Real Possibilities

Testimony of Coralette M. Hannon, Senior Legislative Representative

AARP National Financial Security & Consumer Affairs Team

Opposing RAISED BILL NO. 6401, AN ACT CONCERNING VIDEO AND CABLE PROVIDERS

Introduction

AARP appreciates the opportunity to submit testimony today on *An Act Concerning Video and Cable Providers*. AARP represents nearly 600,000 members in Connecticut. The reliability and affordability of the state's telecommunications infrastructure are essential to the elderly, whether they live in urban Bridgeport neighborhoods or in the hilly towns of Litchfield County. As telecommunications networks migrate to the use of technologies based on Internet protocol (IP), consumers continue to depend on reliable service and to welcome regulatory oversight of carriers' practices. Bill No. 6401 would unnecessarily eliminate important consumer protection relating to an increasingly popular telecommunications service.

Bill No. 6401 proposes to eliminate oversight of VoIP in Connecticut.

Bill No. 6401 would eliminate state regulatory oversight of VoIP precisely at a time when consumer demand for VoIP is increasing. Although the "Statement of Purpose" indicates that the legislative intent is to *"clarify"* the state's authority, the bill would have the effect of *eliminating* the state's authority over VoIP.

Section 1(a) of the proposed legislation sets forth a definition of interconnected Voice over Internet protocol that is virtually identical to that set forth by the Federal Communications Commission ("FCC"). (The proposed definition does not include the third element in the FCC's definition.) The FCC rules define "interconnected VoIP service" as "a service that: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network." (47 C.F.R. § 9.3).

Section 1(b) would prohibit regulation of "the entry, rates, terms, or conditions of interconnected VoIP."

Section 1(c) states that the bill would not "affect the authority of the Attorney General to apply and enforce the Connecticut Unfair Trade Practices Act" or other general consumer protection laws.

Section 1(d) states that the state's authority to assess E-9-1-1 fees, telephone relay service fees or lifeline service fees would not be affected.

Section 1(e) retains interconnection and switched access obligations for VoIP providers.

Bill No. 6401 would harm AARP's members and, more generally, would harm Connecticut's consumers.

Nationwide, approximately 90% of people who are aged 65 or older continue to subscribe to wireline service.[1] There are about 517,000 people over age 65 in Connecticut,[2] and so AARP estimates that approximately 465,000 elderly citizens in Connecticut rely on a wireline connection to the telecommunications network. Across all age groups, approximately 80 percent of adults in Connecticut continue to rely on a wireline connection to the network.[3] VoIP is an increasingly prevalent way for consumers to obtain a wireline connection to the telecommunications network.

Bill No. 6401 concerns "interconnected VoIP service." VoIP service is gaining in popularity - cable companies have successfully marketed their "triple play" offerings throughout the country, including in Connecticut. Indeed, the most popular wireline (landline) alternative to AT&T's traditional wireline (landline) service is the voice service that cable companies offer, most frequently as part of a "triple play" bundle of services that include voice, data (i.e., broadband access to the Internet), and video. In some instances, such as through cross-marketing agreements with cable companies, such as those recently announced by Verizon, consumers subscribe to "quadruple play," which also includes wireless service.

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[1]Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics, Centers for Disease Control and Prevention, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey,* January – June 2012, rel. December 19, 2012, at 2.

[2]U.S. Census Bureau, State & County QuickFacts, available at: http://quickfacts.census.gov/qfd/states/09000.html (reviewed January 29, 2013). The U.S. Census Bureau reports that 14.4% of the Connecticut population is 65 or older. The Connecticut population in 2012 was estimated to be 3,590,347 persons.

[3] National Center for Health Statistics researchers estimate that, based on surveys between January and December 2011, 18.7% of adults in Connecticut lived in households that relied solely on wireless telephones in 2011, i.e., were "cord-cutters." Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics; Nadarajasundaram Ganesh, Ph.D., and Michael E. Davern, Ph.D., NORC at the University of Chicago; and Michel H. Boudreaux, M.S, State Health Access Data Assistance Center, University of Minnesota, *Wireless Substitution: State-Level Estimates From the National Health Interview Survey, 2010-2011,* National Health Statistics Reports, Number 61, October 12, 2012, at Table 1.

