

# UPTOWN

## Leveling the playing field

In 1999, state legislators tried to “level the playing field” among telecommunications providers. While the playing field has been leveled, an unintended outcome of the legislative action will result in a \$20 million annual reduction in municipal revenues.

“This loss of revenue is devastating to local governments during a time when government at all levels struggles to maintain services,” said MASC Executive Director Howard Duvall.

Prior to the 1999 Telecommunications Act, local exchange carriers (LECs) paid a franchise fee to local governments for the right to build infrastructure on the public right of way. Typically, this rate was 3 percent of local recurring charges.

With the passing of the federal Telecommunications Act, competition

erupted and created new choices and opportunities for savings for consumers as long-distance carriers, wireless providers and even new local telephone companies expanded their reach. These new telecommunications businesses and long-distance carriers typically had no need to build infrastructure within the public right of way in municipalities. Instead of a franchise fee, these companies paid business license taxes based on gross income of their business within the municipality. For the most part, these taxes were lower than the 3 percent paid by incumbent LECs.

The result was a situation understandably resented by LECs, as it created a situation whereby their competitors, who in many cases were allowed to use infrastructure built and funded by LECs, were paying substantially less in taxes.

In 1999, the S.C. General Assembly passed the S.C. Telecommunications Act in an attempt to level the playing field among telecommunications service providers. The Act established a five-year phase-in of taxing telecommunications companies. LECs like BellSouth would continue to pay a franchise fee through 2003 or for the length of the franchise, whichever is longer. The rate is usually 3 percent of local recurring charges. Telecommunications companies that had paid a business license tax to a municipality as of December 31, 1997 would continue at the established tax rate through 2003. New companies, mainly wireless, would begin to pay a business license tax at three-tenths of 1 percent of gross revenues. Effective in 2004, the franchise fees paid by

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## Ethics Commission increases failure to file penalties

As of July 1, the penalty for failing to file statement of economic interests forms and campaign disclosure forms increased to \$100 per day.

If the required form is not filed within five days of the established deadline, an initial fine of \$100 is charged. Once the State Ethics Commission sends a certified letter informing the individual the form has not been filed, a \$10 per day fine is charged for the first 10 days, and then the penalty increases to \$100 per day for each additional day the form is not filed and fines are not paid. There is no cap on penalties.

“Notices are sent to home addresses and carbon-copied to the entity they are associated with, such as the town administrator,” said Cathy L.

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LECs would be eliminated, and the legislated business license rate would be set at 0.75 of one percent for LECs and other providers. Telecommunications companies, under the 1999 Act, can pass the franchise fee or business license tax on to their customers as a billed line item.

### News Briefs



■ MASC welcomes Sophia Johnson to its staff as administrative assistant for programs and services. Sophia previously worked for the S.C. Department of Commerce.

■ In July, the S.C. Association of Municipal Power Systems elected its 2003-2004 board:

**President** — Ken Barnett, assistant manager of Greenwood CPW

**Vice President** — Coleman Smoak, general manager of Laurens CPW

**Members-at-Large** —

**John Bagwell**, electric division director of Orangeburg DPU

**Becky Matthey, P.E.**, public works/utilities director of the City of Camden

**Donnie Hardin**, general manager of Gaffney BPW

**Sam Bennett**, city manager of Clinton

■ The Palmetto Pride Community Pride Grant program offers municipalities and other organizations up to \$10,000 to spearhead local anti-litter and beautification efforts. Last year, 61 cities and towns received grants to implement programs focusing on education, enforcement, awareness and pickup. To receive a 2004 Community Pride Grant application, contact Sherryl Jenkins at 803.758.6034 or visit [www.palmettopride.org](http://www.palmettopride.org).

Equalizing the rates paid by LECs and other telecommunications providers is a fair and reasonable solution. However, one consequence of the legislature-imposed rate schedule to go into effect in January was clearly unintended — the substantial reduction in revenue for municipal governments.

It is estimated that municipalities across South Carolina will lose approximately \$20 million annually under the 0.75 percent business license tax rate. This reduction has the effect of an unfunded mandate on local governments.

