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<b>FCC Inbox:</b>	INBOX-1.41 : MISCELLANEOUS
<b>Confirmation #:</b>	20200429294948893
<b>Submitted:</b>	Apr 29, 2020 5:19:33 PM
<b>Status:</b>	RECEIVED
<b>Name(s) of Filer(s)</b>	Stewards of Sound, Inc
<b>Law Firm(s)</b>	Fletcher, Heald and Hildreth, PLC
<b>Attorney/Author Name(s)</b>	Peter Tannenwald, Matthew H. McCormick
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<b>Type of Filing</b>	OTHER
<b>Address of</b>	Law Firm
<b>Address</b>	1300 N. 17th St. 11th Floor, Arlington, VA, 22209-3801
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## Peter Tannenwald

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**From:** no-reply@fcc.gov  
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Confirmation Number: 20200429294948893

Proceeding(s): INBOX-1.41 : MISCELLANEOUS

Filer(s): Stewards of Sound, Inc

Author(s): Peter Tannenwald, Matthew H. McCormick

Law firm(s): Fletcher, Heald and Hildreth, PLC

Type of Filing: OTHER

File Number:

Report Number:

Bureau ID Number:

Documents(s) Attached: W279DD P4R final.pdf

Address: 1300 N. 17th St. 11th Floor, Arlington, VA 22209

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of )  
 )  
**WRPX, INC.** ) **Facility ID No. 141819**  
 )  
FM Translator Station **W279DD** )  
Hudson, WI )

To: Chief, Audio Division, Media Bureau

**PETITION FOR RECONSIDERATION**

1. Stewards of Sound, Inc. (“Stewards”) hereby petitions for reconsideration of the decision of the Audio Division, by letter of March 30, 2020 (“Decision”), dismissing Stewards’ interference complaint (“Complaint”) against WRPX, Inc. (“WRPX”) with respect to interference caused by FM translator W279DD, Facility ID 141819, to listener reception of the co-channel signal of WWIB, Facility ID 63428. The Decision improperly expanded the requirements adopted in *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, 34 FCC Rcd. 3457 (2019) (“Report and Order”) when it faulted Stewards for insufficient, rather than non-existent, private attempts to resolve the interference problem. The Decision also defied common sense in holding that a listener who states that he or she cannot receive WWIB “on 103.7” has not stated that listening took place over the air.

2. The end result of the Decision is the continuation of proven interference that is occurring in fact, contrary to the letter, spirit, and intent of Section 74.1203(a)(3) of the Commission’s Rules, which unambiguously states:

§ [74.1203](#) Interference.

(a) An authorized FM translator or booster station will not be permitted to continue to operate if it causes any actual interference to:

(3) The direct reception by the public of the off-the-air signals of any full-service station or previously authorized secondary station....

3. W279DD has been on the air causing interference to reception of WWIB for four years.<sup>1</sup> Dozens of listeners, some of whom have been listening to WWIB for decades, have written, often in their own handwriting, complaining about losing the ability to listen to WWIB. Stewards has been asking the Commission for the relief to which it is fully entitled under Section 74.1203(a)(3) since August of 2017. The translator was ordered on June 11, 2018, to cease operation,<sup>2</sup> but it did not comply. Instead, WRPX filed an application and was authorized to modify its antenna pattern.<sup>3</sup> That did not fix the problem. WRPX then applied for a construction permit to modify its antenna pattern further.<sup>4</sup> The latest application was granted over three months ago, but the new antenna has not yet been installed; and as discussed *infra*, WRPX has declined to advise Stewards of when it will be installed.

4. Now, as a result of the Decision, WRPX is free to tear up its latest construction permit and to continue to operate a translator that unquestionably is causing interference to over-the-air reception of WWIB by *bona fide* listeners. Why? Because the Commission has thrown up procedural obstacles, has disregarded years of documentary evidence provided by Stewards, and has created narrow hoops through which Stewards must jump with precision, all the while ignoring the fact that interference exists that is prohibited by the rule and will now continue to exist unless reconsideration is granted. In other words, the basic purpose of the regulatory

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<sup>1</sup> The translator began operating on Channel 279 in May of 2016. See File CDBS File No. BLFT-20160502ABR.

