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February 11, 2019

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, DC 20554

Re: REDACTED FOR PUBLIC INSPECTION
beIN Sports, LLC v. Comcast Cable Communications, LLC and Comcast Corporation, MB
Docket No. 18-384, File No. CSR-8972-P

Dear Ms. Dortch:

Enclosed is the Public version of the Answer of Comcast Corporation and Comcast Cable Communications, LLC (together, “Comcast”) in the above-captioned proceeding.

Comcast also is serving a copy of this Public Answer via electronic mail to counsel for beIN Sports, LLC.

If you have any questions, please do not hesitate to contact me.

Respectfully submitted,



Michael D. Hurwitz
*Counsel for Comcast Corporation and Comcast
Cable Communications, LLC*

Enclosures

cc: Pantelis Michalopoulos, Steptoe & Johnson LLP (via electronic mail)

REDACTED – FOR PUBLIC INSPECTION

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
beIN SPORTS, LLC,)	
<i>Complainant,</i>)	
	)	MB Docket No. 18-384
vs.	)	File No. CSR-8972-P
)	
COMCAST CABLE)	
COMMUNICATIONS, LLC)	
And)	
COMCAST CORPORATION,)	
<i>Defendants.</i>)	

To: Chief, Media Bureau

ANSWER TO COMPLAINT

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February 11, 2019

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COMCAST CORPORATION,)	
<i>Defendants.</i>)	

ANSWER TO COMPLAINT

Defendants Comcast Corporation and Comcast Cable Communications, LLC (together, “Comcast”) submit this Answer to the complaint (the “Second Complaint”) filed by beIN Sports, LLC (“beIN”) on December 13, 2018.¹

I. **INTRODUCTION**

The Second Complaint is an improper attempt to re-litigate the Commission’s prior dismissal of beIN’s March 2018 Complaint (the “First Complaint”). In its Dismissal Order, the Commission determined that beIN had failed to establish a prima facie showing of

¹ beIN Sports, LLC, Program Carriage Complaint, MB Docket No. 18-384 (Dec. 13, 2018) (“Second Compl.”). Following an inquiry from counsel for Comcast, beIN submitted a supplement to its Second Complaint five days later to include an appendix to the correspondence included as Exhibit 16 of the Second Complaint that beIN had wrongly omitted. beIN filed that supplement in MB Docket No. 18-90, but it should be considered as part of beIN’s Second Complaint in MB Docket No. 18-384. See Letter from Pantelis Michalopoulos, Counsel for beIN Sports, LLC, to Marlene Dortch, Secretary, FCC, MB Docket No. 18-90 (Dec. 18, 2018) (filing Appendix A to the December 13, 2018 letter from Francis M. Buono to Pantelis Michalopoulos included as Exhibit 16 of the Second Complaint). For the sake of a complete record, Comcast has reattached herein the full December 13, 2018 letter, including Appendix A, as Ex. 5.

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discrimination based on affiliation. The Commission issued this ruling after review of the parties' term sheets and negotiating documents from April 2017 through February 2018 that beIN put into the record, as well as beIN's sworn written testimony. The Commission found that beIN's renewal offers lacked sufficient content certainty to support a program carriage discrimination case. beIN did not seek reconsideration or review of the Dismissal Order, which is final.

The Second Complaint now seeks to obtain a different result, yet it relies on the very same term sheets and negotiating history to do so. Mistakenly treating the Commission's prima facie determination as nothing more than "guidance," beIN contends that it provided the missing content certainty to Comcast in oral communications early on in the parties' negotiations, thus "clos[ing] the gap" identified in the Dismissal Order. But the Dismissal Order did not find a "gap" to be filled through artful pleading or new assertions that could have been supplied in the first instance. The Commission made detailed findings about the significant uncertainty over beIN's future programming from the outset of the parties' negotiations in April 2017 up through when beIN filed the First Complaint. Although the Dismissal Order was without prejudice to beIN bringing a different complaint, this does not permit re-litigation of an explicit Commission ruling on the *same* claim – one that beIN chose not to appeal: beIN's Second Complaint constitutes an impermissible collateral attack on the Dismissal Order and is precluded.

Even if it were not otherwise barred by principles of collateral estoppel, the Second Complaint provides no factual basis for the Commission to reach a different prima facie determination. beIN's belated assertion that it addressed the lack of content certainty in early communications with Comcast is contradicted by the actual term sheets that the parties exchanged and the record the Commission already examined. Comcast's December 2017

renewal offer (the “December 2017 Offer”) stated that beIN’s content was [[

]] And, as the Commission has already found, beIN’s subsequent proposals to Comcast in early 2018 did not remedy this content uncertainty. beIN now purports to offer [[

]]. But that fact is not new; it was before the Commission in the prior proceeding. The Commission found that beIN’s content remained significantly uncertain *notwithstanding* that beIN’s proposed “like for like” replacement of other soccer content [[]]. Nothing in beIN’s Second Complaint provides any basis to disturb the Dismissal Order.

Further, rather than offering adequate content certainty now, beIN proposes that the parties [[

]]. No rational distributor would accept such terms.

In all events, as Comcast has shown previously and reiterates here, the beIN networks are not similarly situated to NBCSN or Universo for a number of reasons, including the enormous overall differences in programming on the respective networks, their different audiences, and their different carriage by other MVPDs. The attached expert declarations of Dr. Andres Lerner and Mr. Peter Litman confirm that this prior conclusion remains correct.

Finally, beIN’s attempt to re-litigate the history of its negotiations with Comcast is especially meritless given subsequent marketplace developments. Since beIN filed the First

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Complaint, no other MVPD (or OVD) has increased beIN's carriage. The nation's largest MVPD, AT&T/DirecTV, has dropped beIN across its platforms. And, since Comcast ceased carrying the beIN networks, the number of Comcast customers who have canceled their service due to the loss of the beIN networks has been minimal – significantly fewer than Comcast had previously forecast. These facts confirm the reasonableness of Comcast's business judgment that beIN's demands for increased fees and greater distribution were unjustified. Moreover, Comcast customers who want this niche programming continue to have access to the beIN networks through a different distribution platform (Dish Network's Sling TV) that can be accessed via the Comcast X1 box. These marketplace developments also completely undermine beIN's assertion that Comcast's decision has unreasonably restrained beIN in its ability to compete fairly within the meaning of Section 616. beIN's challenges are instead self-inflicted, resulting from its own business decisions and strategic missteps in a highly competitive video programming distribution marketplace.

For all these reasons, the Second Complaint should be dismissed with prejudice.

II. FACTS²

1. Comcast incorporates by reference the relevant factual background set forth in the Dismissal Order regarding the negotiations and term sheets that preceded beIN's First Complaint.³

2. The parties' carriage agreement expired on July 31, 2018 (herein, the "Expired Agreement"). Comcast ceased carrying the beIN networks at midnight on August 1, 2018.

3. Following standard procedure, Comcast alerted its customers about the loss of beIN and provided them with instructions to obtain beIN's niche programming by (a) accessing the Sling TV Internet app on their Comcast X1 box and (b) subscribing to Sling TV's "World Sports" package, at a price (\$10) comparable to what the customer would have paid for Comcast's Sports and Entertainment ("SEP") and Basic Latino ("H") packages. The beIN networks are also available to all Comcast broadband customers by subscribing directly to Sling TV or to fuboTV. Comcast also provided information about soccer programming shown on a variety of other programming services that it carries (most of which are unaffiliated with Comcast).

² A detailed description of beIN's April 2017 carriage renewal proposal to Comcast (the "April 2017 Proposal"), Comcast's internal analyses regarding the April 2017 Proposal, and ensuing negotiations between Comcast and beIN is set forth in the attached declarations of Andrew Brayford, Vice President of Content Acquisition ("Brayford Decl.") (Ex. 1) and Justin Smith, Senior Vice President for Content Acquisition ("Smith Decl.") (Ex. 2). Throughout this Answer, numbered paragraphs in beIN's Complaint are cited in the form "Second Compl. ¶ __," and the exhibits attached thereto in the form "Second Compl. Ex. __." In addition, the following sworn statements are submitted in support of this Answer: Supplemental Declaration of Dr. Andres Lerner ("Lerner Suppl. Decl.") (Ex. 3); Declaration of Dr. Andres Lerner ("Lerner Decl.") (included as Attach. A to Ex. 3); Supplemental Declaration of Peter Litman ("Litman Suppl. Decl.") (Ex. 4); and Declaration of Peter Litman ("Litman Decl.") (included as Attach. A to Ex. 4).

³ See *beIN Sports, LLC, Complainant v. Comcast Cable Communications, LLC and Comcast Corp., Defendants*, Memorandum Opinion and Order, 33 FCC Rcd. 7476 ¶¶ 7-11 (MB 2018) ("Dismissal Order"); see also *beIN Sports, LLC, Program Carriage Complaint*, MB Docket No. 18-90 (Mar. 15, 2018) ("First Compl."); Comcast Corporation and Comcast Cable Communications, LLC, Answer to Complaint, MB Docket No. 18-90, ¶¶ 1-20 (May 14, 2018) ("Comcast First Answer").

4. Marketplace events have since validated the reasonableness of Comcast's prior analyses and negotiation position. In its Answer to the First Complaint, Comcast's viewership analyses showed that Comcast was *likely already losing money* under the Expired Agreement by carrying the beIN networks relative to the cost of not carrying them.⁴ Under one reasonable projection, informed by prior experience, Comcast expected to lose approximately {{ }} customers, accounting for only approximately {{ }} in annual lost margin if it were to no longer carry the beIN networks. These viewership analyses also showed that very few customers were watching the beIN networks regularly, so there was no business justification to carry them more broadly.⁵

5. Comcast has since conducted subsequent, ordinary course viewership analyses based on actual customer responses to the unavailability of beIN on Comcast's cable systems. As of September 2018, only approximately {{ }} customers had left Comcast or cancelled their video service as a result of the beIN networks no longer being carried. These customers accounted for approximately {{ }} in annual lost margin for Comcast. A follow-up analysis conducted in October 2018 showed minimal additional turnover: only {{ }} additional churned customers, or {{ }} total, accounting for approximately {{ }} in annual lost margin. And a January 2019 analysis ("January 2019 Viewership Analysis") showed that the effect on Comcast of no longer carrying beIN had run its course by the end of December. Only approximately {{ }} additional customers, or about {{ }} total, left

⁴ Comcast First Answer ¶¶ 7-8, 12. Comcast clarifies that these Viewership Analyses, also included in the its First Answer, show lost "margin." Prior references to lost "revenue" are corrected herein.

⁵ *Id.* ¶ 8.

Comcast or cancelled their video service as a result of beIN no longer being carried. These customers account for approximately {{ }} in annual lost margin for Comcast.

6. Compared to the approximately [[]] annual cost of the Expired Agreement, these analyses demonstrated an annual savings of some {{ }}, confirming that Comcast had, in fact, been significantly overpaying for the beIN networks. Offset against the estimated [[]] annual cost of beIN's April 2017 Proposal, this presented a savings of approximately {{ }} per year. And even compared against Comcast's December 2017 Offer of [[]], this presented a still significant annual savings of {{ }} for Comcast.

7. By the end of the summer, it was also clear that Comcast was not alone in its assessment that beIN's increased license fee and distribution demands were unjustified. One day after Comcast's carriage of beIN ceased, beIN went dark on Verizon FiOS systems. And by the end of August, AT&T announced that it, too, would no longer carry the beIN networks on its DirecTV and U-verse platforms. Both Verizon and AT&T stated publicly that beIN had sought aggressive increases in fees incommensurate with the value of beIN's programming. Although Verizon and beIN renewed their carriage agreement after a nine-day blackout, beIN achieved no discernable increase in carriage on Verizon systems. Nor is there any evidence that beIN obtained expanded carriage with Dish Network when their carriage agreement was renewed.

8. In addition, by early August, it was confirmed that beIN had lost the U.S. rights to carry matches from the Serie A league, a cornerstone of beIN's soccer programming, to ESPN. Compounding this loss was the fact that one of soccer's biggest stars, Cristiano Ronaldo, left beIN's most prominent remaining league, La Liga, for Serie A – the very league beIN no longer had the rights to carry. In subsequent negotiations, and despite continued demands for fee

increases, [[

]] and, instead of providing greater certainty for its remaining content, beIN now proposes that Comcast should [[

]].⁶

III. THE COMMISSION CONCLUSIVELY DETERMINED THAT BEIN FAILED TO ESTABLISH A PRIMA FACIE CASE OF DISCRIMINATION BASED ON COMCAST’S DECEMBER 2017 OFFER.

A. beIN’s Second Complaint Is an Improper Challenge to the Dismissal Order

9. In its Dismissal Order, the Commission ruled that beIN had failed to satisfy the “similarly situated” and disparate treatment showings necessary to establish a prima facie discrimination claim based on Comcast’s December 2017 Offer, due to the significant uncertainty over the programming that beIN would provide as part of a renewal agreement.⁷ This determination included detailed findings of fact regarding the parties’ negotiations and proposed term sheets (i.e., beIN’s April 2017 Proposal,⁸ Comcast’s December 2017 Offer,⁹ and beIN’s subsequent February 2018 Proposal¹⁰), as adduced by beIN.

10. beIN chose not to seek review of that decision.¹¹ Yet the Second Complaint recycles the same discrimination claim based on the same term sheets and negotiating history

⁶ Letter from Pantelis Michalopoulos, Counsel for beIN Sports, LLC, et al., to Drew Brayford, Vice President of Programming, Comcast Cable Communications, LLC, et al., at 3 (Dec. 3, 2018) (Second Compl. Ex. 3).

⁷ See Dismissal Order ¶¶ 13, 15. beIN wrongly claims that the Commission “did not agree” with Comcast’s arguments detailing the multiple other deficiencies in beIN’s case. See Second Compl. ¶ 6. Rather, the Commission simply did not reach any of those other deficiencies.

⁸ Second Compl. Ex. 5.

⁹ *Id.* Ex. 6.

¹⁰ *Id.* Ex. 7.

¹¹ beIN had 30 days to appeal the Dismissal Order (i.e., until September 4, 2018), which is now final. See 47 C.F.R. § 1.106(f) (requiring filing of a petition for reconsideration within 30 days of the public notice of final Commission action); *id.* § 1.115(d) (establishing the same 30-day deadline for applications for review); see also, e.g., *San Francisco IVDS, Inc. to Renew the License for Station KIVD0012, San Francisco, CA in the 210-218 MHz*

already considered by the Commission. beIN simply claims now that it made oral assurances about its content early on in the parties' discussions, which it contends "closes the gap" on the lack of content certainty found by the Commission.¹² But that is a misreading of the Dismissal Order. The Commission made detailed findings that the lack of content certainty persisted *throughout* the parties' negotiations and exchange of term sheets; Comcast was left to guess what programming would be shown on the beIN networks during the renewal period. The Dismissal Order left no "gap" on this factual issue that beIN can possibly fill (much less through revisionist claims about early party discussions that could and should have been raised in the first proceeding). The Dismissal Order thus forecloses beIN from re-litigating its program carriage discrimination claim based on Comcast's December 2017 Offer.¹³

Services; and Petition for Reinstatement of License and for Reinstatement of Application for Renewal of License, Memorandum Opinion and Order, 18 FCC Rcd. 724 ¶ 7 n.24 (2003) (finding that a prior decision was now beyond review because the party did not file a petition for reconsideration within the 30-day deadline and noting "the strong policy favoring administrative finality set forth by Congress" in the Communications Act).

¹² Second Compl. Ex. 3 at 3; Second Compl. ¶ 7. A press release that beIN issued the day after filing the Second Complaint states that beIN views the Dismissal Order as "guidance" as to how to substantiate the same claim. *See* Press Release, beIN, beIN SPORTS Refiles Carriage Complaint Against Comcast (Dec. 14, 2018), <https://www.businesswire.com/news/home/20181214005197/en/beIN-SPORTS-Refiles-Carriage-Complaint-Comcast>.

¹³ *See, e.g., TSR Wireless, LLC v. US West Communications, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd. 11166 ¶ 15 (2000) ("*TSR Wireless Order*") ("[O]nce an issue is raised and determined, the doctrine of collateral estoppel precludes the *entire* issue, not just the particular arguments raised in support of it in the first case. Accordingly, a litigant may not raise a new argument in a second proceeding regardless of whether it was made in the first proceeding; so long as the argument could have been made, it is precluded.") (emphasis added) (internal citations omitted); *id.* (also noting that "even when an opinion is silent on a particular issue, issue preclusion is applicable if resolution of that issue was necessary to the judgment"); *see also Allen v. McCurry*, 449 U.S. 90, 94 (1980) (defining issue preclusion to mean that "once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case"); *Carr v. Tillery*, 591 F.3d 909 (7th Cir. 2010) (applying collateral estoppel doctrine to bar a plaintiff whose RICO claim was dismissed for failure to allege a viable "predicate act" from recasting the same alleged wrongful acts to satisfy this pleading requirement in a second suit); Restatement (Second) of Judgments § 27 ("When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.").

11. The fact that the First Complaint was dismissed without prejudice does not change this result. A dismissal without prejudice has preclusive effect in a subsequent proceeding when, as here, an issue has been raised and determined in a sufficiently firm way in a prior proceeding.¹⁴ beIN’s illogical position is that the Dismissal Order did not dispose of beIN’s attempt to establish a prima facie case of program carriage discrimination based on the December 2017 Offer, which, it bears repeating, said beIN’s programming was [[

]] But it is difficult to conceive of a determination that was more definitive – and less susceptible to re-argument – than the Commission’s conclusion that the future makeup of beIN’s networks remained significantly uncertain even to the point when beIN filed its First Complaint.

12. Moreover, this was a substantive determination on the merits of an essential requirement of beIN’s program carriage case.¹⁵ The prima facie standard gives effect to Congress’s intention to protect MVPDs from non-meritorious claims under Section 616.¹⁶ Because MVPDs engage in protected speech, the prima facie standard likewise affords

¹⁴ See, e.g., *Germain Real Estate Co. v. HCH Toyota, LLC*, 778 F.3d 692 (8th Cir. 2015) (finding that a prior dismissal without prejudice was sufficiently firm because: (1) the parties were fully heard and the court was familiar with the relevant provisions of the contractual agreements, and (2) the judgment could have been appealed but was not); *Carr*, 591 F.3d at 916-17 (holding that “a jurisdictional ruling on an issue that has been fully and fairly adjudicated is barred from subsequent challenge by the doctrine of collateral estoppel, even when the prior case was dismissed without prejudice,” and observing that “[t]his illustrates the pertinent point that a dismissal can be without prejudice yet have preclusive effect”) (emphasis added). Likewise, the Restatement (Second) of Judgments explains that a final judgment for purposes of collateral estoppel “includes any prior adjudication of an issue in another action that is determined to be sufficiently firm to be accorded conclusive effect.” Restatement (Second) of Judgments § 13 (emphasis added).

¹⁵ See *Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution and Carriage*, Second Report and Order, 9 FCC Rcd. 2642 ¶ 29 (1993) (“1993 Program Carriage Order”) (assigning burden of proof on a complainant to establish a prima facie showing); 47 C.F.R. § 76.1302 (same).

¹⁶ See *Revisions of the Commission’s Program Carriage Rules; Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage*, Second Report and Order in MB Docket No. 07-42 and Notice of Proposed Rulemaking in MB Docket No. 11-131, 26 FCC Rcd. 11494 ¶ 10 (2011) (“2011 Program Carriage Order”) (finding that “retaining [the prima facie] requirement is important to dispose promptly of frivolous complaints and to ensure that only legitimate complaints proceed to further evidentiary proceedings”).

constitutional protection, as it “allows the FCC to screen out frivolous complaints against MVPDs and thereby minimize the litigation burden and any possible chilling effect [on speech]” that might violate the First Amendment.¹⁷ Importantly for present purposes, *prima facie* determinations are made based on the claims and evidence that the *complainant* adduces, providing a fair and adequate opportunity for litigants such as beIN to present the elements of their *prima facie* case to the Commission for determination in an adjudicatory proceeding.¹⁸ The Dismissal Order thus constituted a ruling on the merits of the *prima facie* elements of the First Complaint based on the documentary and testimonial evidence adduced by beIN.¹⁹ The decision has the same preclusive effect as any other merits ruling that the Media Bureau may issue on required elements of a program carriage case at the *prima facie* stage.²⁰

13. While the Dismissal Order did not prejudice beIN’s right to bring another program carriage complaint based on different facts or evidence,²¹ it definitively determined that

¹⁷ *Time Warner Cable Inc. v. FCC*, 729 F.3d 137, 167 (2d Cir. 2013) (“*Time Warner Cable*”).

¹⁸ See 47 C.F.R. § 76.1302(a) (program carriage complaints are adjudicatory proceedings); *id.* § 76.1302(g) (*prima facie* rulings are based on the complaint and evidence adduced by the complainant). These aspects of the program carriage rules afforded beIN with a full and adequate opportunity to litigate its *prima facie* case, which is all that the doctrine of collateral estoppel requires. See, e.g., *Rainbow Tours, Inc. v. Haw. Joint Council of Teamsters*, 704 F.2d 1443, 1445-46 (9th Cir. 1983) (noting that there is no dispute “that findings on issues decided in [agency] proceedings are entitled to collateral estoppel effect” where, as here, the findings were made on a material issue, supported by substantial evidence (in this case, beIN’s *own* evidence), and the proceeding complied with due process) (cataloging cases).

¹⁹ See *TSR Wireless Order* ¶ 15 (holding that the collateral estoppel doctrine precludes re-litigation of a case issue “once [it] is raised and determined” in an adjudicatory proceeding); see also *UC Health v. NLRB*, 803 F.3d 669, 682-83 (D.C. Cir. 2015) (Edwards, J., concurring) (explaining that “the precedential value of a decision is defined by the context of the case from which it arose,” and that where, as here, an issue has been heard and decided by the same adjudicatory body, the prior ruling “attaches a specific legal consequence to . . . a subsequent case involving identical or similar material facts”) (citations omitted).

²⁰ See *2011 Program Carriage Order* ¶ 16 n.63 (noting that at the *prima facie* stage, the Media Bureau “*may rule on the merits* of certain elements of the case based on the pleadings and refrain from referring these specific issues for further evidentiary proceedings”) (emphasis added).

²¹ For example, with respect to another program carriage complaint that was also dismissed without prejudice, the Bureau determined that LBI, a broadcaster, did not meet the definition of “video programming vendor” under the rules, but left open the possibility that LBI could bring a second complaint to the extent it was unrelated to the standing issue already decided by the Bureau in its *prima facie* determination. See *Liberman Broadcasting, Inc. and*

beIN could not meet its prima facie burden based on the December 2017 Offer. Accordingly, beIN's attempt to re-litigate that same claim is barred by the collateral estoppel doctrine. The Second Complaint should be dismissed as a matter of law.