“Like all businesses, families and governments in the country, South Carolina’s local governments are struggling in the current economic climate — yet the demand for police and fire protection and other services provided by municipal governments has not lessened,” said Duvall. “If revenues from telecommunications taxes are reduced, many local governments in the state will be left with only two alternatives: to reduce much-needed services or to raise taxes.”

“In the case of reduced services, public health and safety will be affected. In the case of raising taxes, South Carolina cities have only two choices before them — raising property taxes or increasing business license taxes on all other businesses operating within city limits. Either case could have a negative effect on economic development in cities and towns, weakening or holding back local economies. Such action is also likely to cause unnecessary political controversy,” Duvall added.

Telecommunications taxes, when passed to the consumer as a billed line item, have little impact on individual businesses and consumers — but property tax increases affect everyone.

“MASC continues to support equal tax rates for LECs and other telecommunications providers,” said Duvall. This level playing field can be accomplished

by making the business license rate 1.25 percent of gross revenue for all providers. This is a 58 percent reduction in the franchise fee rate currently paid by LECs.

During the 2003 legislative session, MASC worked with Senator Tom Moore and other key legislators to amend the S.C. Telecommunications Act of 1999 and to raise the final rate of 0.75 percent called for by the Act. Senator Moore was successful in persuading the Senate to amend House Bill H3530 to set a final rate of 1.25 percent. The amendment also eliminates the requirement of a report from the Board of Economic Advisors (BEA). The BEA report requires financial data from telecommunications companies and revenue reports from municipalities. BEA staff is concerned the requirements of the study cannot be accurately accomplished.

Speaker of the House David Wilkins referred the bill to the House Labor, Commerce and Industry Committee, preventing its passage before the legislature adjourned in June.

“It is imperative the General Assembly passes this legislation early in the 2004 legislative session, as the 2004 business license fee is due January 31,” said Duvall. “The key to accomplishing this is BellSouth, the most powerful lobbying group in South Carolina.”

For the House of Representatives to concur with the provisions of H3530 as passed by the Senate, BellSouth must openly express its support of a 1.25 percent rate. BellSouth has publicly expressed its desire for a level playing field among its telecommunications competitors, but its public support of a 1.25 percent rate as called for in H3530 is also needed. H3530 allows the municipality to impose a business license tax at the rate of 1.25 percent of gross revenue on all telecommunications companies, creating a level playing field without jeopardizing basic municipal services.

# Election Commission revises interpretation

As reported in the June 2003 *Uptown*, new legislation regarding special elections allows a municipality to cancel the election if only one candidate has filed for the office and if no one has declared to be a write-in candidate within 14 days after the close of the filing period.

"After further review of recently passed legislation allowing for no election if only one candidate files, the State Election Commission understands that this would apply to municipal *general* elections and to municipal *special* elections. Therefore, municipal elections may not have to be held if the requirements are met," said Garry Baum, state training coordinator for the State Election Commission.

This law would also apply to those municipalities with multiple seats and

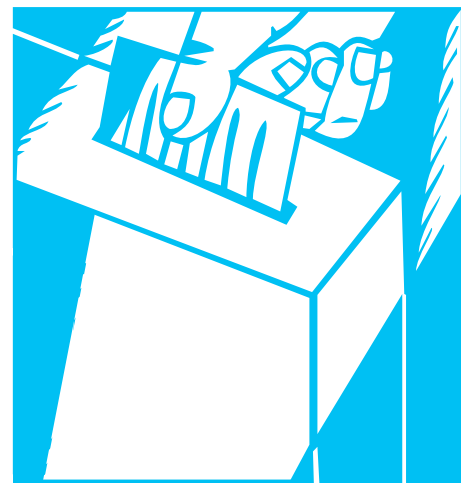
the same number of candidates filing as number of seats. For example, a municipality having three city council seats elected citywide would not need to hold an election if three candidates filed and no one filed as a write-in during the appropriate time.

If a municipality with three city council seats elected by district had only one candidate file for each district seat and no one filed as a write-in for any seat during the appropriate time, no election would be needed. However, if one write-in filed for a particular district seat, that election would have to be held while the other two district elections would not have to be held.

If no election is necessary, the municipality's election commission is still required to meet to certify any filed candidate as the winner.

Municipalities should contact their municipal attorney before canceling an election.

