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July 1, 2008

Stephanie L. Stumbo
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40601

RECEIVED

JUL 01 2008

PUBLIC SERVICE
COMMISSION

**RE: Application of NANPA on Behalf of the Kentucky Telecommunications Industry for
Approval of NPA Relief Plan for the 270 NPA, and Number Conservation Measures
Within Kentucky**
Case No. 2006-00357

Dear Ms. Stumbo:

Enclosed please find for filing the original and ten copies of a Joint Motion of a Coalition of Local, Interexchange and Wireless Carriers to Reopen Proceeding and for Informal Conference in the above-referenced matter.

Please acknowledge receipt of this filing by placing your file-stamp on the extra copy and returning to me via our runner. Thank you.

Sincerely yours,

STOLL KEENON OGDEN, PLLC



Douglas F. Brent

DFB: ec

Enclosures

cc: Parties of Record
John N. Hughes
Mary K. Keyer
Mark R. Overstreet

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUL 01 2008

PUBLIC SERVICE
COMMISSION

In the Matter of:

THE APPLICATION OF NANPA ON BEHALF OF)
THE KENTUCKY TELECOMMUNICATIONS)
INDUSTRY FOR APPROVAL OF NPA RELIEF PLAN) CASE NO.
FOR THE 270 NPA, AND NUMBER CONSERVATION) **2006-00357**
MEASURES WITHIN KENTUCKY)

**JOINT MOTION OF A COALITION OF LOCAL, INTEREXCHANGE
AND WIRELESS CARRIERS TO REOPEN PROCEEDING
AND FOR INFORMAL CONFERENCE**

In the year since the Commission's May 31, 2007 order (the "*May 31, 2007 Order*") requiring a geographic split to introduce a new area code in Western Kentucky for relief of the 270 area code, four significant events have occurred. The Commission was granted code conservation authority; exhaust projections changed as a result, leading the Commission to postpone the deadline for permissive dialing until 2010. Meanwhile, two other state commissions, citing changed circumstances, rescinded their own area code split decisions and ordered all-services overlays.

Had any of these significant events occurred prior to the Commission's *May 31, 2007 Order*, it might have changed the outcome. Accordingly, the carrier petitioners¹, representing a broad coalition of incumbent wireline providers, competitive local exchange carriers, wireless carriers, and interexchange carriers, hereby request that the Commission re-open the referenced proceeding to: (1) consider important changes in facts and circumstances, including the North American Numbering Plan Administrator's recent changes to projected exhaust dates in the 270

¹ Telecommunications utilities supporting this motion include the joint movants T-Mobile, Verizon Wireless, AT&T Communications of the South Central States and AT&T Kentucky, Sprint Nextel, Cricket Communications, Windstream Kentucky East, LLC and Windstream Kentucky West, LLC. In addition, the joint movants are authorized to state that the request is supported by a number of other interested carriers providing service in Western Kentucky, including Dialog Telecommunications, Inc., Norlight, Inc. d/b/a Cinergy Communications, and Big River Telephone Company, Inc.

NPA and recently identified technical issues elsewhere; (2) schedule an informal technical conference and further procedures as necessary; and (3) re-evaluate the best method to address future numbering needs in Western Kentucky and the 270 NPA.

A fresh look at area code relief issues is timely. In the four years since the advent of intermodal local number portability only two other states have chosen and implemented area code splits. In contrast, 15 overlays have been chosen and implemented since 2005.

In addition, two states have recently *reversed* their own area code split decisions in favor of overlays. And in light of the Commission's recent Order extending the deadline to commence permissive dialing until 2010, there is now adequate time for the Commission to carefully weigh the issues and technical concerns identified herein. Respectfully, the public interest is best served by re-examining these numbering issues. They are critical to all Kentucky customers and the carriers serving them. In support of the petition, the petitioners state as follows.