B. beIN Has Not Provided Any New or Credible Evidence That Disturbs the Commission's Prior Conclusions

14. Even assuming for the sake of argument that the Second Complaint were not precluded per se, beIN presents no valid basis for the Commission to reach a different conclusion. The Commission expressly noted that its decision was based on beIN's "fail[ure] to provide evidence sufficient to support its claim that the programming it would provide under the renewal agreement is similarly situated to the video programming provided by . . . NBCSN and Universo."²² While beIN now asserts that it provided oral assurances to Comcast early in the parties' discussions, and that "Comcast has been certain all along about the rights beIN has made available" for renewal, that argument is not credible and is contradicted by the actual term sheets that the parties exchanged.²³ Moreover, far from being "new," the "evidence" on which these arguments is based was already before the Commission in the prior proceeding and found insufficient.²⁴ These new unfounded arguments in the Second Complaint simply underscore the

LBI Media, Inc. v. Comcast Corporation and Comcast Cable Communications, LLC Program Carriage Complaint, Memorandum Opinion and Order, 31 FCC Rcd. 9551 n.7 (MB 2016) ("As discussed below, we dismiss LBI's complaint on the basis that it has sought relief as a broadcast licensee and thus lacks standing to bring a program carriage complaint. We note, however, that *to the extent Estrella TV acts as a non-broadcast network that qualifies as a video programming vendor under the statute*, it is free to file a program carriage complaint on that basis.") (emphasis added).

²² See Dismissal Order ¶ 13.

²³ Compare *id.* (specifically finding that beIN's "term sheets show significant uncertainty about what programming would be provided by beIN Sports in a renewal agreement"), with Second Compl. Ex. 3 at 3 (referencing "oral communications" leading up to the December 2017 Offer). See also Lerner Suppl. Decl. ¶¶ 4-7; Litman Suppl. Decl. ¶¶ 11-15.

²⁴ See Lerner Suppl. Decl. ¶¶ 8-10; Litman Suppl. Decl. ¶¶ 2-3.

lack of content certainty previously – and correctly – found by the Commission in the Dismissal Order.²⁵ Specifically:

- ***La Liga and Ligue 1:*** beIN now argues that its “right to replace like-for-like games
[[

26

27

]]. Regardless, this “evidence” is not new and was already provided by beIN in the First Complaint proceeding.²⁸ The Commission fully considered this fact in its Dismissal Order and expressly concluded that beIN’s content remained uncertain *notwithstanding* [[
]].²⁹ beIN now also claims that, during its April 2017 presentation, it assured Comcast that it would renew its La Liga and Ligue 1 rights.³⁰ However, beIN’s April 2017 Proposal sent immediately after that presentation left open the question of what content would be available on beIN’s networks, belying any notion that any content had been nailed down in these prior discussions.³¹ In fact, beIN did not inform Comcast that it
[[

32

]].³³

- ***Serie A:*** In addition, beIN alleges that, since the beginning of renewal discussions in April 2017, it had emphasized to Comcast that it was unlikely to renew its Serie A rights.³⁴ Yet, in its First Complaint – filed and verified nearly a year later (in March

²⁵ See Brayford Decl. ¶¶ 55-56. In all events, these allegations “could have been made” in the prior proceeding and thus “[are] precluded” here. *TSR Wireless Order* ¶ 15.

²⁶ Second Compl. ¶ 7.

²⁷ See *id.* ¶ 52.

²⁸ See beIN, Reply to Comcast Answer, MB Docket No. 18-90, ¶ 148 (June 4, 2018) (“beIN Reply”); Declaration of Ken Tolle, President and Senior Advisor, Launch Pad Media Advisors, PC, ¶ 5 (beIN Reply Ex. 3) (“In fact, beIN has informed Comcast that it has secured its highest-priced rights – those to the Spanish La Liga.”).

²⁹ Dismissal Order ¶ 13 ([[

]]) (emphasis added).

³⁰ Second Compl. ¶¶ 7, 59; Declaration of Roy Meyeringh, Vice President of Business Development and Affiliate Sales, beIN Sports, LLC, ¶ 4 (Dec. 13, 2018) (Second Compl. Ex. 11).

³¹ See Second Compl. Ex. 5.

³² Brayford Decl. ¶¶ 39, 55 & Attach. C; Smith Decl. ¶ 26. Indeed, Comcast noted this in its 2018 Answer. See Comcast First Answer Ex. 1 ¶ 39.

³³ Brayford Decl. ¶ 55 & Attach. D; Second Compl. Exs. 5, 7.

³⁴ Second Compl. ¶¶ 7, 59.

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2018) – beIN highlighted its distribution of Serie A as part of its “top-flight European soccer” for purposes of satisfying the prima facie showing.³⁵ Serie A matches also comprised a substantial number of the programming minutes that beIN compiled and presented to the Commission as evidence of similarity, which beIN provides again in its Second Complaint.³⁶ beIN is judicially estopped from now attempting to assert a different position that is fundamentally inconsistent with its prior representations to the Commission regarding Serie A.³⁷ In any event, beIN’s inconsistent representations regarding Serie A are immaterial to the Commission’s content determinations. The Commission implicitly recognized in its Dismissal Order the possibility that beIN would not be able to provide Serie A programming ||³⁸

- [[

]]. But again, these same provisions were included in beIN's February 2018 term sheet, which the Commission found lacked sufficient content certainty.³⁹ And for good reason:]]

35 First Compl. ¶ 21; Declaration of Antonio Briceño, Deputy Managing Director, US & Canada, beIN Sports, LLC, ¶ 5 (Mar. 15, 2018) (First Compl. Ex. 8); Letter from Pantelis Michalopoulos, Counsel for beIN Sports, LLC, et al., to Drew Brayford, Vice President of Programming, Comcast Cable Communications, LLC, et al., at 2 (Feb. 13, 2018) (Second Compl. Ex. 1) (“beIN’s soccer programming (featuring games of the Spanish La Liga, French Ligue 1 and Italian Serie A as well as World Cup Qualifiers) is similarly situated to the soccer video programming provided by Comcast’s affiliates.”). Moreover, even in this Second Complaint, Mr. Briceño mistakenly continues to state that beIN distributes Serie A. Declaration of Antonio Briceño, Deputy Managing Director, US & Canada, beIN Sports, LLC, ¶ 5 (Dec. 13, 2018) (Second Compl. Ex. 8) (“beIN is a sports programming network that primarily distributes top-flight European soccer, including games of the Spanish La Liga, French Ligue 1 and *Italian Serie A* as well as FIFA World Cup Qualifiers.”) (emphasis added).

³⁶ See First Compl. ¶ 63; see also Second Compl. ¶ 84; Second Compl. Ex. 8 ¶ 20.

³⁷ The doctrine of judicial estoppel prevents a party from asserting a claim in a legal proceeding that is inconsistent with a claim taken by that party in a previous proceeding. *See, e.g., New Hampshire v. Maine*, 532 U.S. 742 (2001). “Judicial estoppel applies to sworn statements made to administrative agencies . . . as well as to courts.” *DeRosa v. Nat’l Envelope Corp.*, 595 F.3d 99, 103 (2d Cir. 2010).

38 Dismissal Order ¶ 13.

³⁹ See Second Compl. Exs. 5, 7; Dismissal Order ¶ 13 n.51; *see also* Lerner Suppl. Decl. ¶¶ 11-13.

⁴⁰ See, e.g., Comcast First Answer ¶ 34.

]].

15. The Dismissal Order is based on this same evidence. The Commission correctly found that beIN [[

]]⁴¹ Thus, far from curing the First Complaint’s deficiencies, the Second Complaint only highlights them again.⁴²

16. While the Second Complaint is predicated on Comcast’s December 2017 Offer and other negotiations prior to beIN’s First Complaint,⁴³ it is noteworthy that the lack of content certainty offered by beIN has persisted.⁴⁴ Even in its most recent October 2018 offer to Comcast, beIN would still retain wide latitude to replace the soccer programming it exhibits

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⁴¹ Dismissal Order ¶ 13 n.51 (emphasis in original); *see also* Lerner Suppl. Decl. ¶¶ 3-7.

⁴² For example, beIN now makes the implausible argument that the phrase [[

]]. Second Compl. ¶ 65 (citing beIN’s industry expert, Eric Sahl). This is incorrect, according to Mr. Litman. *See* Litman Suppl. Decl. ¶ 22. In all events, it is evident from the actual term sheets exchanged by the parties that any such “significant discussion” did not lead to any clarity or certainty as to the content guarantees that beIN would be providing. As Mr. Litman also shows, Mr. Sahl’s effort to draw a false equivalency between beIN’s failure to provide specific content guarantees and NBCSN’s content practices is based on an incorrect factual premise. *See* Litman Suppl. Decl. ¶ 20 (detailing how {{
}}).

⁴³ In correspondence since filing the Second Complaint, beIN conceded [[

]]. Letter from Pantelis Michalopoulos, Counsel for beIN Sports, LLC, et al., to Francis M. Buono, Senior Vice President and Senior Deputy General Counsel, Comcast Corporation, et al., at 2 (Jan. 10, 2019). Nevertheless, beIN’s ongoing lack of content uncertainty is noteworthy in light of the Commission’s findings in the Dismissal Order.

⁴⁴ *See also* Litman Suppl. Decl. ¶¶ 5, 16-23.

⁴⁵ *See* Second Compl. Ex. 3 at 3.

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17. There is no reason for the Commission to disturb its prior determinations in the Dismissal Order. The new arguments in beIN's Second Complaint are based on the same underlying evidence that could and should have been raised before and underscore, rather than eliminate, the lack of content certainty found by the Commission. Accordingly, the Second Complaint should be dismissed with prejudice.

⁴⁶

Id.

⁴⁷

Brayford Decl. ¶ 54; Smith Decl. ¶ 37; Lerner Suppl. Decl. ¶ 14 ([

]); Litman Suppl. Decl. ¶¶ 16, 55 (observing that [

]].

⁴⁸

Dismissal Order ¶ 13.

IV. EVEN ASSUMING BEIN *HAD* PROVIDED SUFFICIENT CONTENT CERTAINTY, IT HAS FAILED TO SHOW THAT ITS NETWORKS ARE SIMILARLY SITUATED TO NBCSN OR UNIVERSO.

18. The lack of content certainty is not the only fatal deficiency in the Second Complaint.⁴⁹ As in the First Complaint, beIN’s claim of affiliation-based discrimination here is based on circumstantial evidence. Under the program carriage rules, beIN bears the burden of proof to establish that its networks are “similarly situated” to NBCSN and Universo (to the extent the programming on the beIN networks is stable enough even to begin that comparison).⁵⁰ The Commission examines a combination of factors in assessing claims of similarity, including “genre, ratings, license fee, target audience, target advertisers, target programming, and other factors,”⁵¹ and “no single factor is necessarily dispositive.”⁵² Applying this standard demonstrates that the beIN networks are *not* similarly situated to NBCSN and Universo.

19. In the Second Complaint, beIN continues to allege that NBCSN, a general sports network, and Universo, a Spanish-language general entertainment network, are similarly situated to beIN’s niche soccer networks primarily because each exhibits some soccer programming.⁵³ That comparison is legally and factually insufficient. The Commission has consistently

⁴⁹ For the sake of a complete record, Comcast expressly incorporates its First Answer and Surreply by reference here. *See* Comcast First Answer; Comcast Corporation and Comcast Cable Communications, LLC, Motion for Acceptance of Surreply and Surreply, MB Docket No. 18-90 (June 15, 2018); *see also* Letter from Francis M. Buono, Senior Vice President, Legal Regulatory Affairs & Senior Deputy General Counsel, Comcast Corporation, to Pantelis Michalopoulos, Esq., Steptoe & Johnson, LLP, at Appendix A (Dec. 13, 2018) (Second Compl. Ex. 16) (included in full, per *supra* note 1, as Ex. 5 herein).

⁵⁰ *See 2011 Program Carriage Order* ¶ 14; *see also generally* 47 U.S.C. § 536(a)(3); 47 C.F.R. § 76.1301(c); *1993 Program Carriage Order* ¶ 35; Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, §§ 2(b)(1)-(2), 106 Stat. 1460, 1463 (1992).

⁵¹ *See* 47 C.F.R. § 76.1302(d)(3)(iii)(B)(2)(i); *Game Show Network, LLC v. Cablevision Systems Corp.*, Memorandum Opinion and Order, 32 FCC Rcd. 6160 ¶ 43 (2017) (“*GSN Order*”).

⁵² *2011 Program Carriage Order* ¶ 14.

⁵³ *See* Second Compl. ¶¶ 4-5, 56-60, 62-65.

construed the similarly situated standard to require a comparison of the programming on vendors' *networks as a whole*. Simply showing an overlap of a small subset of programming, or even that two networks are of the same broad genre, fails to satisfy this standard.⁵⁴ The Commission thus rejected such a narrow focus on a subset of programming in both the *WealthTV* and *GSN* cases.⁵⁵ Each of those cases involved general entertainment networks, as well as some overlap in genres of programming on the networks at issue. But the Commission found the differences in the networks' overall programming and other factors to be dispositive that the networks at issue were not similarly situated.⁵⁶ An examination of these objective factors here likewise demonstrates dispositive differences between the beIN networks and NBCSN and Universo.⁵⁷

A. The beIN Networks Exhibit Very Different Programming Than NBCSN and Universo.

20. At their core, both beIN Sports and beINE are niche soccer networks that appeal to a specific and limited group of viewers in the United States.⁵⁸ beIN emphasizes that “soccer

⁵⁴ 2011 Program Carriage Order ¶ 14 (“[A] complainant is unlikely to establish a *prima facie* case of discrimination . . . by demonstrating that the defendant MVPD carries an affiliated music channel targeted to younger viewers but has declined to carry an unaffiliated music channel targeted to older viewers with lower ratings and a higher license fee.”).

⁵⁵ In the *WealthTV Order*, the Commission focused on the comparison between two networks – WealthTV and MOJO – and upheld the ALJ’s determination that WealthTV’s expert’s analysis of only selective programming on these networks was not as credible as the defendant MVPDs’ expert’s analysis of the programming on both networks as a whole. *Herring Broadcasting, Inc. d/b/a WealthTV v. Time Warner Cable, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd. 8971 ¶¶ 23-24 (2011) (“*WealthTV Order*”); *see also id.* ¶¶ 22, 25 (referring to comparisons of “the two networks” as part of the similarly situated analysis), *aff’d by Herring Broad., Inc. v. FCC*, 515 F. App’x 655, 656-57 (9th Cir. 2013); *GSN Order* ¶¶ 48-50, 62 (finding, based on assessment of the overall programming carried on each network as a whole and the “enormous *overall* differences in programming,” that “GSN is not similarly situated to WE tv or Wedding Central”) (emphasis added).

⁵⁶ *See WealthTV Order* ¶¶ 22-26; *GSN Order* ¶¶ 48-51.

⁵⁷ Comcast addressed the lack of similarity between the beIN networks and NBCSN and Universo in its Answer to beIN’s First Complaint, which it incorporates by reference. *See supra* note 49. Comcast summarizes these clear differences below and updates the relevant data.

⁵⁸ *See* Brayford Decl. ¶¶ 5, 19, 28-29, 51-52; Smith Decl. ¶¶ 6, 14, 19; Lerner Decl. ¶ 15; Litman Decl. ¶ 10.

dominates our networks,”⁵⁹ describes itself as a “sports programming network that primarily distributes top-flight European soccer, including games of the Spanish La Liga and French Ligue 1, as well as FIFA World Cup Qualifiers.”⁶⁰ In fact, in the “Description of the Service” in the Expired Agreement, beIN promised [[

]]⁶¹

21. beIN cannot plausibly compare its niche networks to NBCSN or Universo; neither is a single-sport network, let alone a niche European soccer network. NBCSN is a general multi-sport network.⁶² As beIN itself acknowledges,⁶³ NBCSN’s programming strategy is to deliver a diverse range of marquee sports programming to round out its programming calendar throughout the course of the year: NHL (including the Stanley Cup Playoffs) and NASCAR/motor sports, in particular, as well as flagship events like the Olympics and Tour de France and original sports-related programming that covers a number of different sports.⁶⁴

⁵⁹ beIN Sizzle Reel, YouTube (Feb. 1, 2016), <https://www.youtube.com/watch?v=Vv4LCwt5vcc> (also noting on screen that “61% of total programming across both [beIN] networks are live soccer matches”).

⁶⁰ Second Compl. ¶ 17.

⁶¹ See 2012 beIN-Comcast Term Sheet § 4 (Second Compl. Ex. 4) (emphasis added).

⁶² NBCSN’s Service Description in its affiliation agreement with Comcast {{

}} See Smith Decl. ¶ 20

n.3.

⁶³ See Second Compl. ¶ 25 (describing NBCSN as “a national sports cable network that carries basketball, professional and college American football, soccer, hockey, motor sports, and golf among many other sports events” whose “marquee events include the Summer and Winter Olympics, soccer’s English Premier League, PGA, NFL, NBA, NHL, IAAF World Championships, and the Six Nations Championship”).

⁶⁴ See NBCUniversal, Businesses, NBCSN, <http://www.nbcuniversal.com/business/nbc-sports-network-nbcSN> (last visited Feb. 9, 2019) (NBCSN is “the home of the Summer and Winter Olympics, National Hockey League (NHL), Premier League, Formula One, IndyCar (NBCSN), Tour de France, Premier Boxing Champions and beginning in 2015, NASCAR. . . . In addition, NBCSN features college football, college basketball, college hockey,

NBCSN also features a range of college sports, rugby, boxing, and horse racing.⁶⁵ In the aggregate, this diverse mix of sports content is designed for – and has – broad appeal to a wide range of sports fans.

22. Although English Premier League soccer is a component of NBCSN’s programming, it is only one piece of NBCSN’s larger sports programming strategy. NBCSN devotes three times the amount of programming time to NASCAR/auto-racing and the NHL, in the aggregate, than it does to the English Premier League.⁶⁶ Simply because NBC Sports executives have noted the importance of the English Premier League does not diminish the importance of NBCSN’s *other* marquee sports programming. Nor does it render NBCSN a soccer network as beIN claims.⁶⁷ In fact, NBCSN has made clear in its marketing and other public statements that it is emphatically *not* a soccer network.⁶⁸

23. In an attempt to obscure these clear programming differences, beIN tries to establish similarity between NBCSN and beIN programming based on NBC Sports’ alleged “focus” on soccer news coverage on its sports news website, podcasts, online merchandise, and

cycling, outdoor programming, horse racing surrounding the Triple Crown and Breeders’ Cup, *Fight Night* boxing, Ironman, the Dew Tour and USA Sevens Rugby. NBCSN is also home to original programs such as *Costas Tonight*, *NFL Turning Point*, *Pro Football Talk*, *The Dan Patrick Show*, *NBCSN Sunday Sports Report*, and *NASCAR America*.”); *see also* Comcast Spotlight, NBCSN One Sheet, <https://comcastspotlight.com/sites/default/files/NBCSN%20Network%20One%20Sheet.pdf> (last visited Feb. 9, 2019) (Ex. 6).

⁶⁵ See NBCUniversal, Businesses, NBCSN, <http://www.nbcuniversal.com/business/nbc-sports-network-nbcSN> (last visited Feb. 9, 2019).

⁶⁶ See Lerner Decl. ¶ 17, tbl. 1.

⁶⁷ See Second Compl. ¶ 73.

⁶⁸ Jon Miller, President of NBC Sports and NBCSN, has said that “NBC Sports are not evangelists on behalf of the ‘beautiful game’ ‘We don’t want to be the network of soccer,’ Miller said. ‘We want to be the network of the Premier League. There’s a big difference.’” Tom Teodorczuk, *How NBC is monetizing its \$1 billion Premier League Soccer investment*, MarketWatch, Dec. 19, 2017, <https://www.marketwatch.com/story/how-nbc-sports-is-monetizing-its-1-billion-premier-league-soccer-investment-2017-12-14> (emphasis added).

its NBC Sports Twitter feed.⁶⁹ None of this is relevant to the Commission’s established factors for evaluating similarity of NBCSN as a *programming network*.⁷⁰

24. The differences between Universo and beINE are likewise readily apparent. Universo is a “modern general entertainment cable channel for Latinos.”⁷¹ While its programming includes a mix of “top sports franchises” like NASCAR, NFL, the Olympics, and FIFA World Cup, it focuses on “edgy, emotional programming” and consists primarily of reality TV series and scripted programming, including in the form of a broad video-on-demand library for MVPDs to make available to their Spanish-language customers.⁷²

25. beIN cannot establish similarity based solely on the fact that NBCSN and Universo also include soccer programming, which accounts for only a small fraction of each network’s diverse overall programming lineup. Indeed, the Commission has rejected prior attempts to demonstrate similarity based on a review of selective programming, and without “undertaking a systematic review of the programming” across the networks.⁷³ A modest overlap

⁶⁹ See Second Compl. ¶¶ 76-81.

⁷⁰ For the same reasons, beIN’s coverage of NBA and NFL games on its website and Twitter feed, which are not carried on the beIN networks, is irrelevant to an analysis of the programming on those networks. See also Lerner Suppl. Decl. ¶ 22.

⁷¹ Universo, <http://www.nbcuniversal.com/business/NBCUniverso> (last visited Feb. 9, 2019). Universo prides itself on delivering Spanish-language “authentic lifestyle entertainment” for Latinos in the United States, with a “dynamic mix of reality and scripted series, music programming, sporting events, novelas, and movies on every platform.” Comcast Spotlight, Universo, <https://comcastspotlight.com/offerings/overview/nbc-universo> (last visited Feb. 9, 2019). As beIN concedes, Universo’s programming consists mostly of scripted and reality series and music programming as well as sports. See Second Compl. ¶ 26.

⁷² See Universo, <http://www.nbcuniversal.com/business/NBCUniverso> (last visited Feb. 9, 2019). Universo’s Service Description in its affiliation agreement with Comcast states that its service {{

}} See Smith Decl. ¶ 20 n.5.

⁷³ See *Herring Broadcasting, Inc. d/b/a WealthTV v. Time Warner Cable, Inc.*, Recommended Decision of Chief Administrative Law Judge Richard L. Sippel, 24 FCC Rcd. 12967 ¶ 25 (2009) (“*WealthTV Recommended Decision*”), *aff’d* by *WealthTV Order*.

in content does not make two cable networks similarly situated, as the Commission has previously found.⁷⁴

26. In fact, there are “enormous overall differences in [the] programming” shown on beIN, beINE, NBCSN, and Universo.⁷⁵ Based on a comprehensive review of publicly available TV programming guide data that categorizes, by genre, the programs aired on the networks in 2017, Dr. Lerner finds that soccer programming accounted for 55.1 and 72.3 percent of all programming minutes on beIN Sports and beINE, respectively. In contrast, less than 10 percent of NBCSN’s programming minutes consisted of soccer programming during the same time period. And as the chart below demonstrates, there is minimum overlap in other types of sports programming (e.g., hockey, auto-racing, tennis, motorcycle racing) on the networks. As for Universo, less than six percent of its programming minutes during the same period consisted of soccer programming. And while the vast majority of Universo’s programming minutes (88.2 percent) were comprised of *non-sports* programming, such programming accounted for only 14.1 percent of beINE’s (nearly all of which appear to be paid programming and infomercials).⁷⁶

⁷⁴ See, e.g., *GSN Order* ¶ 50 (comparing overall tallies of programming genres on each network and finding that a “mere handful of ‘relationship-themed’ shows that aired on [the complainant’s network] are far too little to overcome the enormous *overall* differences in programming between” the complainant’s network and the defendant’s affiliated networks) (emphasis added); see also *WealthTV Order* ¶¶ 22-26.

⁷⁵ See *GSN Order* ¶ 50.

⁷⁶ See Lerner Decl. ¶¶ 15-22.

