

Assembly Bill No. 1299

CHAPTER 507

An act to amend Section 281 of the Public Utilities Code, relating to telecommunications.

[Approved by Governor October 3, 2013. Filed with
Secretary of State October 3, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1299, Bradford. Telecommunications: universal service programs: California Advanced Services Fund.

Existing law, the federal Telecommunications Act of 1996, establishes a program of cooperative federalism for the regulation of telecommunications to attain the goal of local competition, while implementing specific, predictable, and sufficient federal and state mechanisms to preserve and advance universal service, consistent with certain universal service principles. The universal service principles include the principle that consumers in all regions of the nation, including low-income consumers and those in rural, insular, and high-cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas. The act authorizes each state to adopt regulations to provide for additional definitions and standards to preserve and advance universal service within the state, only to the extent that they adopt additional specific, predictable, and sufficient mechanisms that do not rely on or burden federal universal service support mechanisms.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations, as defined. Existing law establishes the California Advanced Services Fund (CASF) in the State Treasury and requires that moneys in those funds are the proceeds of rates and are held in trust for the benefit of ratepayers and to compensate telephone corporations for their costs of providing universal service and may be expended only to accomplish specified telecommunications universal service programs, upon appropriation in the annual Budget Act or upon supplemental appropriation. Existing law requires the commission to develop, implement, and administer the CASF to encourage deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation, and substantial social benefits of advanced information and communications technologies, as provided in specified decisions of the commission and in the CASF statute. Existing law establishes 3 accounts, the Broadband Infrastructure Grant Account,

the Rural and Urban Regional Broadband Consortia Grant Account, and the Broadband Infrastructure Revolving Loan Account within the CASF.

Existing law prohibits the commission from collecting, before January 1, 2011, more than \$100,000,000, for deposit into the CASF through a specified surcharge authorized by the commission. Existing law authorizes the commission to collect an additional sum not to exceed \$125,000,000, after January 1, 2011, for a sum total of moneys collected through the surcharge not to exceed \$225,000,000. Existing law authorizes the commission to collect the additional sum through the 2015 calendar year. Existing law requires that of the moneys collected after January 1, 2011, \$100,000,000 is to be deposited into the Broadband Infrastructure Grant Account, \$10,000,000 is to be deposited into the Rural and Urban Regional Broadband Consortia Grant Account and used for specified purposes, and \$15,000,000 is to be deposited into the Broadband Infrastructure Revolving Loan Account and used for specified purposes.

This bill would establish the Broadband Public Housing Account within the CASF and would authorize the commission to transfer \$20,000,000 from the Broadband Infrastructure Grant Account and \$5,000,000 from the Broadband Revolving Loan Account to the Broadband Public Housing Account if the commission is otherwise authorized to collect funds for purposes of the CASF in excess of the \$225,000,000 the commission is authorized to collect through December 31, 2015, under existing law. The bill would authorize not more than \$20,000,000 from the Broadband Public Housing Account be available for grants and loans to a publicly supported community, as defined, to finance a project to connect a broadband network to that publicly supported community. The bill would authorize not more than \$5,000,000 from the Broadband Public Housing Account be available for grants and loans to a publicly supported community to support programs designed to increase adoption rates for broadband services for residents of that publicly supported community. The bill would require the commission, in reviewing a project application to consider the availability of other funding sources for that project, any financial contribution from the broadband service provider to the project, the availability of any other public or private broadband adoption or deployment program, including tax credits and other incentives, and whether the applicant has sought funding from, or participated in, any reasonably available program. The bill would authorize the commission to require an applicant to provide match funding, and prohibit the commission from denying funding for a project solely because the applicant is receiving funding from another source.

This bill would incorporate additional changes in Section 281 of the Public Utilities Code proposed in SB 740, that would become operative only if SB 740 and this bill are both chaptered and become effective on or before January 1, 2014, and this bill is chaptered last.

The provisions of the bill would become operative only if this bill and SB 740 of the 2013–14 Regular Session are both enacted and become effective on or before January 1, 2014.