<sup>2</sup> Audio Division Letter to James A. Koerner, Esq, Ref. 1800B3-KV, June 11, 2018.

<sup>3</sup> CDBS File Nos. BPFT-20180627AAR and BLFT-20180801ABO.

<sup>4</sup> LMS File No. 0000087322.

scheme, to protect primary services from interference from secondary services, has been turned upside down.

5. Attempts at Private Resolution. The Decision states that “the Complaint lacks the required statement that SSI attempted to resolve the matter privately with WRPX. That is not so, and the Decision recognizes that the Complaint stated that a private resolution was not possible. But the Decision says that even though the required recitation was made, the efforts at a private resolution related to a “separate claim that has already been adjudicated.” That is not a rational approach, for two reasons. First, the entire situation with W279DD has been one continuing effort by Stewards for nearly three years, involving the same translator, the same primary station, and the same frequency. The adoption of new rules only changed some decisional criteria and did not wipe out any history. Second, the “separate claim,” which Stewards does not concede was separate, was never fully resolved. While the Audio Division issued a ruling and directed the translator to cease operation, the translator never complied; and the Audio Division never acted in response to a request by Stewards for enforcement filed on June 19, 2018. After WRPX installed a new antenna, Stewards returned to the Commission on October 31, 2018, with evidence that interference still existed. The Audio Division never ruled on that complaint but rather insisted that Stewards supplement – not replace – its complaint, because the complaint would now be ruled on based on criteria in the Report and Order.

6. To say that there have been separate proceedings, and that Stewards’ efforts prior to the Report and Order were all wiped out, is harsh and is not supported by the Report and Order. The Report and Order stated only that complaints still pending would be decided pursuant to the new rules and should be amended with “supplemental” materials, not created

anew. There was no warning that prior efforts needed to be repeated. The Report and Order stated:

49. Applications or complaints that have not been acted upon as of the effective date of the rules adopted in this *Report and Order* will be decided based on the new rules. If necessary, parties will be given an opportunity to submit *supplemental materials* to address the revised rules adopted herein [*emphasis added*].

7. When the Audio Division wrote to Stewards on August 22, 2019, inviting Stewards to submit supplemental information, the letter was a form that only had boxes checked. There was no explanation of the details of specific deficiencies and certainly no indication that new efforts at a private resolution were required. The relevant box stated that Stewards should submit a “Statement that the Complaining Station licensee has used commercially reasonable efforts to inform the relevant translator licensee of the claimed interference and attempted private resolution.” Stewards did in fact repeat the required recitation in its supplemental materials and pointed out that there was more than ample opportunity for WRPX to engage in a dialog in light of all the pleadings that had been filed, in addition to private discussions that were held prior to Stewards’ initial complaint. Keep in mind that WRPX never shut down the translator and responded to Stewards’ complaints by filing applications to modify the translator’s antenna pattern, never approaching Stewards before doing so.<sup>5</sup>

8. The requirement of the Report and Order was to attempt “private” resolution, so Stewards did not submit the emails between it and WRPX; but that does not mean that the emails do not exist or that Stewards did not engage in a commercially reasonable effort. Some discussion was by email and some by telephone. Attached as Exhibit 1 are copies of emails, with excerpts quoted below, showing that WRPX’s response was to state that the translator

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<sup>5</sup> Public notice was given in Broadcast Applications, Report No. 29269, released July 2, 2018. The application was granted on July 13, 2018.

would not be shut off, that pre-translator interference conditions could never be restored, and that Stewards should basically go through the FCC's complaint process. A email from WRPX's consulting engineer stated:

The only way to “completely” eliminate the interference is to shut off the translator, *which is not reasonably going to happen*. There are no other frequencies available...Borgen Broadcasting Corp. is willing to work with you to mitigate this but *it is unreasonable for WWIB to expect the same conditions as existed prior to April 2016*... You would be better served to encourage those who are experiencing issues to switch to alternative program delivery, such as online via your webstream....In any event, there are processes for this and it starts with identifying individual complainants at specific locations who will need to go on record as well as cooperate in the resolution of said complaints [*emphasis added*].