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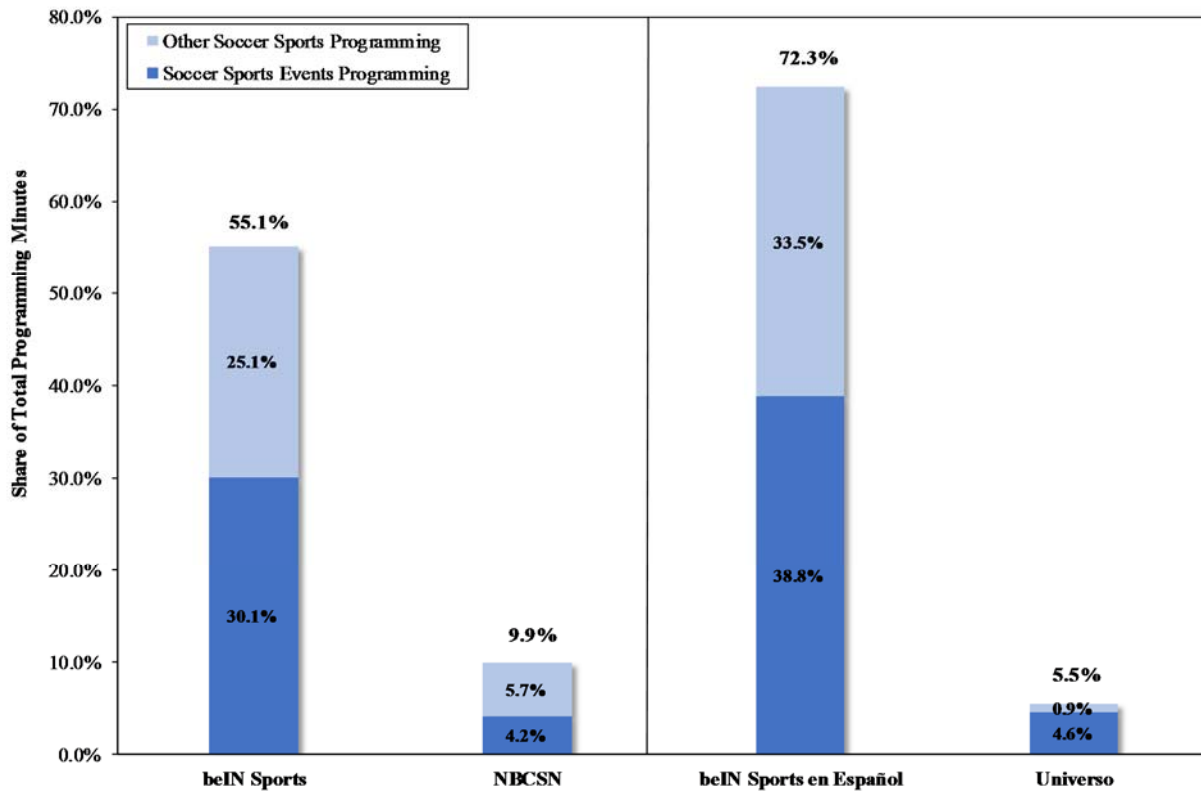
Share of Programming Minutes by Genre/Sub-Genre (2017)⁷⁷

	beIN Sports			
	beIN Sports	en Español	NBCSN	Univervo
Sports Programming	88.6%	85.9%	81.3%	11.8%
Soccer	55.1%	72.3%	9.9%	5.5%
Tennis	12.5%	1.7%	0.1%	0.0%
Motorcycle racing	5.6%	2.2%	1.2%	0.0%
Football	0.5%	2.1%	6.1%	0.2%
Auto	2.1%	0.0%	21.3%	0.0%
Hockey	0.0%	0.0%	8.7%	0.0%
Pro wrestling	0.0%	0.0%	0.0%	5.8%
Other	12.6%	7.6%	34.2%	0.3%
Non-Sports Programming	11.4%	14.1%	18.7%	88.2%
Consumer	8.6%	1.4%	14.1%	0.0%
Shopping	2.7%	12.6%	0.9%	0.0%
Travel	0.1%	0.0%	0.0%	0.0%
Special	0.0%	0.1%	0.5%	0.2%
Religious	0.0%	0.0%	0.0%	0.7%
Reality	0.0%	0.0%	2.7%	38.0%
Entertainment	0.0%	0.0%	0.4%	5.6%
Documentary	0.0%	0.0%	0.0%	18.9%
Game show	0.0%	0.0%	0.0%	12.1%
Drama	0.0%	0.0%	0.0%	5.1%
Soap	0.0%	0.0%	0.0%	2.8%
History	0.0%	0.0%	0.0%	1.5%
Spanish	0.0%	0.0%	0.0%	1.4%
Other	0.0%	0.0%	0.0%	1.7%
All Programming	100.0%	100.0%	100.0%	100.0%

Source: Gracenote program scheduling data.

⁷⁷ This table shows all sports programming with greater than five percent of programming minutes for any of the four networks. Sports Programming includes Sports Events, Sports Non-Events, and Sports Talk. The “Auto” category includes the sub-genres “auto” and “auto racing.” “Other” sports programming for NBCSN includes bicycle racing, outdoor sports, card games, poker, rugby, curling, fishing, skiing, basketball, track and field, and horse racing, which together account for approximately 20 percent of programming minutes. Over 30 additional sports comprise the rest of the sports programming for NBCSN. See Lerner Decl. tbl. 1 & n.20.

Soccer Programming Minutes as a Share of Total Programming Minutes (2017)



Source: Gracenote program scheduling data.

27. Looking at “marquee” programming, as beIN urges,⁷⁸ Dr. Lerner weights programming by viewership and finds that soccer-related programming made up [[]] percent of beIN Sports’ viewership in 2018, but only [[]] percent of NBCSN’s viewership.⁷⁹ Soccer-related programming made up [[]] percent of the viewership of beINE , but only [[]] percent of Universo’s viewership.⁸⁰ Non-soccer programming made up the vast majority of

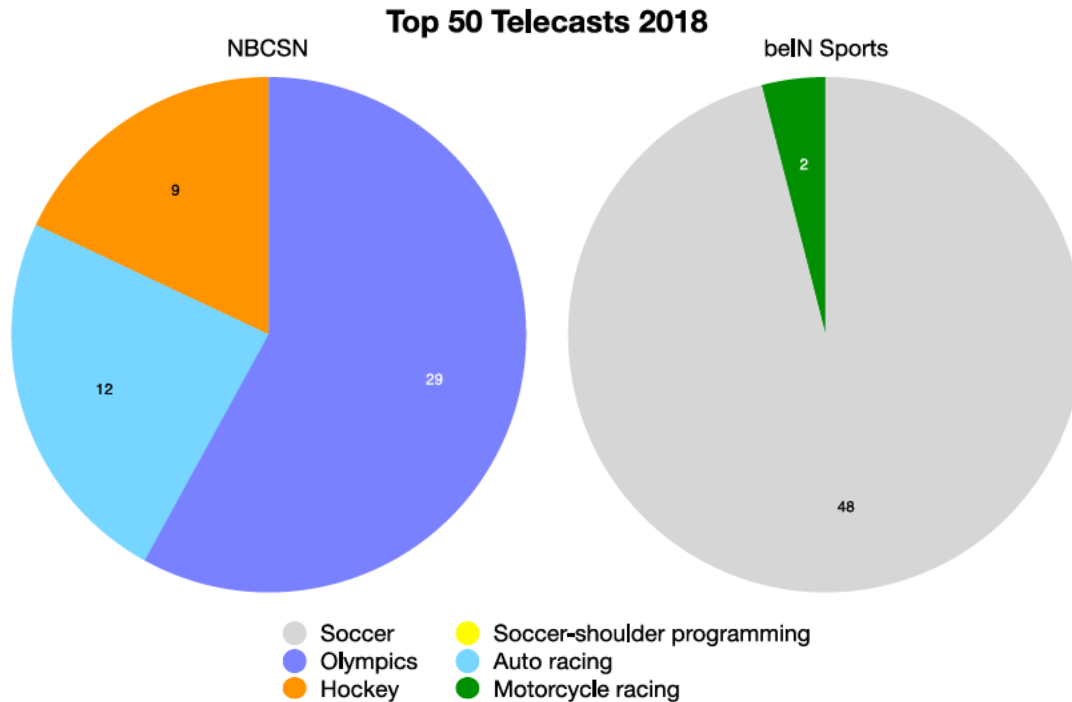
⁷⁸ See Second Compl. ¶ 72.

⁷⁹ Lerner Decl. Fig. 3.

⁸⁰ Lerner Suppl. Decl. ¶ 19.

viewership for both NBCSN and Universo, thus “clearly contradict[ing] beIN’s claim that NBCSN and Universo have a particular emphasis on soccer.”⁸¹

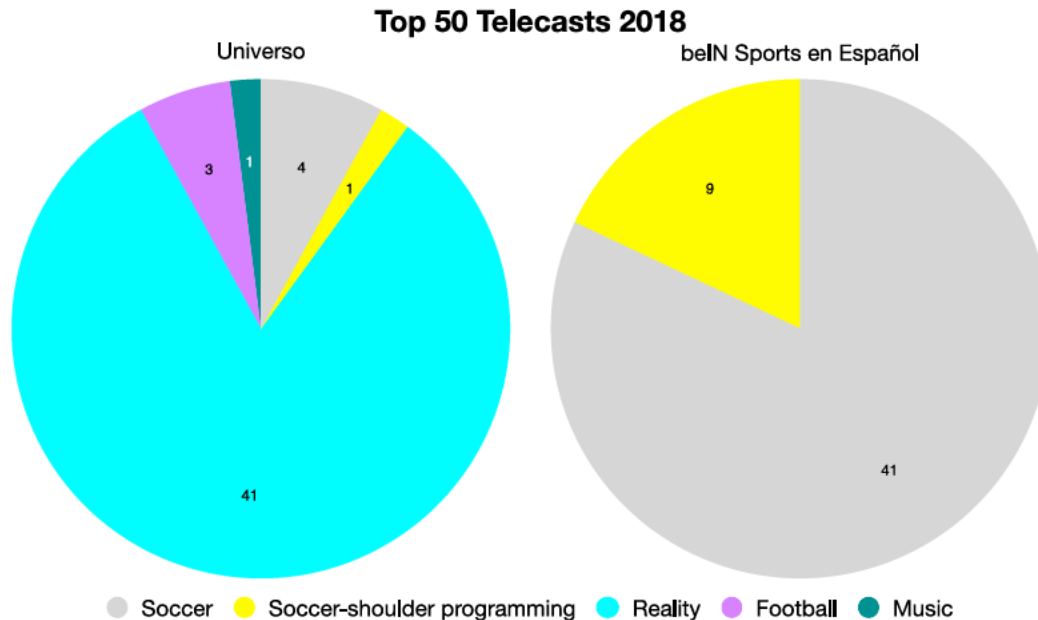
28. Likewise, Mr. Litman found that nearly *all* of the top-rated programs on the beIN networks were soccer matches or soccer-related programs, as shown in the charts below. In contrast, soccer did not account for *any* of the top 50 programs on NBCSN in 2018 (comprised of Winter Olympics, auto-racing, and hockey).⁸² For Universo, more than 80 percent of the top-rated programs were reality shows, while soccer represented only 10 percent (meanwhile soccer or soccer-related programs comprised 100 percent of beINE’s top-rated programs).⁸³



⁸¹ *Id.* ¶ 20 (“Motor Sports made up [[]] percent, NHL made up [[]] percent, and the Olympics made up [[]] percent of the viewership of NBCSN, totaling over [[]] percent of NBCSN’s viewership—more than five times the viewership of soccer events in 2018. Universo’s viewership was [[]] percent General Drama, [[]] percent General Variety, and [[]] percent Audience Participation (totaling almost [[]] percent of viewership).”).

⁸² Litman Suppl. Decl. ¶ 29. Further, Mr. Litman found that “[t]he most viewed telecast on beIN Sports had a smaller audience than 287 telecasts on NBCSN.” *Id.*

⁸³ *Id.* ¶ 40; *see also* Lerner Suppl. Decl. ¶ 21.



B. beIN Cannot Show That Its Audience and Ratings Are Similar to NBCSN and Universo, or That It Competes Uniquely with NBCSN and Universo for Advertisers

29. ***Audience.*** beIN likewise fails to provide any credible evidence that its networks materially compete with NBCSN or Universo for viewers.⁸⁴ The relevant demographic data reveal clear differences across numerous metrics, confirming that the “viewer audiences for the beIN networks are largely distinct from the viewer audiences of both NBCSN and Universo.”⁸⁵

30. beIN Sports targets a “young, bilingual, and affluent audience,” with the youngest median age (37) of any sports network and “a higher median household income than [the] English cable sports network average” (over 60 percent of viewers have a household income of \$75K+, and over 40 percent have a household income of \$100K+).⁸⁶ By contrast, almost half of

⁸⁴ See Second Compl. ¶¶ 86-90.

⁸⁵ Lerner Decl. ¶ 38.

⁸⁶ See Screenshots from beIN Website (Ex. 7); beIN March 10, 2017 Presentation to Distributor, at 15 (Second Compl. Ex. 12) (“beIN viewers . . . are affluent, tech savvy, highly engaged consumers”); Comcast Spotlight, beIN Sports One Sheet, <https://www.comcastspotlight.com/sites/default/files/beIN%20Sports%20Network%20One%20Sheet.pdf> (last

NBCSN viewers (47 percent) are over 55, and a smaller percentage (44 percent) have a household income of \$75K or more.⁸⁷ In both the *WealthTV* and *GSN* cases, the Commission concluded that similar differences in audience age and household income or affluence were evidence that the networks at issue did not target or attract the same audiences.⁸⁸ Moreover, Nielsen data confirm that beIN Sports’ audience has a substantial Hispanic component, especially relative to NBCSN – [] percent of beIN Sports households have a Hispanic head of household versus just [] percent of NBCSN viewing households.⁸⁹ These figures comport with NBCSN’s flagship content: NBCSN’s NASCAR and NHL programming attracts mainly Caucasian audiences (94 and 92 percent, respectively).⁹⁰ Likewise, beINE and Universo do not target or attract similar audiences. The vast majority of beINE’s audience is male ([] percent), while Universo enjoys [] percent female viewers.⁹¹ This alone is a dispositive difference, as found in both *WealthTV* and *GSN*.⁹² And, unlike beINE’s more affluent audience, the median household income of Universo viewers is \$37K.⁹³

visited Feb. 9, 2019) (Ex. 8) (asserting that 67 percent of beIN’s audience is less than 55 years old); *see also* Litman Decl. ¶ 42.

⁸⁷ Ex. 6; *see also* Litman Decl. ¶ 42; Lerner Decl. ¶ 38.

⁸⁸ *See WealthTV Order* ¶¶ 25-26 (finding that WealthTV’s targeting of “the most affluent viewer, 25-60+” and MOJO’s targeting of “younger adult males” provided “substantial record evidence” to support the ALJ’s determination that WealthTV and MOJO did not target similar audiences); *GSN Order* ¶¶ 55-57 (finding that there were “stark differences in the actual audiences of GSN and We tv” based the median viewer age of each network).

⁸⁹ *See* Litman Decl. ¶ 42; Lerner Decl. ¶ 38; Lerner Suppl. Decl. ¶ 34; *see also* Ex. 7 (highlighting multicultural, particularly Hispanic, viewership).

⁹⁰ beIN Sports Media Kit, <http://www.ethnicchannels.com/images/channeldetail/beinsports/BEIN-SPORTS-MEDIA-KIT.pdf> (Comcast First Answer Ex. 10); Derek Thompson, *Which Sports Have the Whitest/Richest/ Oldest Fans*, *The Atlantic*, Feb. 10, 2014, <https://www.theatlantic.com/business/archive/2014/02/which-sports-have-the-whitest-richest-oldest-fans/283626/>. According to another source, only about nine percent of NASCAR fans are Hispanic. *See* NASCAR Fan Base Demographics, <http://www.brentsherman.com/PDFS/NASCAR.pdf>.

⁹¹ *See* Litman Decl. ¶¶ 57-58.

⁹² *See supra* note 55.

⁹³ beIN also previously noted on its website that beINE’s audience “is 15 percent more upscale than the [Spanish Language] cable average.” Ex. 7; Altice Media Solutions, NBC Universo,

31. Beyond these differences in the networks' audience demographics, most soccer fans are unlikely to view the various international leagues as substitutes for one another.⁹⁴ In its own promotional materials pre-dating this litigation, beIN hailed the fact that “70% of *La Liga* viewers on beIN’s English-language channel *do not watch* Premier League on [NBCSN].”⁹⁵ As Dr. Lerner explains, “the limited degree of viewer audience overlap between the beIN networks and both NBCSN and Universo . . . shows that the networks primarily reach distinct sets of viewers, and further suggests that viewers overall do not perceive the two networks as close economic substitutes.”⁹⁶ In 2017, only [[]] percent of NBCSN viewers also viewed beIN Sports, and only [[]] percent viewed beINE. Likewise, only [[]] percent of Universo viewers also watched beIN Sports, meanwhile beINE only ranked [[]] in viewer overlap with Universo, behind [[]] other Spanish-language networks.⁹⁷

<http://www.alticemediasolutions.com/networks/nbc-universo> (last visited Feb. 9, 2019); Comcast Spotlight, Universo One Sheet, <https://www.comcastspotlight.com/sites/default/files/NBC%20Universo%20Network%20One%20Sheet.pdf> (last visited Feb. 9, 2019) (included as Ex. 9) (showing that over 75 percent of Universo viewers have a household income of less than 75K; 15.7 percent have a household income of 100K+; and only 8.4 percent have a household income of \$75K-\$99,999K); *see also* Litman Decl. ¶ 57 (finding that Nielsen data show that only [[]] percent of Universo viewers have a household income over \$75K).

⁹⁴ *See* Lerner Decl. ¶ 45 (“Soccer fans tend to be interested in specific leagues, teams, and/or matches; they do not generally find the matches of different leagues to be substitutes for each other.”). The lack of overlap between beIN Sports soccer viewers and NBCSN soccer viewers, which beIN elsewhere candidly admits, is not surprising. A study by sports economists at the University of Tübingen found that five of the top 20 most popular soccer clubs among American fans are from the English Premier League, which tends to be the most popular league overall among the United States audiences. Georgios Nalbantis & Tim Pawlowski, *The Demand for International Football Telecasts in the United States* 14, 81 (2016); *see also* Litman Decl. ¶ 24.

⁹⁵ *See* Ex. 7 (emphasis added).

⁹⁶ Lerner Decl. ¶¶ 40-42.

⁹⁷ Lerner Suppl. Decl. ¶ 32. Dr. Lerner also explains that beIN’s data on the percentage of beIN viewers that also watch NBCSN or Universo are misleading, because that simply reflects the popularity of NBCSN and Universo, not similarity. Lerner Suppl. Decl. ¶¶ 30-31.

32. **Ratings.** beIN also relies on cherry-picked, inapt Nielsen ratings data in an attempt to draw comparisons between its networks and NBCSN and Universo.⁹⁸ Dr. Lerner and Mr. Litman both explain that beIN’s highly selective ratings data paint a distorted picture of its viewership; rather, analyses of standard Nielsen metrics reveal little ratings similarity among the networks.⁹⁹ Critically, NBCSN has a dramatically broader viewership base than beIN Sports, drawing 27 times the average viewing audience of beIN Sports in the first half of 2018, an even greater multiple than in 2017 when NBCSN drew more than 10 times the average viewing audience of beIN Sports.¹⁰⁰

33. As Mr. Litman explains, beIN’s focus on [

]].¹⁰¹

Further, Dr. Lerner and Mr. Litman also observe that there is little significance to beIN’s focus on coverage area ratings.¹⁰² The households that subscribe to the specialty sports and Spanish-

⁹⁸ See Second Compl. ¶¶ 91-95; *see also* Smith Decl. ¶ 20.

⁹⁹ See Lerner Decl. ¶¶ 26-31; Litman Decl. ¶¶ 32-41, 55-56. Dr. Lerner also explains that “similar ratings for two networks would not in any way imply that the networks compete in a significant way for viewers or advertisers.” Lerner Decl. ¶ 43.

¹⁰⁰ See Lerner Suppl. Decl. ¶ 27 (“[C]onsistent with the niche nature of their programming, the beIN networks appeal to a relatively narrow viewer audience, whereas NBCSN and Universo offer content with broader appeal.”); Lerner Decl. ¶ 27; Litman Suppl. Decl. ¶¶ 34-36; *see also* Press Release, Comcast, NBCSN Has Delivered Its Best Year Ever & Is On Pace to Rank #2 Among Sports Cable Networks (Dec. 13, 2018), <https://corporate.comcast.com/press/releases/nbcSN-delivered-best-year-to-rank-2-among-sports-cable-networks> (explaining that “NBCSN is on pace to rank as the #2 sports cable network in both Total Day and Primetime viewership – a high for the network AND the first time any network other than ESPN2 will finish second”). beIN’s own media kit shows the disparities in its and NBCSN’s ratings across every major audience segment. *See* Comcast First Answer Ex. 10.

¹⁰¹ See Litman Decl. ¶¶ 35, 36, 55; Second Compl. ¶ 21.

¹⁰² As Dr. Lerner notes, Nielsen Media specifically warns against relying on a comparison of coverage area ratings between networks. *See* Lerner Suppl. Decl. ¶¶ 28-29; Second Compl. ¶¶ 91-93.

language packages on which the beIN networks are typically carried (and that are captured by coverage area ratings) have disproportionately large numbers of sports fans and Latinos that are more likely than the overall population to watch the beIN networks.¹⁰³ NBCSN and Universo, however, are distributed to a broader population of households because of their broader array of programming. As Dr. Lerner explains, “beIN’s claims based on coverage ratings essentially compare viewership in a vastly different population of viewers.”¹⁰⁴ Mr. Litman similarly observes, “beIN’s ratings analysis based on coverage area ratings is not methodologically sound. . . . It is a mathematical certainty that beIN would not rate as highly if it were in a universe that had proportionately fewer Latinos and sports fans.”¹⁰⁵ Nevertheless, even assuming for the sake of argument that coverage area ratings are an appropriate comparison, the data show that NBCSN’s average coverage area rating in the first half of 2018 was over seven times that of beIN Sports, “show[ing] that the difference in distribution cannot explain the tremendous difference in viewership between the networks.”¹⁰⁶ Moreover, Mr. Litman notes that beIN Sports’ coverage area ratings declined substantially since 2017.¹⁰⁷

34. Likewise, beIN’s reference to the outdated ratings of a small handful of individual, high-profile games – out of the *thousands* of hours of programming over several years – is not only irrelevant but misleading and not representative of the overall viewership of

¹⁰³ See Litman Decl. ¶¶ 39-41.

¹⁰⁴ Lerner Decl. ¶ 29.

¹⁰⁵ Litman Decl. ¶ 40; *see also* Lerner Decl. ¶ 31 (finding that “there is no plausible basis for [beIN’s] assumption” that, “based on coverage ratings . . . distributing [the beIN networks] to a broader population of households would result in [the beIN networks] attracting the same percentage of viewers”).

¹⁰⁶ Lerner Suppl. Decl. ¶ 29.