The people of the State of California do enact as follows:

SECTION 1. Section 281 of the Public Utilities Code is amended to read:

281. (a) The commission shall develop, implement, and administer the California Advanced Services Fund to encourage deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation, and the substantial social benefits of advanced information and communications technologies, as provided in Decision 07-12-054 and Decision 09-07-020 and this section. The commission shall establish the following accounts within the fund:

- (1) The Broadband Infrastructure Grant Account.
- (2) The Rural and Urban Regional Broadband Consortia Grant Account.
- (3) The Broadband Infrastructure Revolving Loan Account.
- (4) The Broadband Public Housing Account.

(b) (1) All moneys collected by the surcharge authorized by the commission pursuant to Decision 07-12-054, whether collected before or after January 1, 2009, shall be transmitted to the commission pursuant to a schedule established by the commission. The commission shall transfer the moneys received to the Controller for deposit in the California Advanced Services Fund. Moneys collected on and after January 1, 2011, shall be deposited in the following amounts in the following accounts:

(A) One hundred million dollars (\$100,000,000) into the Broadband Infrastructure Grant Account.

(B) Ten million dollars (\$10,000,000) into the Rural and Urban Regional Broadband Consortia Grant Account.

(C) Fifteen million dollars (\$15,000,000) into the Broadband Infrastructure Revolving Loan Account.

(2) All interest earned on moneys in the fund shall be deposited in the fund.

(3) The commission shall not collect moneys, by imposing the surcharge described in paragraph (1) for deposit in the fund, in an amount that exceeds one hundred million dollars (\$100,000,000) before January 1, 2011. On and after January 1, 2011, the commission may collect an additional sum not to exceed one hundred twenty-five million dollars (\$125,000,000), for a sum total of moneys collected by imposing the surcharge described in paragraph (1) not to exceed two hundred twenty-five million dollars (\$225,000,000). The commission may collect the additional sum beginning with the calendar year starting on January 1, 2011, and continuing through the 2015 calendar year, in an amount not to exceed twenty-five million dollars (\$25,000,000) per year, unless the commission determines that collecting a higher amount in any year will not result in an increase in the total amount of all surcharges collected from telephone customers that year.

(c) (1) All moneys in the California Advanced Services Fund shall be available, upon appropriation by the Legislature, to the commission for the program administered by the commission pursuant to this section, including

the costs incurred by the commission in developing, implementing, and administering the program and the fund.

(2) Notwithstanding any other law and for the sole purpose of providing matching funds pursuant to the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5), any entity eligible for funding pursuant to that act shall be eligible to apply to participate in the program administered by the commission pursuant to this section, if that entity otherwise satisfies the eligibility requirements under that program. Nothing in this section shall impede the ability of an incumbent local exchange carrier, as defined by subsection (h) of Section 251 of Title 47 of the United States Code, that is regulated under a rate of return regulatory structure, to recover, in rate base, California infrastructure investment not provided through federal or state grant funds for facilities that provide broadband service and California intrastate voice service.

(d) Moneys in the Rural and Urban Regional Broadband Consortia Grant Account shall be available for grants to eligible consortia to fund the cost of broadband deployment activities other than the capital cost of facilities, as specified by the commission. An eligible consortium may include, as specified by the commission, representatives of organizations, including, but not limited to, local and regional government, public safety, elementary and secondary education, health care, libraries, postsecondary education, community-based organizations, tourism, parks and recreation, agricultural, and business, and is not required to have as its lead fiscal agent an entity with a certificate of public convenience and necessity.

(e) Moneys in the Broadband Infrastructure Revolving Loan Account shall be available to finance capital costs of broadband facilities not funded by a grant from the Broadband Infrastructure Grant Account. The commission shall periodically set interest rates on the loans based on surveys of existing financial markets.

(f) (1) For purposes of this subdivision, the following terms have the following meanings:

(A) “Publicly subsidized” means either that the housing development receives financial assistance from the United States Department of Housing and Urban Development pursuant to an annual contribution contract or is financed with low-income housing tax credits, tax-exempt mortgage revenue bonds, general obligation bonds, or local, state, or federal loans or grants and the rents of the occupants, who are lower income households, do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance.