Very few customers purchase VoIP on a stand-alone basis – approximately 90 percent of VoIP is purchased as part of a bundle with broadband Internet access service.[4] This fact simply means that those consumers who rely on VoIP are not looking for an alternative to AT&T's basic local exchange service nor even to a small "bundle" of AT&T's basic local exchange service and a few extra features and services (such as call waiting, toll), but rather are looking for a more comprehensive bundle that gives them access to the Internet, the ability to make telephone calls, and television viewing.

A review of data for the last three years underscores the growing significance of VoIP to consumers in Connecticut. Since year-end 2008, the number of interconnected VoIP subscriptions in the United States grew 69% from over 21.7 million to 36.7 million in December 2011.[5] Over the same three-year time period, the interconnected VoIP share of total residential end-user switched access lines and interconnected VoIP subscriptions grew from 20% to almost 37% by year-end 2011.[6] (2011 is the most recent year for which the FCC has released data.)

It is likely that demand for VoIP-based service will continue to increase in the future. There is no need to relinquish oversight of this important service, and indeed eliminating oversight would harm today's and tomorrow's consumers.

VoIP is an increasingly important element of Connecticut's telecommunications infrastructure - VoIP subscribers deserve consumer protection.

AARP acknowledges the growing popularity of VoIP and precisely because of VoIP's contribution to Connecticut's telecommunications infrastructure, policy makers should understand fully the implications of Bill No. 6401 for consumers. Although AARP does not have data on how many of its members rely on VoIP, it is reasonable to assume that VoIP is also gaining traction among the elderly, particularly those that seek the triple play bundle.

Regardless of the reasons that customers subscribe to VoIP, they deserve (and indeed their safety depends on) network reliability and basic regulatory oversight. Bill 6401 would prematurely and unnecessarily remove that oversight.

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[4] 87% of all residential interconnected VoIP lines were provided as part of a bundle with broadband service. FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Local Telephone Competition: Status as of December 31, 2011, rel. January 2013 ("FCC Local Competition Report"), Table 10.

[5] FCC Local Competition Report, at Table 3.

[6] *Id.*, at Chart 3.

If industry has any lingering uncertainty about the state's authority to regulate VoIP, legislation should explicitly and unambiguously acknowledge that Connecticut now possesses the authority to regulate VoIP.

Industry raises the concern that regulatory uncertainty impedes investment in Connecticut. As this testimony explains in detail below, the FCC has not pre-empted state authority over "fixed" VoIP. In AARP's view, there is no uncertainty on this point. If nonetheless, industry is concerned about a lack of clarity, the solution is to "clarify" that states possess this authority. The solution is not to eliminate that authority. Despite the purported "uncertainty," cable companies have clearly found a profitable business strategy, which includes selling VoIP as one of three key elements of the triple-play packages they offer households.[7]

Simply because other states have eliminated their authority over VoIP does not mean that Bill No. 6401 is in the public interest.

Many other states have eliminated regulation of VoIP. In some instances, states relinquished their authority before VoIP had gained popularity and perhaps before these states had a chance to consider the implications of the legislation. In most instances, states eliminated their oversight before the development of extreme weather events that have underscored the vulnerability of new technologies to power outages (and the corresponding importance of network reliability). Most likely, in all instances, legislation was implemented as a result of aggressive industry lobbying *despite and indeed because of the fact that state public utility commissions (such as Massachusetts and New Hampshire) had asserted jurisdiction over VoIP.* Connecticut has a chance to chart a path that is better for consumers. There is simply no hurry to go down the path that other states have felt pressured by industry to pursue.

There is no evidence that the state's oversight is impeding industry's VoIP offerings.

