

CHAPTER 16
CABLE COMMUNICATION SYSTEM FRANCHISE

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16.01 DEFINITIONS

1) In Chapter 16 of the Municipal Code of the Town of Delavan, the following words and phrases have the designated meanings:

- (a) **ADDITIONAL AND AUXILIARY SERVICE** shall mean service other than service provided by the Grantee to the subscriber on a monthly basis and for which the subscriber pays a set fee.
- (b) **BASIC SERVICE** shall mean subscriber services provided by the grantee, including the delivery of broadcast signals and programming originated over the cable system, covered by the regular monthly charge paid by all subscribers.
- (c) **BROADBAND TELECOMMUNICATIONS NETWORK (BTN)** hereinafter referred to as "**System**" shall mean any network of cables, optical, electrical, or electronic equipment, including cable television systems, used for the purpose of transmission of electrical impulses of television, radio and other intelligence, either analog or digital for sale or use by the inhabitants of the Town of Delavan.
- (d) **CABLE TELEVISION CHANNEL** a frequency band six (6)MHz in width within a standard television broadcast signal delivered by cable to a subscriber terminal.
- (e) **TOWN** shall mean the Town of Delavan or the area within the limits of the Town of Delavan.
- (f) **COMMENCE OPERATION** shall mean that the operation will be considered to have commenced when sufficient distribution facilities have been installed so as to permit the offering of cable service to at least twenty-five(25%) of the dwelling units located with the designated "**service area**".
- (g) **TOWN BOARD (Board)** shall mean the Town Board for the Town of Delavan and any legally appointed or elected successor or agency thereof.
- (h) **DISCRETE CABLE TELEVISION CHANNEL** shall mean a signaling path provided by a cable television system to transmit signals of any type to specified subscriber terminals with the cable television system.
- (i) **FCC** shall mean the Federal Communication Commission and any legally appointed or elected successor.
- (j) **FRANCHISE AREA (service area)** shall mean the Town of Delavan or the areas within the limits of the Town of Delavan.
- (k) **FRANCHISE PAYMENT** shall include all charges imposed

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for a franchise whether the object is regulation, revenue or one time reimbursement of costs incurred by the Town of Delavan in the award of this franchise.

- (l) **GRANTEE** shall mean any persons, firm, company, corporation or association to whom a franchise is granted by the Town Board of the Town of Delavan hereunder and the lawful successor or assigns of such persons, firm, company corporation or association.
- (m) **GROSS SUBSCRIBER REVENUE** shall mean any and all compensation for cable television service provided to the subscriber including pay television service, but excluding any and all tax on said revenue including sales tax.
- (n) **HEAD END** shall mean the land, electronic processing equipment, antennas, tower, building and other appurtenances normally associated with and located at the starting point of a Broadband Telecommunications Network, excluding the studio.
- (o) **REASONABLE NOTICE** shall mean the provision of notice of contemplated action delivered at least seventy-two (72) hours prior to such action.
- (p) **STREET** shall include all streets, roadways, highways, avenues, lanes, alleys, courts, places, squares, curbs, sidewalks, easements, rights-of-way or other public ways in the Town which have been or may hereafter be dedicated and open to the public use, or such other public property as designated by law.
- (q) **SUBSCRIBER** is a purchaser of any service delivered by Grantee pursuant to this franchise, and "**subscriber**" shall also include all persons who are not required to pay any fee, but receive any service delivered by Grantee pursuant to this franchise.
- (r) **SUBSTANTIALLY COMPLETED** operation will be considered substantially completed when sufficient distribution facilities have been installed so as to permit the offering of "**full network service**" to at least seventy-five(75%) percent of the dwelling units reasonably in the "franchise area".