*For more information, contact the State Election Commission at 803.734.9060.*



## Ethics Commission continued from cover

Hazelwood, assistant director and general counsel for the State Ethics Commission.

As of July 21, more than 125 public officials, lobbyists, candidates and committee members owed the state more than \$147,400 in fines. A list of debtors is located on the S.C. State Ethics Commission Web site ([www.state.sc.us/ethics](http://www.state.sc.us/ethics)).

According to the State Ethics Commission, debtors are informed by letter, telephone and/or personal contact regarding these debts. The Commission has referred the list of debtors to the S.C. Department of Revenue for collection.

"There is far too much correspondence from our office for people not to know they owe the state money," Hazelwood said.

Hazelwood explained there are times when notices have been mistakenly sent out.

"Instead of ignoring the notices, they need to contact us and let us know the information is incorrect. Otherwise, the fees will keep accumulating," she said.

All candidates running for office and political party committees must file a campaign disclosure form within 10 days of spending or receiving the first \$500 in campaign funds. After the initial report, candidates must file quarterly reports covering contributions and expenditures from the last report through the end of the calendar quarter. For every year in office, officials must file the statement of economic interests form on or before April 15. The statement should cover activity during the previous calendar year.

Statement of economic interests forms should be submitted by all elected officials, candidates for public office, city administrators, managers,

supervisors, chief finance and purchasing officials and by municipal clerks. Forms can be obtained on the State Ethics Commission's Web site or from the election official in charge of the election. Statement of economic interests forms are submitted to the State Ethics Commission. In cases of partisan elections, candidates' statement of economic interests forms are filed with the party or election official responsible for receiving declarations of candidacy or petitions to appear on the election ballot. A candidate may not appear on a ballot unless the form is filed. The election official is responsible for submitting the form to the State Ethics Commission.

*For more information about regulations regarding campaign finances, visit the State Ethics Commission's Web site at [www.state.sc.us/ethics](http://www.state.sc.us/ethics).*

# 'Ticket fixing' and the crime of obstruction of justice

## Hypothetical Scenario #1

*Councilmember A arrives on the scene as a police officer of her town is arresting her teenage son for DUI. She informs the officer that he should drop the charge and reminds the officer that he serves "at the pleasure of council."*

## Hypothetical Scenario #2

*Mayor B of the City of Pennypie Falls asks Mayor C of the Town of Birdville if he can help with the reckless driving charge pending in Birdville's municipal court against his golfing buddy. Mayor C calls Birdville's arresting officer and tells her to get rid of the reckless driving charge and substitute a "no points" charge. She refuses. Mayor C then asks the municipal court judge, "as a friend," to "take care of" the charge against Mayor B's golfing buddy.*

In these examples, Councilmember A and Mayor C could be charged with obstruction of justice. Obstruction of justice is a crime in South Carolina, punishable by fine and/or up to 10 years' imprisonment. If the obstruction of justice charge is considered "a crime involving moral turpitude," the elected official is also subject to suspension from office upon indictment and to forfeiture of office upon conviction.

## The Crime

State law recognizes "obstruction of justice" as both a common-law and a statutory criminal offense. The common-law offense is defined as doing "any act which prevents, obstructs, impedes or hinders the administration of justice" (*State v. Lyles-Gray*, 328 S.C.458, 492 S.E.2d 802, 805 Ct. App. 1997). The offense may be committed, among other ways, by "improperly or corruptly attempting to influence, intimidate or impede any officer, juror or witness in any court, in the discharge of his duty" (*S.C. Attorney General Opinion dated February 10, 1978, 1978 S.C. AG LEXIS 831*).

Some acts constituting obstruction of justice are specified in statutory law. S.C. Code Section 16-9-340 (titled "Intimidation of court officials, jurors or witnesses") makes it unlawful for a person, by threat or force, to intimidate or impede, among others, a judge or witness in the discharge of their duty or to "destroy, impede or attempt to obstruct or impede the administration of justice in any court."

The effort to intimidate or influence need not be successful. "[I]t is sufficient [to constitute the offense] if some act is done in furtherance of the endeavor" (*State v. Love*, 275 S.C. 55, 271 S.E.2d 110,113, 1980). The term "corruptly" is

typically defined to mean "with an improper motive." This motive can be caused simply by the desire to benefit another person and need not be caused by the hope of monetary reward or benefit. The use of threats or force is an element of the statutory offense, but is not an essential element of common-law obstruction of justice (*State v. Lyles-Gray*).

