process. The Commission should not reverse course now by adopting sweeping exceptions that likely would render the new rules ineffective.

II. THE COMMISSION SHOULD REBUFF ATTEMPTS TO EXPAND THE CIRCUMSTANCES IN WHICH CAF SUPPORT WOULD BE PRECLUDED DUE TO THE PRESENCE OF ALLEGED UNSUBSIDIZED COMPETITION.

Under the *Report and Order*, recipients of CAF funding for high-cost areas currently served by price cap companies may not spend the funds to serve customers in areas already served by an "unsubsidized competitor," defined as a "facilities-based provider of residential terrestrial fixed voice and broadband service."¹⁵ Such a framework, which is consistent with that proposed in the America's Broadband Connectivity Plan,¹⁶ enables an appropriate balance of funding concerns, encouraging the more efficient distribution of funding while ensuring that high-cost areas will have access to robust voice and broadband service.

¹⁴ See *Report and Order* at ¶ 723.

¹⁵ *Id.* at ¶ 103.

¹⁶ See Letter from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., Attachment 1 at 3 (filed July 29, 2011) (ABC Plan).

Nevertheless, several petitioners seek to upset that balance by broadening the circumstances in which CAF support would be precluded due to the presence of alleged “unsubsidized competition.” NTCH, a mobile provider, asserts that the Commission should redefine “unsubsidized competitor” to include any provider of residential voice and broadband service—fixed or mobile—that meets undefined “minimum service thresholds.”¹⁷ WISPA, whose members generally provide fixed broadband but not voice service, seeks to modify the framework to state that CAF support should not be extended to any “area subject to unsubsidized competition,” so that the unsubsidized voice provider and the unsubsidized broadband provider need not be one and the same.¹⁸ Satellite broadband provider ViaSat requests reconsideration of the decision not to permit satellite broadband providers to qualify as “unsubsidized competitors.”¹⁹ In each of these petitions, the petitioner glosses over concerns that cited “competition” offers substandard service, and proposes methodologies that are inconsistent with the overall CAF framework adopted by the Commission and would undermine the Commission’s objective that all consumers have access to robust voice and broadband service. Therefore, the Commission should reject these calls for reconsideration.

¹⁷ NTCH Petition at 13. Windstream also opposes NTCH’s request to reduce the phase-out of support for local exchange carriers (LECs) to three years, and its proposal to require LECs receiving support to cap access charges at levels comparable to those charged in urban areas. *See* NTCH Petition at 10-12. As the United States Telecom Association noted in its comments to the Further Notice of Proposed Rulemaking, ILECs continue to bear state Carrier of Last Resort (COLR) and federal eligible telecommunications carrier (ETC) obligations, and transitions away from explicit and implicit support must be gradual so carriers can continue to fulfill those obligations. *See* Comments of the United States Telecom Association, CC Docket Nos. 01-92 and 96-45, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, GN Docket No. 09-51, and WT Docket No. 10-208, at 7-10 (January 18, 2012).

¹⁸ WISPA Petition at 4-8.

¹⁹ ViaSat Petition at 8-12.

A. The Commission Should Deny NTCH’s Petition.

The Commission should reject NTCH’s plea to redefine “unsubsidized competitor” to include any provider of residential voice and broadband service—fixed or mobile—that meets “minimum service thresholds.”²⁰ Because NTCH does not define “minimum service thresholds,” it is unclear whether NTCH is seeking (1) the inclusion of mobile providers that meet the Commissions’ specified performance requirements, or (2) a reduction in the performance requirements for both fixed and mobile providers that would trigger the “unsubsidized competitor” provision. In any event, neither option should prompt new Commission action.