(B) “Publicly supported community” means a publicly subsidized multifamily housing development that is wholly owned by either of the following:

(i) A public housing agency that has been chartered by the state, or by any city or county in the state, and has been determined an eligible public housing agency by the United States Department of Housing and Urban Development.

(ii) An incorporated nonprofit organization as described in Section 501 (c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)) that is exempt from taxation under Section 501 (a) of that code (16 U.S.C. Sec. 501(a)), and that has received public funding to subsidize the construction or maintenance of housing occupied by residents whose annual income qualifies as “low-” or “very low” income according to federal poverty guidelines.

(2) Notwithstanding subdivision (b) of Section 270, moneys in the Broadband Public Housing Account shall be available for the commission to award grants and loans pursuant to this subdivision to an eligible publicly supported community if that entity otherwise meets eligibility requirements and complies with program requirements established by the commission.

(3) Not more than twenty million dollars (\$20,000,000) shall be available for grants and loans to a publicly supported community to finance a project to connect a broadband network to that publicly supported community. A publicly supported community may be an eligible applicant only if the publicly supported community can verify to the commission that the publicly supported community has not denied a right of access to any broadband provider that is willing to connect a broadband network to the facility for which the grant or loan is sought.

(4) (A) Not more than five million dollars (\$5,000,000) shall be available for grants and loans to a publicly supported community to support programs designed to increase adoption rates for broadband services for residents of that publicly supported community. A publicly supported community may be eligible for funding for a broadband adoption program only if the residential units in the facility to be served have access to broadband services or will have access to broadband services at the time the funding for adoption is implemented.

(B) A publicly supported community may contract with other nonprofit or public agencies to assist in implementation of a broadband adoption program.

(5) To the extent feasible, the commission shall approve projects for funding from the Broadband Public Housing Account in a manner that reflects the statewide distribution of publicly supported communities.

(6) In reviewing a project application under this subdivision, the commission shall consider the availability of other funding sources for that project, any financial contribution from the broadband service provider to the project, the availability of any other public or private broadband adoption or deployment program, including tax credits and other incentives, and whether the applicant has sought funding from, or participated in, any reasonably available program. The commission may require an applicant to provide match funding, and shall not deny funding for a project solely because the applicant is receiving funding from another source.

(7) (A) To provide funding for the purposes of this subdivision, the commission shall transfer to the Broadband Public Housing Account twenty million dollars (\$20,000,000) from the Broadband Infrastructure Grant Account and five million dollars (\$5,000,000) from the Broadband Revolving Loan Account. Any moneys in the Broadband Public Housing Account that

have not been awarded pursuant to this subdivision by December 31, 2016, shall be transferred back to the Broadband Infrastructure Grant Account and Broadband Infrastructure Revolving Loan Account in proportion to the amount transferred from the respective accounts.

(B) The commission shall transfer funds pursuant to subparagraph (A) only if the commission is otherwise authorized to collect funds for purposes of this section in excess of the total amount authorized pursuant to paragraph (3) of subdivision (b).

(g) (1) The commission shall conduct an interim and final financial audit and an interim and final performance audit of the implementation and effectiveness of the California Advanced Services Fund to ensure that funds have been expended in accordance with the approved terms of the grant awards and loan agreements and this section. The commission shall report its interim findings to the Legislature by April 1, 2011. The commission shall report its final findings to the Legislature by April 1, 2017. The reports shall also include an update to the maps in the final report of the California Broadband Task Force and data on the types and numbers of jobs created as a result of the program administered by the commission pursuant to this section.

(2) (A) The requirement for submitting a report imposed under paragraph (1) is inoperative on January 1, 2018, pursuant to Section 10231.5 of the Government Code.

(B) A report to be submitted pursuant to paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

(h) (1) Beginning on January 1, 2012, and annually thereafter, the commission shall provide a report to the Legislature that includes all of the following information:

(A) The amount of funds expended from the California Advanced Services Fund in the prior year.