9. To fault Stewards for inafdequately approaching WRPX privately is not reasonable given all the circumstances. WRPX's position that shutting off the translator was “not reasonably going to happen” left Stewards with no realistic remedy other than formally seeking relief from the Commission.<sup>6</sup>

10. Moreover, Stewards has continued to communicate privately with WRPX. It is always possible, though by no means assured, that construction of the modified facilities authorized in LMS File No. 0000085322 will mitigate enough of the interference to reduce the number of WWIB listener complaints below the FCC-required threshold to sustain a complaint. But the new antenna pattern that was authorized on January 16, 2020, has not yet been constructed. Stewards' counsel asked WRPX's counsel when installation could be expected, but

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<sup>6</sup> It should also be noted that WRPX appeared to be aggressive with at least some of WWIB's complaining listeners, as indicated in the statements of Barbara Bartz and Karen Adams, attached hereto as Exhibit 3, both of which have previously been submitted to the Commission by Stewards.

WRPX's counsel has not been able to respond.<sup>7</sup> The email exchange, which took place in March of 2020, is attached as Exhibit 2.

11. Method of Listening to WWIB. The Decision further faulted Stewards because the statements of complaining listeners said that they listen to WWIB "on 103.7" or "at 103.7" instead of "listens over-the-air." While it is true that Rule Section 74.1201(k) uses the phrase "listens over the air," the Commission has never said that only those precise words are sufficient to support an interference complaint. The rational meaning of that rule is that listeners must state that they receive interference using an over-the-air radio receiver and are not trying to listen through the Internet, on the telephone, or by some other technology. To rule otherwise is an unreasonable elevation of form over substance, with no rational support and also without any warning in Commission Rules or Orders that only one precise phrase and no equivalent words will be accepted.

12. WWIB's complaining listeners recited at length their efforts to move "radios" around in their homes, reception of an undesired signal which they explicitly identified as coming from WDGY<sup>8</sup> when they wanted to listen to WWIB, and inability to listen on automobile radios. Two complaints previously submitted to the Commission are attached as Exhibit 3 and are very clear that the listeners are trying to receive WWIB over the air. Reception of programming identified as coming from WDGY and interference to reception of WWIB "on 103.7 MHz" could not occur if the listener were not relying on over-the-air reception of WWIB. WWIB "on 103.7" arrives on 103.7 MHz, which is over the air. There can be no question that all the complaining listeners were relying on over the air reception. Stewards submits that the

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<sup>7</sup> No criticism of WRPX's counsel is intended. He can respond only to the extent that he receives information from his client.

<sup>8</sup> WDGY(AM) is the primary signal that is rebroadcast by W279DD.



Commission's rejection of its complaints because of use of different words with the same meaning as the words in the rule constitutes decision-making that would never stand up in court under the arbitrary and capricious standard.

13. Conclusion. Stewards again asks the Audio Division to look at the big picture. The end result of the Decision is the continuation of interference that has been proven to exist, allowing a secondary service to interfere with actual, regular, and decades-long loyal listening to a primary signal, contrary to the letter, spirit, and intent of Section 74.1203(a) of the Commission's Rules, over a period of four years. The Report and Order was not intended to set up a series of traps to foil legitimate interference complaints that are sufficient in number, but that is what the Decision did – it came out with the wrong real life result because of regulatory hoops that, as applied here, impair rather than enhance the effectiveness of the basic rule.

14. To apply the Rules properly and to fulfill their intended purpose, the Decision must be reversed. The translator must be ordered to shut down until the newly authorized antenna is installed. If the Rules are not enforced, and the translator is not shut down, then at a minimum, WRPX must be ordered to complete installation of its new antenna within 30 days.

