

Citizen Feedback Forums and Communications Law

By Duane Elgin

How do Citizen Feedback Forums fit into U.S. communications law? Do these represent an inappropriate intrusion of the public into the affairs of broadcast TV stations or do these activities represent a fully legitimate exercise of the public's rights and duties in a modern democracy? Because most U.S. citizens are reluctant to act when not given the authority to do so, it is important to know that Citizen Feedback Forums are fully legitimate expressions of our democratic processes and are strongly supported across a broad spectrum of Constitutional law, Congressional legislation, and FCC regulation.

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." A citizen feedback forum or electronic town meeting is the fulfillment of this constitutional guarantee. It is a forum where citizens can assemble peacefully and communicate freely with the intention of petitioning appropriate government bodies for changes they feel are in the public interest.

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 1928 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.”

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."

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."

It has been thought by some that the sweeping deregulation of television in the 1980s 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.

Despite this hands off approach of the FCC, the broadcasting community continues to recognize it has strong (though now largely unenforced) 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."

This was adapted from my book *Promise Ahead*, New York: Morrow, 2000, see footnote, pages 216-218.