¹⁰⁷ See Litman Suppl. Decl. ¶ 34.

its networks.¹⁰⁸ Indeed, the viewership of these events is substantially outside the norm of beIN’s average viewership, by several multiples, and well below the norm of the viewership for NBCSN’s high-profile sporting events, which achieved record ratings in 2018, including for its coverage of the NHL Playoffs and Winter Olympics.¹⁰⁹

35. **Advertisers.** Similarly, beIN’s claim that its networks compete directly and materially with NBCSN or Universo for advertisers because they share several common advertisers is unavailing.¹¹⁰ In fact, as in the *GSN* case, “the very substantial differences in programming and demographics” among these networks makes it “unlikely that advertisers would regard [them] as substitutes.”¹¹¹ The mere existence of common advertisers on the four networks does not establish competition between the networks for advertising dollars. The Commission explained in the *GSN* case that the fact that “some of the same companies advertised on both GSN and WE tv . . . standing alone does not mean that the companies viewed the channels as substitutes.”¹¹² Dr. Lerner further states that “overlaps do not imply

¹⁰⁸ See Second Compl. ¶ 94.

¹⁰⁹ See Litman Suppl. Decl. ¶¶ 35, 37-38. Mr. Litman explains that beIN Sports’ highest rated program, the May 6 El Clásico match, which has experienced declining ratings since the 2015 match cited by beIN, peaked at [] viewers in 2018 – nearly 50 times beIN’s sport’s average viewership; meanwhile, NBCSN’s top-rated program, February 10 Winter Olympics coverage, drew [], 13 times the audience of the May 6 soccer match (and only 24 times NBCSN’s average viewership, thus less of an outlier than the El Clásico match). *Id.*; see also Press Release, Comcast, NBCSN Has Delivered Its Best Year Ever & Is On Pace to Rank #2 Among Sports Cable Networks (Dec. 13, 2018), <https://corporate.comcast.com/press/releases/nbcSN-delivered-best-year-to-rank-2-among-sports-cable-networks>; Andrew Bucholtz, *Stanley Cup Playoffs tied for second-most watched since 1997, Final was most-watched non-Original Six Final on record*, Awful Announcing, June 8, 2018, <https://awfulannouncing.com/nbc/stanley-cup-playoffs-tied-for-second-most-watched-since-1997-final-was-most-watched-non-original-six-final-on-record.html>.

¹¹⁰ See Second Compl. ¶¶ 105-110.

¹¹¹ *GSN Order* ¶ 59.

¹¹² *Id.* ¶ 60 (noting that GSN presented evidence that 90 percent of WE tv’s top 40 advertisers also advertised on GSN and that 93 percent of GSN’s top 40 advertisers also advertised on WE tv); see also *WealthTV Recommended Decision* ¶ 20 n.72 (noting that evidence that MOJO and WealthTV had dealings with two of same advertisers “does not establish that the two networks generally solicited or contracted with the same advertisers”).

substitutability (or even similarity) between networks . . . [and] one can actually draw the opposite conclusion – . . . overlaps . . . may indicate that two networks are complementary.”¹¹³

36. Even looking at the [] companies that beIN emphasizes – [] – each of which are among the largest advertisers in the country, there is no meaningful overlap.¹¹⁴ As the Commission has explained, where overlapping advertisers are “large conglomerates that advertise . . . across most or all of the national cable networks and whose sheer advertising volume places them among the top advertisers across a wide range of channels . . . simple measurements of advertiser overlap may not be particularly meaningful or reliable.”¹¹⁵ So, too, is the case here.

37. Although beIN attempts to show a greater advertising overlap between the networks in its Second Complaint, most of the additional cited companies advertise across a broad range of networks. Indeed, as Dr. Lerner explains, the beIN’s top advertisers purchased ad time on many networks, with much greater advertising spend on networks *other than* the beIN

¹¹³ Lerner Decl. ¶ 47; *see also* Lerner Suppl. Decl. ¶ 37. beIN’s own arguments bear this out: no one would contend that beIN – a niche soccer network – is similar to [] – simply because [] advertises on both. *See* Lerner Suppl. Decl. ¶ 42 n.95; *see also* Second Compl. ¶ 110.

¹¹⁴ Dr. Lerner finds that these companies generally advertised across 60 to 90 different networks. Lerner Decl. ¶ 49, tbl. 2; *see also* Litman Decl. ¶¶ 43-45. []

also Lerner Suppl. Decl. ¶ 42 (also noting that [] [] allocated [] percent of its advertising spend on networks other than beIN Sports). [] *See* Second Compl. ¶ 110; *id.* Ex. 8 ¶ 40, Attach. A; *see*

¹¹⁵ *GSN Order* ¶ 60. Though beIN argues that these large advertisers should not be discounted because they create targeted ads for each network, Second Compl. ¶ 108, beIN cannot substantiate its claims that “many large shared advertisers have advertising programs tailored to a few networks including the beIN and NBC Sports networks, or limited to beIN and NBC Sports.” beIN’s provides just one example [], but fails to show that [] campaign did not air across many other networks. *See* Lerner Suppl. Decl. ¶ 39 (also noting that [] advertising spend on the beIN networks made up only [] percent of beIN’s total advertising revenue and, more generally, that beIN does not show that the advertising campaigns on the beIN networks are more similar to campaigns on NBSCN and Universo, as compared to the many other networks on which those companies advertise).

networks, NBCSN, and Universo. NBCSN and Universo account for only [] percent and [] percent, respectively, of the advertising spend by beIN’s top 100 advertisers on the top five networks on which these companies advertised.¹¹⁶ And nearly half of all of beIN advertisers purchased *no* advertising on NBCSN or Universo.

38. Indeed, empirical evidence provided by Dr. Lerner shows a clear *lack* of substitution by advertisers between the beIN networks and either NBCSN or Universo, and refutes beIN’s claim that the beIN networks are close substitutes to NBCSN and Universo for advertisers.¹¹⁷

C. Other Distributors Do Not View the beIN Networks as Similarly Situated to NBCSN or Universo

39. The lack of similarity between the beIN networks and NBCSN and Universo is reinforced by the objective marketplace evidence of how other MVPDs treat the networks. The MVPDs that still carry the beIN networks primarily distribute them on upper-level or add-on tiers, as Comcast historically did and proposed to continue to do in its December 2017 Offer.¹¹⁸ Likewise, apart from fuboTV, the only other linear OVD that carries beIN is Sling TV – and it does so in its World Sports Package (available on a standalone basis for \$10/month). All of the other significant linear OVDs – DirecTV Now, Sony PlayStation Vue, Hulu Live, and YouTube

¹¹⁶ Lerner Suppl. Decl. ¶ 40; *see also id.* ¶ 41 (showing that the majority of all beIN advertisers ([] allocated over 80 percent of their advertising spend to other networks).

¹¹⁷ *See* Lerner Suppl. Decl. ¶¶ 43-44 (observing that there is no inverse relationship between the change in advertising spend on the beIN networks and advertising spend on NBCSN and/or Universo).

¹¹⁸ beIN itself described this overall pattern of carriage for beIN Sports to the Commission, stating that “[m]ajor Pay-TV companies tend to make beIN’s English-language network available only as part of a sports package, which usually is distributed to about 20% of the MVPD’s total subscribership.” Comments of beIN Sports, LLC, MB Docket No. 16-41, at 8 (Jan. 26, 2017); *see also* Litman Suppl. Decl. ¶¶ 31-33, 41; Lerner Suppl. Decl. ¶¶ 35, 46-47.

Live – do not carry beIN at all.¹¹⁹ And, like Comcast, other MVPDs and linear OVDs distribute NBCSN and Universo more broadly than the beIN networks.¹²⁰

40. As Chairman Pai observed in his dissent to the *Tennis Channel Order*, it was clear error to overlook that “Comcast’s treatment of Tennis Channel was within the industry mainstream.”¹²¹ He stressed that “every major MVPD in the United States distributed both Golf Channel and Versus to more subscribers than Tennis Channel. Or, to put it another way, not a single major MVPD found Tennis Channel to be ‘similarly situated’ to Golf Channel and Versus when making decisions.” Chairman Pai found this to be “powerful evidence” that Comcast had not discriminated on the basis of affiliation.

41. As shown in the chart below, this evidence has become even more powerful since the end of the Expired Agreement.¹²² beIN maintains in the Second Complaint that it ||

||¹²³ However,

AT&T/DirecTV, the largest MVPD in the country, dropped the beIN networks last August.¹²⁴ In addition, Verizon and Dish Network recently renewed with beIN, but there is no evidence that

¹¹⁹ Litman Decl. ¶ 95; Lerner Suppl. Decl. ¶ 49.

¹²⁰ See Litman Suppl. Decl. ¶¶ 31-33, 41; Lerner Suppl. Decl. ¶¶ 35; Lerner Decl. ¶¶ 32-33. Moreover, NBCSN and Universo have each been broadly carried on Comcast’s systems for many years, long before beIN even existed.

¹²¹ *Tennis Channel, Inc., Complainant v. Comcast Cable Communications, L.L.C., Defendant*, Joint Dissenting Statement of Commissioners Ajit Pai and Robert M. McDowell, 27 FCC Rcd. 8508, 8551 (2012) (“*Tennis Channel Order Joint Dissenting Statement*”). In this analysis, Commissioners Pai and McDowell excluded DirecTV and Dish Network, which had ownership interests in the Tennis Channel. There is no need to exclude any distributor here, making the marketplace distribution evidence even more powerful.

¹²² More detailed versions of the following chart are included as Ex. 10.

¹²³ Second Compl. ¶ 103.

¹²⁴ John Lafayette, *AT&T Drops beIN Sports From Channel Lineups*, Multichannel News, Aug. 30, 2018, <https://www.multichannel.com/news/bein-sports-comes-off-att-channel-lineups>; see also Litman Suppl. Decl. ¶ 46; Lerner Suppl. Decl. ¶ 52.

either decided to expand distribution of the beIN networks.¹²⁵ During Verizon’s contentious renewal negotiations with beIN, Verizon specifically noted that “[u]nfortunately, beIN Sports is demanding a significant rate increase for the same content they offer today” – similar to what Comcast experienced in its negotiations with beIN.¹²⁶

¹²⁵ See Press Release, beIN, beIN Sports Reaches Agreement with Verizon Fios (Aug. 13, 2018), <https://www.businesswire.com/news/home/20180813005436/en/beIN-SPORTS-Reaches-Agreement-Verizon-Fios>; Press Release, beIN, beIN Sports Reaches Long-Term Renewal Agreement with Dish, Sling TV (Sept. 21, 2018), <http://www.beinsports.com/us/general/news/bein-sports-reaches-long-term-dish-sling-tv/985847>. Dish Network continues to distribute the beIN networks only on specialty and less-penetrated tiers, as Comcast did. As Mr. Litman notes, Mr. Sahl’s former longtime employer, Dish Network, evidently does not share any of Mr. Sahl’s conclusions about the value of the beIN networks on broad tiers. Litman Suppl. Decl. ¶ 47 n.49; *see also* Lerner Suppl. Decl. ¶ 53.

¹²⁶ Kent Gibbons, beIN Sports USA Channels Dropped From Fios, Multichannel News, Aug. 2, 2018, <https://www.multichannel.com/news/bein-sports-usa-channels-dropped-fios>.

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Carriage of NBCSN, Universo, beIN Sports, and beINE by Top MVPDs

MVPD		Tier of Carriage															
		beIN Sports/beINE					NBCSN					Universo					
		Broad	Mid-level	Upper/Premium	Spanish Tier	Sports Tier	Broad	Mid-level	Upper/Premium	Spanish Tier	Sports Tier	Broad	Mid-level	Upper/Premium	Spanish Tier	Sports Tier	Other Specialty Tier
AT&T	DirecTV	DROPPED AUG. 2018					✓	✓	✓	✓			✓	✓	✓	✓	
	U-verse						✓	✓	✓	✓		✓	✓	✓	✓		
Charter				✓	✓		✓	✓	✓				✓	✓	✓		
Dish Network				✓	✓	✓	✓	✓	✓					✓	✓		
Verizon		✓ *	✓	✓	✓ **	✓	✓	✓		✓			✓	✓	✓		
Cox				✓	✓	✓	✓	n/a	✓					✓ ^	✓		✓ ^
Altice USA	Optimum			✓	✓ **	✓	✓	✓	✓				✓	✓	✓	✓	
	Suddenlink	NOT CARRIED					✓	✓	✓			✓	✓	✓	✓	✓	
Frontier	FiOS	✓ **	✓ **	✓ **	✓ ***	✓ #	✓	✓	✓		✓ ^		✓	✓	✓		
	Vantage			✓ #	✓ #	✓ #	✓	✓	✓			✓	✓	✓	✓ #		
Mediacom					✓ ^	✓	✓					✓ #			✓ #		✓ #
TPG Capital	RCN			✓ *	✓ ***		✓	n/a	✓					✓	✓ ^		
	Grande	NOT CARRIED					✓	✓	✓					✓			✓
	Wave	NOT CARRIED					✓					✓ ^			✓ ^		✓ ^
WOW!		NOT CARRIED					✓	✓					✓ #				
Cable One		NOT CARRIED					✓									✓	
CenturyLink (Prism)			✓ *	✓ *	✓ **	✓ *	✓	✓	✓			✓	✓	✓			
Atlantic Broadband				✓ #	✓ #		✓	n/a	✓					✓ #	✓ #		
Liberty Puerto Rico		✓ **	✓			✓		✓			✓	✓			✓		✓

Carriage data based on review of public MVPD channel-lineups from zip codes across at least 10 of the top markets by subscriber count for each MVPD (or complete set of markets where an MVPD operates in fewer than 10 markets). There may be some limited variation within certain markets. Unless otherwise indicated, carriage includes both beIN Sports and beIN Sports en Español.

* beIN Sports only

** beIN Sports en Español only

Carried only in select market(s)

^ Carriage tier varies by market

42. Dr. Lerner further confirms, based on empirical data, that the distribution Comcast proposed in its December 2017 Offer was consistent with the rest of the industry.¹²⁷ Other MVPDs, on average, distribute the beIN networks to a much smaller percentage of subscribers compared to their distribution of NBCSN and Universo, and well below the distribution that beIN demands from Comcast.¹²⁸

43. By contrast, beIN fails to provide *any* distribution data in its Second Complaint. Instead, it continues to claim that its supposed broad carriage on Verizon, Charter, and Liberty Cablevision of Puerto Rico is representative of its [[] among other distributors. However, beIN’s relatively broad carriage on Verizon FiOS is clearly the exception to the rule.¹²⁹ Verizon dropped beIN for more than a week during contentious renewal negotiations, and the Second Complaint is silent on the terms of the parties’ renewal.¹³⁰ In any event, Verizon FiOS’s carriage of beIN, as compared to NBCSN and Universo, is still consistent with the overall marketplace pattern: FiOS distributes NBCSN to a higher penetration of its customers than it does beIN.¹³¹

¹²⁷ Lerner Decl. ¶¶ 68-76; *see also* Litman Decl. ¶¶ 29-30, 78-97, Ex. 3.

¹²⁸ Lerner Suppl. Decl. ¶ 35.

¹²⁹ *See* Second Compl. ¶ 129; *see also* Litman Decl. ¶¶ 88-92.

¹³⁰ In addition, Verizon is an outlier in how it pays for and packages networks, including through its “viewership-based” business model (which it said it began implementing the same month that it launched beIN) and other content distribution and payment models. Shalini Ramachandran, *Verizon Seeks to Shake Up Fees for TV Channels*, Wall St. J., Mar. 17, 2013, <https://www.wsj.com/articles/SB10001424127887324392804578362943263175884>; Don Reisinger, *Verizon Looks to Turn TV Fee Rules on Their Head*, CNET, Mar. 18, 2013, <https://www.cnet.com/news/verizon-looks-to-turn-tv-fee-rules-on-their-head/>; Press Release, Verizon, *Why Paying for What You Watch May Stabilize Content Costs* (Mar. 25, 2013), <http://www.verizon.com/about/news/why-paying-what-you-watch-may-stabilize-content-costs/> (“Our conceptual pricing model is based on actual viewership of any channel, rather than the use of Nielsen ratings as is the case today.”).

¹³¹ Litman Decl. ¶¶ 78, 81.

44. With respect to Charter, the distribution data that beIN previously provided to the Commission in the First Complaint proceeding exposes the inaccuracy of beIN's claim of broad carriage. These data show that the beIN networks have only approximately 15 percent penetration on Charter systems, and that NBCSN and Universo enjoy greater distribution.¹³² This again shows that the beIN networks are not similarly situated to NBCSN and Universo.

45. As for Liberty Cablevision of Puerto Rico, beIN's broader distribution by this smaller, regional MVPD is not a meaningful benchmark for the rest of the industry. Liberty Cablevision of Puerto Rico serves a population that is virtually all Spanish-speaking, which is not representative of any Comcast market, much less Comcast's footprint as a whole. And, as shown in the table below, most other smaller, regional MVPDs do not carry beIN at all. By contrast, nearly *all* (41 out of 42) such MVPDs carry NBCSN and nearly half (18) carry Universo.

¹³² beIN's public distribution data, which it provided to the Commission in the prior proceeding, is attached hereto as Ex. 11 (previously included as Attach. C to beIN Reply Ex. 1).

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Carriage of NBCSN, Universo, beIN Sports, and beINE by Small or Midsized MVPDs

MVPD	Carriage		
	NBCSN	Universo	beIN or beINE
Midcontinent Communications	✓	✓	✗
Armstrong Cable Services	✓	✓	✗
Cincinnati Bell	✓	✓	✗
Service Electric Cable TV	✓	✓	✗
Blue Ridge Communication	✓	✓	✗
Buckeye Broadband	✓	✓	✗
GCI Liberty	✓	✗	✗
TDS	✓	✓	✗
Vyve Broadband	✓	✗	✗
Comporium Communications	✓	✗	✗
Schurz Communications, Inc.	✓	✓	✗
Shentel	✓	✓	✗
Zito Media	✓	✓	✗
Northland Cable Television	✓	✓	✗
Hargray Cable	✓	✓	✗
Fidelity Communications	✓	✗	✗
MCTV	✓	✗	✗
WEHCO Video	✓	✗	✗
Vast Broadband	✓	✓	✗
Blue Stream	✓	✓	✓
Adams CATV	✓	✗	✗
Morris Broadband LLC	✓	✗	✗
Arvig Communication Systems	✓	✗	✗
Inter Mountain Cable	✓	✗	✗
Click! Network	✓	✓	✗
Mid-Hudson Cablevision	✓	✗	✗
Anne Arundel Broadband (Broadstripe)	✓	✗	✗
Frankfort Electric Plant Cable	✓	✗	✗
Eagle Communications	✓	✗	✗
Cable TV of East Alabama	✓	✗	✗
USA Communications	✓	✗	✗
ImOn Communications	✓	✗	✗
TruVista Communication	✓	✓	✗
Cass Cable TV/Green County Partners	✓	✓	✗
MI Connection (Continuum)	✓	✓	✗
T.V. Service, Inc.	✓	✗	✗
Cablesouth Media III	✓	✗	✗
Troy Cablevision	✓	✗	✗
Allen's TV Cable Service	✓	✗	✗
CableAmerica Corporation	✓	✗	✗
Reach Broadband LLC	✗	✗	✗
Rainbow Communications	✓	✗	✗

Carriage data based on review of public MVPD channel lineup(s) for each MVPD.

V. OTHER MARKETPLACE EVIDENCE CONFIRMS COMCAST’S LEGITIMATE, NON-DISCRIMINATORY BUSINESS JUDGMENT AND NEGATES ANY CLAIM OF AFFILIATION-BASED DISCRIMINATION.

46. Beyond failing to establish a prima facie case, beIN’s recycled claim of affiliation-based discrimination is negated by substantial marketplace evidence that confirms Comcast’s reasonable business judgment.¹³³ When an MVPD has provided “legitimate and non-discriminatory business reasons” for its decision-making,¹³⁴ it is the complainant’s burden to show that there are “substantial and material questions of fact as to whether the defendant MVPD has engaged in conduct that violates the program carriage rules.” beIN cannot meet this burden, either. This provides another basis for the Bureau to find that no further proceedings are necessary and that the Second Complaint should be dismissed “on the merits based on the pleadings.”¹³⁵

¹³³ See *2011 Program Carriage Order* ¶ 16; *Comcast Cable Commc’ns, LLC v. FCC*, 717 F.3d 982, 985 (D.C. Cir. 2013) (“*Tennis Channel Decision*”) (“There is . . . no dispute that the statute prohibits only discrimination *based on* affiliation. Thus, if the MVPD treats vendors differently based on a reasonable business purpose . . . , there is no violation.”) (emphasis in original); see also *GSN Order* ¶ 78 (“[B]ecause an MVPD can take an adverse carriage action as long as it is not based on affiliation or non-affiliation, a video programming vendor must counter an MVPD’s properly supported defense that it has treated vendors differently based on a reasonable business purpose.”).

¹³⁴ *2011 Program Carriage Order* ¶ 17. The Commission has found that legitimate business reasons for a carriage decision include the cost of carriage, a lack of subscriber demand and interest, unfavorable terms and conditions of carriage, the carriage decisions of other cable operators, and bandwidth constraints. See, e.g., *GSN Order* ¶¶ 67-72 (finding that cost-savings were a legitimate business justification); *WealthTV Order* ¶¶ 27-32 (upholding ALJ’s finding that lack of subscriber interest and demand, minimal carriage on other MVPDs, and low “brand recognition” were legitimate business considerations); *TCR Sports Broadcasting Holding L.L.P. d/b/a Mid-Atlantic Sports Network v. Time Warner Cable Inc.*, Memorandum Opinion and Order, 25 FCC Rcd. 18099 ¶¶ 13-20 (2010) (holding that subscriber demand, costs of carriage, bandwidth constraints, and carriage decisions of other cable operators are legitimate reasons to deny carriage).

¹³⁵ *2011 Program Carriage Order* ¶ 17.

A. Comcast Reasonably Concluded That It Was Not in Its Economic Best Interest To Pay Higher Fees and Expand Distribution for the beIN Networks

47. beIN claims that Comcast would incur “no cost” or no [[]] by agreeing to expand its distribution to more subscribers.¹³⁶ That is not true. beIN continues to demand significant fee increases and expanded distribution of its networks.¹³⁷ Comcast legitimately concluded that beIN’s renewal demands were a bad deal for Comcast and did not make business sense given the limited value of the beIN networks to Comcast customers. And beIN has failed to provide any credible evidence otherwise. As summarized in the chart below, at each turn in the parties’ negotiations, beIN insisted on unrealistic terms that were out of step with the marketplace and bore no relationship to the actual value of the beIN networks to Comcast and its customers, particularly when beIN was unable to provide concrete assurances about its core content.

¹³⁶ Second Compl. ¶¶ 127, 130.

¹³⁷ See Second Compl. Exs. 5, 7; see also Mar. 7, 2018 beIN Proposal (provided as Attach. D to Ex. 1).