15. If no relief is granted, the Commission will in effect be telling Stewards to start all over again and file a new complaint, which Stewards is prepared to do. The Stewards family has owned and operated WWIB for two generations. The station's Christian-based family-oriented programming has attracted many loyal listeners, and Stewards will make every effort to enable those listeners continue to receive WWIB's broadcast signal.

16. It should be noted, however, that if Stewards filed a new complaint now, WRPX would then be able to cut off the complaint, after all of Stewards' work, by installing its new antenna and making Stewards go back to its listeners yet another time. The correct solution,

which comports with purpose and intent of the regulatory scheme, is to require WRPX to install its new antenna immediately,<sup>9</sup> and as a way to encourage promptness, to require that the translator cease operation with its present facilities.

Respectfully submitted,



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Peter Tannenwald  
Matthew H. McCormick

Fletcher, Heald & Hildreth, PLC  
1300 N. 17<sup>th</sup> St., 11<sup>th</sup> Floor  
Arlington, VA 22209-3801  
Tel. 703-812-0404/0438  
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[mccormick@fhhlaw.com](mailto:mccormick@fhhlaw.com)

Counsel for Stewards of Sound, Inc.

April 29, 2019

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<sup>9</sup> Without a Commission order to install, WRPX can sit on its construction permit for up to three years and install only after Stewards has done all the work required to file a new complaint.

STEWARDS OF SOUND, INC

**EXHIBIT 1**

Emails between Pat Wahl (Stewards' Chief Engineer)  
and Mark Mueller (WRPX's Consulting Engineer)

From: **Pat Wahl** <[pwahl@wwib.com](mailto:pwahl@wwib.com)>  
Date: Tue, May 2, 2017 at 4:25 PM  
Subject: WDGY translator interference to WWIB  
To: [mark@muellerbroadcastdesign.com](mailto:mark@muellerbroadcastdesign.com)  
Cc: Terry Steward <[tsteward@wwib.com](mailto:tsteward@wwib.com)>

Hi Mark,

Sorry so long in getting back to you. Terry was on a "long" vacation with Carol in Florida, so this has been on the back burner. Carol is scheduled for open heart surgery next Tuesday. Since we talked I have continued collecting listener mail for you and I'll share these examples, as you asked, focusing on locations. These listeners mark the "western edge" so you can get an idea where the interference begins. I also have received feedback from people who notice interference when out driving yet have good signal at their homes. Examples would be people east of Knapp and Boyceville, and, of course, Menomonie and Wheeler have no interference.

2 miles southwest of Wilson  
2 miles northwest of Boyceville  
6 miles east of Beldenville  
6 miles south of Baldwin  
In town, Hwy 63 Clear Lake  
4 miles northeast of Maiden Rock  
8 miles east of River Falls

I did some Google Maps distance measurements and a quick sum to find these locations in particular average 58 miles from our tower site. At each location, listeners were hearing wwib in their homes before the translator.

Pat Wahl  
Chief Engineer  
Stewards of Sound, Inc.  
WWIB/WOGO  
Chippewa Falls, WI  
[715-559-6577](tel:715-559-6577) cell

Exhibit 1

Page 2

From: **Mark A. Mueller** <[mark@muellerbroadcastdesign.com](mailto:mark@muellerbroadcastdesign.com)>  
Date: Tue, May 23, 2017 at 5:25 PM  
Subject: RE: follow up on 103.7 translator in Hudson  
To: Pat Wahl <[pwahl@wwib.com](mailto:pwahl@wwib.com)>, Terry Steward <[tsteward@wwib.com](mailto:tsteward@wwib.com)>

Pat,

The only way to “completely” eliminate the interference is to shut off the translator, which is not reasonably going to happen. There are no other frequencies available. Many of these areas are outside even the 100 uV/m (40 dBu) Longley-Rice contour and while you may have enjoyed sporadic service there before those days are rapidly coming to an end regardless of what happens with this translator. If this were an LPFM there would be no recourse whatsoever, and while I understand that you are trying to protect existing service no matter how weak, the lack of complaints over the first 11 months of operation weighs heavily against a claim of “regularly used”.