## The Punishment

The common-law offense is considered a misdemeanor, and the statutory offense is a felony. Both offenses are punishable by fine (up to \$10,000 for the statutory offense) and/or by 10 years' imprisonment.

South Carolina appellate courts have not ruled whether obstruction of justice is a crime involving moral turpitude. However, a 1979 S.C. State Attorney General Opinion stated that a violation of a similar federal statute (18 U.S.C. Section 1503) "clearly constitutes a crime involving moral turpitude" (*S.C. Attorney General Opinion dated October 16, 1979, 1979 S.C. AG LEXIS 137*).

Under Article 6, section 8 of the state constitution, the governor can suspend municipal officers upon indictment (or waiver of indictment) for "a crime involving moral turpitude" and, if the officer is convicted, their office is declared vacant. S.C. Code 5-7-200(a) provides that a mayor or councilmember "shall forfeit his office" if convicted of "a crime involving moral turpitude."

## The Bottom Line

Public officials attempting to "fix" a traffic or criminal charge or to influence the disposition of a traffic or criminal charge could face criminal charges.



# 2003 Achievement Award Winner

## Population Category 1,000-5,000: Town of Bluffton

The Town of Bluffton has proven you can provide affordable housing for citizens while respecting the community's architectural heritage.

In the late 1990s, Bluffton officials recognized the Town would soon face tremendous growth due to Hilton Head Island reaching the "build-out" stage of development. Instead of ignoring the inevitable growth, Bluffton began annexing land to have some local control over future development. In less than five years, the town grew from one square mile to almost 50 square miles. Geographically, the Town of Bluffton is now the fourth-largest municipality in South Carolina. While most of the property is large, undeveloped parcels, it is zoned for future homes, businesses and parkland.

Officials knew the anticipated growth and high land costs (one-third of an acre of non-riverfront land costs \$85,000) would create affordable housing concerns. Once again, the town chose to be proactive instead of reactive. It passed a density bonus ordinance that encourages subdividing land parcels to make them more affordable. It also encourages uniqueness in planning, design and housing type. The Town Council and the Planning Commission review each proposed development with density bonuses.

Bluffton did not stop there; it created the Historic Small House Program to revive, restore and reinforce the town's architectural heritage throughout the entire town. The town has a mix of housing ranging from antebellum historic houses to mobile homes. The Small House Program offers pre-approved, affordable and historically correct house plans aimed at the home buyer searching for a small home. A local architectural firm



Above: The pilot project for Bluffton's Historic Small House Program is the Heyward Street Project, a series of homes ranging from 1,200 to 2,200 square feet and using design principles of larger antebellum homes. Right: Miss Nellie's Cottage is named after the owner whose house inspired the project.



developed the first series of plans, called the Bluffton Historic Small House Series. The plans take design principles used in larger homes and put them to work in homes ranging from 1,200 to 2,200 square feet. As the mobile home properties begin to upgrade or sell, the town hopes that offering these low-cost, easy-alternative designs will enhance its architectural fabric. The Lowcountry Community Development Corporation, Architectural Building Solutions and local banks offer grants to make house payments for these homes comparable with those of a similar-sized mobile home.

The Bluffton Historic Small House Program exemplifies a partnership of

public and private agencies to ensure continuation of affordable, historically correct housing.

*For more information about this project, contact Josh Martin at 843.706.4510.*

*MASC recognizes and encourages innovations and excellence in local government through its Achievement Awards. Started in 1987, the program provides local government officials and employees the opportunity to receive deserved recognition for superior and innovative efforts in local government. The program also provides a forum for sharing the best public service ideas in South Carolina. For more information, visit MASC's Web site at [www.masc.sc](http://www.masc.sc) or call Christie Zeller at 803.933.1215.*

# Working together to build a community

*Community Builders specializes in helping cities and towns discover what is unique about their community. By focusing on a unique aspect, a community can create a new economic development plan, revitalize its downtown and even create a marketing plan to bring businesses and customers to the town. A group of South Carolinians recently visited County Mayo, Ireland, and discovered what happens when several communities work together to find their common uniqueness. The residents of County Mayo knew they had to put territorial boundaries aside and come together for a common cause for their towns to survive. In the end, County Mayo developed a tourism industry, an industry that supports its once-failing economy. Find out more about the experiences and ideas generated from a trip to Ireland at the 2003 Community Builders Conference scheduled for October 23-24 in Newberry.*