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48. Comcast conducted an objective assessment of the value of the beIN networks to Comcast customers, and the economics of beIN’s proposal, in order to formulate a reasonable counterproposal. This included the substantive viewership analyses described above, which showed that Comcast was already overpaying for the networks under the Expired Agreement and would lose [[]] annually if it accepted beIN’s unrealistic renewal fees.¹³⁸

¹³⁸ As detailed in the Brayford and Smith Declarations, even under more targeted, but still extremely conservative calculations derived from Comcast’s experience with actual network drops, Comcast projected an average annual savings of approximately {{ }} million if Comcast were to drop beIN entirely rather than accepting beIN’s April 2017 demand for [[]] million in average annual fees. Even taking into account beIN’s lower February 2018 Proposal, the 2018 Viewership Analysis indicated that these costs would still be roughly {{ }} million higher than the maximum projected losses over the same [[]] period. *See* Brayford Decl. ¶¶ 31, 33; Smith Decl. ¶¶ 21-22. These analyses confirmed the reasonableness of Comcast approach in its December 2017 Offer and subsequent negotiations.

49. Given the limited appeal of the beIN networks to Comcast customers, there was no business justification, or “net benefit,” for Comcast to accept beIN’s demands for expanded distribution and higher fees. Indeed, based on this “straight up financial analysis,”¹³⁹ Comcast concluded that it would not derive any economic benefit – and would instead *lose money* – if it were to accept beIN’s unreasonable renewal demands.¹⁴⁰ Dr. Lerner and Mr. Litman confirm that Comcast’s December 2017 Offer to continue to carry the beIN networks on specialty tiers made good business sense for Comcast at that time. This would have allowed Comcast to make the networks available to the limited subset of customers that want them, without passing higher costs on to its other customers.¹⁴¹

50. beIN contends that any “meaningful loss of subscriber fees for the [SEP]” is “implausible” because most subscribers purchasing Comcast’s SEP and H Tier solely to watch beIN have already left and replaced their subscription with fuboTV.¹⁴² But this argument does nothing to help beIN’s case. To the contrary, it only confirms the reasonableness of Comcast’s position. If beIN was already providing a negligible benefit to Comcast’s SEP or H Tier – since fans of this niche soccer programming can supposedly obtain it for less money elsewhere – it certainly would not provide a benefit in the form of attracting or retaining customers to Comcast’s Digital Starter tier, where beIN demanded carriage for renewal.

51. The reasonableness of Comcast’s business judgment is further confirmed by the independent determinations by other MVPDs and OVDs, who have either dropped beIN or

¹³⁹ *Tennis Channel Decision*, 717 F.3d at 984.

¹⁴⁰ This is precisely the type of “detailed, concrete” business evaluation that the *Tennis Channel* court and the Commission in *GSN* found to be good-faith financial considerations. *See id.* at 985; *GSN Order* ¶¶ 63-66.

¹⁴¹ Lerner Decl. ¶¶ 56-76; Litman Decl. ¶¶ 106-115; *see also* Lerner Suppl. Decl. ¶¶ 50-51.

¹⁴² *See* Second Compl. ¶ 128.

continue to carry its networks only in comparable specialty tiers or packages.¹⁴³ This “powerful,” objective marketplace evidence further negates any claim that Comcast’s refusal to offer expanded distribution to beIN was intended to confer some competitive advantage to NBCSN or Universo. As Chairman Pai explained in his dissent from the *Tennis Channel Order*, while paying higher license fees and expanding distribution may suit a network’s business objectives, Comcast is not “obligated to be the first mover and provide the network with the revenue and publicity that it needs in order to become attractive to other MVPDs. . . . Comcast’s obligation under our rules is to provide unaffiliated networks with non-discriminatory – *not preferential* – treatment.”¹⁴⁴

52. Nor would Comcast stand to benefit from beIN’s offer [[
]].¹⁴⁵ beIN’s claim that its unilateral ability to replace leagues and matches “on a like-for-like” basis on its networks would benefit Comcast is equally baseless.¹⁴⁶ beIN asserts that this “flexibility mitigates the risk of being stuck with a league whose major stars are gone.”¹⁴⁷ Besides underscoring the continued lack of content certainty, this supposed “benefit” again demonstrates the declining value of beIN’s core content. beIN’s loss of Serie A rights, coupled with the loss of La Liga’s superstar player, Cristiano Ronaldo, to Serie A’s

¹⁴³ See Lerner Suppl. Decl. ¶¶ 35; 46-53; Litman Suppl. Decl. ¶¶ 31-33, 41, 46-47.

¹⁴⁴ *Tennis Channel Order Joint Dissenting Statement*, 27 FCC Rcd. at 8553 (emphasis added). As Commissioner O’Rielly observed in approving the *GSN Order*, “it appears that Cablevision made a decision based on its business interests regarding carriage and not one intended to discriminate against GSN.” *GSN Order*, 32 FCC Rcd. at 6191 (Statement of Commissioner Michael O’Rielly).

¹⁴⁵ Litman Decl. ¶ 70; Brayford Decl. ¶ 39; Smith Decl. ¶¶ 26-27. If anything, this proposal is even more problematic to Comcast from a business standpoint, since it would have enabled beIN to dilute the value of its existing networks [[
]], and consume additional valuable bandwidth on Comcast’s cable plant.

¹⁴⁶ Moreover, as Dr. Lerner explains, this “like for like” substitution provision is not standard and is uncommon in the industry. See Lerner Suppl. Decl. ¶¶ 2, 5.

¹⁴⁷ Second Compl. ¶ 63; Declaration of Eric Sahl, President, ID Media LLC, ¶ 9 (Second Compl. Ex. 10).

Juventus club, has diminished beIN's value proposition.¹⁴⁸ beIN has not identified any replacement programming that would possibly mitigate these losses, much less justify significantly higher license fees for renewal.¹⁴⁹

53. Other marketplace events since the expiration of the Agreement further demonstrate the reasonableness of Comcast's business judgment. While beIN claims that literally *millions* of subscribers have contacted beIN about restoring its niche soccer programming on Comcast systems, Comcast has experienced *minimal* customer response to the absence of the networks on its cable service. Only a tiny fraction of beIN viewers churned from Comcast or eliminated their video service since the expiration of the Agreement, and far fewer than estimated in Comcast's prior viewership analyses. The associated annual financial impact to Comcast (i.e., the revenue "benefit" of carrying the networks) for this small number of viewers pales in comparison to the license fees Comcast was paying beIN under the Expired Agreement, and even more so when compared to the increased license fees that beIN has demanded. As detailed above, Comcast's January 2019 Viewership Analysis found that only approximately {{ }} subscribers, accounting for an approximate {{ }} annual loss of margin, had left Comcast or cancelled their video service as a result of beIN no longer being carried, representing an annual savings of approximately {{ }} relative to what Comcast was paying under the Expired Agreement.¹⁵⁰ Compared to the estimated {{

¹⁴⁸ See Litman Suppl. Decl. ¶ 49.

¹⁴⁹ beIN's claim that NBCUniversal has {{
}} is specious. Second Compl. ¶ 126. {{

}}.

¹⁵⁰ See *supra* ¶¶ 5-6; see also Brayford Decl. ¶¶ 49-51; Smith Decl. ¶ 35 & n.7; Lerner Suppl. Decl. ¶¶ 50-51; Litman Suppl. Decl. ¶¶ 50-51.

]] annual cost of beIN's April 2017 Proposal, this savings totaled approximately {{
}}.¹⁵¹ Even compared to Comcast's own December 2017 Offer, not carrying beIN
presented a still significant annual savings of {{ }} for Comcast.¹⁵²

54. At the same time, the limited number of Comcast customers who want to watch beIN are able to do so, without interruption, on Comcast's X1 platform via the Sling TV app. beIN's content remains available through Comcast's arrangements with this alternative streaming service. The fact that Comcast customers can readily access beIN's programming on the X1 platform further refutes any notion that Comcast has acted with discriminatory intent, rather than exercising its reasonable business judgment. Comcast is taking advantage of new distribution technologies – and beIN's *own* content licensing arrangements with an OVD – to make available this niche soccer programming to interested customers, without incurring the increased costs from higher fees and greater distribution bandwidth that beIN has demanded.

B. beIN's Other Claims of Discrimination Based on HD Carriage, Authentication, and a Direct-to-Consumer Offering Are Likewise Without Merit

55. beIN's remaining claims of discrimination based on HD carriage, authentication of its app, and its ability to offer a direct-to-consumer service are easily disproved, as well.¹⁵³ As Comcast has previously shown, these allegations based on Comcast's December 2017 Offer were entirely premature. Comcast had, in fact, been negotiating with beIN regarding the authentication of its app and was willing to consider HD carriage in certain circumstances.¹⁵⁴

¹⁵¹ See *supra* ¶ 6; Brayford Decl. ¶ 51.

¹⁵² See *supra* ¶ 6; Brayford Decl. ¶ 51.

¹⁵³ Second Compl. ¶¶ 118-122.

¹⁵⁴ See Comcast First Answer ¶ 76.

56. Moreover, in the Second Complaint, beIN now contends that []

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]].¹⁵⁶

57. The Commission can conclude one of two things from beIN’s claims about these issues in its Second Complaint: either beIN is deliberately misrepresenting []
[]; or beIN no longer views such terms as material “in any respect.” In either case, beIN’s claims that Comcast has discriminated based on HD carriage, authentication, and direct-to-consumer terms should be rejected.

VI. BEIN CANNOT SHOW THAT COMCAST’S DECEMBER 2017 OFFER HAS UNREASONABLY RESTRAINED BEIN’S ABILITY TO COMPETE FAIRLY.

58. As part of its prima facie case, beIN must also demonstrate that Comcast’s December 2017 Offer has had the effect of *unreasonably* restraining beIN’s ability to compete fairly.¹⁵⁷ beIN cannot make this essential showing, either.

59. As the Second Circuit explained, the unreasonable restraint requirement is constitutionally significant given the First Amendment concerns and the infringement on MVPDs’ editorial choices implicated by the Commission’s program carriage regime.¹⁵⁸ Thus, at

¹⁵⁵ See Second Compl. ¶ 53, Second Compl. Ex. 11 ¶ 10; Second Compl. Ex. 3 at 3.

¹⁵⁶ See Second Compl. Ex. 16 at 1 n.3. []

]].

¹⁵⁷ 2011 Program Carriage Order ¶ 15; 47 C.F.R. § 76.1302(d)(3)(iii)(A).

¹⁵⁸ *Time Warner Cable*, 729 F.3d at 165 (The “‘unreasonable restraint’ requirement renders [the program carriage regime] narrowly tailored so as not to burden more speech than necessary to advance the government’s interests.”); see also *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 636 (1994) (holding that Comcast and other

the prima facie stage, the Commission is required to “demand[] proof of the significant or material detrimental effect implicit in the term ‘unreasonable restraint.’”¹⁵⁹ Allowing allegations of “any detrimental effect on an unaffiliated network as sufficient to prove a *prima facie* violation” would “effectively nullify the unreasonable restraint requirement of § 616(a)(3),” raising serious First Amendment concerns.¹⁶⁰

60. beIN is not relieved of making this critical showing by continuing to invoke the Comcast-NBCUniversal Conditions nearly a year after their expiration.¹⁶¹ The Commission has made clear that party-initiated program access and carriage remedies, including complaint-based and arbitration remedies, must be *formally invoked or initiated prior to* expiration of the condition.¹⁶² The Comcast-NBCUniversal Conditions expired on January 20, 2018, and beIN

MVPDs “engage in and transmit speech, and . . . are entitled to the protection of the speech and press provisions of the First Amendment”).

¹⁵⁹ *Time Warner Cable*, 729 F.3d at 166 (referring specifically to the unreasonable restraint showing at the prima facie stage of a program carriage complaint proceeding).

¹⁶⁰ *Id.* (emphasis in original); see also *WealthTV Recommended Decision* ¶ 73 (holding that WealthTV could not satisfy its burden to establish that MVPD defendants’ “conduct unreasonably restrain[ed] its ability to compete fairly merely by showing that the defendants’ individual carriage decisions affected its competitive position in the marketplace” and finding that the defendants decided not to carry WealthTV “on the basis of reasonable and legitimate business reasons that were within the bounds of fair competition”) (internal quotation marks and citation omitted).

¹⁶¹ Second Compl. ¶¶ 38-41; First Compl. ¶¶ 42-45; see also *Applications of Comcast Corp., General Electric Co. and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses*, Memorandum Opinion and Order, 26 FCC Rcd. 4238, App. A § III (2011) (“*Comcast-NBCUniversal Order*”).

¹⁶² In 2009, when relieving News Corp. of its program access arbitration condition under the *News Corp.-Hughes Order* following its split from DirecTV in 2008 (which were not set to expire until 2010), the Commission expressly stated that the arbitration condition would continue to apply to “arbitrations in which a formal demand or notice for arbitration has been provided up to and including the date we release this Order.” *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee*, Memorandum Opinion and Order, 24 FCC Rcd. 8674 ¶ 16 (2009) (“*News Corp.-Hughes Order*”). The Commission further noted that it was including the period between when the divestiture occurred and its order “to preserve a remedy that was assumed to be available, based on the *News Corp.-Hughes* and *Liberty-DIRECTV* orders, until it expired or was removed.” *Id.* ¶ 17. Unlike the *News Corp.-Hughes* case, however, the Comcast-NBCUniversal Conditions expired after their full term, with full notice to all parties, so no additional window was needed for complaints or arbitrations to be filed. See *Comcast-NBCUniversal Order*, App. A § XX. Similarly, in response to a petition filed by Comcast in 2007 to suspend the *Adelphia Order* program carriage arbitration condition, which had been misused by The America Channel (“TAC”), the Commission suspended the condition but specifically noted that “those disputes in which the condition or arbitration has already been invoked” could proceed. See *Comcast*

did not file its Second Complaint until December 13, 2018.¹⁶³ There is no basis to permit beIN to essentially extend the effective date of the Conditions by invoking them now, as part of what is already an *untimely* challenge to the Commission’s Dismissal Order.¹⁶⁴

61. Nor can beIN demonstrate that any of its claims of unreasonable restraint are due to Comcast’s December 2017 Offer. According to beIN, Comcast’s December 2017 Offer would somehow force beIN either to (1) go out of business, if beIN accepted the offer or (2) decline the offer and be dropped by Comcast. Neither of these claims is accurate. In fact, beIN acknowledges that its “go-out-of-business” claims are based solely on the alleged effect of MFNs that it chose to enter into with *other* distributors, not Comcast’s December 2017 Offer.¹⁶⁵ As Mr. Litman explains, “If beIN provided other MVPDs with MFN protections that were overly generous (for example, affording a smaller MVPD the benefit of more favorable deals beIN did with larger MVPDs) that is not a reason for Comcast to have to accept affiliation terms . . . that exceeded the value that Comcast saw for the networks.”¹⁶⁶

Corporation Petition for Declaratory Ruling that The America Channel is not a Regional Sports Network, Order, 22 FCC Rcd. 17938 ¶ 24 (2007). The Commission went on to note that “our suspension of the program carriage condition does not affect the current arbitration process between TAC and Comcast or the ongoing program carriage arbitration between MASN and Time Warner.” *Id.* ¶ 24 n.66.

¹⁶³ *Comcast-NBCUniversal Order*, App. A § XX. beIN’s First Complaint likewise was noticed and filed well after expiration of the Conditions.

¹⁶⁴ *See supra* discussion Section III.A.

¹⁶⁵ *See* Second Compl. ¶¶ 49, 126. beIN has previously raised the same MFN concerns to the Commission in an *industry-wide* proceeding years ago, and cannot lay blame on Comcast’s December 2017 Offer now. *See* Reply Comments of beIN Sports, MB Docket No. 16-41, at 6-10 (Apr. 19, 2016); Comments of beIN Sports, MB Docket No. 16-41, at 11-13 (Jan. 26, 2017); *see also* Litman Suppl. Decl. ¶ 56 (observing that “it is unclear how Comcast would be responsible for the MFN provisions that beIN had provided to other affiliates [when Comcast] was not party to those deals”).

¹⁶⁶ Litman Suppl. Decl. ¶ 56. Mr. Litman further explains that, in his opinion, “it makes little sense for beIN to offer or agree to such MFNs [that afford a smaller MVPD the benefit of deals done with larger MVPDs].” *Id.*

62. Moreover, as Comcast previously explained, its December 2017 Offer was an initial counterproposal made months before termination of the Expired Agreement.¹⁶⁷ There is no basis for beIN to suggest that this was a take-it-or-leave-it offer. To the contrary, the parties continued to negotiate and exchange term sheets through July 2018.

63. beIN's remaining "evidence" of restraint – [[

]] – involves marketplace developments following the parties' impasse, which are entirely unrelated to Comcast's December 2017 Offer. Notably, beIN simultaneously states that it "is still growing at a prodigious rate" and that [[

]]¹⁶⁸ These representations undermine beIN's arguments that it has experienced *any* meaningful restraint following its impasse with Comcast.

64. In any event, any supposed harm from these events must be attributed to *beIN's* own poor business decisions and strategy, and are a by-product of its declining value proposition in the marketplace. It was beIN that chose not to accept [[

]]. In addition, beIN (1) failed to renew its rights to Serie A, which is now the home of soccer superstar Cristiano Ronaldo; (2) was dropped by AT&T/DirecTV; (3) was unable to secure broader distribution as part of its recent renewal agreement with Dish Network; and (4) apparently entered into MFN agreements with other distributors that limit its flexibility.¹⁶⁹ Also,

¹⁶⁷ Comcast First Answer ¶¶ 6, 11; *see also* Brayford Decl. ¶¶ 3, 25-30.

¹⁶⁸ Second Compl. ¶ 103.

¹⁶⁹ *See* Litman Suppl. Decl. ¶¶ 45-49, 56.

beIN continues to lack carriage on most MVPDs and linear OVDs. And beIN has not launched a direct-to-consumer offering, which many other programmers have done in the past couple of years.

65. Even putting aside that these developments are not the result of Comcast's December 2017 Offer, it is simply implausible in today's highly competitive marketplace for beIN to claim that it is *unreasonably* restrained from competing fairly by Comcast. The number of competitive distribution options for programmers like beIN has grown significantly.¹⁷⁰ In addition, beIN is free to make its content available on an over-the-top basis through the beIN Connect app.¹⁷¹ These marketplace realities refute any suggestion that Comcast is a gatekeeper for beIN to compete fairly in today's marketplace.¹⁷²

VII. RESPONSE TO NUMBERED PARAGRAPHS

Except as hereinafter specifically admitted, qualified, or otherwise answered, Comcast denies each and every allegation or assertion in beIN's Complaint. Comcast also denies each and every allegation or assertion in beIN's Complaint for which Comcast lacks adequate information or knowledge to admit or deny. *See* 47 C.F.R. § 76.7(b)(2)(iv). Comcast answers each numbered paragraph of the Complaint with the following correspondingly numbered paragraphs.

¹⁷⁰ Most Comcast customers have several other competitive pay-TV choices to watch beIN's niche soccer programming. These include not only traditional MVPDs like CenturyLink Prism, Dish Network, and Verizon, but, as noted, also linear OVDs like Sling TV and fuboTV (as well as all of the potential distribution that beIN has on MVPDs and OVDs alike with which it currently does not have carriage agreements). *See* Smith Decl. ¶ 7. Further, as beIN has acknowledged, Comcast customers continue to have access to the beIN networks via the Sling TV app on Comcast's X1 platform. *Id.* ¶ 30; Brayford Decl. ¶ 52.

¹⁷¹ In Mr. Litman's opinion, this is likely the more appropriate business model for beIN's niche soccer content. Litman Decl. ¶ 122.

¹⁷² beIN essentially concedes this point. Its continued claims of significant switching between Comcast and fuboTV to obtain beIN's programming – if they are to be believed – demonstrate this marketplace reality. Second Compl. ¶¶ 44, 128.

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1. Comcast denies paragraph 1.
2. Comcast denies paragraph 2.
3. Comcast denies paragraph 3, except to state that the December 2017 Offer speaks for itself and Comcast has no knowledge of the “contractual ‘Most Favored Nations’ (‘MFN’) obligations” that beIN has voluntarily agreed to with other distributors.
4. Comcast denies paragraph 4. Moreover, contrary to beIN’s unsubstantiated claims in the last two sentences of the paragraph, [[

]].

5. Comcast denies paragraph 5. Moreover, Comcast states that its Answer to the First Complaint speaks for itself.
6. Comcast denies paragraph 6, except to state that the Dismissal Order speaks for itself. Comcast notes that the Dismissal Order did not disagree with Comcast’s other arguments regarding the lack of similarity between the beIN networks and NBCSN and Universo and the lack of benefit of continuing to carry beIN, but simply did not reach these arguments given the Commission’s dispositive finding of significant content uncertainty.
7. Comcast denies paragraph 7 and reiterates that – far from being “new” – this “evidence” was already before the Commission in the prior proceeding and found insufficient in the Dismissal Order.
8. Comcast denies paragraph 8.
9. Comcast denies that it has violated Section 616, or any other section, of the Communications Act of 1934 or of the Commission’s regulations.

10. Comcast denies that the program carriage condition set forth in the Commission's Comcast-NBCUniversal Order applies to beIN's Complaint, as that condition expired on January 20, 2018. In any event, Comcast denies that it violated the program carriage condition.

11. Regarding the first sentence, Comcast admits that it submitted the December 2017 Offer as an initial counterproposal to beIN on December 13, 2017, but denies beIN's characterization of the December 2017 Offer and states that it was grounded in the framework of the Expired Agreement between Comcast and beIN, and responded to the lack of content certainty and aggressive economic terms beIN had proposed in its April 11, 2017 renewal pitch to Comcast (more than 15 months before the Expired Agreement was set to expire). Comcast denies the remainder of this paragraph.

12. Comcast denies paragraph 12, except to state that Comcast's December 2017 Offer speaks for itself.

13. Comcast denies paragraph 13.

14. Comcast denies paragraph 14 and denies that beIN's meritless claims are entitled to any relief.

15. Comcast denies paragraph 15.

16. Paragraph 16 contains legal conclusions to which no response is required.

17. Comcast admits that beIN has exhibited varying European soccer programming from beIN's launch through the present, but Comcast lacks sufficient information to admit or deny the remainder of paragraph 17 and states that, during renewal negotiations, beIN was

II

]].

18. Comcast admits that beIN occasionally offers non-soccer-related programming, including a number of infomercials, but notes that beIN's networks have been dominated by continental European soccer and soccer-related programming, which is the main driver of value for beIN's networks.

19. Comcast lacks sufficient information to admit or deny paragraph 19.

20. Comcast lacks sufficient information to admit or deny paragraph 20, except to admit that it was the first cable operator to launch beIN in the United States in 2012.

21. Comcast denies the first sentence of paragraph 21. Comcast states that the data cited in paragraph 21 speaks for itself. However, as explained in Section IV.B of the Answer and in Mr. Litman's Declaration, beIN's reliance on [[data is not meaningful.

22. Comcast admits to paragraph 22.

23. Comcast admits to paragraph 23 and states that the Communications Act, the Commission's program carriage rules, and the Comcast-NBCUniversal Order (which expired in January 2018 and does not apply to this case) speak for themselves.

24. Comcast admits to paragraph 24, but notes that the data cited are no longer current, and that the network's name is "Universo," not "NBC Universo."