As this testimony demonstrates, consumer demand for VoIP has been growing steadily. There is no evidence that oversight is hampering that growth. Cable companies are profitably offering

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[7] For example, The *Wall Street Journal* reported that during the fourth quarter of 2012: "Comcast booked a profit of $1.29 billion for the quarter, compared with $1.02 billion a year earlier. On a pro forma basis, assuming Comcast's acquisition of NBC Universal had occurred a year earlier, per-share earnings rose to 47 cents from 36 cents a year earlier" *Wall Street Journal,* "Cable Lifts Comcast," February 16, 2012. Throughout its footprint, Comcast added 336,000 high-speed Internet customers in the fourth quarter, which is 15% more than Comcast added in the previous year. Id.
http://online.wsj.com/article/SB10001424052970204792404577224844011375490.html

For the third quarter of 2012, Cablevision reported High-Speed Data and Voice customer additions of approximately 28,000 and 22,000, respectively. Cablevision also reported that its average monthly revenue per video customer was $154. 83, which was an increase of 2.1% compared with the prior year period. "Cablevision Systems Corporation Reports Third Quarter 2012 Results," November 6, 2012, page 1. Cablevision will report its earnings for the fourth quarter of 2012 on February 28, 2013. http://www.cablevision.com/investor/index.jsp

VoIP as part of their "triple play" (voice, Internet access, and video) marketing strategy. AARP welcomes new technology and welcomes increased consumer choice for telecommunications services. But, contrary to some rhetoric, the "either/or" is a false argument. Basic consumer protection can co-exist with new technology. Veiled threats of withholding innovation and investment in Connecticut should be ignored.

The alternative consumer protection measures relied upon by the proposed legislation are more time-consuming and burdensome for regulators and are not an adequate substitute for the consumer protection that PURA provides.

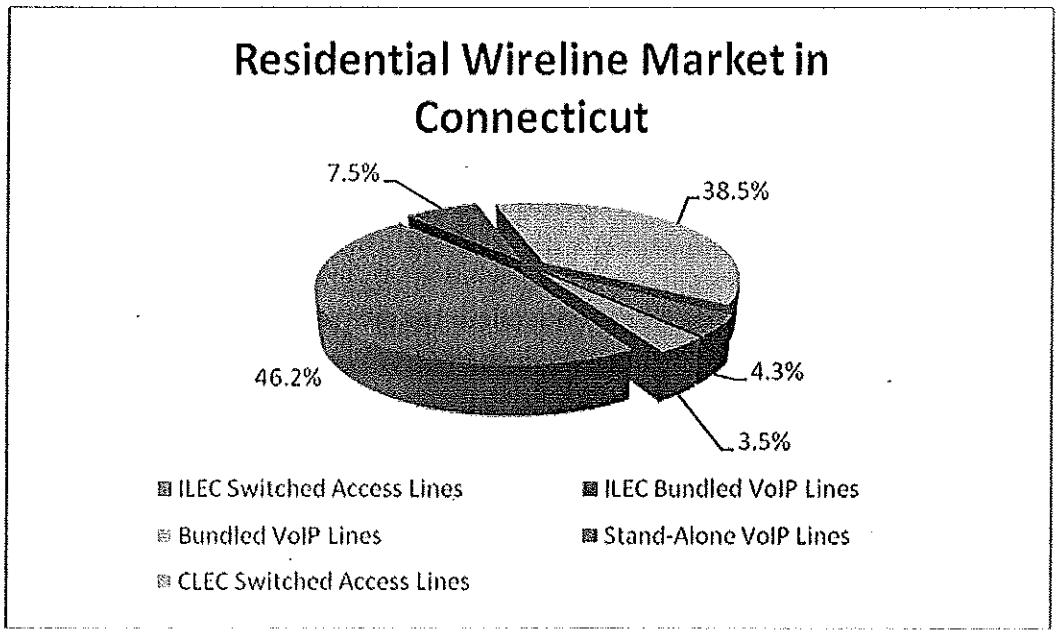
Bill No. 6401 relies on the existence of the Connecticut Unfair Trade Practices Act as sufficient consumer protection. AARP disagrees. PURA possesses the requisite administrative expertise to oversee the telecommunications industry. Relying on generic consumer protection laws is a poor substitute for addressing individual consumer complaints that may not rise to the level of significance that the Attorney General's Office would pursue.