Established April 17, 2001, Ordinance No. 229

16.02 GRANT OF AUTHORITY

- 1) The franchise granted hereunder shall give to the Grantee the right and privilege to construct, erect, operate, modify and maintain, in, upon, along, across, over and under streets, (as

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defined in Section 16.01(1) (p) herein which have been or may hereafter be dedicated and open to public use in the Town, towers, antennas, poles, cables, electronic equipment, and other network appurtenances necessary for the operation of a Broadband Telecommunication Network in the Town of Delavan utilizing wherever possible existing facilities with the right upon application to the designated Town Official, to set poles or other equipment on facilities constructed by applicant. Said designated Town Official will not unreasonably refuse permission for said construction. However, a non-proliferation of poles policy for aesthetic purposes shall be considered.

- 2) The Town shall require all developers of future subdivisions, when making provisions for or restrictions of utilities in the subdivision plat to include cable television services. It is intended by this paragraph to include cable television services in the same class of public utilities.

Established April 17, 2001, Ordinance No. 229

16.03 CONDITIONS OF FRANCHISE

- 1) The Grantee shall be subject to the following restrictions and conditions with regard to the operation of the System, which conditions and restrictions shall be in addition to any other subsections of this Section or other Sections of the Municipal Code.
- 2) Cables, wires and other equipment in connection with such System shall only be installed and operated on or under the public Rights-of-Way upon the poles, or in underground conduit and equipment of the existing utilities within the Town and their successors, or assigns, where conduits exist and where space for installed conduits is available. Installation of any additional poles, conduit or other equipment for the installation of cables, wires, and other overhead equipment and underground equipment in Public Rights-of Way in connection with the said System shall be subject to the authorization of the Town Board or its designated representative. In reaching a decision as to such additional poles or equipment; the suggestions if any, of the utility companies servicing or planning to serve such area may be considered. Underground installations shall always be preferred. However, the Grantee may construct its plant aerial so long as there is one utility aerial.
- 3) Such wires, cables and other underground or overhead equipment shall be located as may be required of telephone companies or power lines by the Public Service Commission of Wisconsin.

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All equipment shall be grounded in the manner as required by the State of Wisconsin Electrical Code for electrical services existing on the date of installation of any equipment.

- 4) The Grantee shall pay all costs incurred by the Town of Delavan in the event of the necessity of restoration of the Public Rights-of Way as a result of the Grantee's construction of its System or its operation. The Grantee and the Town shall coordinate the restoration of the Public Rights-of-Way if it becomes necessary for the Grantee to open or otherwise disturb said Public Right-of-Way.
- 5) The Grantee shall, at its own expense, protect, support, temporarily or permanently disconnect, relocate in the same Public Right-of Way, any property owned or used by the Grantee if required by the Town of Delavan for reasons of traffic conditions, public safety, street vacation, freeway and street construction change or establishment of a street grade, installation of sewers, drains, water pipes, power lines and tracts or any other type of structures or improvements by governmental agencies when acting in a governmental capacity. The Town shall provide the Grantee notice of its intention to make changes which might otherwise cause Grantee expense pursuant to this paragraph and the Grantee shall have an opportunity to comment.
- 6) The Grantee shall, upon the request of any person holding a building moving permit issued by the Town, temporarily raise or lower its lines or disconnect or take them down to permit the moving of buildings. The expense of such removal, raising or lowering of the wires shall be paid by the person requesting the same, and the Grantee shall be given not less than three (3) working days advance notice to arrange for such temporary wire changes.
- 7) All installations by the Grantee of cables and incidental equipment shall comply in all respects with all laws, ordinances, rules and regulations of the Federal Communications Commission, the State of Wisconsin or any agency or department thereof, and of the Town or any agency or department thereof, now or hereafter in effect.
- 8) The Grantee shall provide and maintain its equipment in such condition and of such quality so that none of its service will adversely affect radio and television reception.
- 9) Installation and maintenance of equipment shall be such that standard color signals shall be transmitted with reasonable and acceptable fidelity to all subscribers.
- 10) The Grantee shall not directly or indirectly require or solicit of any subscriber the patronage of any designated person or company engaged in the servicing sale or repair of

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television receivers. The foregoing shall not apply to the repair or adjustment of equipment which is in part of the System of the Grantee.