## An Irish sense of community

*by Glinda Price Coleman, executive director, Great Falls Home Town Association*

As the plane landed at Shannon Airport that Monday morning, the clouds began to break and Ireland lay before us, a patchwork quilt in many shades of green. The fields and meadows were neatly divided with hedgerows and rock walls, and even from the air, you could see the rolling hills leading up from Galway Bay. One could immediately discern why Ireland is known as the Emerald Isle.

From the airport right to the front doors of our guest houses in the Tochar Valley, County Mayo, we were made to feel welcome and wanted. The first words we heard from almost everyone's lips were "You are very welcome," a phrase that was unfamiliar to us and yet became one that was the most endearing of our trip.

Ireland is an ancient land with proven inhabitation dating back at least 5,500 years. As we were to learn in the 10 days following our arrival, the people of County Mayo are dedicated to community development — a dedication that seems well-rooted and flourishing.

The group of 18 people chosen to attend the International Study Tour of County Mayo, Ireland, in essence did

not know one another. Sponsored by the Clemson Institute for Economic and Community Development through a W.K. Kellogg Foundation Grant, the study tour has a mission to focus on domino development and grassroots sustainable economic development — namely the processes and sites of community development in County Mayo. We were from all different levels and aspects of community development: university professors and program directors, community program directors, private-sector planners and architects, elected officials and even a university vice president.

The people of County Mayo told us how they took their ideas and, with the help of development agencies, national programs and local dedication, developed sustainable projects that have made an economic impact on their small towns and villages.

A word that was consistently repeated was "network." Many of the tourism programs they have been able to implement and sustain depend on a network of small communities willing to work together. These communities have their own separate identities and cling to them as much as some of our

South Carolina communities. But they have used this sense of identity to work together instead of pushing themselves further apart. I don't know that it came naturally to them, but they seem to have accepted it most willingly.

County Mayo is a diverse place from a geographical point of view. There are beaches, mountains, rolling hills and plenty of bog land. Farming has been the primary source of income for centuries, if not millennia, and it still is important. Farming, however, is diminishing, with fewer and fewer people engaging in it full time.

It is this reality and declining population that led to the grassroots community development plan, including various aspects of tourism. The Tochar Valley is a product of this rural tourism drive. It is a network of some 20 towns and villages that roughly follow the ancient pilgrim path to Croagh (Mount) Patrick where Saint Patrick fasted, praying for the Irish to turn to Christianity in 441 A.D. The network provides all the communities the power of a "larger population." It also strives to protect the rural

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environment and to promote and encourage income-producing activities.

As more was revealed to us about the problems the area is facing and the wonderful history and heritage of the area, I came to realize why this opportunity to study was offered to the group from South Carolina. Although we were told that the similarities between what County Mayo was doing and what South Carolina was doing or wanted to do was one reason for the study, it really didn't sink in until I saw it for myself.

We encountered many ideas and concepts that, as a community development program director in the small town of Great Falls, I could see working quite well in our community and in others across the state.

The charge of the study group is to develop ideas and techniques that can be used in South Carolina and to focus on rural revitalization in two communities or areas in the state.

Over the next year, this project will be developed by our group at the Sandhill Research and Education Center and put into practice.

From the conversations during the study tour and as we arrived back at home, the group was changed by the experience. I know it definitely gave me a new perspective.

The sense of community in County Mayo has been developing for thousands of years. This deep sense of community is one of the things that impressed me most. It is something that we in South Carolina are losing or maybe never really had a chance to develop. In the great scheme of things, we are brand-new as compared to the communities of Ireland. But the welcoming nature of our people in the state and our interest in heritage and tradition give us a lot in common with the Irish. If we build on these aspects, I think we can use some of the same ideas that are working in County Mayo.