Borgen Broadcasting Corp. is willing to work with you to mitigate this but it is unreasonable for WWIB to expect the same conditions as existed prior to April 2016. Even if the translator is turned off, another will surely take its place. You would be better served to encourage those who are experiencing issues to switch to alternative program delivery, such as online via your webstream.

In any event, there are processes for this and it starts with identifying individual complainants at specific locations who will need to go on record as well as cooperate in the resolution of said complaints. That cooperation may include installation of a directional receive antenna for their radio.

- Mark

**From:** Pat Wahl [mailto:[pwahl@wwib.com](mailto:pwahl@wwib.com)]  
**Sent:** Tuesday, May 23, 2017 3:53 PM  
**To:** [mark@muellerbroadcastdesign.com](mailto:mark@muellerbroadcastdesign.com); Terry Steward <[tsteward@wwib.com](mailto:tsteward@wwib.com)>  
**Subject:** Re: follow up on 103.7 translator in Hudson

Hi Mark,

I am passing your reply on to Terry Steward. I will clarify for you that each listener location I listed is an actual listener residence and refers to someone receiving interference AT their home. The mention of other listeners "out driving" in this area was only to potentially aid you in identifying the interference area as a means to resolving this problem. We continue to receive reports of interference in this area and wish to resolve this as soon as possible. Do you no longer wish to work on this together as we discussed on the phone?

Pat

Exhibit 1

Page 3

On Tue, May 23, 2017 at 2:54 PM, Mark A. Mueller <[mark@muellerbroadcastdesign.com](mailto:mark@muellerbroadcastdesign.com)> wrote:

Pat,

At this point you are going to have to follow the FCC procedures for this, which includes sworn statements from the complainants with specific names and addresses with contact information. A large problem here is that the time from the translator signing on to the first complaint is so long that the FCC requirement at §74.1203(a)(3) that it be a "regularly used signal" is not met. You've also got "people who notice interference when out driving yet have good signal at their homes", which indicates that this is more of a radio issue than a signal issue.

- Mark

**From:** Pat Wahl [mailto:[pwahl@wwib.com](mailto:pwahl@wwib.com)]

**Sent:** Tuesday, May 23, 2017 2:33 PM

**To:** [mark@muellerbroadcastdesign.com](mailto:mark@muellerbroadcastdesign.com)

**Subject:** follow up on 103.7 translator in Hudson

Hi Mark,

Terry told me he called your office late last week and left a message for you. He wonders if you are on the road, since he hasn't heard back. He was calling to follow up on my email to you May 2nd. You can reach Terry at [715-559-6080](tel:715-559-6080).

Thanks!

Pat Wahl

WWIB/WOGO

[715-559-6577](tel:715-559-6577)

STEWARDS OF SOUND, INC.

**EXHIBIT 2**

Email Exchange between Stewards' Counsel and WRPX's Counsel

From: James Koerner <jkoerner.law@comcast.net>  
Sent: Tuesday, March 17, 2020 11:51 AM  
To: Peter Tannenwald  
Cc: wdgyam@comcast.net  
Subject: RE: FM translator W279DD

Peter:

I'm waiting to hear from our engineer.

Jim

From: Peter Tannenwald [mailto:tannenwald@fhhlaw.com]  
Sent: Tuesday, March 17, 2020 10:23 AM  
To: James Koerner  
Subject: RE: FM translator W279DD

Sorry to be a best when most of us are confined to home, but did you find anything out yet?  
Peter

Peter Tannenwald  
Fletcher, Heald & Hildreth  
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Tel: 703.812.0404 | Fax: 703.812.0486  
tannenwald@fhhlaw.com | www.fhhlaw.com | www.commlawblog.com

From: James Koerner [mailto:jkoerner.law@comcast.net]  
Sent: Tuesday, March 10, 2020 2:17 PM  
To: Peter Tannenwald <tannenwald@fhhlaw.com>  
Subject: RE: FM translator W279DD

I don't know off-hand, but I will try to find out.