- 11) The Grantee shall submit to inspections by duly authorized personnel of the Town and shall make available to such inspectors or duly authorized personnel its facilities and equipment wherever situated. The Town reserves the right to enact reasonable regulations regarding the installation and maintenance of the facilities of the Grantee. The Grantee will be offered the option of providing security and fire alarm service if, or when the Town deems it necessary.
- 12) The Town shall have the right, during the life of this franchise, free of charge, to install and maintain upon the fixtures and conduits of the Grantee within the Town limits wires and appropriate attachments necessary for a security and fire alarm system. Such wires and fixtures shall be constructed and maintained to the satisfaction of the Grantee and in accordance with its specifications.
- 13) The Town, in its use and maintenance of such wires and attachments shall at all times comply with the rules and regulations of the Grantee so that there may be a minimum danger of contact or conflict between the wires and fixtures of the Grantee and the wires and attachments of the Town.
- 14) The Grantee shall have the authority to trim trees upon and overhanging Public Right-of Way of the Town so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, except that at the option of the Town, such trimming may be done by it or under its supervision and direction.

Established April 17, 2001, Ordinance No. 229

16.04 TRANSFER OR SALE OF CABLE TELEVISION

- 1) This franchise may be transferred, assigned or sold only with the written consent of the Town Board and approved only if the transferee, assignee or purchaser agrees in writing to be subject to all the terms and conditions of this ordinance. The franchise shall notify the Town Board at least thirty (30) days before a proposed transfer, assignment, or sale is to take effect. Such notice must be in the form of a written request to the Town Clerk, stating the reasons why such an assignment is necessary and/or advisable and detailing the expected changes in the operation of the System. Information regarding the legal, character, financial, technical, and other qualifications of the party or parties to whom the franchise is to be transferred, assigned, or sold or by whom

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the same is to be operated shall also be provided. This Section shall apply to any transfer, assignment, of sale of greater than twenty-five (25%) percent of the ownership, operation, or management of the franchise. The Town Board shall not withhold approval or consent regarding the transfer, assignment or sale, without cause and unless it is shown that the operation or management of the System will be affected to the detriment of the public by approving said transfer, assignment or sale. This provision shall not apply to either the mortgage or hypothecation of the System in respect to any mortgages or the remedies therein.

Established April 17, 2001, Ordinance No. 229

16.05 FRANCHISE TERM, REVIEW AND RENEWAL

- 1) The term of this franchise shall be for a period of fifteen (15) years and shall be in full force and effect for said term subject to the provisions of this ordinance.
- 2) Every two (2) years, prior to the expiration of this franchise, during the month of January, at a regular or special Town Board meeting, the Town and the Grantee, at either party's option, may meet to discuss application of new technologies, system performances, services provided, programming offered, customer complaints, and judicial and FCC rulings affecting the operation of the System. The parties shall compare the services offered by Grantee to those of other stand-alone systems in similar market situations, and if appropriate, the parties may renegotiate any of the above provisions, provided that such changes do not adversely affect economic viability of the franchise or adversely affect programming and maintenance services to the subscribers.
- 3) At the twelfth(12) year of the franchise, or if mutually agreed by the Town and the Grantee during one of the review and renegotiations described in Paragraph(2) above, the Town of Delavan and the Grantee shall consider extension of this franchise for fifteen additional years. The purpose of this provision is to allow for maximum flexibility in the financial planning on the part of the Grantee, and for the Town in anticipating future services. It is further the purpose of this provision to encourage the Town to examine the Grantee's performance and to plan for the future in providing cable television service as well as to reward the satisfactory performance of the Grantee. The Town may at any time reward the Grantee for satisfactory performance by the extension of the franchise for five (5) year increments. This authority is

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granted so as to provide incentive to the Grantee for satisfactory performance and maximum service.

Established April 17, 2001, Ordinance No. 229

16.06 RESPONSIBILITIES UPON TERMINATION OR EXPIRATION

- 1) Should the Grantee's franchise be terminated or expire and there is no judicial or administrative review of the termination or expiration taking place, the Grantee shall begin removal within ninety (90) days of termination or expiration all property owned by Grantee and placed on a Public Right-of -Way unless permitted by the Town to abandon said property in place or transfer said property to a purchaser.