Telecommunications markets in Connecticut are dominated by a cable-telco duopoly, which means that there is not any effective competition to protect consumers from unreasonable rates and service quality.

A "cable-telco" duopoly dominates telecommunications markets in Connecticut and across the country. In any given community in Connecticut, there are two major players – AT&T (in Greenwich, Verizon serves approximately 20,000 – 25,000 customers), and a cable company. Cablevision, Comcast, Cox, Charter, and Metrocast do not compete with each other, but instead serve their respective franchise areas and provide some competition to the incumbent telephone company. A duopoly does not provide effective competition. The following graphic illustrates the duopolistic nature of the residential local telephone market in Connecticut. Almost 54% of the lines are provided by the ILEC, 38.5% are VoIP lines bundled with Internet access service (i.e., cable modem), 4.3% are stand-alone VoIP lines, and just 3.5% of the total residential telephone lines in Connecticut are served by CLEC switched access lines.[8]

AARP recognizes that cable companies have been successfully wooing those AT&T customers that want triple-play offerings at prices of close to $100 per month (see Figure 1 below), but a duopoly does not protect even these consumers, let alone those seeking more affordable options. Moreover, the state Legislature should be wary of the friendly duopoly, like the Verizon/cable companies' recent cross-marketing agreements. This represents a trend toward cooperation not competition between ILECs and cable companies, which will benefit the companies but harm consumers.

[8] FCC Local Competition Report, at Table 10.



Because consumers cannot rely on market forces to yield reasonable terms and conditions of VoIP service, regulatory oversight continues to be essential. AARP acknowledges that VoIP rates are not regulated by PURA, but PURA does have the authority to regulate other aspects of VoIP services, for example, the entry (to require CLEC certificates), the conditions of service (e.g., resolve consumer complaints), prohibit cramming (unauthorized third-party billing), monitor service quality (network outages, reliability), and oversee consumer education.

Precisely because of changes in technology and the various options for connecting to Connecticut's telecommunications network, it is critically, important for consumers to be informed fully about the implications of new technology for public safety. VoIP will not work during a prolonged power outage, thus jeopardizing access to emergency services.

The FCC has not pre-empted state regulation of "fixed" VoIP.

The very fact that industry is actively seeking deregulation of VoIP in Connecticut and throughout the country is evidence that states *do* now possess the authority to regulate VoIP. While the Federal Communications Commission (FCC) has declared "nomadic" VoIP an interstate service (thus reducing states' ability to regulate such services), the states still may exercise their authority over other VoIP services, which the FCC has thus far declined to categorize for regulatory purposes. However, many states, under pressure from telephone and cable companies, have passed laws prohibiting state public utility commissions from exercising

that authority. As traditional telecommunications carriers move to services that are based on Internet Protocol (IP-based services), consumers are in danger of losing important regulatory safeguards, and, if Bill No. 6401 were enacted, PURA would lose its traditional tools of consumer protection.

What is VoIP?

VoIP services can be either "fixed" or "nomadic" services. "Nomadic" VoIP refers to services provided by companies such as Vonage that require users to provide their own broadband Internet access in order to use the service. With this application, the user's geographic location is not fixed, but instead, the user can connect a computer to any broadband connection; the only relevant "address" is the IP address. In contrast, "fixed" VoIP is offered on a location-specific basis, *e.g.*, at the customer's home. The cable companies' telephone service would fall into this category. Because fixed VoIP is "hard-wired" to the customer premises, and uses the facilities of the cable or telecommunications provider, one can more easily distinguish intrastate traffic from interstate traffic over fixed VoIP than over nomadic VoIP.

