



Testimony

Testimony Regarding the NFL Network Dispute

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by **Bill Peacock**
*Vice President of
Administration &
Director, Center for
Economic Freedom*

I have always been a huge professional football fan. Being a Houston native, I remember George Blanda seemingly defying the aging process with the Houston Oilers and later with the Oakland Raiders. Even the Aggie in me had no problem rooting for Earl Campbell when he rushed for 199 yards against the Miami Dolphins in the best Monday Night Football game ever played. And I'll never forget when the Oilers, excuse me, the Tennessee Titans, came up one yard short of going into overtime in Super Bowl XXXIV.

As a fan, I have particularly enjoyed the "NFL Follies" series of films containing classic highlights of players bumbling, stumbling, and fumbling their way across the gridiron. While highly entertaining—such as ex-Minnesota Viking Jim Marshall's fumble recovery and ensuing 65 yard run to the wrong end zone—they also provide excellent examples of how not to play football.

What we are seeing in the battle over the NFL Network provides a similar example of how not to regulate markets.

This fight has all the elements of a classic battle between marketplace titans – including the unfortunate attempt to get government intervention on the side of one of the parties.

A classic example of this is the intervention of government into the electricity and telephone markets in the early 20th century. At that time, there was significant competition between electric companies and telephone companies in providing service to customers. However, some companies began to seek advantage through government intervention in the marketplace.

So those markets wound up becoming regulatory monopolies. We know all too well about this in Texas, where we have spent a lot of time and money recently untangling the web of regulations caused by years of government intervention in these markets.

And we still think of some aspects of these markets as "natural monopolies." But the only thing really natural about them is the natural tendency of government to get involved in the private business transactions.

Rent seeking is the economic term used to describe businesses turning to government intervention in pursuit of profits they cannot gain through competition. Of course, this is not a new development in world history. The Mercantilist system of trade that led to many of the European Wars in the latter part of the last millennium was based on government-granted profits through monopolies.

In America, however, rent seeking was thoroughly rejected. In fact, the rejection of the government's directing profits to certain wealthy individuals and businesses was a significant factor behind the American Revolution. The most famous example of this was at the Boston Tea Party. The Stamp Act also infuriated the American colonists.

Today, things have changed. Rent seeking is regularly accepted by government regulators. This acceptance is particularly embodied in modern anti-trust regulations. Somewhere along the way, it has become "anti-competitive" for a company to be so successful at satisfying consumers that it

gains profits or market share at the expense of its competitors. It has become “predatory” for an efficient business to offer consumers lower prices than its competitors can afford to offer. And it has become “discriminatory” for a company to decide what electronic content to transmit over its privately-owned transmission lines.

We’ve seen this over the last year in Texas, where what some have seen as excessive market shares or profits have been used to call for increased regulation over the insurance and electric markets. And it was only two years ago that some market participants opposed telecom deregulation in an attempt to maintain a regulatory advantage over competitors.

I think much of this stems from a misunderstanding of the power and sophistication of consumers in the 21st century marketplace. A perfect example of this is how consumers responded to the NFL Network game between the Dallas Cowboys and the Green Bay Packers.

Probably the most common response by fans was to watch the game in sports bars, which reported huge crowds and revenues that night.

Other fans watched the game with other friends who had satellite service. One such satellite customer in East Austin opened up his yard to all comers with a big-screen TV and free food.

Others actually switched their television service to a different provider that carried the NFL Network. Reading through the blogs, I saw that both DISH Network and Grande Communications gained new subscribers.

Some fans even watched the game over the Internet.

The one thing that is clear through all of the debate over the issue before you today is that the fans were able to take care of themselves.

The telecommunications and entertainment markets are tremendously competitive, and consumers take advantage of that every day. The Foundation does not believe that the Texas Legislature or any other government entity should impose a one-size fits all solution on viewers—a solution that would force some consumers to subsidize the viewing habits of others and enrich some shareholders at the expense of other shareholders.

Instead, NFL fans and your constituents will be much better served if you let them make the decisions about who watches which football game where. ★