Established April 17, 2001, Ordinance No. 229

16.07 COMPLETION OF CONSTRUCTION AND EXTENSION OF SYSTEM

- 1) The Grantee shall initiate construction and installation of the broadband telecommunications network within six (6) months of receiving necessary authority from the Federal Communications Commission including microwave licenses and a Certificate of Compliance and within twelve (12) months the Grantee shall commence operations. The Grantee shall have substantially completed construction within the franchise area within twelve (12) months of the effective date of the franchise grant hereunder.
- 2) The Town may, in its discretion, extend the time for Grantee, acting in good faith, to perform any act required hereunder. The time for performance shall be extended or excused, as the cause may be, for any period during which Grantee demonstrates to the satisfaction of the Town Board that Grantee is being subjected to delay or interruption due to any of the following circumstances if reasonably beyond Grantee's control:
 - (a) Necessary utilities rearrangements or pole change-outs;
 - (b) governmental or regulatory restrictions or economic conditions;
 - (c) Labor strikes;
 - (d) lock outs;
 - (e) war;
 - (f) national emergencies;
 - (g) fire;

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(h) Other acts of God

- 3) The Grantee shall complete construction within a reasonable time. However, Grantee shall not be required to construct said system beyond any area in which there are less than fifty (50) homes per linear cable mile. Line extensions or installations beyond 150 feet will be paid for by the subscriber at the Grantee's cost. It is intended by this paragraph to protect the Grantee and the subscribers from subsidizing unreasonable extensions.
- 4) The Grantee shall be allowed to furnish service from the head end to other areas than the Town. However, the construction or provision of services to areas other than the Town does not prohibit, impede, or delay the substantial completion date of the System in the Town. If any such program service or initial customer rate provided to said other areas shall be in any manner superior to the program service or initial customer rates provided within the Town, then such program service or initial customer rates shall be provided to the Town.

Established April 17, 2001, Ordinance No. 229

16.08 RATES

In the event of a rate increase of the basic service, the Grantee shall provide the subscribers a thirty (30) day notice of such increase. Said Notice shall be forwarded to the Town Clerk of the Town of Delavan, with supporting data for said increase.

Established April 17, 2001, Ordinance No. 229

16.09 TERMINATION OF FRANCHISE

- 1) The Town reserves the right to revoke any franchise granted hereunder and rescind all rights and privileges associated therewith in the event of noncompliance by the Grantee with any material provisions of this Ordinance.
- 2) In the event, that the Town shall decide to terminate for cause a franchise granted hereunder, it shall give the Grantee ninety(90) days written notice of its intention to terminate and stipulate the cause. If during the ninety (90) day period the cause shall be cured to the satisfaction of the Town, the Town shall declare the notice to be null and void. In any event, before a franchise may be terminated, the Grantee must be provided with an opportunity to be heard before the Town Board.

Established April 17, 2001, Ordinance No. 229

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16.10 FRANCHISE FEE

- 1) The Grantee shall pay to the Town of Delavan a franchise fee of three percent (3%) of the Grantee's gross subscriber revenues from the operation of the cable communications system within the Town limits. Said annual sum shall be paid within forty-five (45) days of the end of the calendar year. Annually, an independent auditor shall certify the amount of the Grantee's revenue from all cable services in order to verify the fee paid pursuant thereto.

Established April 17, 2001, Ordinance No. 229

16.11 BROADBAND CABLE COMMUNICATIONS SERVICE

- 1) The Cable Communications System permitted to be installed and operated hereunder shall be operated on conformance with the FCC's Technical Standards 47 C.F.R.ss76.601 et. seq.
- 2) The Grantee shall continue, throughout the term of the franchise, to maintain the technical standards and quality of service set forth in this Section. Should the Town Board reasonably find, by Resolution, that the Grantee has failed to maintain these technical standards and quality of service, and should it be by Resolution it shall specifically enumerate improvements to be made; then the Grantee shall make such improvements.
- 3) The Cable System shall carry and deliver to all subscribers all of the signals as provided in the Grantee's application.

