The Rotten NFL Scheme at the Heart of the AT&T-DirecTV Merger

The Sunday Ticket arrangement assures that only a small share of the American population can enjoy viewer choice on Sunday afternoons. And AT&T wants to own it.

Don't all Americans deserve to watch the best matchups? (Reuters)

First Comcast wants Time-Warner’s cable division, now AT&T wants DirecTV, the satellite-based cable carrier. Needless to say these corporate giants have only your best interests in mind!

Buried within the AT&T bid for DirecTV is an extreme anti-consumer measure that should draw the Justice Department’s ire: AT&T is angling to acquire a cartel arrangement that was designed 20 years ago to prevent viewer choice in watching America’s most popular sport, professional football.

On Sunday afternoons, football fans who tune in via cable or traditional rabbit ears are offered only whatever game the local CBS or Fox affiliate airs, regardless of whether a superior contest is happening at the same time. Often the game that’s shown is a woofer, while a quality pairing does not air. For instance, on December 29th, 2013, the defending Super Bowl champion Baltimore Ravens faced a must-win in their final regular-season contest: Victory meant return to the playoffs, defeat meant “shutting it down,” as jocks say. Much of the nation saw Ravens-Bengals, but Texas, Tennessee, and southern Indiana did not.
These areas were shown a laff-riot pairing: 6-9 Titans versus 2-13 Texans, the league’s worst team.

(Think the Ravens game example above is some weird outlier? That same day, the Packers and Bears met in a winner-take-all for the final NFC playoff slot: the victor would reach the postseason, the vanquished go home. Much of the nation got this stellar contest. But Montana, Idaho, southern Illinois and Missouri saw a woofer: Seattle versus St. Louis, an also-ran with a losing record.)

The workaround for terrible games on your local channel is NFL Sunday Ticket, which for about $200 per season allows the viewer to watch whatever NFL tilt he or she prefers.

The first catch: Since its inception in 1994, Sunday Ticket has been available only to customers of DirecTV. The second catch: DirecTV is a great service if you can get it, but millions of American households cannot. Receiving DirecTV requires installing a dish with unobstructed line-of-sight to the sky above Texas, where the company’s satellite hangs. My house is surrounded by lovely greenhouse-gas-absorbing trees, so DirecTV is out of the question. Any dwelling with trees or other buildings on its southern facing can’t capture the DirecTV signal. Most of New York City, the Chicago Loop, and other downtowns are DirecTV-free zones.

(In theory, a location that can’t receive the DirecTV signal can get a waiver to purchase Sunday Ticket over the Web. In my case, DirecTV told me I wasn’t eligible for the waiver—after the company’s installer told me I’d never receive the signal. Anyway consumers should not need to set up Web-to-TV converter
systems. Publicly subsidized products like Sunday Ticket should be available via cable.)

AT&T’s bid to acquire DirecTV includes acquisition of the Sunday Ticket exclusive. The Los Angeles Times reports that snapping up Sunday Ticket is a key goal of AT&T's. Professional football is among the most valuable brands on the entertainment landscape. What communications corporation wouldn’t want a monopoly over a major NFL product?

But the Sunday Ticket cartel arrangement assures that only a small share of the American population can enjoy viewer choice on Sunday afternoons. The same voters who are taxed to subsidize the NFL, to the tune around $1 billion annually, are denied a choice about what games to watch.

Adding insult to injury, anyone in Canada and Mexico can sign up for NFL Sunday Ticket, without cable-carrier restrictions. In those nations, telecommunication law forbids sole-carrier contracts. Inside the United States, the NFL’s antitrust waiver allows it to screw consumers with impunity. And screwing consumers with impunity is a prerogative AT&T wants too!

When the NFL made its first deal with DirecTV, satellite-relayed signals were exotic and broadband cable did not exist: Initially, Sunday Ticket was seen as a niche product for technophiles. A ratings calculation was at work as well. Sunday Ticket is an annualized pay-per-view, and pay-channel viewership does not count in Nielsen ratings. If large numbers of viewers switched from NFL games aired on local affiliates to football shown on Sunday Ticket, the NFL’s Nielsen numbers would decline, even if actual viewership was rising.
But as football has surged in popularity in the last two decades and broadband become available to nearly all the country, observers have repeatedly expected that Sunday Ticket would become available to everyone. After all, no one now could think the NFL is losing popularity, while Nielsen’s scoring of new-viewership habits such as next-day DVR of drama and comedy shows is taken into account in their advertising rates. Today the NBA and MLB both market their extra-price watch-any-game services via cable.

But DirecTV has repeatedly offered the NFL a king’s ransom to renew its monopoly. For the 2014 season, DirecTV will pay the league $1 billion for about two million Sunday Ticket subscribers: more than to be paid by NBC, whose NFL games average 10 times as many viewers. DirecTV offers the king’s ransom because Sunday Ticket is the loss leader that put the company on the map. And the NFL loves a customer that pays too much!

DirecTV has done the league important favors to sustain its sweetheart relationship. As the 2011 season approached, with the NFL’s labor deal expiring and a lockout possible, DirecTV agreed to pay $1 billion even if no games were played that season. CBS, ESPN, Fox, and NBC would have owed nothing for no games. The $1 billion promise from DirecTV afforded the NFL a plush strike fund, ensuring owners and league executives could live in luxury that year even if the season were cancelled.

AT&T badly wants the same sweetheart relationship with the NFL, and has insisted DirecTV renew its monopoly deal before the takeover closes. If so AT&T will acquire something CBS, Comcast, ESPN, Fox, NBC, and Verizon don’t have—the sole means to watch the NFL game of your choice.
The Justice Department should insist, as part of any approval it may offer for the AT&T merger bid, that DirecTV divest itself of the Sunday Ticket exclusive. Such a requirement may cause AT&T to back out of the deal, or demand that DirecTV accept a lower price: but that’s why there is antitrust law, to provide a cross-check against behavior that harms consumers. The NFL’s viewer-choice service should be offered by all cable carriers, as nearly all other entertainment products are available across the cable universe.

Not only is it absurd that Americans subsidize a sports league so Canadian and Mexican viewers can have more choice than Americans do. If Sunday Ticket were available on all cable carriers, more buyers would allow for a lower price, as happened with cell phones. Rather than a tiny number who have good luck with geography paying $200 a year to pick their own NFL game, many millions could pay, say, $50 a year for the same freedom.

Allowing AT&T to acquire DirecTV’s Sunday Ticket monopoly would be strongly anti-consumer. Using this moment to divest the monopoly and bring Sunday Ticket to all telecommunications platforms would be strongly pro-consumer. Please don’t tell us the Justice Department and the White House will mess this opportunity up.