

**IF THE NAB HAD ITS WAY, THIS  
WOULD BE YOUR LIVING ROOM.**



## THE NAB VERSUS INNOVATION

In attempting to defend its campaign against widespread, flexible use of the television white spaces, incumbent broadcasters have objected to the notion that they are opposed to new technologies. However, downright hostility towards innovation has always been the hallmark of the broadcast industry. As one commenter has observed, the National Association of Broadcasters “has consistently opposed every bit of new technology offering new media options to consumers...”<sup>1</sup> Here are but a few examples.

- **FM Radio:** FM radio, invented in 1933, offered fidelity far superior to AM broadcasting, and by 1941 American consumers had purchased over 500,000 FM receivers.<sup>2</sup> However, large incumbent broadcasters, which relied on AM technology, viewed FM as a competitive threat. In 1944, broadcasters successfully lobbied the FCC to relocate FM to a different frequency band, rendering existing equipment obsolete.<sup>3</sup> As a result, FM radio listenership did not surpass AM listenership until 1979.<sup>4</sup>
- **Cable Television:** Although cable television technology (originally deployed to allow outlying areas to receive network television broadcasts) initially did not receive much attention from broadcasters, the NAB vigorously opposed cable TV after the nascent service began offering programming that competed with over-the-air broadcasts, characterizing it as a “malignant tumor” and launching an expensive campaign to “Save Free TV”.<sup>5</sup>
- **The VCR:** In the landmark Supreme Court case *Sony v. Universal City Studios* (the “Betamax case”), CBS filed a brief opposing VCR manufacturer Sony, claiming that “[e]very broadcaster is directly threatened by [the] argument that the broadcasting of copyrighted materials makes them fair game for home copying” and maintaining that the “argument that the ability of [VCRs] to play prerecorded videocassettes makes them suitable for substantial noninfringing use is frivolous.”<sup>6</sup>
- **Satellite Television:** As with cable, broadcasters aggressively opposed satellite television, even challenging the FCC’s power to authorize the Direct Broadcast Satellite service. A federal appeals court ultimately rejected the NAB’s contention as a “luddite argument,” holding that “existing licensees[] have no entitlement that permits them to deflect competitive pressure from innovative and effective technology.”<sup>7</sup>
- **Satellite Radio:** The NAB has consistently opposed satellite radio operations since they were first proposed in 1990,<sup>8</sup> culminating in an aggressive effort to stop the pending merger of satellite radio providers XM and Sirius. In 2007, the NAB’s efforts prompted the *Wall Street Journal* to caution that the government should not “help the NAB smother a fledgling competitor in the crib.”<sup>9</sup>
- **DTV Transition:** Broadcasters—who were slated to broadcast DTV service at full power by 2002—long opposed a hard deadline to transition from analog broadcasting notwithstanding the substantial amounts of desirable spectrum that would be freed up for innovative public safety and commercial uses. Broadcaster opposition to the transition led one senior FCC official to observe that broadcasters would “rather eat their children than give up this spectrum,”<sup>10</sup> and the delay prompted Senator John McCain to voice concerns about the NAB’s influence on DTV transition issues.<sup>11</sup>
- **Digital Video Recorders:** When Digital Video Recorders such as TiVo and ReplayTV launched in 1999, the parent companies of CBS, ABC, and FOX announced that they were considering suing the manufacturers unless they negotiated licenses to use the programming.<sup>12</sup> A number of broadcast networks ultimately joined a suit against the makers of the latter device,<sup>13</sup> and broadcasters began advocating for “broadcast flag” regulations that would constrain the ability of DVRs to use digital TV signals.
- **“Short-Spaced” Radio Stations:** Given the increasing popularity of FM radio, the FCC in the late 1980s authorized “short-spaced” station assignments that were nominally closer to existing stations, but that could avoid causing harmful interference using methods such as directional antennas.<sup>14</sup> As with previous proposals to promote efficient use of the broadcast spectrum, the NAB opposed these efforts, claiming they would result in interference to existing broadcasters.<sup>15</sup>