Established April 17, 2001, Ordinance No. 229

16.12 COMPLAINT PROCEDURE

- 1) Grantee shall investigate all complaints within twenty-four (24) hours of their receipt and shall in good faith attempt to resolve them within forty-eight (48) hours after notice. Grantee shall maintain a record of each complaint and shall maintain said record for a period of two (2) years. Said record shall be available to the Town upon reasonable notice for review.

Established April 17, 2001, Ordinance No. 229

16.13 LIABILITY AND INDEMNIFICATION

- 1) The Grantee shall maintain and by it's acceptance of any franchise granted hereunder agrees that it will maintain

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throughout the term of the franchise, a general comprehensive liability insurance policy against liability for loss or damage for personal injury, death or property damage, occasioned by the operations of Grantee under any franchise granted hereunder, in the amounts of:

- (a) \$500,000.00 for bodily harm or death to any one person, within the limit, and
 - (b) \$500,000.00 for property damage resulting from any one accident.
- 2) It shall be expressly understood and agreed by and between the Town and any grantee hereunder that the Grantee shall save the Town and its agents and employees harmless from and against all claims, damages, losses and expenses, including attorney's fees sustained by the Township on account of any suit judgment, execution, claim or demand whatsoever arising out of but not limited to copyright infringements and all other damages arising out of the installation, operation or maintenance of the Broadband Telecommunications Network authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this Ordinance and any franchise granted hereunder. This provision shall not apply to acts of the Town, its agents or employees.
- 3) The insurance policies mentioned in Subsection (1) above shall be obtained from the same company and shall contain an endorsement stating that the policies are extended to cover the liability assumed by the Grantee under the terms of this Ordinance and shall contain the following endorsement:
- (a) "It is hereby understood and agreed that this policy may not be cancelled nor the amount of coverage thereof reduced until thirty (30) days after such receipt by the Town Clerk by registered mail of a written notice of such intent to cancel or reduce the coverage."
- 4) The Grantee shall maintain, and by it's acceptance of any franchise granted hereunder agrees that it will maintain throughout the term of the franchise a faithful performance bond running to the town in the penal sum of \$25,000.00 conditioned that the grantee shall well and truly observe, fulfill and perform each term and condition of this Ordinance and any franchise granted hereunder and that in case of any breach of condition of the bond, the amount thereof shall be forfeited to the Town as liquidated damages. The bond shall contain the following endorsement:

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(a) "It is hereby understood and agreed that this bond may not be cancelled nor the intention not to renew be stated until thirty(30) days after such receipt by the Town Clerk of the Town of Delavan, Wisconsin, by registered mail a written notice of such intent to cancel or not renew."

5) Upon completion of the construction of the physical plant, the Grantee may petition the Town Board to reduce or eliminate this bond of faithful performance.

Established April 17, 2001, Ordinance No. 229

16.14 CONSTRUCTION AND NETWORK TECHNICAL STANDARDS AND MEASUREMENTS

1) The technical standards including measurements of the construction and Systems to be operated in the Town shall comply with the minimum standards established by the Federal Communications Commission.

Established April 17, 2001, Ordinance No. 229

16.15 ADDITIONAL REQUIREMENTS

1) The Grantee shall comply with all conditions imposed by Federal Communications Commission and by the State of Wisconsin. Failure to obtain any required licenses or to comply with all such conditions shall be grounds to revoke the franchise under the procedure of Section 16.09 of this Municipal Ordinance without liability assigned to the Town of Delavan.

Established April 17, 2001, Ordinance No. 229

16.16 SUBSCRIBER PRIVACY

1) Neither the Grantee; the Town, nor any person shall initiate nor use any form, procedure or device for procuring information or data from cable subscribers' terminals by use of the cable System, without prior authorization from each subscriber so affected. Valid authorization shall mean approval from the subscriber for a period of time not to exceed one (1) year and shall not have been obtained from the subscriber as a condition of service.