25. Comcast admits to paragraph 25, except to clarify that "NBC Sports" is the larger division that manages the sports programming for multiple NBCUniversal properties, including NBCSN. Comcast states that, to the extent paragraph 25 is meant to describe NBCSN (rather than the NBC Sports group, which is not a network), it includes incomplete and inaccurate information, and fails to list other highly valued programming, such as NASCAR, IndyCar, and

Tour de France. With respect to the last sentence, Comcast states that it has a long history of broadly distributing NBCSN (and its predecessors Outdoor Life Network and Versus) and its carriage of NBCSN on Digital Starter (“DS”) is a result of its reasonable business judgment and editorial discretion and is comparable to the carriage of NBCSN by virtually all other large MVPDs, as set forth in Exhibit 10.

26. Except for the third sentence, which Comcast denies, Comcast admits to paragraph 26 but, with respect to the fourth sentence, notes the network’s official name is “Universo.” Regarding the last sentence, Comcast states that it has a long history of broadly distributing Universo (and its predecessor mun2) and its current carriage of Universo is a result of its reasonable business judgment and editorial discretion and is comparable to the carriage of Universo by many of the largest MVPDs, as set forth in Exhibit 10.

27. Comcast denies paragraph 27 except to admit that it has been the subject of program carriage complaints.

28. Comcast admits to paragraph 28.

29. Comcast states that the Communications Act of 1934 and the Commission’s rules speak for themselves.

30. Comcast disputes that the Commission has jurisdiction to adjudicate this matter under the Comcast-NBCUniversal Order Conditions, which expired on January 20, 2018.

31. Comcast admits to paragraph 31, except to deny any characterization of the Dismissal Order, beIN’s December 3, 2018 pre-filing notice, and Comcast’s December 13, 2018 response, which speak for themselves. Comcast further notes the incongruity of beIN’s allegation that Comcast “ignore[d] beIN’s request for further dialogue” with the fact that beIN

filed the Second Complaint within hours of receiving Comcast’s response to beIN’s pre-filing notice.

32. Comcast states that Section 616 and the program carriage rules speak for themselves.

33. Comcast states that the Cable Television Consumer Protection and Competition Act of 1992 and its legislative history speak for themselves.

34. Comcast states that the 1993 order cited in paragraph 34 speaks for itself. Comcast notes that the Commission also stated, in the same order, that “[i]n implementing the provisions of Section 616, we believe that our regulations must . . . preserve[] the ability of affected parties to engage in legitimate, aggressive negotiations.”

35. Comcast states that the authority cited in paragraph 35 speaks for itself.

36. Comcast states that the Commission’s rules speak for themselves.

37. Regarding the first two sentences of paragraph 37, Comcast states that the Commission’s rules speak for themselves. Comcast denies the last sentence of paragraph 37.

38. Comcast denies the premise of paragraph 38 and the characterizations of the Comcast-NBCUniversal Order, which speaks for itself, and reiterates that the Conditions expired nearly a month prior to beIN sending Comcast a pre-filing notice of its First Complaint and nearly a year prior to beIN sending Comcast a pre-filing notice of its Second Complaint.

39. Comcast states that the Comcast-NBCUniversal Order speaks for itself and the Conditions expired on January 20, 2018.

40. Comcast denies paragraph 40.

41. Comcast denies the premise of paragraph 41, as the expired Comcast-NBCUniversal Order is inapplicable to the present Complaint.

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42. Comcast denies the premise of and statements in the first sentence of paragraph 42, with the exception of the date contained therein. Comcast lacks sufficient information to confirm or deny the second and third sentences regarding the hopes or motivations underpinning beIN's Expired Agreement with Comcast, but states that Comcast's packaging of beIN was a product of Comcast's reasonable business judgment and reflected the fact that beIN's niche soccer networks appeal to a small fraction of Comcast's customers and are well-suited to specialty tiers.

43. Comcast admits to paragraph 43 and notes that the Expired Agreement speaks for itself.

44. Comcast lacks sufficient information to confirm or deny the first sentence of paragraph 44 regarding beIN's motivation for the terms of its Expired Agreement with Comcast. Comcast admits to the second sentence. Comcast lacks sufficient information to admit or deny the third sentence but denies that a brand-new, niche programmer like beIN ||

||. Comcast denies the fourth sentence. Comcast lacks sufficient information to confirm or deny the statements regarding beIN's hopes for the Expired Agreement in the fifth sentence but denies that beIN's "free lunch" had any added value on more broadly distributed tiers. Comcast denies the sixth and seventh sentences.

45. Comcast lacks sufficient information to confirm or deny the first sentence of paragraph 45. Comcast denies the second sentence. Comcast admits to the third and fourth sentences. With regard to the fifth sentence, Comcast admits that NBC Sports renewed its English Premier League rights in 2015 for six seasons. Comcast states that the English Premier

League is only one piece of NBCSN's larger sports programming strategy and broader content offerings, as discussed in Section IV.A of the Answer. Comcast admits the last sentence of the paragraph.

46. Comcast admits that it carried beIN Sports on SEP and beINE on SEP and H in most markets and adds that it carried beIN Sports on its Preferred, Premier, and SEP packages in select markets, but denies beIN's characterization that these are "buy-through" packages since H generally is available to any subscriber with a Limited Basic package, and SEP is available to DS subscribers. Comcast denies the premise of the second and third sentences. Comcast admits to the last sentence and states that beIN also enjoys access to all of Comcast's subscribers via the SEP and H tiers.

47. Comcast denies the first sentence and clarifies that on April 11, 2017 Mr. Meyeringh and Mr. Tolle presented Mr. Brayford and Ms. Fisher with a renewal proposal but did not "submit" the proposal to Comcast until two days later via email. Comcast denies the remainder of the paragraph and the characterization of the April 2017 Proposal, which speaks for itself.

48. With the exception of the first two sentences, which it admits, Comcast denies paragraph 48 and notes that the April 2017 Proposal speaks for itself and does not include any of the details regarding the content the beIN networks would carry that beIN alleges it made or the content commitment it agreed to in the Expired Agreement.

49. Comcast denies the first and second sentences of paragraph 49, except to admit that Comcast submitted an initial counterproposal to beIN on December 13, 2017 and had maintained a regular dialogue with beIN regarding authentication. Comcast lacks sufficient knowledge to confirm or deny the third sentence. Comcast admits to the fourth, fifth, and sixth

sentences but states that the December 2017 Offer [[

]]. Regarding the seventh

sentence, Comcast admits to the figure in that sentence [[

]] but denies the remainder of that sentence. Regarding the last sentence, Comcast states that [[

]].

50. Comcast denies paragraph 50, except to admit that beIN responded to that meeting with a counterproposal on February 2, 2018, the terms of which speak for themselves. To clarify, Comcast denies that Mr. Smith was present for the January 25, 2018 meeting, which was attended by Mr. Brayford and Ms. Fisher on behalf of Comcast. Comcast further denies that its December 2017 Offer failed to reflect the value of beIN's programming, particularly given that, at the time Comcast made the December 2017 Offer, beIN had not [[

]]. Nor did beIN

confirm at the January 25, 2018 meeting that it had [[]]. As Comcast stated in its Answer to the First Complaint and in Mr. Brayford's Declaration herein, the first time that beIN confirmed that [[

]]. Nor did beIN make any mention of a like-for-like mechanism or discuss potential replacement leagues at the January 25, 2018 meeting; rather the meeting featured a verbal proposal by beIN that was more in line with Comcast's expectations for the negotiation. And

although Comcast lacks sufficient information to admit or deny whether beIN was “disheartened” with Comcast’s December 2017 Offer, Comcast was disappointed by beIN’s February 2 Proposal, which proposed higher fees and broader carriage terms than beIN’s January 25, 2018 verbal offer, among other issues. Comcast further notes that the February 2 Proposal also included several other new terms not mentioned in paragraph 50, in addition to []

[].

51. Comcast admits that Messrs. Briceño, Tolle, and Meyeringh met with Mr. Smith, Ms. Fisher, and Mr. Brayford in Philadelphia on March 1, 2018 to discuss beIN’s February 2 Proposal but denies the remainder of paragraph 51.

52. Comcast denies paragraph 52, except to state that beIN submitted a counterproposal on March 7, 2018, the terms of which speak for themselves. Rather than providing more certainty, beIN’s “like-for-like” provision demonstrated that beIN was proposing replacing its top-tier European soccer properties, which had been the core programming with the most value on its networks, []

[].

53. Comcast denies paragraph 53.

54. Comcast admits the first sentence of paragraph 54. Comcast denies the remainder of the paragraph, except to state that Comcast appropriately informed its customers about the

loss of beIN and provided them with instructions to obtain beIN's niche programming via Sling TV's "World Sports" package available on the Comcast X1 box. Comcast also provided information about soccer programming shown on a variety of other programming services that it carries (most of which are unaffiliated with Comcast).

55. Comcast denies paragraph 55, subject to the clarification above in response to paragraph 4.

56. Comcast admits to the first sentence of paragraph 56 but denies the premise of the remainder of the paragraph, which itself is "cherry-picked."

57. Comcast denies paragraph 57, except to admit that it received a pre-filing notice from beIN on December 3, 2018.

58. Comcast denies paragraph 58.

59. Comcast denies paragraph 59.

60. Comcast denies paragraph 60, and incorporates paragraphs 12-23 of Mr. Litman's Supplemental Declaration in response.

61. Comcast denies paragraph 61, except to state that the April 2017 Proposal, which beIN includes as Exhibit 5 of the Complaint speaks for itself and does not include [[

]] Comcast incorporates its response to paragraph 60.

62. Comcast denies paragraph 62 and incorporates its response to paragraph 60.

63. Comcast denies paragraph 63 and incorporates its response to paragraph 60.

64. Comcast denies paragraph 64 and incorporates its response to paragraph 60.

65. Comcast denies the first sentence of paragraph 65, except to state that the December 2017 Offer stated beIN's service programming was [[]]

]] and speaks

for itself. Comcast denies the remainder of the paragraph and incorporates its response to paragraph 60.

66. Comcast denies paragraph 66 and incorporates its response to paragraph 60.

67. Comcast denies the first sentence of paragraph 67. With respect to the second sentence, Comcast states that any Commission decision speaks for itself.

68. Comcast notes that the cited NFL decision was an initial Media Bureau decision, which speaks for itself, and further notes that the current Media Bureau, in another recent program carriage case, disavowed another aspect of that same NFL initial order.¹⁷³

69. Comcast denies paragraph 69, except to state that the cited Tennis Channel decision speaks for itself and was vacated and remanded by the D.C. Circuit and later dismissed by the Commission.

70. Comcast denies paragraph 70.

71. Comcast admits paragraph 71 except to deny beIN's characterization of Universo for the reasons detailed in Section IV, Dr. Lerner's and Mr. Litman's Declarations and Supplemental Declarations, and beIN's own description of Universo in paragraph 26.

72. Comcast denies the premise of paragraph 72 and specifically denies the last sentence of that paragraph; unlike the beIN networks, soccer comprises a limited amount of the programming on NBCSN and Universo, as detailed in Section IV.A and Dr. Lerner's and Mr. Litman's Declarations and Supplemental Declarations and beIN's own description of Universo in paragraph 26 and in this paragraph, which notes that Universo delivers "signature series, blockbuster movies, music, must-see live events and strategic acquisitions."

¹⁷³ See *Word Network Operating Company d/b/a The Word Network v. Comcast Corp. and Comcast Cable Commc'ns, LLC*, Memorandum Opinion and Order, 32 FCC Rcd. 7704 ¶ 35 (2017).

73. Comcast denies the premise of paragraph 73, except to state that Mr. Miller’s quote speaks for itself.

74. Comcast denies the premise of paragraph 74. Unlike beIN Sports, NBCSN has made a “huge investment” and “mammoth advertising campaigns” on behalf of a wide variety of its marquee sports programming including hockey, NASCAR, and the Olympics – not just soccer. As Mr. Litman explains, data plainly bear out this distinction: SNL Kagan projected NBCSN to spend [] million in 2018 on programming – more than ten times that of beIN Sport’s [] million.¹⁷⁴

75. NBCSN denies the premise of paragraph 75 and incorporates its response to paragraph 74.

76. Comcast denies paragraph 76. Far from presenting evidence of an “intensive advertising campaign,” beIN has taken screenshots of news and analysis from what it concedes is the NBC Sports “soccer landing page,” which is the webpage a user would access if she specifically was looking for soccer-related information. As is visible in the second screenshot beIN presents, NBCSports.com’s soccer page is the fifth of ten sport-specific sections that NBCSports.com includes in the website’s top banner (last accessed Feb. 4, 2019). Notably, the top banner of the first screenshot includes a score from the Western Conference Finals of the NHL Stanley Cup Playoffs.

77. Except for the implication of a “heavy push,” Comcast admits paragraph 77. Apart from being irrelevant to the Commission’s program carriage “similarly situated” framework and indicative of beIN’s deficient prima facie case, the remainder of the paragraph

¹⁷⁴ Litman Decl. ¶ 27.

describes a small slice of NBC Sports group’s broad sports journalism and its diverse customer offerings.

78. Comcast denies the premise of paragraph 78, which once again refers not to NBCSN but the website of the NBC Sports group and is irrelevant to the Commission’s program carriage rules. Comcast further denies the last sentence, which is inaccurate: “Rotoworld” is NBC Sports’ fantasy sports-centric website, presenting news, analysis, and tools catered to players of fantasy football, baseball, basketball, hockey, golf, NASCAR, as well as the EPL.¹⁷⁵

79. Comcast admits paragraph 79, and notes that, despite beIN’s apparent familiarity with shop.nbcsports.com, it fails to note that the online store, managed by sports merchandiser Fanatics, also sells jerseys from the Washington Nationals’ Max Scherzer, the Washington Wizards’ Bradley Beal, and the Big 12 Conference’s Kansas Jayhawks – merchandise from players and teams that “all play in leagues that NBC [including NBCSN and Universo] does not carry.”

80. Comcast admits that the “NBC Sports Soccer” twitter handle, one of many sport-specific NBC Sports-branded accounts, is devoted to soccer coverage, but denies the premise of this paragraph.

81. Comcast denies that paragraph 81 has any relevance to this proceeding.

82. Comcast denies that paragraph 82 has any relevance to this proceeding.

83. Comcast denies paragraph 83, except to state that the article referenced therein speaks for itself.

¹⁷⁵ See generally www.rotoworld.com.

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84. Comcast denies paragraph 84, and states that, as discussed in Section IV.A above and in Dr. Lerner’s Declaration, soccer comprised less than 10 percent of NBCSN’s programming in 2017, while it comprised more than 55 percent of beIN Sports’ programming; and, as explained by Mr. Litman in his Supplemental Declaration, nearly all of beIN Sports’ 50 top-rated programs in 2018 were soccer matches or soccer-related programs, while none of NBCSN’s 50 top-rated programs were soccer-related (and instead were dominated by Winter Olympics, auto-racing, and hockey).

85. Comcast denies paragraph 85.

86. Comcast denies paragraph 86, except to state that neither the Complaint nor Mr. Briceño’s Declaration provides a source for such data.

87. Comcast denies paragraph 87.

88. Comcast denies paragraph 88, except to say that the cited materials – which are not unique to NBCSN or Universo – speak for themselves.

89. Comcast denies paragraph 89.

90. Comcast denies paragraph 90, except to state that the cited data speak for themselves.

91. Comcast denies paragraph 91 and states that beIN’s highly selective ratings data are misleading and do not demonstrate similarity in ratings between the beIN networks, on the one hand, and NBCSN and Universo, on the other.

92. Comcast denies paragraph 92 and specifically denies the relevance or credibility of any conclusions derived from beIN’s “appropriate further adjustment,” for which beIN provides no methodology or calculations.

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93. Comcast denies paragraph 93, except to state that the cited data speak for themselves, and incorporates Section IV.B above and the corresponding analysis from Dr. Lerner's and Mr. Litman's Declarations and Supplemental Declarations cited therein.

94. Comcast denies paragraph 94, and incorporates its response to paragraph 93.

95. Comcast denies the first sentence of paragraph 95. Comcast admits to the remaining sentences, except to deny the final clause of the last sentence, and states that the materials cited therein are evidence of Comcast's good-faith fulfillment of []

[].

96. Comcast denies the first sentence of paragraph 96. Comcast denies the second sentence of that paragraph, except to admit that Universo acquired the 2017 CONCACAF game rights. Comcast lacks sufficient information to confirm or deny the statements and vague allegations made by beIN in the final two sentences of the paragraph but states that Universo had the exclusive Spanish-language rights to the programming.

97. Comcast denies the premise of paragraph 97 and states that the fact that beIN bid on the U.S. rights for English Premier League along with NBCSN, and Fox in 2015 is inconsequential given NBCSN's overall programming strategy, line-up, and viewing audience, and that NBCSN has no intention or desire to be a niche soccer network. Furthermore, Comcast states that the cited order speaks for itself.

98. Comcast denies the first two sentences of paragraph 98. Comcast denies the premise of the third sentence and states that the referenced articles speak for themselves.

99. Comcast denies the premise of paragraph 99 and is unable to confirm or deny the statements made by beIN in the materials provided to other distributors.

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100. Comcast denies paragraph 100 and is unable to confirm or deny the statements made by beIN in the materials provided to other distributors.

101. Comcast denies paragraph 101.

102. Comcast denies paragraph 102, except to state that the cited data speaks for itself.

103. Comcast lacks sufficient information to confirm or deny paragraph 103.

However, assuming the veracity of beIN's statement that it is [[

]] this admission provides evidence that beIN has not been unreasonably restrained in the marketplace. Further, Comcast denies beIN's claim that beIN has been [[

]] and notes that Comcast's prior carriage of beIN had been well within the industry mainstream.

104. Comcast denies the premise of paragraph 104 and states that such data is not borne out by viewership data from Comcast customers.

105. Comcast denies paragraph 105, except to state that the cited overlap in advertisers is not evidence of material or direct competition for advertisers between networks, as detailed in Section IV.B above and the corresponding analysis from Dr. Lerner's and Mr. Litman's Declarations and Supplemental Declarations cited therein.

106. Comcast denies paragraph 106 and incorporates its response to paragraph 105.

107. Comcast denies the premise of paragraph 107, incorporates its response to paragraph 105, and states that beIN's claim that the four largest advertisers for the September 6, 2016 match "bought time on both telecasts" undermines beIN's assertion that advertisers substitute one network for the other.

108. Comcast denies paragraph 108 and incorporates its response to paragraph 105.

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109. Comcast denies paragraph 109, except to state that the data cited therein speak for themselves and do not present evidence of substitutability for advertising among the networks, and incorporates its response to paragraph 105.

110. Comcast denies paragraph 110, except to state that the referenced data speak for themselves, and incorporates its response to paragraph 105.

111. Comcast denies the first sentence of paragraph 111. Comcast admits to the remaining sentences but states that a few cherry-picked examples of non-soccer sports programming do not support the conclusion that beIN's networks are similarly situated to NBCSN and Universo and reiterates that beIN Sports and beINE are niche soccer networks that predominantly feature continental European soccer programming.

112. Comcast denies paragraph 112 and notes that, with or without Serie A rights, beIN's networks are not similarly situated to NBCSN or Universo.

113. Comcast denies paragraph 113.

114. Comcast denies paragraph 114.

115. Comcast denies paragraph 115.

116. Comcast denies the first and second sentences of paragraph 116. Comcast admits to the third and fourth sentences.

117. Comcast denies the first sentence of paragraph 117 and states that [[

]]. Comcast denies the second sentence and states that, [[

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]]. Comcast denies the third and fourth sentences. Comcast admits to the fifth sentence but clarifies that the H tier generally bolts on to other tiers, including the Limited Basic offering. Comcast denies the premise of and the first half of the sixth sentence, except to admit to the remaining part of the statement regarding Universo's distribution. Comcast states that the table included at the end of paragraph 117 omits its Limited Basic offering, which is one of the packages to which the H Tier generally may be added.

118. Comcast denies the premise of paragraph 118 and states that any HD carriage decisions are made based on its reasonable business judgment in light of the bandwidth constraints in any particular market and other associated costs of HD carriage, as well as the overall demand for the network.

119. Comcast denies the premise of paragraph 119. Comcast lacks sufficient information to admit or deny other MVPDs' business rationales for carrying certain programming in HD, but reiterates that Comcast's carriage decisions with respect to beIN have been a product of its reasonable business judgment and reflect the limited demand for beIN among Comcast customers.

120. Comcast lacks sufficient information to admit or deny the blanket statements in paragraph 120 but states that it repeatedly demonstrated its willingness to come to mutually agreeable terms surrounding authentication with beIN.

121. Comcast denies paragraph 121 and incorporates its response to paragraph 120.

122. Comcast denies the first sentence of paragraph 122. Comcast lacks sufficient information to confirm or deny the remaining statements in that paragraph.

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123. Comcast admits to the first sentence of paragraph 123 but states that the monthly fee Comcast paid beIN under the Expired Agreement was approximately [[] and denies the remainder of that paragraph.

124. Comcast denies the premise of paragraph 124. Comcast notes that it was beIN that proposed [[]], and reiterates that Comcast's proposed fees were based on its reasonable business judgment, were firmly grounded in its viewership analyses, and reflected outstanding questions about the value proposition of beIN's programming.

125. Comcast denies paragraph 125.

126. Comcast cannot confirm or deny beIN's business judgments as expressed in paragraph 126 and lacks sufficient information to respond to beIN's claims regarding interactions with other distributors or rights holders. Moreover, Comcast lacks sufficient information to respond to the alleged effect on beIN of MFNs that beIN has entered into with other distributors.

127. The first sentence of paragraph 127 contains legal conclusions to which no response is required. Comcast denies the second and third sentences. Regarding the fourth sentence, Comcast incorporates its response to paragraph 11 and notes that beIN's April 2017 Proposal demanded exorbitant fee and carriage increases and lacked certainty about the soccer programming that would be exhibited on the networks [[]

]].

128. Comcast denies the premise of paragraph 128 and notes that beIN's contention that beIN no longer has value on the SEP because fuboTV also carries beIN is inconsistent with what beIN acknowledged in negotiations with Comcast. Nonetheless, Comcast generally agrees with beIN that it did not have a lot of value on the SEP and H tiers. Comcast notes that beIN is

currently available for \$10/month on Sling TV, which belies beIN’s claim that Comcast offers beIN at a “comparatively high price” on SEP and the H tier.

129. In response to paragraph 129, Comcast admits that CenturyLink Prism, fuboTV, Liberty Cablevision of Puerto Rico, and Verizon carry beIN on broadly penetrated tiers, as does Frontier (but only in select markets within its footprint). However, Comcast notes that nearly all other major MVPDs generally carry the beIN networks on upper-level or add-on tiers with lower penetration, like Comcast had done, and that over 40 MVPDs and most virtual MVPDs do not carry beIN at all. Comcast states that its carriage of the beIN networks was well within the industry mainstream. Comcast notes that the chart Comcast provides in Exhibit 10 and the Declarations and Supplemental Declarations of Dr. Lerner and Mr. Litman provide an accurate and comprehensive representation of beIN’s distribution.

130. Comcast denies paragraph 130 and incorporates the analyses and business judgments summarized in Mr. Brayford’s and Mr. Smith’s Declarations. Comcast notes that its most recent viewership analyses, which use data from actual subscriber behavior following the expiration of the Expired Agreement, validate the findings of the viewership analyses commissioned by Comcast’s Content Acquisition during early renewal negotiations and confirm Comcast’s conclusion that beIN’s demands for broad distribution and higher fees were inconsistent with beIN’s commercial value.