To the extent that NTCH seeks the special inclusion of mobile providers that meet the Commissions’ specified performance requirements, the Commission should deny the petition. The Commission already has indicated that any provider—fixed or mobile—can become an “unsubsidized competitor” by offering a fixed wireless service that guarantees speed, capacity, and latency minimums will be met at all locations within the relevant area.²¹ Any further allowance for mobile providers’ service, however, is unwarranted. The purpose of the CAF is to ensure that consumers in high-cost areas have access to robust, scalable, *fixed* broadband service,²² and it would be nonsensical to preclude support for a given area if there is no such fixed service available. The Commission established a separate funding mechanism, the Mobility Fund, to expand mobile broadband and voice service, recognizing that such service offers unique capabilities but also limitations that prevent it from being a complete substitute for

²⁰ NTCH Petition at 13.

²¹ *Id.*

²² *See, e.g., Report and Order* at ¶ 127.

fixed service.²³ As noted by the Commission, the record demonstrates that few, if any, mobile services can meet the CAF speed, capacity, and latency requirements, and that even for 4G technologies, “meeting minimum speed and capacity guarantees is likely to prove challenging over larger areas, particularly indoors,” and that it would be very difficult and costly to verify mobile broadband performance.²⁴

To the extent NTCH is seeking a reduction in the performance requirements for fixed and/or mobile providers that would trigger the “unsubsidized competitor” provision, the Commission should reject the request as contrary to its own stated goals. A fundamental principle underlying reform of the Universal Service Fund is that “all Americans . . . should have access to affordable modern communications networks capable of supporting the necessary applications that empower them to learn, work, create, and innovate.”²⁵ And as noted in the *Report and Order*, the Commission has found that its performance requirements constitute a reasonable benchmark for the availability of “advanced telecommunications capability,” based on an examination of overall Internet traffic patterns, the requirements of streaming standard-definition video in real time, and the analysis underlying the National Broadband Plan’s universalization target.²⁶ If the Commission now excludes certain high-cost areas from CAF funding because of the presence of unsubsidized providers offering service that does not meet these requirements, it will be shortchanging consumers in those areas by depriving them of

²³ See *id.* at ¶ 118.

²⁴ *Id.*

²⁵ See *id.* at ¶ 51.

²⁶ See *id.* at ¶ 93 (citing the 2010 and 2011 Broadband Progress Reports and National Broadband Plan). See also National Broadband Plan at 135 (noting that a 4 Mbps download speed will support a set of applications that include sending and receiving e-mail, downloading Web Pages, photo and video, and using simple video conferencing”).

service capable of supporting the applications that the FCC has already determined they need to operate their businesses, teleconference with doctors, and take advantage of distance-learning.

B. The Commission Should Deny WISPA’s Petition.

The Commission should reject WISPA’s proposal to not extend CAF support to any “area subject to unsubsidized competition,” as defined by WISPA.²⁷ WISPA’s members are largely fixed wireless broadband providers who, they claim, choose not to provide voice services so they can avoid regulation under Title II.²⁸ Therefore, WISPA is seeking a regime whereby fixed wireless broadband providers would be able to block carriers from receiving CAF support in areas that those fixed wireless providers serve as long as a terrestrial fixed voice provider also serves the area without a subsidy.²⁹

Delinking the provision of voice and broadband service in this way would be entirely inconsistent with the reform framework the Commission has adopted. Rather than declaring that both voice and broadband are supported services, the Commission has chosen to retain voice as the lone supported service, and require carriers to provide broadband service as a condition of receiving support for the provision of voice service.³⁰ Moreover, the Commission left in place existing state Carrier of Last Resort (“COLR”) obligations and thus far has made no changes to

²⁷ See WISPA Petition at 5 (proposing to define “areas subject to unsubsidized competition” as “a census block in which there is at least one facilities-based provider of terrestrial voice and at least one facilities-based provider of terrestrial fixed broadband service that do not receive high cost support. For purposes of this definition, these voice and broadband services need not be provided by the same entity”).

²⁸ See *id.* at 7 (noting that “in some rural and hard-to-serve markets, WISPs find the cost of incurring additional Title II regulations would exceed the benefits of deploying and providing voice services to customers”).