I. BACKGROUND

On August 30, 2006, the North American Numbering Plan Administrator ("NANPA") advised the Commission that it was forecasting exhaustion of numbering resources in the 270 NPA by the fourth quarter of 2007. NANPA also informed the Commission that it had declared jeopardy status for the 270 NPA. This created what appeared to be an urgent situation requiring a prompt decision in order to maintain the availability of telephone numbers in Western Kentucky. With 2007 looming, and with no assurances that the Federal Communications Commission ("FCC") would act on a long-pending Commission petition to implement mandatory pooling in the 270 NPA, the Commission determined that it "must move forward with its decision." *May 31, 2007 Order* at 4.

After setting an expedited schedule, the Commission received comments from approximately four telecommunications carriers. Informal public comments were also filed,

mostly by email. After considering written submissions, the Commission chose a geographic split as the method of area code relief in Western Kentucky. The Commission noted, however, that using a split instead of the industry-recommended all-services overlay would result in continuously smaller geographic areas for assignment of new NPA's. The Commission also agreed that geographic splits are not a permanent solution for future numbering needs—they become infeasible as an option once they can no longer “address existing areas of interest and *maintain desirable calling arrangements.*” *May 31, 2007 Order* at 5 (emphasis added).

While it is apparent that the Commission believed geographic splits were not a permanent solution to future numbering exhaust situations in Kentucky, it also appears that the Commission saw no significant technical difficulty in implementing a geographic split rather than an overlay. A review of the record in the proceeding shows that industry comments focused largely on *customer convenience issues* implicated by the choice of a split versus an overlay. While carriers filing comments agreed that the overlay plan recommended by NANPA in 2001 was the best solution, the few carriers that even compared the relative merits of a split generally agreed that a geographic split was technically feasible. In hindsight, telecommunications markets are quite different from what they were in 2001 when NANPA filed the request for relief in Western Kentucky. The telecommunications industry had not foreseen the exponential increase in complexity of implementing a geographic split in today's environment of cross-platform (*i.e.* wireline, wireless, VoIP) number portability. For example, each wireless handset associated with a line that will undergo a number change will require reprogramming. While handset programming is not a brand new issue, wireless handsets now make up a far greater proportion of the customer equipment requiring programming to effect a split.

Nowhere in the Commission's *May 31, 2007 Order* is there any discussion of the growth of wireless services in Kentucky since the Commission had last considered number exhaust issues, nearly eight years earlier. Carriers have learned through experience elsewhere that wireless growth and intermodal portability are creating new technical challenges, *particularly with respect to implementing permissive dialing*. These issues are elaborated in Section II of this motion. But in a nutshell, because many of the necessary changes to wireless and other networks cannot be tested before the start of permissive dialing, there is potential for problems affecting even those customers whose carriers believe that they are totally prepared.

During the past year the joint movants have gained new appreciation of the difficult synchronization needed to begin permissive dialing in advance of an area code split. The movants believe that had permissive dialing begun in Kentucky on the date originally ordered, April 1, 2008, many technical issues would have arisen, further frustrating customers. Fortunately, however, there have been two intervening events that greatly expanded the interval before area code relief is required in Western Kentucky.

First, in a remarkable coincidence, on the very same day the Commission issued its order requiring an area code split, the Federal Communications Commission granted the Kentucky Commission's petition for delegated authority to implement mandatory thousands-block number pooling within the 270 NPA. *In the Matter of Numbering Resource Optimization*, CC Docket No. 99-200, *Order*, 22 FCC Rcd 10092 (May 31, 2007). The Commission had been seeking this authority for six years, having filed two separate petitions for delegated authority to address pooling issues in the 270 NPA. With the FCC petition finally granted, on June 15, 2007, the Commission extended the permissive dialing date to July 1, 2008. The Commission, furthermore, postponed indefinitely the date for mandatory dialing. The Commission also noted

that the westernmost portion of the affected area, including the cities of Henderson, Hopkinsville, Madisonville, Murray, and Paducah, would be assigned the new 364 NPA. The Commission then acted quickly to require mandatory thousand-block pooling in the Western Kentucky rate centers. *See* Case No. 2006-00357, *Order* (July 18, 2007). These measures were highly effective in reducing numbering pressures in Western Kentucky.