(B) The recipients of funds expended from the California Advanced Services Fund in the prior year.

(C) The geographic regions of the state affected by funds expended from the California Advanced Services Fund in the prior year.

(D) The expected benefits to be derived from the funds expended from the California Advanced Services Fund in the prior year.

(E) Actual broadband adoption levels from the funds expended from the California Advanced Services Fund in the prior year.

(F) The amount of funds expended from the California Advanced Services Fund used to match federal funds.

(G) An update on the expenditures from California Advanced Services Fund and broadband adoption levels, and an accounting of remaining unserved and underserved areas of the state.

(2) (A) The requirement for submitting a report imposed under paragraph (1) is inoperative on January 1, 2016, pursuant to Section 10231.5 of the Government Code.

(B) A report to be submitted pursuant to paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 1.5. Section 281 of the Public Utilities Code is amended to read:

281. (a) The commission shall develop, implement, and administer the California Advanced Services Fund program to encourage deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation, and the substantial social benefits of advanced information and communications technologies, consistent with this section.

(b) (1) The goal of the program is, no later than December 31, 2015, to approve funding for infrastructure projects that will provide broadband access to no less than 98 percent of California households.

(2) In approving infrastructure projects, the commission shall give priority to projects that provide last-mile broadband access to households that are unserved by an existing facilities-based broadband provider. The commission shall provide each applicant, and any party challenging an application, the opportunity to demonstrate actual levels of broadband service in the project area, which the commission shall consider in reviewing the application.

(c) The commission shall establish the following accounts within the fund:

- (1) The Broadband Infrastructure Grant Account.
- (2) The Rural and Urban Regional Broadband Consortia Grant Account.
- (3) The Broadband Infrastructure Revolving Loan Account.
- (4) The Broadband Public Housing Account.

(d) (1) All moneys collected by the surcharge authorized by the commission pursuant to Decision 07-12-054 shall be transmitted to the commission pursuant to a schedule established by the commission. The commission shall transfer the moneys received to the Controller for deposit in the California Advanced Services Fund. Moneys collected on and after January 1, 2011, shall be deposited in the following amounts in the following accounts:

(A) One hundred ninety million dollars (\$190,000,000) into the Broadband Infrastructure Grant Account.

(B) Ten million dollars (\$10,000,000) into the Rural and Urban Regional Broadband Consortia Grant Account.

(C) Fifteen million dollars (\$15,000,000) into the Broadband Infrastructure Revolving Loan Account.

(2) All interest earned on moneys in the fund shall be deposited in the fund.

(3) The commission shall not collect moneys, by imposing the surcharge described in paragraph (1) for deposit in the fund, in an amount that exceeds one hundred million dollars (\$100,000,000) before January 1, 2011. On and after January 1, 2011, the commission may collect an additional sum not to exceed two hundred fifteen million dollars (\$215,000,000), for a sum total of moneys collected by imposing the surcharge described in paragraph (1) not to exceed three hundred fifteen million dollars (\$315,000,000). The commission may collect the additional sum beginning with the calendar year starting on January 1, 2011, and continuing through the 2020 calendar year, in an amount not to exceed twenty-five million dollars (\$25,000,000)

per year, unless the commission determines that collecting a higher amount in any year will not result in an increase in the total amount of all surcharges collected from telephone customers that year.

(e) (1) All moneys in the California Advanced Services Fund shall be available, upon appropriation by the Legislature, to the commission for the program administered by the commission pursuant to this section, including the costs incurred by the commission in developing, implementing, and administering the program and the fund.

(2) Notwithstanding any other law and for the sole purpose of providing matching funds pursuant to the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5), any entity eligible for funding pursuant to that act shall be eligible to apply to participate in the program administered by the commission pursuant to this section, if that entity otherwise satisfies the eligibility requirements under that program. Nothing in this section shall impede the ability of an incumbent local exchange carrier, as defined by subsection (h) of Section 251 of Title 47 of the United States Code, that is regulated under a rate of return regulatory structure, to recover, in rate base, California infrastructure investment not provided through federal or state grant funds for facilities that provide broadband service and California intrastate voice service.