131. Comcast denies paragraph 131.

132. Comcast denies paragraph 132 and incorporates paragraph 40 of Mr. Brayford’s Declaration, which responds to beIN’s assertions.

133. In response to paragraph 133, Comcast incorporates its responses to paragraphs 1 through 132.

134. Comcast denies paragraph 134.

135. In response to paragraph 135, Comcast incorporates its responses to paragraphs 1 through 134.

136. Comcast denies paragraph 136.

General. Comcast denies any of the allegations in the Complaint that are not addressed in the responses above, and denies that beIN is entitled to any relief whatsoever.

VIII. CONCLUSION

For all of these reasons, the Second Complaint should be denied and dismissed with prejudice.

Respectfully submitted,

/s/ Michael D. Hurwitz

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February 11, 2019

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

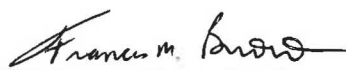
In the Matter of)	
)	
beIN SPORTS, LLC,)	
<i>Complainant,</i>)	
)	
vs.	)	MB Docket No. 18-384
	)	File No. CSR-8972-P
)	
COMCAST CABLE)	
COMMUNICATIONS, LLC)	
and)	
COMCAST CORPORATION,)	
<i>Defendants.</i>)	

DECLARATION OF FRANCIS M. BUONO

1. My name is Francis M. Buono. I am Senior Vice President, Legal Regulatory Affairs, and Senior Deputy General Counsel for Comcast Corporation (collectively, with Comcast Cable Communications, LLC, "Comcast").

2. I have read Comcast's Answer and to the best of my knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and it is not interposed for any improper purpose.

Dated: Washington, DC
February 7, 2019



Francis M. Buono

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EXHIBIT 1

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of)	
)	
beIN SPORTS, LLC,)	
<i>Complainant,</i>)	
	)	MB Docket No. 18-384
vs.	)	File No. CSR-8972-P
)	
COMCAST CABLE)	
COMMUNICATIONS, LLC)	
And)	
COMCAST CORPORATION,)	
<i>Defendants.</i>)	

DECLARATION OF ANDREW BRAYFORD

1. My name is Andrew Brayford. I am Vice President of Content Acquisition for Comcast Cable (“Comcast”). My business address is One Comcast Center, Philadelphia, Pennsylvania 19103.
2. I have worked in my current role at Comcast since 2013. In my position at Comcast, my responsibilities include negotiating and administering certain of Comcast’s carriage agreements.
3. I was involved in managing Comcast’s relationship with beIN Sports (“beIN”) beginning in 2014 and led Comcast’s negotiations with beIN regarding renewal of its prior carriage agreement (the “Expired Agreement”), which expired on July 31, 2018. I was also involved in negotiations and other efforts surrounding authentication of Comcast subscribers on beIN’s app, which began in 2016. Working with the Content Acquisition group and other senior executives, I prepared and delivered Comcast’s December 13, 2017 renewal proposal

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(“December 2017 Offer”) to beIN. The December 2017 Offer was an early-stage counterproposal to beIN’s initial offer, which was tendered more than fifteen months prior to expiration of beIN’s existing agreement (“April 2017 Proposal”). beIN’s April 2017 Proposal sought, among other things, a [] increase in fees, a [] increase in distribution, and [] the contract term under the Expired Agreement, while leaving open fundamental questions affecting the value of the network, including on the most basic issue of what content beIN intended to provide on its channels.

4. I have reviewed beIN’s original March 15, 2018 program carriage complaint (“First Complaint”), as well as its recent December 13, 2018 complaint (“Second Complaint”), including the declarations of Mr. Antonio Briceño, beIN’s Deputy Managing Director, US & Canada; Roy Meyeringh, beIN’s Vice President of Business Development and Affiliate Sales; and Ken Tolle, beIN’s outside counsel for content acquisition and distribution matters, alleging that Comcast’s December 2017 Offer discriminated against beIN in favor of NBC Sports Network (“NBCSN”) and Universo. Comcast’s affiliation with NBCSN and Universo did not influence the December 2017 Offer or subsequent negotiations with beIN. Rather, the December 2017 Offer was based on our analysis of Comcast customers’ limited demand for beIN, the fees and other costs associated with carrying beIN, and the overall value proposition of beIN programming. Each of these legitimate business reasons is an essential part of Comcast’s editorial discretion in deciding whether to carry any affiliated or unaffiliated network. Moreover, as discussed below, further analyses conducted after Comcast ceased carrying the beIN networks confirm the reasonableness of our evaluation of the beIN networks throughout the parties’ recent carriage negotiations.

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beIN Agreement and Carriage

5. First launched in the United States and on Comcast systems in August 2012, beIN is a niche network that is defined by its focus on international soccer programming. All of Comcast's promotion and marketing of the network, [[]], focused on its soccer offerings.

6. Comcast was the first cable operator in the United States to carry beIN and remained among beIN's largest distributors until the expiration of the Expired Contract. Comcast launched beIN on its systems pursuant to the Expired Agreement, which was executed on August 15, 2012. The Expired Agreement granted Comcast the right to distribute two linear channels: an English channel ("beIN Sports") and a Spanish channel with secondary audio in English (beIN Sports en Español, or "beINE"), and [[]]

]] Because beIN Sports and

beINE are essentially single-sport niche channels, [[]]

]].

7. The Expired Agreement further provided that Comcast would pay beIN [[]]

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]].

8. Pursuant to the Expired Agreement, Comcast carried beIN Sports on its Sports Entertainment Package (“SEP”) in most Comcast markets, and on its Preferred and Premier packages, in addition to SEP, in select markets. Comcast carried beINE on both the SEP and the basic Latino (“H”) package in nearly all Comcast markets.

9. In August 2015, Comcast allowed the Expired Agreement [[
]] term. The Expired Agreement continued under the previous terms and
monthly [[

]]. The Expired Agreement expired on July 31, 2018.

10. Although not required under the Expired Agreement, my team decided to roll out beINE in high definition (“HD”) in eight markets in the West and Central divisions in early 2016, after consultation with executives in those divisions who thought that potential local viewership interest in the channel might justify the added bandwidth and other associated costs of HD transmission. In addition, [[

]]. We also began
conversations with beIN regarding authentication of Comcast customers on beIN Connect (i.e.,
enabling Comcast customers to access content on the beIN Connect app using their Comcast log-

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in credentials). I sent beIN Comcast's standard authentication terms and conditions in December 2016. beIN responded with a mark-up of the terms and conditions in March 2017 and an additional mark-up in May 2017, and discussions continued over the next few months but then were subsumed by the larger renewal negotiations that beIN initiated.

Initial Renewal Negotiations

11. At beIN's request, the parties began negotiating a renewal agreement in April 2017, more than fifteen months prior to expiration of the current agreement. It is highly unusual for renewal negotiations to begin at such an early stage; in my experience, discussions regarding carriage renewal negotiations usually begin three or four months prior to expiration of an agreement. Nevertheless, I agreed to meet with Roy Meyeringh and Ken Tolle of beIN on April 11, 2017 at Comcast's Philadelphia offices to begin discussions. Samantha Fisher, Assistant General Counsel for Comcast's Content Acquisition team, was also present.

12. At the meeting, beIN made a marketing pitch followed by aggressive and unrealistic renewal demands.¹ beIN proposed [[]].² This fee was *more than* [[]] the rate of the Expired Agreement [[]]. beIN's proposal also required Comcast to distribute one or both of the channels to [[]]

¹ At the April 11, 2017 meeting, beIN made this proposal orally and in a PowerPoint presentation; Mr. Meyeringh emailed me a PDF of the presentation with the proposal two days later, at my request.

² Under the April 2017 Proposal, it was unclear whether Comcast would still [[]]

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]]. And beIN proposed [[

]].

13. I was surprised by beIN's proposal. The proposed [[]] fee increase was substantially more than major programmers, even large broadcast groups, typically seek in renewal, and beIN's requested distribution did not align with my understanding of the network's position in the market. I communicated to beIN my belief that the proposal was very aggressive with respect to both the proposed rate and distribution increases. I also asked beIN to clarify which leagues and games it was committing to have on the channels during the renewal term[[

]]. Contrary to new arguments raised in the Second Complaint and accompanying declarations, at no time did beIN provide a concrete response to this fundamental question during the April 2017 discussions or anytime thereafter. Nor did beIN stress that its Serie A rights "were a question mark," which would have made beIN's proposed fee increase even more unreasonable.

14. beIN's marketing presentation at the meeting was also unpersuasive, as I politely indicated at the time. beIN did not include any details regarding [[

]] would continue to be offered in the renewal term. Details such as these are an essential factor in determining the value of any sports network, and [[

]] in the Expired Agreement was

one of the reasons Comcast agreed to launch it in the first place. Tellingly, beIN's April 2017

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Proposal, which was beIN's memorialization of the terms it claims to have offered in the April 11, 2017 meeting, completely lacked any of these details.

15. Nor did beIN present any concrete benefit to Comcast for carrying the networks more broadly or for paying substantially increased fees. Although beIN cited some data and statistics about its networks, these points were dubious and largely irrelevant to my evaluation of the networks. For example, beIN used cherry-picked []

[] Far from making beIN's case, these claims called into question the significantly increased fees and distribution that beIN was requesting.

Comcast's Deliberations

16. beIN's aggressive proposal prompted further discussions internally about our carriage of beIN. In June 2017, my team commissioned some initial analyses of beIN's viewership from Comcast's in-house Enterprise Business Intelligence ("EBI") team. {{

}}.

17. An additional part of these viewership analyses involves identifying {{

}}.

18. In this case, our preliminary viewership analyses showed that, even at the current fees under the Expired Agreement, Comcast was *likely already losing money* from carriage of the beIN networks relative to the cost of not carrying them. After factoring in the [[]] fee increases that beIN requested for renewal, the projected lost margin from dropping beIN

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entirely was {{ }} of the {{ }} in average annual costs – {{ }} – that Comcast and its subscribers would incur under beIN’s April 2017 Proposal {{ }}.

19. In addition, the preliminary viewership analyses also confirmed beIN’s limited appeal and viewership among Comcast customers. I determined that, in all likelihood, those customers who want to watch programming on beIN Sports and beINE already subscribe to the SEP and H tiers, so broader distribution would not result in a material increase in viewership. Collectively, these analyses pointed to the clear conclusion that there was no compelling case for Comcast to expand distribution under the Expired Agreement, much less at the significant rate increases and broader distribution that beIN was requesting.

20. These business judgments were also confirmed by more general marketplace evidence. The majority of other MVPDs that carry beIN do so on upper-level and specialty tiers, similar to Comcast’s carriage at the time. Many MVPDs do not carry beIN at all. Likewise, many linear OVDs do not carry beIN. And Sony PlayStation Vue dropped beIN from its service in June 2017, just as we were beginning our own analysis.

21. I further determined that broader distribution of beIN Sports and beINE could reduce the value of the SEP and H tiers, potentially resulting in lost revenue from the relatively small number of passionate Comcast customers who purchase those tiers in order to access beIN programming.

22. Beyond these factors, there were other fundamental issues about beIN’s April 2017 Proposal that were unresolved and could significantly affect the value proposition of the networks. For example, beIN had not confirmed the soccer programming that would appear on

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the networks during the proposed [[]] renewal term, or even whether the soccer programming currently offered [[

]] – the main driver of value for the networks – would continue to be offered.

23. Compounding this basic content uncertainty was the ongoing issue of the availability of beIN’s programming *for free* on Verizon’s streaming service, go90. The previous year, my team had discovered that beIN appeared to be offering the same live soccer content on beIN Sports and beINE on go90 *at no charge to consumers*.³ In fact, we discovered that beIN provided go90 with soccer content in the early morning hours, whereas beIN showed only paid programming (i.e., infomercials) during this same time period on Comcast’s linear feeds. We questioned beIN about the impact of this arrangement on the value of the linear networks.

[[

]]. (Although Verizon discontinued go90 in July 2018, beIN remained available on go90 for much of the early half of 2018.)

24. Finally, as I considered beIN’s renewal proposal, my concerns were exacerbated by the emergence of news reports detailing serious allegations and an ongoing criminal investigation over the company’s acquisition and use of soccer rights.⁴ Such reports are an independent reason why I believed that Comcast should exercise caution before deciding to renew or expand its carriage of beIN. Comcast has already had a mixed experience with beIN’s

³ See Screenshots of beIN content on go90 (previously included as Comcast First Answer Ex. 5).

⁴ See Compilation of Representative News Reports Regarding beIN Media Group (previously included as Comcast First Answer Ex. 6).

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affiliated network, Al Jazeera America, which abruptly shut down after Comcast carried it for more than two years.

Comcast's Initial Counterproposal

25. I maintained regular contact with beIN in the months following the April 2017 meeting. This included a call on October 2, 2017 with Mr. Meyeringh to discuss the ongoing authentication negotiations and reaffirm that there had been no interim developments from beIN's April 2017 Proposal. Mr. Meyeringh confirmed that the April 2017 Proposal remained beIN's starting point and that it was a serious proposal for which it was looking for feedback in order to retool if necessary. I restated Comcast's opinion that the proposal was aggressive from both a fee and distribution standpoint. As in the April 2017 meeting, Mr. Meyeringh did not discuss beIN's content in any detail. I told Mr. Meyeringh that Comcast was working on a counterproposal, based on the Expired Agreement, that would reflect Comcast's assessment of the value of the beIN networks to Comcast customers.

26. Despite the continued lack of clarity or marketplace support for fundamental aspects of its renewal proposal, beIN said it wanted to reach a deal as soon as possible. As noted, this was highly unusual given that the Expired Agreement would not expire until July 31, 2018. But in order to accommodate beIN's desired timeline, on December 13, 2017, over seven months prior to expiration of the Expired Agreement (and still several months earlier than renewal negotiations would typically begin), I sent beIN Comcast's initial counterproposal, grounded in the framework of our Expired Agreement.

27. First, we proposed to continue the [[

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]]. This fee proposal was formulated using data from the viewership analyses described above, which revealed that Comcast was likely carrying beIN at a loss under beIN's existing rates and other significant questions about the value proposition of beIN's programming to our customers. The December 2017 Offer also included language indicating that the [[

]].

28. Second, the counterproposal offered [[

]], since Spanish-speaking

customers are much more likely to purchase the H tier than the SEP. The packaging proposal was consistent with our data from the preliminary viewership analyses and aligned with Comcast's general business interest in packaging niche programming that appeals to a small number of passionate viewers on specialty tiers in order to provide better choices to our customers and manage the cost of the most popular tiers. More generally, these proposed terms were consistent with beIN's carriage by other distributors.

29. Third, we proposed a [[

]]. We determined that committing to carry this still relatively

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new, niche soccer network, with limited viewership and still to-be-determined content, for a longer period [[]] would be an irresponsible business decision – especially given the highly competitive and rapidly-evolving video marketplace, and our general concerns about beIN’s future content and management issues.

30. Finally, the counterproposal included [[]], once the economics of the renewal were settled.

[[]]

]]. Together, these terms were generally consistent with the parties’ prior course of dealing and intended to facilitate more realistic negotiations going forward.

Further Deliberations and Negotiations

31. My team continued to actively consider beIN’s value to Comcast customers over the following weeks and commissioned an additional, updated viewership analyses from EBI in January 2018. These analyses were also adjusted and refined based on {{ }} in 2015 (“2018 Viewership Analysis”). The 2018 Viewership Analysis examined {{

}}. The 2018 Viewership Analysis projected a maximum churn of

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roughly {{ }} customers – corresponding to around {{ }} in potential lost margin (and therefore an average annual savings of over {{ }} million) if Comcast were to drop the beIN networks – {{ }} Comcast customers who currently subscribe to a package that includes the beIN networks leaving Comcast. (Note that these figures, which appear in Attachment B of this declaration, have been conservatively adjusted upwards from the figures that appear in the original 2018 Viewership Analysis (Attachment A) of this declaration, to ensure that the analysis reflects the total universe of Comcast customers who received beIN at that time.)

32. On January 25, 2018, Samantha Fisher and I met with Mr. Meyeringh and Mr. Tolle to walk through Comcast's December 2017 Offer. beIN was very focused on obtaining distribution and wanted carriage on Comcast's [[]] tier. We explained that beIN's viewership did not present a business justification for increased distribution. We reiterated our concerns that beIN still could not clarify the actual soccer content that it would offer on its channels, which further undermined its requests for significantly increased distribution and fees. We also reiterated that the linear feeds for both beIN Sports and beINE were available to customers for free via go90, and we again explained why this free offering undercut the value of the networks to Comcast and its subscribers. [[

]]. As I previously noted, beIN's content remained available at no charge on go90 through much of the first half of 2018, until Verizon ceased the offering. beIN seemed to acknowledge the unrealistic economics of its April 2017 Proposal by making a verbal offer that was more in line with our expectations for the negotiation. Specifically, Mr. Tolle asked us to consider [[

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]]. At the conclusion of the meeting, beIN agreed to send us a written counterproposal, addressing all material terms, for further consideration.

33. Comcast received a written counterproposal from beIN on February 2, 2018 (“February 2 Proposal”). In light of our discussions on January 25, we were surprised to see that the February 2 Proposal made no changes to the [[]] renewal term originally proposed by beIN, and that beIN now demanded a monthly fee of [[

]] – much higher than what beIN had indicated in our January 25 meeting and a rate that would be among the highest annual escalators in the industry.⁵ This constituted a more than [[]] percent increase from the existing rate [[

]] in the first year alone, and a cost of roughly [[]] million in that year, rising to [[]] million by 2024, for a total cost of [[]] million over the proposed [[

]]. Based on the 2018 Viewership Analysis, beIN’s higher costs would be roughly {{

}} higher than the *maximum* projected losses from not carrying the networks over the same [[]] period.

34. Other aspects of the February 2 Proposal were either silent on or actually went *backwards* from other material terms in beIN’s April 2017 Proposal. The February 2 Proposal also demanded not only carriage of beIN Sports on [[]] (effectively upping its April 2017

⁵ The February 2 Proposal [[

]].

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Proposal for [[]] percent (or [[]] million) subscribers to approximately [[]] million subscribers), but also carriage of beINE [[

]].

35. On February 7, 2018, together with Harry Moseley, an attorney on the Content Acquisition team, I held a call with Mr. Meyeringh and Mr. Tolle to walk through the February 2 Proposal and to discuss our questions regarding its new provisions. We expressed our disappointment in receiving a proposal that went backwards from the terms discussed in the January 25 meeting. We asked beIN for clarification regarding [[

]], which seemed designed to trigger even higher rates and greater distribution obligations for the beIN networks. When pressed, beIN was unable to identify how this new language would impact beIN's carriage fees, nor was it clear how beIN intended for

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Comcast to comply with these half-baked terms from an operational standpoint. Despite the promising close of our January 25 meeting, over a short period of time it became apparent to me that beIN's approach to the renewal negotiations had taken an adversarial and non-productive turn.

36. On February 13, 2018, before we had a chance to respond either orally or in writing to beIN's February 2 Proposal, I was informed by our legal regulatory team that beIN had sent Comcast a notice of intent to file a program carriage complaint. I was disappointed that beIN had chosen to pursue a path of litigation, particularly at such a premature juncture. Although I remained open to engaging in further renewal negotiations with beIN, I was unwilling to allow the threat of litigation to pressure my team into agreeing to terms that were not commensurate with the value of the network and not good for our customers.

37. On March 1, 2018, Justin Smith, Senior Vice President of Content Acquisition, Samantha Fisher, and I met with Mr. Meyeringh and Mr. Tolle of beIN at Comcast's offices in Philadelphia in an attempt to advance the renewal dialogue and discuss the February 2 Proposal. Mr. Briceño arrived later in the meeting. Mr. Tolle began by informing us that [[

]]. [[

]]. However, beIN again had no further information regarding the lack of content certainty and other issues we had raised previously and no persuasive business reason to support its increased distribution and fee demands (nor did we believe that Comcast should be responsible for underwriting and insuring against beIN's [[

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]]. We noted that our viewership analyses did not show the level of passionate viewers or interest in beIN that could possibly justify beIN’s negotiating position. Notably, during these discussions, [[

]]. In short, beIN’s proposed “benefits” to Comcast never went beyond bare assertions that were easily disproved.

38. We also noted that the February 2 Proposal again failed to clarify which games and leagues would be shown on the networks. We requested that beIN provide objective guidelines regarding the meaning of “like for like” and the limits of this provision. [[

]]. At the conclusion of the meeting, beIN committed to providing a revised proposal to address our questions.

39. On March 7, 2018, beIN sent us a revised proposal (“March 7 Proposal”).⁶ The proposal [[

⁶ Included as Attachment D to this declaration.

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]]. Worse, with respect to the provision granting beIN the right to substitute “like for like” soccer leagues, beIN clarified that it was proposing that it would have the right to replace the top-tier European soccer leagues or tournaments carried under the Expired Agreement, such as the Italian Serie A and French Ligue 1, with [[

]]

which might further dilute the value of the content on beIN’s existing channels and occupy valuable bandwidth. I responded to beIN on March 11, 2018 via e-mail that we still did not see any business case as to why carrying the beIN channels as broadly as proposed would benefit us or our customers, much less for the substantial additional fees and steep annual increases proposed.

40. I understand that beIN has alleged that carriage on a lower tier will benefit Comcast by helping Comcast to attract and retain subscribers at lower price points and enabling beIN to attract greater advertising revenue that will allow beIN to “hold down the fees” it charges to Comcast.⁸ These claims reiterate certain arguments that Mr. Meyeringh made for the first time in a March 11 email, clearly in anticipation of litigation, which were memorialized a

⁷ Included as Attachment C to this declaration.

⁸ See Second Compl. ¶¶ 128-132.

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few days later in a March 13 letter from beIN's litigation counsel. But the notion that broader carriage of beIN would help Comcast attract and retain customers at lower price points simply does not hold water. In addition, accepting beIN's proposed fees and distributing beIN Sports on a more highly-penetrated tier would increase the price of that tier for *all* subscribers, the vast majority of whom have no interest in viewing beIN. And even setting aside beIN's proposed fee increases, [[

]]. As for beIN's arguments pertaining to advertising revenue, beIN had every opportunity to "hold down the fees" it offered to Comcast, but instead insisted on demanding significant increases to current rates. To the extent beIN is also arguing that broader carriage would benefit Comcast's advertising, beIN is unlikely to provide any material incremental value to Comcast's local ad inventory. The local advertising sales market would not expand because of this additional supply of ad inventory, and Comcast already has a substantial amount of local ad sales inventory in soccer programming from various channels it carries, including ESPN, ESPN2, ESPN Deportes, FS1, and Fox Deportes. Moreover, any such ad revenue would be negligible when compared to the [[in increased fees beIN seeks. Above all, each of beIN's purported benefit arguments presupposes that beIN has compelling value to a critical mass of our customers – an assumption that was simply not borne out by our extensive internal analyses and objective marketplace evidence.

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41. On March 12, 2018, Mr. Smith, Ms. Fisher, and I held a call with Messrs. Briceño, Meyeringh, and Tolle to walk through the revised March 7 Proposal. beIN asserted that
II

II. We scheduled a follow-up call the next day, March 13, 2018, to continue the discussion. beIN closed that call by informing us that it intended to file a program carriage complaint.

42. We received beIN's First Complaint on March 15, 2018.

Subsequent Developments

43. II

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]]. beIN had previously claimed, in its First Complaint and elsewhere, that these terms were “material.”