In October 2007, NANPA released an updated Numbering Resource Utilization Forecast (“NRUF”), which pushed out the expected exhaust date by six months, to the second quarter of 2009. The Commission reacted by further extending the date for permissive dialing and by continuing its deferral of a date certain for mandatory dialing. Case No. 2006-00357, *Order*, (November 9, 2007). Significantly, the Commission found that having additional time before the beginning of permissive dialing “will provide for a more complete evaluation of the impact of mandatory thousands-block number pooling within the 270 NPA, and could result in further delaying the need for NPA relief.” *Id.* at 2.

Next, on December 20, 2007, the Commission released an order which, *inter alia*, stated: “The Commission expects a more accurate assessment of the impact of mandatory pooling will be available during the second quarter of 2008, and the Commission may reconsider delaying the implementation of permanent numbering relief for the 270 NPA at that time.” The Commission further stated that it would be “premature and imprudent” to consider any additional extensions prior to receiving a more accurate assessment from NANPA of the impact of mandatory pooling. *Id.* at 2-3.

On February 29, 2008, NANPA issued an exhaust projection that further extended the expected exhaust date by more than another year, until the third quarter of 2010.² NANPA cited

² NANPA’s latest NRUF containing the current exhaust analysis for Western Kentucky was issued April 25, 2008. http://www.nanpa.com/pdf/NRUF/Apr_2008_NPA_Exhaust_Projections.pdf

“return of codes” as the basis for this updated projection. In other words, the expected exhaust date is more than two years away. Significantly, the current projected interval before exhaustion is *more than a year longer* than the Commission projected after NANPA filed its forecast in August 2006. That projection was for code exhaust by the third quarter of 2007.

Responding quickly to the NANPA projection, on March 31, 2008 the Commission issued an order extending the start of permissive dialing for the 364 NPA more than a year, to April 1, 2010. Additionally, the Commission again stated this “additional time prior to the start of permissive dialing will provide for a more complete evaluation of the long-range impact of mandatory thousands-block number pooling within the 270 NPA, and could result in further delaying the need for NPA relief.” *Order* (March 31, 2008) at 2.³

With this respite, the Commission now has the opportunity to take a measured and detailed look at the intermodal portability issues affecting permissive dialing, including technical problems that have been recently identified or recognized.

II. IMPLEMENTING AN AREA CODE SPLIT PRESENTS ADDITIONAL TECHNICAL BARRIERS THAT NEED TO BE CONSIDERED

Geographic splits are no longer common, and in the aftermath of local number portability (“LNP”), they have become particularly problematic. Significantly, wireline portability was merely beginning, and wireline to wireless portability *did not exist* in 1998, when the Commission last ordered an area code split. FCC rules requiring wireline to wireless portability did not become effective until late in 2003.⁴ And more recently, after the Commission’s *May 31, 2007 Order*, the FCC extended LNP obligations and numbering administration support

³ *Cf. May 31, 2007 Order* at 5 (“[a]s future NPA relief is needed within Kentucky, the option of an all services distributed overlay may become a more attractive solution.”)

⁴ *See Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 96-116, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 23697 (2003).

obligations to encompass interconnected VoIP providers. *Telephone Number Requirements for IP-Enabled Services Providers*, WC Docket No. 07-243, *Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking*, 22 FCC Rcd 19531 (November 8, 2007). These new requirements further complicate the routing necessary to implement an area code split.

Moreover, the advent of intermodal number portability, when combined with growth in wireless penetration and the introduction of advanced communications services, results in a host of technical difficulties unique to splits increasing potential for consumer confusion and dissatisfaction. There are problems associated specifically with the permissive dialing period, when all services in the newly-defined NPA must be treated as if they have *two* 10-digit numbers. For example:

- Number Portability – *Affects Ability to Complete Calls* – Upon the initiation of the permissive dialing period, the Number Portability Assignment Center (“NPAC”) personnel must update the database (which houses all of the ported and pooled number data) to include both the old and the new NPA. Similarly, all carriers must update their operational support systems with the new and old NPA so that port requests will complete within the designated time frames. If the carriers’ systems are not in synch with the NPAC and each other, consumers’ calls will fail or will be misdirected. This was a particular problem in the implementation of the recent splits in the 909/951 (California) and 505/575 area codes (New Mexico).
- Caller ID – *Telephone Number Confusion* – During the permissive dialing period, the called party’s Caller ID may indicate that they have received a call from a 364 number even though the person initiating the call is still using her current 270 number (or vice-versa). Although this issue does not technically affect the ability of the call to complete, it leads to confusion on the part of all. There is no such problem with an overlay because no customer is required to change her number(s).
- Handset Issues – *Customer Inconvenience and Call Failure* – Some wireless devices still require customer and carrier interaction to reprogram handsets with the new phone number. If customers do not take the necessary action, calls will not complete after the start of mandatory dialing reprogramming.