Jim

Exhibit 2

Page 2

From: Peter Tannenwald [mailto:tannenwald@fhhlaw.com]

Sent: Tuesday, March 10, 2020 2:04 PM

To: James Koerner

Subject: FM translator W279DD

Do you know when WRPX plans to install the new antenna approved by the FCC on Jan. 20 for W279DD, Hudson, Wisconsin? I have drafted a letter to the FCC, asking that the licensee be required to install now and not take advantage of the 3-year term on the CP. If installation is imminent, however, I can save everyone a lot of trouble and not file my letter.

Thanks.

Peter

Peter Tannenwald

Fletcher, Heald & Hildreth

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STEWARDS OF SOUND, INC.

**EXHIBIT 3**

Barbara Bartz and Karen Adams Complaints



To whom it may concern,

I have been a faithful listener of WWIB for 35+ years. I have listened to it in my home and on the road during that time. For the past several years, I have been struggling to get it in on my radio and have tried multiple different radios. I listen to it in my car always. It is really frustrating when I go west 5 miles towards New Richmond or Twin Cities. I start getting another radio station out of Hudson on the 103.7 frequency. New Richmond and Baldwin are about 72 miles away from WWIB I should still be able to get it in without any issue on 103.7 in these towns yet I am not able to listen to WWIB there. We can go north 70 miles which is over 130 miles away from WWIB and still be able to get in WWIB with no issues or interference.

I do not recall the call letters of the radio station out of Hudson, they did come out and try to fix the problem and gave me a digital radio or some kind of a radio. I told them they did not have to do that, but they insisted. I told them that it still did not fix the problem of interference. I still ever occasionally will get them on the radio that they gave me. I would listen to WWIB on every radio in my house and am now limited to the kitchen where I still get interference from the other radio station. Right now I am sitting in the kitchen and there is horrible interference. I would like to be able to listen on my other devices without interference also, that is impossible. I should be able to do that. I am still not able to get it in on my car radio when I travel west more than 5 miles from my house yet can go north over 70 miles without any interference. So, giving me a radio, did not solve the problem and I explained that to them before they left. They were very kind even came back to the house to try and convince me it was a WWIB problem. Which I know is not true from the other places I can get WWIB on the radio which are further away from WWIB. Like I have explained in the letter and I told them the same thing, the problem is not resolved. They insisted to me that the problem was resolved and I told them that it really wasn't.

I sure hope this problem can be resolved.

Thank you,

Barbara Bartz

*Barbara Bartz*      4/8/19

N12199 County Road Q

Downing, WI 54734

Jan 4 2019

To Whom It May Concern:

In early November of 2018, I was contacted, via telephone, by the manager of radio station WDBG. The conversation centered around the quality of my radio reception - particularly about how well I received WWIB- 103.7 FM. I informed him that of late, my reception quality had improved. This was all in part to my recent purchase of a new radio as well as a reduction by WDBG over the 103.7 frequency, though I do continue to have trouble with reception in my car, in the vicinity of my home, with WDBG drowning out WWIB.

I felt intimidated by the WDBG manager, who insisted that he be allowed to come to my home and test my radio equipment. He even went ~~as~~ so far as to offer to purchase additional radio equipment for my home, which to me, bordered on coercion. I felt it not appropriate. He made me very uncomfortable. Our phone conversation was contentious, leaving me with no desire to allow him into my home. I felt that his solution to my reception problems does not begin to address the overall issue, for me or other WWIB listeners. New radio equipment does not "fix"

interference with the radio signal.

Respectfully,

Karen Adams  
E1943 1070<sup>th</sup> Ave  
Boyceville WI 54125

**CERTIFICATE OF SERVICE**

I, Peter Tannenwald, do hereby certify that I have, this 29<sup>th</sup> day of April, 2020, caused to a copy of the foregoing “Petition for Reconsideration” to be sent by electronic mail to:

James A. Koerner, Esq.  
[jkoerner.law@comcast.net](mailto:jkoerner.law@comcast.net)  
7020 Richard Drive  
Bethesda, MD 20817  
Counsel for WRPX, Inc.



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Peter Tannenwald