*To learn more about the International Study Tour of County Mayo, Ireland, and the projects being developed at the Sandhill Research and Education Center, join Glinda Price Coleman as she discusses these issues and more at the Community Builders Conference, October 23-24 in Newberry.*

## 2003 Community Builders Conference topics

- Nonprofit Survival
- Listening to the Landscape and the Discourse of the Street
- Creativity, Crowd Gathering and Place
- Building as Catalysts for Revitalization

*Registration deadline is October 7. For more information, contact Nancy Brown at 803.933.1224.*



## Classifieds

■ The City of Beaufort is accepting applications for a zoning/codes compliance officer. Applications available at the City of Beaufort, Human Resource Department, 302 Carteret Street, Beaufort, SC 29902 or online at [www.cityofbeaufort.org](http://www.cityofbeaufort.org).

■ The Town of Eastover is accepting applications for the position of police officer. Applications may be obtained at Eastover Town Hall, located at 624 Main Street. Send resumé to the Eastover Police Department, Chief of Police, PO Box 58, Eastover, South Carolina 29044. Applications accepted until position(s) is filled.

■ The City of Loris is accepting applications for the position of police officer. Send resumé to the Loris Police Department, Chief of Police, 3951 Walnut Street, Loris, SC 29569 or visit [www.lorispolice.com](http://www.lorispolice.com) for more information. Applications accepted until the position is filled.

■ The City of Myrtle Beach is accepting applications for a firefighter. NFPA Level 1 firefighter and/or EMT certification preferred. Application must accompany resumé. For more information, visit [www.cityofmyrtlebeach.com](http://www.cityofmyrtlebeach.com). Send resumé and application to Human Resources Department, City Services Building, 921A Oak Street, PO Box 2468, Myrtle Beach, SC 29578.

■ The City of Westminster is accepting applications for the position of police officer. Applications and job description may be obtained from the Westminster Police Department, 106 Windsor Street, Westminster, SC 29693. For more information, call 864.647.3222 or e-mail [wpdchief401@aol.com](mailto:wpdchief401@aol.com). Applications accepted until the position is filled.

■ The Town of Winnsboro is accepting applications for a director of downtown development. Applicants must possess a bachelor's degree in a related field. Submit resumé and three letters of recommendation to Town Manager, Town of Winnsboro, PO Box 209, Winnsboro, SC 29180.



## Educational Opportunities

### S.C. Municipal Personnel Association

■ **September 23**, will host a Health Insurance Portability and Accountability (HIPAA) workshop at the Municipal Association of S.C. in Columbia.

### S.C. Business Licensing Officials Association

■ **October 14-16**, will hold its Annual Meeting at the Hyatt Regency in Greenville. Topics include "Court Enforcement of Business Licensing Ordinances," "Determining Point of Sale," "Crafting an Effective Presentation to Council" and "Everyday Ethics."

For more information about these meetings or other MASC meetings not listed, please call 803.799.9574, or visit our Web site at [www.masc.sc](http://www.masc.sc)

### S.C. Municipal Finance Officers, Clerks and Treasurers Association

■ **October 15-17**, will hold its Annual Meeting at the Hyatt Regency in Greenville. Topics include "Hometown Security," "Crafting an Effective Presentation to Council," "The S.C. Education Lottery" and "Accepting Credit Cards: The Price is Right."

### Community Builders

■ **October 23-24**, will hold its Annual Meeting in Newberry. Topics include "Nonprofit Survival," "Listening to the Landscape and Discourse of the Street," "Creativity, Crowd Gathering and Place" and "Building as Catalysts for Revitalization." See related article on page 6.

### S.C. Utility Billing Association

■ **October 29**, will hold its Fall Meeting at the Clarion Town House in Columbia.

### S.C. Community Development Association

■ **November 5**, will hold its Winter Meeting at the State Museum in Columbia. Topics include "The ABCs of Mold Detection — Elimination and Liability," "Neighborhood Revitalization" and "Meeting the Challenges of the Growing Latino Presence in S.C. Communities."

### S.C. Municipal Personnel Association

■ **November 12-14**, will hold its Annual Meeting at the Holiday Inn Oceanfront in Hilton Head Island. Topics include "Returning Retirees," "Relationships in the Workplace," "Disciplinary Procedures" and "HIPAA Highlights."

### S.C. Association of Stormwater Managers

■ **November 21**, will hold its Quarterly Meeting in Columbia.



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