²⁹ See *id.* at 5 (explaining proposed definition of “area subject to unsubsidized competition”).

³⁰ See *Report and Order* at ¶¶ 65, 75.

existing federal eligible telecommunications carrier (“ETC”) obligations.³¹ To permit providers that offer an unsupported broadband service to block support for providers that remain subject to voice COLR and ETC obligations would result in a massive mismatch between obligations and support, undermine the entire framework the Commission has constructed, and potentially lead to widespread disengagement by local exchange carriers (“LECs”) in the high-cost areas they currently serve.

Ironically, this result also could deter the future entry of new broadband competitors like WISPs in high-cost areas, as these competitors often rely on wireline LECs for second- and middle-mile access. Indeed, even WISPA has repeatedly noted the need for backhaul, which is often supplied by the incumbent LEC in the area, in these proceedings.³² By creating a regime in which the presence of a fixed wireless broadband provider in an area can block an ILEC from receiving high-cost support, the Commission would be undermining future deployment and use of middle-mile facilities on which many non-LEC broadband providers depend.

Finally, WISPA’s proposal may exacerbate implementation concerns. The National Broadband Map, on which the Commission may choose to rely to determine the presence of an unsubsidized competitor, overstates broadband coverage by fixed wireless service. As the Independent Telephone & Telecommunications Alliance explained in its Petition for Reconsideration, the National Broadband Map shows that some fixed wireless providers overstated their service areas by claiming that they offer service to all locations within the radius

³¹ See *id.* at ¶¶ 75, 1089.

³² See, e.g., Comments of the Wireless Internet Service Providers Association, CC Docket Nos. 01-92 and 96-45, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, GN Docket No. 09-51, and WT Docket No. 10-208, at 5-6 (January 18, 2012); Letter from Stephen E. Coran, counsel for WISPA, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92 and 96-45, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, and GN Docket No. 09-51, at 2 (June 6, 2011).

of their towers despite the fact that they are using line-of-sight technologies that produce service areas that are variegated like the service areas submitted for the National Broadband Map by other providers using the same technologies.³³ If the National Broadband Map is any indication, a Commission decision to permit the alleged presence of a fixed wireless provider's broadband service (without accompanying voice service) to block a carrier from receiving support in a given area will result in more unserved areas being depicted as "served"—and more consumers stranded without access to any adequate broadband service.

C. The Commission Should Deny ViaSat's Petition.

The Commission should reject ViaSat's request to reconsider its decision that satellite broadband providers cannot qualify as "unsubsidized competitors" in a given geographic area. The Commission already has considered this issue and has expressly limited the definition of "unsubsidized competitor" to exclude satellite broadband providers. As the Commission noted in the *Report and Order*, "the record suggests that satellite providers are generally unable to provide affordable voice and broadband service that meets our minimum capacity requirements without the aid of a subsidy."³⁴ Moreover, "consumer satellite services have limited capacity allowances today, and future satellite services appear unlikely to offer capacity reasonably comparable to urban offerings in the absence of universal service support."³⁵

³³ Petition for Reconsideration of the Independent Telephone & Telecommunications Alliance, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208, at 4 (December 29, 2011).

³⁴ *Report and Order* at ¶ 104.

³⁵ *Id.* (citing, *inter alia*, Letter from Lisa Scalpone, ViaSat, Inc., Jeffrey H. Blum, Dish Network L.L.C., and Dean Manson, Echostar Technologies L.L.C., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208, at 8 (October 18, 2011)).