Each of these difficulties complicates the consumer's experience with area code relief and otherwise causes confusion, inconvenience and frustration. In contrast, these problems are not present when implementing overlay plans. The permissive dialing period for an overlay plan is a non-event, uncomplicated by the fact that customers are not changing their telephone numbers.

Some of these technical challenges presented by permissive dialing for the split plan were not foreseeable at the time the Commission made its decision in May 2007. Since then it has become clear that new and innovative communications services can present previously unknown technical issues when implementing permissive dialing as part of an area code split.

One new wireless service provides a good example. Over the past two years some wireless carriers have begun to offer preferred contacts plans and services that allow customers to *receive* unlimited calls from five or more eligible (landline or wireless) telephone numbers chosen by the wireless customer. For such preferred contacts services to be billed correctly, the wireless carrier must be able to consistently track the identified originating numbers. During the permissive dialing period, if one of the customer's preferred contacts numbers was changed to the new area code, and that calling contact then called the wireless customer, software limitations at the wireless switch would prevent the proper recognition of the call. Specifically, the incoming call would not be displayed with the "old" telephone number. As a result it would not be recognized as an eligible call; instead it would be charged against the wireless customer's monthly limit, resulting in unexpected charges.

As the telecommunications industry continues to innovate and provide new products and services to its customers, novel technical issues like this one will undoubtedly arise in implementing permissive dialing as a prelude to an area code split.

III. TWO STATES HAVE RECENTLY RESCINDED DECISIONS TO ADOPT AREA CODE SPLITS

Since the Commission's decision in May 2007, two states have reversed prior decisions to implement splits and instead ordered all-services overlays. These decisions are instructive because they illustrate how other state commissions have considered and dealt with the types of issues identified above.

A. Utah

In April 2000, the Utah Public Service Commission issued a Report and Order addressing anticipated exhaustion of the state's 801 area code, and adopted an area code split to provide numbering relief. Docket No. 99-999-05, *Order* (April 26, 2000). The Utah Commission also ordered various number conservation measures, and these measures were so successful that the Utah regulators were able to postpone the implementation of area code relief for more than seven years. By mid-2007 the Utah Commission found that its code conservation measures had run their course and that number exhaust in the 801 NPA would likely occur after the second quarter of 2008. With the record in the case several years old, a group of carriers petitioned the Commission to revisit its prior decision to implement a split. The Commission held a public technical conference which included affected carriers and the Commission's Division of Public Utilities. After seeking and reviewing additional written comments, the Commission determined that it should rescind its original decision and, instead, order the use of an area code overlay in Utah. Docket No. 07-999-01, *Order Selecting Area Code Overlay*, (July 12, 2007). This decision was issued six weeks after the Kentucky Commission issued its *May 31, 2007 Order* for an area code split for the 270 area code.

In reversing its earlier decision the Utah Commission cut straight to the point: "*Conditions have changed* from the time we issued our April 26, 2000, Report and Order and we

have a greater understanding of the implications attendant to area code splits and overlays and have a different appreciation of the impacts each would have. . . .” *July 12, 2007 Order* at 3 (emphasis added). The Utah Commission noted that while an area code split may seem preferable as a way to preserve seven-digit local calling, closer scrutiny showed that customers whose local calling area was divided would be required to dial certain local calls using 10 digits anyway. The Utah Commission also said that it had significantly underestimated the growth in cellular telecommunications. The Commission also noted that technological innovation and customer adoption of pre-programming options in modern handsets and other customer premises equipment have moved more and more customers from actually dialing telephone numbers; rather, many simply use a “speed dial” number to reach family and friends. The Utah Commission observed that an area code split would require much more device re-programming than an overlay would, because in an overlay customers would only have to update any 7-digit numbers programmed in their phones. Finally, the Utah Commission noted how intermodal number portability has become relevant to any decision about relieving number exhaustion.