2) The Town or a Grantee or any person shall not without prior written valid authorization from the Town Board, provide any data identifying designated subscribers.

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Established April 17, 2001, Ordinance No. 229

16.17 SWITCHING DEVICE AND CHANNEL LOCK

- 1) The Grantee shall make available switching devices as are necessary to permit a subscriber to use the subscriber's own antenna. Grantee shall also provide a channel lock to enable the subscriber to control viewing. The Grantee may charge for such devices.
- 2) Subscriber has the option of providing subscriber's own switching device at no charge. Such switching device must meet the specifications of the Grantee.

Established April 17, 2001, Ordinance No. 229

16.18 PENALTIES

- 1) In addition to the procedures specified in Section 16.19 the following shall be in effect:
 - (a) After notice and hearing the Township may fine the Grantee if fails to provide the service specified in this Chapter, or any applicable government regulation. Grantee is not responsible for failure to provide adequate service which is caused by acts of God, strikes, governmental or military action, or other conditions beyond its control.
 - (b) Upon interruption of service, except for acts of God, strikes, governmental or military action, or with express prior permission of the Town, the following shall apply:
 - i. Over forty-eight (48) and less than seventy (72) hours, a ten percent (10%) rebate of one month's fees for all affected subscribers.
 - ii. Over seventy-two (72) hours, a twenty percent (20%) rebate of one month's fees for all affected subscribers.
 - iii. A full month's rebate for any month in which one half or more of the service is interrupted.
 - (c) If Grantee violates any provision of this Chapter, it shall forfeit together with the costs of prosecution, a sum not less than \$50.00 nor more than \$500.00 for each violation.

Established April 17, 2001, Ordinance No. 229

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16.19 GOVERNMENT CONNECTIONS

1) The Grantee shall provide a free one-time connection to the below listed governmental building and/or facilities. The franchising authority shall pay for all wiring within said building or facilities in excess of one hookup. This list may be changed from time to time as the parties may agree and the circumstances change. This list shall include:

- 1. Town Hall
- 2. Fire Stations #1, #2, #3, and #4
- 3. Delavan Lake Sanitary District Office
- 4. Highway Department

Established April 17, 2001, Ordinance No. 229

16.20 TOWN'S RIGHT OF INTERVENTION

1) The Town shall have the right to intervene and the Grantee specifically agrees by his acceptance of a franchise hereunder not to oppose such intervention by the Town in any suit or proceeding to which the Grantee is a party.

Established April 17, 2001, Ordinance No. 229

16.21 PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED

1) Grantee shall not, as to rates, charges, service, service facilities, rules, regulations, employment, or in any other respect, make or grant any undue preference or advantage to any party, nor subject any party to any unlawful prejudice or disadvantage.

Established April 17, 2001, Ordinance No. 229

16.22 SEVERABILITY

1) If any subsection, sentence, clause or phrase of this Section is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of this Ordinance as a whole, and any portions in conflict are hereby repealed. However, in the event that the Federal Communications Commission declares any subsection invalid, then such subsection or subsections shall be renegotiated by the Town of Delavan and the Grantee.

Established April 17, 2001, Ordinance No. 229

16.23 FRANCHISE GRANT

- 1) The cable television franchise, pursuant to this Ordinance is hereby granted to AT&T Corp. and Charter Cable Partners, LLC (CC Partners). All of the terms, provisions and statements contained in their application, including the response and supplement submitted by AT&T Corp and Charter Cable Partners, LLC (CC Partners) is incorporated herein reference and AT&T Corp. and Charter Cable Partners, LLC (CC Partners) shall be bound to said statements and promises. Further, AT&T Corp. and Charter Cable Partners, LLC (CC Partners), as the Grantees of this franchise are bound to and shall comply with all statements of understanding including the terms and provisions contained in its application between them and the Delavan-Darien School System. All terms, provisions, statements and promises contained in the application and whatever letters of understanding have been transmitted, shall be incorporated herein.

Established April 17, 2001, Ordinance No. 229

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