- **Low Power FM:** In 1998, in response to an FCC proposal to allow operation of a new class of low-power FM radio stations, the NAB objected that allowing such stations would result in an “ocean of interference.”<sup>16</sup> Two years later, the NAB distributed a compact disc on Capitol Hill that purported to show the results of such interference; however, government engineers, who could not replicate the results, characterized the simulation as “downright fraudulent.”<sup>17</sup> At Congress’s direction, the FCC commissioned an independent study, which found no significant interference issues with the proposed service.<sup>18</sup>
- **Harnessing White Spaces:** Today, the NAB is opposing efforts to harness unused space between the television channels to bring new Internet services to consumers and first responders.

The space between the channels on your television is where the future of communication, wireless Internet, and even portable television lives. The potential for these White Spaces is limited only by creativity, ingenuity, and the need for clear rules of the road. The Wireless Innovation Alliance, a coalition of creators, developers, and leaders in technology, urges the FCC to determine and adopt rules that will realize the potential of TV white spaces for us all. Find out more at <http://wirelessinnovationalliance.com/>.

<sup>1</sup> Radley Balko, [Dinosaurs vs. Satellites: How the National Association of Broadcasters is Trying to Kill Radio](#) (Apr. 17, 2007).

<sup>2</sup> See Thomas W. Hazlett, *The Wireless Craze, the Unlimited Bandwidth Myth, the Spectrum Auction Faux Pas, and the Punchline to Ronald Coase’s “Big Joke”*: An Essay on Airwave Allocation Policy, 14HARV. J.L. &TECH. 335, 377-378 (2001).

<sup>3</sup> See *id.* at 410-410.

<sup>4</sup> See *id.* at 412.

<sup>5</sup> See *Pay Television in America: Feevee’s Charge*, ECONOMIST, Sept. 27, 1975, at 76.

<sup>6</sup> See Brief Amicus Curiae of CBS Inc. in Support of Respondents, *Sony Corp. v. Universal City Studios, Inc.*, 1982 U.S. S. Ct. Briefs LEXIS 558 (1982) (No. 81-1687).

<sup>7</sup> *Nat’l Ass’n. of Broadcasters v. FCC*, 740 F.2d 1190, 1197-98 (D.C. Cir. 1984).

<sup>8</sup> See *Orbitcast*, [The NAB: A History of Hypocrisy](#) (Apr. 17, 2007), (setting forth timeline of NAB efforts to oppose satellite radio).

<sup>9</sup> Wall Street Journal Online, [What’s the Frequency, NAB?](#) (Apr. 21, 2007).

<sup>10</sup> *Broadcasters Vow to Fight Ferree Plan; Proposal Sets 2009 DTV Deadline*, TELEVISION WEEK, Apr. 19, 2004, at 12.

<sup>11</sup> Grant Ross, [Senator Calls for Quicker Digital TV Transition](#), IDG News Service, INFOWORLD, Oct. 18, 2005.

<sup>12</sup> Deborah Kong, *Media Giants Take on Digital Copyright: Group Wants TiVo and Reply to Obtain Licensing*, SAN JOSE MERCURY NEWS, Aug. 13, 1999, at 1C.

<sup>13</sup> See *Paramount Pictures Corp. v. ReplayTV, Inc.*, Civ No. 01-09358-FMC (C.D. Cal.)

<sup>14</sup> See generally *Amendment of Part 73 of the Commission’s Rules to Permit Short-Spaced FM Station Assignments by Using Directional Antennas*, Report and Order, 4 FCC Rcd. 1681 (1989).

<sup>15</sup> *Id.* at 1682.

<sup>16</sup> *Broadcasters Oppose, but Others Like, FCC’s Microradio Proposal*, COMM.DAILY, Apr. 29, 1998.

<sup>17</sup> Stephen Labaton, *F.C.C. Heads for Showdown with Congress Over Radio Plan*, N.Y. TIMES, Mar. 26, 2000, at C1.

<sup>18</sup> See MITRE Corp., [Experimental Measurements of the Third-Adjacent-Channel Impacts of Low-Power FM Stations](#) (2003).