The Commission correctly has recognized that permitting satellite broadband providers to qualify as “unsubsidized competitors” would potentially deprive many high-cost areas of the CAF funding necessary to support a single provider of reasonably comparable broadband and voice service. These areas potentially would be left only with satellite voice and broadband service. As the Commission notes, the record does not establish that satellite voice services, which typically involve higher latencies than terrestrial services, are a satisfactory substitute for terrestrial voice telephony.³⁶ Satellite broadband service continues to be far more expensive than available wireline offerings, and far less robust.³⁷ In addition, as ViaSat acknowledges, satellite broadband offerings currently include usage limits that are not “reasonably comparable” to usage limits in urban areas.³⁸ HughesNet’s most robust offering includes a 450 MB monthly download limit, and ViaSat’s WildBlue’s top offering includes a 17 GB monthly download limit, while usage limits for wireline services—if they have limits at all—typically exceed 150 or 250 GBs.³⁹

³⁶ See *Report and Order* at ¶ 540, fn.904 (noting that a carrier may receive a waiver of the new high-cost rules where it establishes that the reduction in existing high-cost support would put consumers at risk of losing voice services, and the presence of satellite voice service will not preclude a carrier from receiving a waiver).

³⁷ For example, HughesNet markets 2 Mbps download, 300 Kbps upload service—its fastest offering— and a 450 MB download allowance for \$109.99 per month (\$99.99 for the first three months) with a two-year service commitment. See HughesNet Plans & Pricing, available at <http://www.hughesnet.com/residential-satellite-internet/plans.cfm>. In contrast, Windstream markets 3 Mbps service—not even its most robust offering—for \$29.99 per month as a stand-alone price for its telephone customers, and \$34.99 per month as the lowest bundle price, with no download allowance or other, inflexible usage cap. The most robust offering by ViaSat’s WildBlue is 1.5 Mbps download, 256 Kbps upload, with a 17,000 MB download allowance and 5,000 MB upload allowance for \$79.95 per month with a two-year contract. See WildBlue Plans and Packages, available at <http://www.wirelessatelliteinternet.org/wild-blue-packages>.

³⁸ See ViaSat Petition at 15-16 (urging Commission to reconsider its decision to require usage limits in rural areas to be comparable to those in urban areas).

³⁹ See *Report and Order* at ¶ 99 (noting current usage limits and stating that a 250 GB monthly data limit for CAF-funded fixed broadband offerings would likely be adequate at this time because 250 GB appears to be reasonably comparable to major current urban broadband offerings).

(ViaSat requests reconsideration of the requirement that usage limits in rural areas be reasonably comparable to those in urban areas, and Windstream also opposes this request on the grounds that the high-cost program should not subsidize service with restrictions that can prevent customers from utilizing applications the Commission has deemed necessary.) Finally, the fact that a satellite broadband provider may serve a certain area does not mean that it has the capability to serve *all* customers in that area.⁴⁰ Providers are technologically constrained by the total capacity of the satellites in operation and geographic conditions at individual locations; new satellites are very expensive to launch; and the number of subscribers that a satellite provider can support potentially would decrease as demand per user grows (particularly if strict usage limits are not in place).⁴¹

While satellite may be suited to provide broadband to a small number of the hardest-to-reach households, it remains inadequate as a large-scale solution for broadband access in high-cost areas. If the Commission hopes to achieve its goal that all consumers have access to robust voice and broadband service, it must not permit the presence of a satellite broadband provider to exclude high-cost areas from CAF funding.

CONCLUSION

For the foregoing reasons, the Commission should deny Verizon's Petition requesting adoption of sweeping technical feasibility and industry standards exceptions to the new call signaling rules, and should reject Petitions from NTCH, WISPA, and ViaSat that seek to expand the circumstances in which CAF support for areas currently served by price cap companies would be precluded due to the alleged presence of unsubsidized competition.

⁴⁰ *See, e.g.*, Omnibus Broadband Initiative, The Broadband Availability Gap (OBI Technical Paper No. 1), at 89-90 (explaining capabilities and technical limitations of satellite broadband).

⁴¹ *See id.* at 91-92.

Respectfully submitted,

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Dated: February 9, 2012

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February, 2012, a copy of the foregoing Opposition to Petitions for Reconsideration was served by first class mail on the following parties:

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