In addition, there are also services referred to as "one-way VoIP" service. Skype provides a SkypeIn and, separately, a SkypeOut service that allows users to receive calls from the public switched telephone network (PSTN) and terminate calls on the PSTN, respectively.[9] In April, 2012, the FCC sought comment on whether it should exercise authority over one-way VoIP services for the purpose of universal service fund contributions. The FCC stated: "Such offerings would include all services that provide users with the capability to originate calls to the PSTN *or* terminate calls from the PSTN, but in all other respects meet the definition of "interconnected VoIP."[10] The important distinction with one-way VoIP is that it allows calls to or from the PSTN, but not both. The FCC has not yet issued a decision in this proceeding.

VoIP Historical and Jurisdictional Context

Although the FCC has asserted jurisdiction over "nomadic" VoIP, state regulators continue to have jurisdiction over fixed VoIP.[11] As previously stated, the FCC has not yet addressed the jurisdictional classification of "fixed" (or "facilities-based") VoIP, but rather has only addressed explicitly the classification of "nomadic" (or "over-the-top") VoIP.[12] The FCC has not made the core determination of whether VoIP services are telecommunications services or information services – that issue is pending (and has been pending for many years) in the *IP-Enabled Services* proceeding.[13] In its *IP-Enabled Services NPRM*, the FCC also sought comment regarding

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[9] *In the Matter of Universal Service Contribution Methodology,* WC Docket No. 06-122; *A National Broadband Plan for Our Future,* GN Docket No. 09-51, *Further Notice of Proposed Rulemaking, rel. April 30, 2012,* at para. 62.

[10] *Id.*, at para. 58. The FCC noted that it has not classified one-way VoIP as a telecommunications or information service at this time. *Id.*, at fn 167.

whether switched access charges should apply to VoIP or other IP-enabled services.[14] This matter also remains pending. The FCC has many open proceedings on these matters and has not moved to resolve these issues.[15]

The FCC stated in its *AT&T IP Telephony Order*: "The Commission has recognized the potential difficulty in determining the jurisdictional nature of IP telephony. We intend to address this issue in our comprehensive *IP-Enabled Services* rulemaking proceeding and do not address it here."[16] *This is an important point. Connecticut now possesses the authority to regulate VoIP. Bill No. 6401 would eliminate that essential authority.*

Industry markets VoIP as an alternative to traditional voice service, and consumers have come to have the same expectations for VoIP as they do for traditional voice services.

In one of its many proceedings that bear on VoIP, the FCC aptly stated:

> Consumers increasingly use interconnected VoIP service as a replacement for traditional voice service, and as interconnected VoIP service improves and proliferates, consumers' expectations for this type of service trend toward their expectations for other telephone services. Thus, in this Report and Order (Order), we take steps to protect consumers of interconnected VoIP service from the abrupt discontinuance, reduction, or impairment of their service without notice.[17]

VoIP consumers in Connecticut should expect regulatory oversight to protect them. For example, although the FCC monitors VoIP network outages, it is critically important that relevant state agencies, charged with protecting public safety, also have access to information relating to network reliability. Most recently, on February 21, 2012, the FCC released a Report

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[11] *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minn. Pub. Utils. Comm'n*, 19 FCC Rcd 22404 (2004).

[12] See, for example, *In the Matter of IP-Enabled Services*, WC Docket No. 04-36, *Report and Order*, rel. May 13, 2009, at footnote 21, stating: "The Commission to date has not classified interconnected VoIP service as a telecommunications service or information service as those terms are defined in the Act, and we do not make that determination today. *See* 47 U.S.C. § 153(20), (46) (defining "information service" and "telecommunications service"). In general, providers of facilities-based interconnected VoIP services and 'over-the-top' interconnected VoIP services are subject to the rules in this Order."

[13] In the Matter of IP-Enabled Services, FCC WC Docket No. 04-36, *Notice of Proposed Rulemaking*, Rel. March 10, 2004 ("IP-Enabled Services NPRM"), at para. 43.

[14] *Id.*, at paras. 61-62.

[15] See, e.g., *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges,* FCC WC Docket No. 02-361, *Order,* Rel. April 21, 2004 ("AT&T IP Telephony Order").

