Broadcast Television and Communication Law in the United States

By Duane Elgin, 2012

Communication is the lifeblood of a democracy and healthy society. The existence of democracy and society is threatened when the tools of mass communication are increasingly out of touch with the reality of the world around us. Currently, the public's airwaves are being programmed for commercial success (for the TV stations) and evolutionary failure (for the community) as climate change, peak oil, and more are largely ignored. However, in the United States, as towns work to make the transition to a sustainable future, citizens in local communities have the legal right to expect that broadcast media in their community that make use of their public airwaves will serve the community in its demanding process of transitioning to a new world.
The legal cornerstone for an electronically supported democracy is found in the First Amendment to the U.S. Constitution, which states that,

> *"Congress shall make no law...abridging the freedom of speech . . . or the right of people to peaceably assemble, and to petition the Government for a redress of grievances."*

Our Constitutional "Bill of Rights" unequivocally asserts the rights of citizens to assemble peacefully and communicate freely with the intention of petitioning appropriate government bodies for changes they feel are in the public interest. This is such a fundamental right in American life that its importance cannot be overestimated. This is a foundational agreement that we have among ourselves as citizens.

Turning from Constitutional to communications law, the public has been given very strong communication rights from the earliest stages in the development of broadcasting law. The predecessor to the Federal Communications Commission—the Federal Radio Commission—in 1927 set down the basic requirement that continues today; namely that broadcasters must give first priority to serving the "public interest, convenience, and necessity." The Commission stated that:

> *"...broadcast stations are not given these great privileges by the United States Government for the primary benefit of advertisers. Such benefit as is derived by advertisers must be incidental and entirely secondary to the interest of the public." The Commission further stated that: "**The emphasis must be first and foremost on the interest, convenience, and necessity of the listening public, and***

> ***not on the interest, convenience, or necessity of the individual broadcaster or advertiser.”*** [emphasis added]

This was further clarified in the Communications Act of 1934. This high standard of obligation to the public has remained in effect since the inception of broadcasting and is reflected, for example, in the 1969 Supreme Court decision that clarified the responsibilities of broadcasters. The court ruled that:

> ***"It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount****." In addition: “It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee.”* [emphasis added]

The public has responsibilities just as do the broadcasters. The expressed duty of the public to intervene in broadcasting issues was clearly stated in a major 1966 U.S. Court of Appeals decision:

> *“Under our system, the interests of the public are dominant. . . . Hence, individual citizens and the communities they compose* ***owe a duty to themselves and their peers to take an active interest in the scope and quality of television service which stations and networks provide...Nor need the public feel that in taking a hand in broadcasting they are unduly interfering in the private business affairs of others.*** *On the contrary, their interest in television programming is direct and their responsibilities important.* ***They are the owners of the channels of television—indeed, of all broadcasting****.”* [emphasis added]

It has been thought by some that the sweeping deregulation of television negates this half-century of communications law affirming a duty to serve the public interest. This is not the case. The FCC's 1984 ruling states that *"[deregulation] ...does not constitute a retreat from our concern with the programming performance of television station licensees."* Instead, what the FCC has done is to drop specific programming standards and enforcement. This, in turn, shifts the burden of enforcement to the citizens of local communities.

Despite this hands-off approach of the FCC, the broadcasting community continues to recognize it has strong (though largely not enforced) obligations to serve community interests. For example, in 1985, the President of the National Association of Broadcasters stated:

> *"broadcasting is indeed a unique industry. . . much different from other corporate citizens in America. . . .We have never advocated removal of the public interest standard. In fact,* ***our obligation is to serve the public interest first and stockholder interest second*** *. . . not the other way around*." [emphasis added]

More than half a century later, the Communications Act of 1934 was finally updated by the U.S. Congress in 1996. The resulting *Telecommunications Act* is over 300 pages long. Importantly, throughout, the principle is affirmed that the airwaves should be used "*to serve the public interest, convenience, and necessity.*" Here are a few, of the many key passages that affirm the principle of putting the 'public interest' first, here with regard to the all-critical renewal of licenses:

> *Each license granted for the operation of a broadcasting station shall be for a term of not to exceed 8 years. Upon application therefor****, a renewal of such license may be granted . . . if the Commission finds that public interest, convenience, and necessity would be served thereby****.* [emphasis added]

A further affirmation of the primacy of the public interest standard is found in the conditions that may be attached to the renewal of licenses:

> *CONDITIONS ATTACHED TO LICENSES. (a) Subject to the provisions of this section****, the Commission shall determine, in the case of each application . . . whether the public interest, convenience, and necessity will be served by the granting of such application****. . .* [emphasis added]

From Wikipedia, we have the following description of the broadcasters license and their privilege of using the public's airwaves:

> *The Radio Act of 1927 established the regulatory premise that persists to this day:* ***the spectrum belongs to the public and that licensees have no property rights to continue using it.*** *Although the spectrum is licensed to bidders, the purchase* ***does not represent ownership or rights, only privileges*** *to using that part of the spectrum*. [emphasis added]

The bottom line is that **broadcasters have no property rights and only the privilege of using the airwaves**. It is the public (at the metropolitan scale of the broadcast media footprint) that owns the airwaves and has the legal right to insist they are used to serve *the public interest convenience, and necessity*.