B. West Virginia

West Virginia, which borders Kentucky, is the most recent state to change course on solving area code exhaustion. Over the strong dissent of its Chairman, on January 29, 2008 the West Virginia Public Service Commission, in a 2-1 vote, determined that a geographic split should be implemented to relieve exhaustion in the 304 NPA. Exhaustion was expected to occur in the fourth quarter of 2008. After reviewing numerous petitions for reconsideration, the West Virginia Commission determined that technical complications attributable to the geographic split had not been fully addressed by previous filings in the matter. Those complications, which persuaded the West Virginia Commission to grant reconsideration and to reverse its order, included the following:

- problems with Caller ID
- problems implementing number portability between wireline and wireless platforms
- text messages being lost
- home alarm systems being compromised; and
- misdirected calls during the permissive dialing period

NANPA Petition for Approval of a Relief Plan for the 304 Numbering Plan Area, Case No. 00-0953-T-PC, Order granting reconsideration (February 13, 2008).

On reconsideration the West Virginia Commission found that switching to an overlay would help alleviate each of these technical difficulties, minimizing disruption for consumers and businesses alike.

The undersigned petitioners urge the Kentucky Commission to reopen this proceeding to take additional evidence on whether these problems being avoided in West Virginia are likely to occur as part of an area code split in Western Kentucky.

IV. ABUNDANT COMMISSION PRECEDENT SUPPORTS REOPENING A GENERIC PROCEEDING TO CONSIDER INDUSTRY CHANGES AND OTHER CHANGED CIRCUMSTANCES

The Kentucky Commission has a well-documented history of reopening “closed” matters when changed circumstances compelled a re-examination of policy in light of contemporary developments, including changes either in law or in the facts which had been determinative of a Commission policy decision. There are numerous examples dating back almost to the beginning of telecommunications competition. For example, in 1989 the Commission reopened a generic proceeding related to detariffing of embedded CPE, after new issues were raised related to CPE needed in connection with E-911 service. *Detariffing of Embedded Customer Premises Equipment*, Adm. Case No. 269 (January 10 and December 14, 1989). As another example, in

November 1993 the Commission denied a petition filed by various entities that had requested the Commission to order local telephone companies to assign them N11 codes. Eighteen months later the Kentucky Transportation Cabinet wrote a letter asking that the Commission reconsider its policy decision, and the Commission, on its own motion, treated the letter as a “petition for reopening this administrative proceeding.” The case was reopened. *Abbreviated N11 Dialing Codes*, Adm. Case No. 343 (March 23, 1995). In yet another example related to evolutionary changes affecting telecommunications, two years after passage of the Telecommunications Act, the Commission, on its own motion, reopened Administrative Case No. 355 to reconsider the regulatory monitoring requirements it had earlier placed on local exchange carriers. The Commission made clear that it was reopening the case in light of industry changes. *Local Competition, Universal Service, NTS Rates*, Adm. Case No. 355 (August 26, 1998).

The Commission has been particularly sensitive to the need to reopen generic cases to consider the effects of burgeoning competition for telecommunications services. For example, noting changed industry circumstances, the Commission reopened Administrative Case 359. It was a major proceeding involving reduced regulation for interexchange services that had been closed for four years. The Commission observed that carrier choices had multiplied, and concluded that exempting a greater number of competitive telecommunications utilities from certain regulations “is timely.” *Exemptions for Providers of Local Exchange Service*, Adm. Case No. 359 (August 8, 2000). That same year the Commission, on its own motion, reopened an administrative case concerning regulation of local exchange payphone service. Finding changed circumstances in the pay telephone industry resulting from the FCC’s per-call payphone compensation plan, the Commission determined on its own to eliminate payphone “set use fees” that it had previously allowed. *Deregulation of Local Exchange Carrier Payphone Service*,

Adm. Case No. 361 (May 8, 2000). Finally, there is even precedent for the Commission to, *sua sponte*, reopen a generic proceeding concerning whether to implement an overlay rather than a split. The Commission did just that in 1998, when it reversed its initial decision to implement an all services overlay in NPA 502. *In the Matter of Area Code Exhaustion and Relief*, Adm. Case No. 373 (October 23, 1998).