(3) Notwithstanding subdivision (b) of Section 270, an entity that is not a telephone corporation shall be eligible to apply to participate in the program administered by the commission pursuant to this section to provide access to broadband to an unserved or underserved household, as defined in commission Decision 12-02-015, if the entity otherwise meets the eligibility requirements and complies with program requirements established by the commission. These requirements shall include all of the following:

(A) That projects under this paragraph provide last-mile broadband access to households that are unserved by an existing facilities-based broadband provider and only receive funding to provide broadband access to households that are unserved or underserved, as defined in commission Decision 12-02-015.

(B) That funding for a project providing broadband access to an underserved household shall not be approved until after any existing facilities-based provider has an opportunity to demonstrate to the commission that it will, within a reasonable timeframe, upgrade existing service. An existing facilities-based provider may, but is not required to, apply for funding under this section to make that upgrade.

(C) That the commission shall provide each applicant, and any party challenging an application, the opportunity to demonstrate actual levels of broadband service in the project area, which the commission shall consider in reviewing the application.

(D) That a local governmental agency may be eligible for an infrastructure grant only if the infrastructure project is for an unserved household or business, the commission has conducted an open application process, and no other eligible entity applied.

(E) That the commission shall establish a service list of interested parties to be notified of California Advanced Services Fund applications.

(f) Moneys in the Rural and Urban Regional Broadband Consortia Grant Account shall be available for grants to eligible consortia to fund the cost of broadband deployment activities other than the capital cost of facilities, as specified by the commission. An eligible consortium may include, as specified by the commission, representatives of organizations, including, but not limited to, local and regional government, public safety, elementary and secondary education, health care, libraries, postsecondary education, community-based organizations, tourism, parks and recreation, agricultural, and business, and is not required to have as its lead fiscal agent an entity with a certificate of public convenience and necessity.

(g) Moneys in the Broadband Infrastructure Revolving Loan Account shall be available to finance capital costs of broadband facilities not funded by a grant from the Broadband Infrastructure Grant Account. The commission shall periodically set interest rates on the loans based on surveys of existing financial markets.

(h) (1) For purposes of this subdivision, the following terms have the following meanings:

(A) “Publicly subsidized” means either that the housing development receives financial assistance from the United States Department of Housing and Urban Development pursuant to an annual contribution contract or is financed with low-income housing tax credits, tax-exempt mortgage revenue bonds, general obligation bonds, or local, state, or federal loans or grants and the rents of the occupants, who are lower income households, do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance.

(B) “Publicly supported community” means a publicly subsidized multifamily housing development that is wholly owned by either of the following:

(i) A public housing agency that has been chartered by the state, or by any city or county in the state, and has been determined to be an eligible public housing agency by the United States Department of Housing and Urban Development.

(ii) An incorporated nonprofit organization as described in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)) that is exempt from taxation under Section 501(a) of that code (16 U.S.C. Sec. 501(a)), and that has received public funding to subsidize the construction or maintenance of housing occupied by residents whose annual income qualifies as “low-” or “very low” income according to federal poverty guidelines.

(2) Notwithstanding subdivision (b) of Section 270, moneys in the Broadband Public Housing Account shall be available for the commission to award grants and loans pursuant to this subdivision to an eligible publicly supported community if that entity otherwise meets eligibility requirements and complies with program requirements established by the commission.

(3) Not more than twenty million dollars (\$20,000,000) shall be available for grants and loans to a publicly supported community to finance a project to connect a broadband network to that publicly supported community. A publicly supported community may be an eligible applicant only if the publicly supported community can verify to the commission that the publicly supported community has not denied a right of access to any broadband provider that is willing to connect a broadband network to the facility for which the grant or loan is sought.