[16] *Id.*, at para. 20

[17] *In the Matter of IP-Enabled Services,* WC Docket No. 04-36, *Report and Order,* rel. May 13, 2009, at para. 2.

and Order that extends network outage reporting requirements to providers of interconnected VoIP service.[18] The FCC stated: "In short, given the long-term upward trend in VoIP subscription and use, the growing dependence on VoIP for 9-1-1 communications, our prior experience with voluntary reporting, and the statutory mandate that VoIP providers provide 9-1-1, we adopt mandatory outage reporting of interconnected VoIP service, as detailed below."[19]

Hurricane Irene, Hurricane Sandy, and other extreme weather conditions all underscore the importance of oversight of network reliability *regardless of the technology that carriers use to serve their customers.*

Connecticut now possesses the authority to regulate VoIP; Bill No. 6401 would eliminate that important authority.

Despite various decisions that affect VoIP, the FCC has been reluctant to make a definitive decision on the jurisdictional nature of fixed interconnected VoIP service (as well as whether VoIP services in general should be considered telecommunications or information services). *However, no Court has made a ruling that fixed interconnected VoIP service is outside the authority of state commissions.* There are several open proceedings that implicate the regulatory treatment of VoIP at the FCC. This remains an unsettled issue and the FCC has so far avoided any final decision.

Legislators should dismiss scare tactics about purported investment in Connecticut.

AT&T will talk about advanced technology, modernizing its laws, moving forward, making a transition. AT&T is singing the same tune to the Federal Communications Commission in a federal proceeding regarding the "transition to an IP network."

AT&T may try to depict AARP as stuck in a rotary telephone past. I urge you to look beyond AT&T's rhetoric. I am here today to tell you that AARP supports ubiquitous affordable and reliable advanced technology – affordable broadband services, affordable wireless services, affordable wireline service. AARP recognizes the value of telemedicine to the elderly, Internet access to shut-ins, cell phones for those on the move. But as we forge ahead we should not

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[18] In the Matter of The Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting To Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers, PS Docket No. 11-82, *Report and Order*, rel. February 21, 2012. Section 9.3 of the Commission's Rules defines "Interconnected VoIP service" as "a service that: (1) Enables real-time, two-way voice communications; (2) Requires a broadband connection from the user's location; (3) Requires Internet protocol-compatible customer premises equipment (CPE); and (4) Permits users generally to receive calls that originate on the public switched telephone network." 47 C.F.R. § 9.3.

[19] *Id.*, at para. 46.

abandon key consumer protections during the transition. Connecticut can move forward with modernizing its network while simultaneously protecting its consumers. Contrary to what you will hear today from AT&T, achieving the two goals can and must go hand in hand.

AT&T may tell you that if it doesn't get its way, it will invest in other states. I urge you to look beyond that rhetoric. AT&T is telling each and every state the same thing. Before SBC and the previous AT&T merged, SBC (one of the "baby Bells" that Judge Greene created at the time of divestiture in 1984) was Connecticut's incumbent local telephone company, and here in Connecticut, before it was SBC, it was SNET (Southern New England Telephone Company). Throughout all these mergers, it is the same network that was built with monies from consumers. SBC and now the new AT&T have a long history of regulatory scare tactics, threatening to withhold money if the company does not get the regulatory relief it seeks (price cap regulation, relaxed regulation, the ability to merge with another company).

Hurricane Sandy reminded us that new technology is not yet ready to protect consumers during extreme weather – wireless networks did not work. The phone service that cable companies offer as an alternative to AT&T's POTS – namely VoIP - does not work for more than six to eight hours during power outages. AARP welcomes new technology for its members but during this transition to new technologies it is critically important to understand its limitations and to retain regulatory oversight.

Conclusion

In conclusion, AARP opposes Bill No. 6401. It is premature to relinquish state authority of VoIP. There is absolutely no evidence that the minimum oversight now in place is interfering with industry's successful deployment and marketing of this new technology.

AARP welcomes new technologies. But the transition to new technologies should not result in an erosion of consumer protection.

Thank you for the opportunity to contribute to this important discussion about Connecticut's policy regarding VoIP.

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