Although the telecommunications industry has been especially dynamic, the Commission has demonstrated willingness to re-visit and re-think important policy issues even outside the telecommunications sphere. When circumstances have changed, the Commission has reopened other closed matters. For example, the Commission reopened the evidentiary record in its investigation of the membership of Louisville Gas & Electric and Kentucky Utilities in the Midwest Systems Operator, to receive information about federal energy market tariffs which had been filed after the Commission had held its hearings. *Investigation into Membership of LG&E and Kentucky Utilities Co. in the Midwest Independent Transmission Systems Operator*, Case No. 2003-00266 (June 22, 2004). Reflecting on what it had done so far, the Commission said that it might have earlier defined one issue too narrowly, and said reopening the proceeding was needed “to ensure that the evidentiary record in this case is fully developed....” *Id.*

Finally, just six months ago the Commission decided that *wireless growth alone* is sufficient reason for the Commission to reexamine its previous funding decisions for the Kentucky Telecommunications Access Program. After the Kentucky Commission on the Deaf and Hard of Hearing (“KCDHH”) alleged that current funding mechanisms have not kept pace with the needs of wireless users among the hearing and speech-impaired community, the Commission agreed that it should take a fresh look:

The Commission finds that [petitioner] KCDHH has raised fair and necessary questions regarding the equitable application of the TRS and TAP surcharges and

whether the current funding mechanisms will adequately address and support the telecommunications needs of Kentucky's deaf, speech impaired, and hard-of-hearing community.

Petition of the Kentucky Com'n on the Deaf and Hard of Hearing to Expand the Funding Base for the Kentucky Telecommunications Access Program, Case No. 2007-00464, Order (December 5, 2007) (granting petitioner KCDHH's motion to open a new proceeding).

The Commission should do likewise here. Circumstances have changed: the Commission has postponed permissive dialing until 2010, the telecommunications industry continues to evolve, and area code splits have become the exception, nationwide. These changes lead to fair and necessary questions about how future numbering needs should be addressed for Western Kentucky.

V. THE COMMISSION HAS EXPRESSED A PREFERENCE FOR AN ALL SERVICES DISTRIBUTED OVERLAY

As noted above, there has been one decision in which the Kentucky Commission reversed its own decision to implement an all services overlay in the 502 area code, and subsequently ordered a split. That decision predated number portability by several years. It should carry little weight in the future. Moreover, in 1998 the Commission and industry could not have foreseen what we take for granted today—wireless services are ubiquitous and cross-platform portability is now possible. With these facts in mind, it seems clear that the Commission had it right the very first time it considered how to deal with number exhaustion:

It appears that the overlay option would provide the greatest benefit on a going-forward basis. Subscribers will not have to change telephone numbers, and future relief efforts will be much less disruptive since additional overlay area codes can be readily assigned. Additionally, with the gradual implementation of LNP, the Commonwealth *will be well positioned to enjoy the benefits of competition and new technologies*, since subscribers will have become accustomed to ten-digit local dialing.

In the Matter of Area Code Exhaustion and Relief, Adm. Case No. 373, *Order* (August 18, 1998) (emphasis added).

VI. CONCLUSION

Number exhaust in Western Kentucky is likely to occur, if at all, more than two years from now. The Commission's successful efforts at code conservation in Western Kentucky have opened a window of opportunity to consider technical issues that could unnecessarily impair telecommunications services for many Kentuckians. In light of changes in circumstance since the Commission's *May 31, 2007 Order*, the carriers joining in this motion respectfully request that the Commission reopen this case for the purposes of an informal technical conference and for other appropriate procedures as may be necessary.

Dated: July 1, 2008

By: /s/ Mary K. Keyer

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CERTIFICATE OF SERVICE

It is hereby certified that this 1st day of July, 2008, I have served the foregoing by U.S. Mail, postage prepaid, upon the following:



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