(4) (A) Not more than five million dollars (\$5,000,000) shall be available for grants and loans to a publicly supported community to support programs designed to increase adoption rates for broadband services for residents of that publicly supported community. A publicly supported community may be eligible for funding for a broadband adoption program only if the residential units in the facility to be served have access to broadband services or will have access to broadband services at the time the funding for adoption is implemented.

(B) A publicly supported community may contract with other nonprofit or public agencies to assist in implementation of a broadband adoption program.

(5) To the extent feasible, the commission shall approve projects for funding from the Broadband Public Housing Account in a manner that reflects the statewide distribution of publicly supported communities.

(6) In reviewing a project application under this subdivision, the commission shall consider the availability of other funding sources for that project, any financial contribution from the broadband service provider to the project, the availability of any other public or private broadband adoption or deployment program, including tax credits and other incentives, and whether the applicant has sought funding from, or participated in, any reasonably available program. The commission may require an applicant to provide match funding, and shall not deny funding for a project solely because the applicant is receiving funding from another source.

(7) (A) To provide funding for the purposes of this subdivision, the commission shall transfer to the Broadband Public Housing Account twenty million dollars (\$20,000,000) from the Broadband Infrastructure Grant Account and five million dollars (\$5,000,000) from the Broadband Revolving Loan Account. Any moneys in the Broadband Public Housing Account that have not been awarded pursuant to this subdivision by December 31, 2016, shall be transferred back to the Broadband Infrastructure Grant Account and Broadband Infrastructure Revolving Loan Account in proportion to the amount transferred from the respective accounts.

(B) The commission shall transfer funds pursuant to subparagraph (A) only if the commission is otherwise authorized to collect funds for purposes of this section in excess of the total amount authorized pursuant to paragraph (3) of subdivision (d).

(i) (1) The commission shall conduct two interim financial audits and a final financial audit and two interim performance audits and a final performance audit of the implementation and effectiveness of the California

Advanced Services Fund to ensure that funds have been expended in accordance with the approved terms of the grant awards and loan agreements and this section. The commission shall report its interim findings to the Legislature by April 1, 2011, and April 1, 2017. The commission shall report its final findings to the Legislature by April 1, 2021. The reports shall also include an update to the maps in the final report of the California Broadband Task Force and data on the types and numbers of jobs created as a result of the program administered by the commission pursuant to this section.

(2) (A) The requirement for submitting a report imposed under paragraph (1) is inoperative on January 1, 2022, pursuant to Section 10231.5 of the Government Code.

(B) A report to be submitted pursuant to paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

(j) (1) Beginning on January 1, 2012, and annually thereafter, the commission shall provide a report to the Legislature that includes all of the following information:

(A) The amount of funds expended from the California Advanced Services Fund in the prior year.

(B) The recipients of funds expended from the California Advanced Services Fund in the prior year.

(C) The geographic regions of the state affected by funds expended from the California Advanced Services Fund in the prior year.

(D) The expected benefits to be derived from the funds expended from the California Advanced Services Fund in the prior year.

(E) Actual broadband adoption levels from the funds expended from the California Advanced Services Fund in the prior year.

(F) The amount of funds expended from the California Advanced Services Fund used to match federal funds.

(G) An update on the expenditures from California Advanced Services Fund and broadband adoption levels, and an accounting of remaining unserved and underserved households and areas of the state.

(H) The status of the California Advanced Services Fund balance and the projected amount to be collected in each year through 2020 to fund approved projects.

(2) (A) The requirement for submitting a report imposed under paragraph (1) is inoperative on January 1, 2021, pursuant to Section 10231.5 of the Government Code.

(B) A report to be submitted pursuant to paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 281 of the Public Utilities Code proposed by this bill and Senate Bill 740. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2014, (2) each bill amends Section 281 of the Public Utilities Code, and (3) this bill is enacted after Senate Bill 740, in which case Section 281 of the Public Utilities Code, as amended by Senate Bill 740, shall remain operative only until the operative date of this bill, at which

time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

SEC. 3. This bill shall become operative only if this bill and Senate Bill 740 are both enacted and become effective on or before January 1, 2014.

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