44. Comcast’s material movements on HD carriage, authentication, and clarification of direct-to-consumer terms are just some of the reasonable terms Comcast proposed to beIN [[

]]. However, Comcast and beIN were unable to come to terms on a renewal agreement prior to the expiration of beIN’s carriage contract on July 31, 2018, and, as we informed beIN, Comcast was not interested in continuing to carry the networks under the Expired Agreement’s uneconomic price. Accordingly, Comcast ceased carrying the beIN networks at midnight on August 1, 2018.

45. On August 2, 2018, beIN’s First Complaint was dismissed by the Media Bureau.

46. The coming days, weeks, and months proved instructive in confirming the reasonableness and accuracy of our prior analyses. In fact, they showed that these prior analyses were indeed overly conservative. Verizon FiOS announced that it, too, no longer had the rights to carry the beIN networks, because “beIN Sports is demanding a significant rate increase for the same content they offer today.”⁹ Then, less than a week later, it was revealed that – despite the significant rate increase beIN had demanded of Comcast and Verizon – beIN would no longer carry Serie A matches: ESPN had acquired exclusive three-year rights to telecast Serie A in the United States.¹⁰ Adding yet even more uncertainty to the value of beIN’s programming moving

⁹ See Kent Gibbons, *beIN Sports USA Channels Dropped From Fios*, Multichannel News, Aug. 2, 2018, <https://www.multichannel.com/news/bein-sports-usa-channels-dropped-fios>.

¹⁰ See Paul Melvin, *More than 340 Serie A TIM Matches Headed to ESPN+ In New Multi-Year U.S. Rights Agreement for Italian Football*, ESPN Media Zone, Aug. 7, 2018, <https://espnmediazone.com/us/press-releases/2018/08/more-than-340-serie-a-tim-matches-headed-to-espn-in-new-multi-year-u-s-rights-agreement-for-italian-football/>.

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forward, it was announced that Cristiano Ronaldo – one of the most recognizable athletes in the world and a fixture in beIN’s marketing of La Liga – was leaving La Liga’s Real Madrid for Juventus in Serie A. Arguably the main attraction of one of beIN’s remaining leagues (La Liga) had exited beIN along with Serie A.

47. Later that month, DirecTV and AT&T U-Verse announced that they, too, had been unable to come to reasonable commercial terms with beIN and did not renew the carriage of the networks. AT&T explained that “[t]here are now fewer leagues, popular matches and premier events on beIN channels than before,” and that “[a]s the cost of televised sports continues to soar” AT&T made the choice to “deliver the content [its] customers want at a value they can also support.”¹¹ And, although Verizon and Dish ultimately renewed carriage of beIN, I have seen no evidence that these distributors saw the value of increasing their distribution of the beIN networks. Nor do we have any knowledge of the rates or other terms of those renewals.

48. Comcast’s internal analyses in the weeks following the expiration of the Expired Agreement also confirmed the reasonableness of our business judgement in renewal negotiations and the limited appeal of the beIN networks to Comcast customers. Customer call volume immediately after Comcast ceased carrying the networks was relatively modest, numbering in the low thousands out of the approximately five million customers who received the beIN networks and approximately 22 million Comcast video customers overall. Moreover, a series of follow-up ordinary-course Viewership Analyses conducted by EBI – now using data from actual subscriber behavior following beIN’s expiration – further validated our assessment that the beIN

¹¹ Jon Lafayette, *AT&T Drops beIN Sports From Channel Lineups*, Multichannel News, Aug. 30, 2018, <https://www.multichannel.com/news/bein-sports-comes-off-att-channel-lineups>.

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networks had a very limited, niche appeal for our customers that did not come close to matching the fees or distribution that beIN had demanded from Comcast.

49. More specifically, to conduct these Viewership Analyses, {{

}}.

50. The data from this analysis revealed just how minimal the customer reaction to the beIN expiration had been – and affirmed just how conservative our prior viewership analysis had been. EBI conducted its initial analysis in September (“September 2018 Viewership Analysis”). The data revealed that, in the month since Comcast ceased carriage of the beIN networks, only approximately {{ }} customers had left Comcast or cancelled their video service as a result of the beIN networks no longer being carried. These customers accounted for an approximate {{ }} annual loss in margin for Comcast. A follow-up analysis conducted the next month by EBI (“October Viewership 2018 Viewership Analysis”) showed minimal additional turnover: only {{ }} additional churned customers, or approximately {{ }} total, accounting for approximately {{ }} in annual lost margin.

51. A subsequent analysis completed in January 2019 (“January 2019 Viewership Analysis”) confirmed that, given the similar churn data from both the beIN viewers and the comparison group, the effect on Comcast of no longer carrying beIN had run its course by the end of December. In total, only approximately {{ }} subscribers (of the approximately

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[[]] million customers authorized to view the beIN networks) left Comcast or cancelled their video service as a result of beIN no longer being carried (compared to the roughly {{ }} customers predicted in the January 2018 Viewership Analysis. These {{ }} customers accounted for about {{ }} annual loss in margin for Comcast. Compared to the approximately [[]] annual cost of the Expired Agreement, this presented a savings of some {{ }}, confirming Comcast had, in fact, been overpaying for and carrying the beIN networks at a loss. Offset against the estimated [[]] annual cost of beIN's April 2017 Proposal, this presented a savings of approximately {{ }}. And even compared against Comcast's December 2017 Offer of [[]], this still presented a significant savings of {{ }} for Comcast.

52. Importantly, even though beIN is no longer distributed on Comcast's traditional cable service, the beIN networks remain available to our customers via Comcast's X1 platform. Any interested Comcast customer can access the Sling TV Internet app on the X1 platform and, by subscribing to Sling TV's "World Sports" package, obtain beIN's niche soccer content on rates comparable to what the customer would have paid for the SEP and H packages. (The beIN networks are also available to all Comcast broadband customers by subscribing directly to Sling TV or to fuboTV.)

53. Since ceasing to carry the beIN networks, Comcast has maintained intermittent but open lines of communication with beIN. On October 10, 2018, beIN sent Comcast another renewal proposal ("October 2018 beIN Proposal"). In the cover note to the October 2018 beIN Proposal, beIN stated that [[]]

]]. beIN asked for a monthly base fee

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of [[]], in the first year, with [[]], totaling approximately [[]], over the first year¹² – again, an increase over the Expired Agreement notwithstanding the fact that beIN no longer carries Serie A matches. Based on Comcast’s October 2018 Viewership Analysis, Comcast would still lose more than {{ }} in the first year alone by carrying the beIN networks at those rates, and approximately {{ }}.

]].

54. Despite assuring us that [[]], I received notice of beIN’s intent to file the Second Complaint in a December 3, 2018 letter from beIN’s outside counsel. Among other problems, [[]]

¹² This assumes a November 1, 2018 start date, with the [[]].

¹³ Including final data from the January 2019 Viewership Analysis, Comcast would lose approximately {{ }} over the life of the October 2018 beIN Proposal.

¹⁴ Second Complaint ¶ 17.

¹⁵ Letter from Pantelis Michalopoulos, Counsel for beIN Sports, LLC, et al., to Drew Brayford, Vice President of Programming, Comcast Cable Communications, LLC, et al., at 3 (Dec. 3, 2018) (Second Compl. Ex. 3).

]].

55. beIN filed its Second Complaint against Comcast on December 13, 2018. There are a number of new inaccuracies introduced in this Second Complaint that warrant clarification. In his December 2018 declaration, Mr. Meyeringh, for the first time, claims that beIN assured Comcast that it would renew its La Liga and Ligue 1 rights during our April 11, 2017 meeting. In fact, as I discussed above, with the exception of noting the potential for [[

]] on beINE, beIN's April 2017 pitch was *silent* with respect to the specific content that would be carried on its networks over the proposed [[]] renewal term. To reiterate, the first time that beIN confirmed [[

]].

56. Mr. Meyeringh also now claims that he specifically discussed Serie A rights with Comcast at that meeting and that he "informed Comcast that [beIN] might drop [Serie A] or not prevail in the bidding for their renewal because of our unwillingness to pay an unjustified price,

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which [beIN] would have to pass through to distributors such as Comcast.”¹⁶ During negotiations prior to the filing of beIN’s First Complaint, beIN never definitively stated that it would be losing Serie A rights. Nor did beIN ever disclose this fact in its First Complaint or its extensive supporting affidavits and documents. Of course, had beIN made clear to Comcast in our early negotiations that it would be losing the Serie A rights, this material fact would have only *heightened* our concerns about the uncertainty and value of the content for which beIN was demanding that Comcast pay substantially greater fees and provide broader carriage.

¹⁶ Declaration of Roy Meyeringh, Vice President of Business Development and Affiliate Sales, beIN Sports, LLC, ¶ 4 (Dec. 13, 2018) (Second Compl. Ex. 11).

I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: Philadelphia, Pennsylvania

February 8, 2019

A handwritten signature in cursive script, reading "Andrew Brayford", is written over a horizontal line.

Andrew Brayford

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ATTACHMENT A

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**HIGHLY CONFIDENTIAL
DOCUMENT WITHHELD**

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ATTACHMENT B

REDACTED – FOR PUBLIC INSPECTION

**HIGHLY CONFIDENTIAL
DOCUMENT WITHHELD**

REDACTED – FOR PUBLIC INSPECTION

ATTACHMENT C

REDACTED – FOR PUBLIC INSPECTION

**CONFIDENTIAL
DOCUMENT WITHHELD**

REDACTED – FOR PUBLIC INSPECTION

ATTACHMENT D

REDACTED – FOR PUBLIC INSPECTION

**CONFIDENTIAL
DOCUMENT WITHHELD**

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EXHIBIT 2

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of)	
)	
beIN SPORTS, LLC,)	
<i>Complainant,</i>)	
	)	MB Docket No. 18-384
vs.	)	File No. CSR-8972-P
)	
COMCAST CABLE)	
COMMUNICATIONS, LLC)	
And)	
COMCAST CORPORATION,)	
<i>Defendants.</i>)	
)	

DECLARATION OF JUSTIN SMITH

1. My name is Justin Smith. My business address is One Comcast Center, Philadelphia, Pennsylvania 19103.
2. I am Senior Vice President, Content Acquisition of Comcast Cable. I have held this position since August 2014. In this role, I am responsible for overseeing the negotiation and execution of a portfolio of carriage agreements and carriage renewal deals.
3. Since joining Comcast in 2006, I have also served as Senior Vice President and General Counsel, Comcast Programming Group, and Vice President, Senior Deputy General Counsel and Chief Joint Venture Compliance Officer. As Chief Joint Venture Compliance Officer, I was responsible for overseeing Comcast's compliance with governmental and third-party conditions and commitments arising from the Comcast-NBCUniversal joint venture transaction. I also was involved in administering the conditions relating to programming diversity and independent programming.

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4. One of my key areas of focus at Comcast – both during my term as Compliance Officer and in my current role on the Content Acquisition team – has been ensuring that Comcast delivers content that appeals to and meets the demands of underserved populations, particularly Hispanic populations. This mission is a vital part of Comcast’s editorial discretion to decide which networks and content to carry. As part of our commitment to better serve our diverse customers, Comcast offers more than 16,000 hours of diverse on-demand and online programming, carries more than 100 diverse networks on Xfinity platforms, and has added more than 20 independent programming networks since 2011, including four primarily Hispanic American-owned-and-operated independent networks: El Rey, BabyFirst Americas, Primo TV, and Kids Central.

Background

5. In 2003, Comcast launched GolTV, an independent programmer that primarily carried soccer content from international leagues and tournaments, including the Spanish Premier League (“La Liga”). Comcast carried GolTV on its Sports Entertainment Package (“SEP”) and Hispanic Tier (“H”) until 2012, when beIN Sports (then “beIN Sport”) (“beIN”) approached Comcast to seek a carriage agreement after purchasing the rights to La Liga and other GolTV programming. Comcast believed that continued carriage of La Liga and certain other soccer content would add value to our specialty tiers and help us retain Hispanic male customers, in particular. Accordingly, we made the decision to drop GolTV and carry beIN in its place. Carriage of GolTV only involved one linear channel, but carriage of beIN entailed two linear channels, beIN Sports and beIN Sports en Español (“beINE”).

6. Although I was not directly involved in the negotiations of the 2012 Comcast-beIN affiliation agreement (the “Expired Agreement”), I understand that this decision was not

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made lightly, primarily because []

]]. Comcast was the first cable operator in the United States to launch beIN. Both Dish and DirecTV had already agreed to launch beIN, so our carriage decision was also motivated by some competitive pressure to carry the same content that those satellite distributors carried.

7. Since 2012, cable operators such as Comcast have been under ever-increasing cost pressure as content acquisition costs have skyrocketed. Post-2012, Comcast's programming costs have increased by 58 percent (more than *six* times the rate of inflation over the same period). At the same time, Comcast faces intense competition for video customers from other cable operators and MVPDs, including telco and DBS providers, as well as overbuilders such as RCN and WOW!, and an ever-increasing number of online video services, which now provide both linear and on-demand programming to viewers over the Internet. These linear online video services include Sony PlayStation Vue, Sling TV, DirecTV Now, YouTube TV, and Hulu Live, which are exerting competitive pressure on our cable service, including through low promotional rates and initial free periods. Cable operators such as Comcast are also capacity-constrained: there are many more cable and broadcast programmers seeking carriage on our cable systems than our bandwidth allows, particularly as more capacity is used for high-speed Internet service. In this highly competitive environment, Comcast must focus intensely on making sure our content acquisition costs are commensurate with the value we provide to our customers, including expanding and enriching their access to content on personal and mobile devices in the home and on the go. The balance between consumer demand, content, and costs is at the core of

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Comcast’s editorial discretion to determine which networks to carry and how broadly to distribute them.

8. In order to provide compelling programming at a price and in packages that customers will find affordable and attractive, while also increasing their options for accessing and viewing content, Comcast seeks greater flexibility in our contracts with programming suppliers. In most markets, Comcast offers several tiers of service, each inclusive of the prior: Limited Basic (10+ channels), Digital Economy (100+ channels), Digital Starter (140+ channels), Digital Preferred (220+ channels), and Digital Premier (260+ channels). Comcast also has a number of “bolt-on” packages, including the SEP, which can be added onto packages starting with Digital Starter, and several tiers of the Xfinity Latino package, which generally can be added onto lower tier packages, including Limited Basic. Rather than increasing the heft and cost of video packages by moving networks onto broader carriage tiers – referred to in the industry as “melting” a network – Comcast is increasingly focused on deepening customer engagement with our existing packages through additional rights and value (i.e., increasing use of Video on Demand (“VOD”), DVR, TV Everywhere apps, etc.). This is a marketplace necessity as we are increasingly competing for customer attention and engagement with online Subscription VOD (“SVOD”) providers, like Netflix and Amazon Prime, as well as social media platforms such as Facebook and Instagram. We are also under greater competitive pressure than ever to *slim down* the number of total channels we make available in broadly penetrated packages, especially those that do not garner significant customer passion or broad viewership, in order to contain content costs and our monthly cable rates.

9. For passionate soccer fans in particular, Comcast makes a rich array of soccer programming available to our customers. Most of this programming is offered on multiple

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unaffiliated networks that Comcast distributes both broadly (e.g., ESPN, ESPN2, and FS1 on Digital Starter) and on specialty tiers (e.g., ESPN Deportes, Fox Deportes, and Univision Deportes, which are generally offered through the Xfinity Latino package). These networks feature programming from leagues – including MLS, the German Bundesliga, and the Mexican Liga MX, among others – that are on par (if not above-par), in terms of value proposition, with the leagues beIN features.

beIN Renewal Negotiations

10. It was against these marketplace realities that the Content Acquisition team began, at beIN’s insistence, unusually early carriage renewal negotiations with beIN in April 2017 – over fifteen months prior to the expiration of the Expired Agreement. Although I did not attend the April 11, 2017 meeting at which beIN presented its initial renewal offer (“April 2017 Proposal”) to Andrew Brayford and Samantha Fisher, I reviewed the April 2017 Proposal and Mr. Brayford kept me apprised of our subsequent negotiations and correspondence with beIN. The April 2017 Proposal was surprisingly aggressive and unrealistic. beIN requested significantly higher monthly payments [[

]], much greater distribution [[

]], [[the contract term [[

]] and other terms that were completely unrealistic in today’s highly competitive video marketplace. At the same time, beIN’s presentation was silent with respect to the actual content (i.e., soccer leagues and games) that it expected to carry over the proposed [[]]

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term. Nor did beIN explain why Comcast should be willing to pay [[
on renewal to carry this niche soccer network.]]

11. I worked with Mr. Brayford and the Content Acquisition team to craft a counteroffer to the April 2017 Proposal that was more reasonable and realistic for Comcast and its customers. But these early negotiations would prove to be quixotic: despite several rounds of correspondence and meetings, beIN still could not answer basic questions about its future content and other material issues to support its renewal demands, much less provide a framework for a mutually-acceptable set of renewal terms.

Licensing Fees

12. After receiving beIN's April 2017 Proposal, I also worked with Mr. Brayford to commission more detailed analyses of beIN's viewership based on Comcast set-top box and other data from our in-house Enterprise Business Intelligence ("EBI") group. {{

}}.

13. In the case of beIN, the conclusions were striking. First, the data showed that the projected lost margin from dropping beIN was {{ }} of the [[]] million average annual costs [[]] under beIN's April 2017 Proposal. The data also revealed that even at the [[]] that Comcast was paying at that time under the Expired Agreement, which amounted to approximately [[]] million in annual costs – i.e., [[]] – Comcast was likely *losing* money by carrying the beIN networks relative to the cost of not carrying them at all. In other words, the analyses showed that it would be a better business decision for Comcast to drop the beIN networks than to continue to carry them even at the price Comcast paid under the Expired Agreement.

14. Second, the viewership analyses showed that {{ }}. This further confirmed that

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beIN's request for distribution to an additional approximately [] million Comcast customers was not justified by marketplace demand and was wholly unrealistic.

Content/Value Questions

15. beIN's proposed [] monthly fee increase was also a dramatic step-up, even compared to large broadcast groups, let alone for a niche cable network. Yet, this fee increase was not accompanied by any form of guarantee with respect to the soccer content that beIN would offer going forward. In the Expired Agreement, beIN provided []

[].

16. The lack of certainty for the soccer content that beIN would be able to offer during its proposed [] renewal term was especially troubling to Comcast in light of other factors. There have been multiple news reports detailing serious allegations and an ongoing criminal investigation over beIN's acquisition and use of soccer rights.¹ In addition, the Content Acquisition team and I had been in ongoing discussions with beIN over our discovery

¹ See Compilation of Representative News Reports Regarding beIN Media Group (previously included as Comcast First Answer Ex. 6).

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that it had been making the *same* soccer content from the linear feeds for both beIN Sports and beINE available *at no charge* via Verizon’s over-the-top mobile service, go90.² This arrangement plainly devalued the network to Comcast and its customers, and further undermined any justification for beIN’s proposed [[]] fee increases. I concluded that beIN’s renewal requests were entirely unrealistic for a network that could not guarantee what soccer content it would be carrying or where and how it would be offering its soccer content to other competitors in the marketplace.

Comcast’s Initial Counterproposal

17. Despite these outstanding fundamental issues, beIN continued to press for an accelerated negotiating timeline and to receive a counterproposal from Comcast. In order to accommodate these requests, the Content Acquisition team provided a counterproposal to beIN on December 13, 2017 (the “December 2017 Offer”).

18. I understand beIN has alleged in its December 13, 2018 complaint (“Second Complaint”), just as it did in its March 15, 2018 complaint (“First Complaint”), that the December 2017 Offer discriminated against beIN in favor of NBC Sports Network (“NBCSN”) and Universo. This allegation is false. Comcast’s affiliation with these networks did not influence our December 2017 Offer and subsequent negotiations with beIN.

19. Rather, the December 2017 Offer was formulated based on our analyses of Comcast customers’ limited demand for beIN, the fees and other costs associated with carrying beIN, and the overall value proposition of beIN programming (including the significant uncertainty regarding what leagues and games beIN would commit to provide us during the

² See Screenshots of beIN content on go90 (previously included as Comcast First Answer Ex. 5).

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renewal period). Based on these business considerations, the December 2017 Offer: (1) aimed to maintain the structure of Comcast's Expired Agreement with beIN while [[

]] and to eliminate the monthly losses that Comcast is incurring under the Expired Agreement; and (2) proposed a [[

]], consistent with the results of the viewership analyses and Comcast's interest in maintaining flexibility in the highly competitive video marketplace. The December 2017 Offer also called for further discussion [[

]], with the assumption that finalization of these terms would occur following agreement on the fundamental economic terms).

20. beIN's attempt to allege program carriage discrimination based on our December 2017 Offer, by comparing itself to NBCSN and Universo, is as unrealistic from a marketplace perspective as the other aspects of its renewal demands. Numerous, objective marketplace factors demonstrate that NBCSN and Universo are not comparable networks to the beIN networks. Specifically, among other factors:

- Both NBCSN and Universo have a long history of broad distribution by Comcast as well as by nearly all other distributors because of their value proposition in the marketplace.
- NBCSN is a general interest sports programmer, and, above all, is the primary national telecaster of the National Hockey League, including the Stanley Cup Playoffs.³ That reason alone justifies broad carriage by Comcast, given that our

³ NBCSN's Service Description in its affiliation agreement with Comcast {{

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footprint includes the lion's share of the biggest hockey markets in the country (e.g., Boston, Chicago, Denver, Detroit, Minneapolis/St. Paul, Nashville, New Jersey, Philadelphia, Pittsburgh, San Francisco Bay Area, Washington, DC). In 2018, NBCSN delivered its strongest ratings ever in Total Day and Primetime viewership, bolstered by its flagship hockey programming – including the 2018 Stanley Cup Playoffs, which tied for the second most-watched NHL postseason in more than 20 years, and its marquee 2018 Winter Olympics Coverage.⁴

- Universo is a “modern general entertainment cable channel for Latinos” that features a variety of scripted series, reality series, movies, and music programming, with live sports being only a small fraction of its content.⁵

Universo targets a young Hispanic audience, and its viewership is balanced between males and females. Universo's content portfolio offers a robust VOD library, a feature that has limited relevance for live sporting events but significant appeal to viewers of general entertainment programming.

Subsequent Deliberations and Negotiations

21. My team continued to assess beIN's viewership and value to Comcast customers over the following weeks and commissioned additional, updated viewership analyses in January

}}

⁴ See Press Release, Comcast Corp., *NBCSN Has Delivered Its Best Year Ever & Is On Pace to Rank #2 Among Sports Cable Networks* (Dec. 13, 2018), <https://corporate.comcast.com/press/releases/nbcfn-delivered-best-year-to-rank-2-among-sports-cable-networks>; Andrew Bucholtz, *Stanley Cup Playoffs tied for second-most watched since 1997, Final was most-watched non-Original Six Final on record*, Awful Announcing, June 8, 2018, <https://awfulannouncing.com/nbc/stanley-cup-playoffs-tied-for-second-most-watched-since-1997-final-was-most-watched-non-original-six-final-on-record.html>.

⁵ Universo, <http://www.nbcuniversal.com/business/NBCUniverso> (last visited Feb. 8, 2019). Universo's affiliation agreement with Comcast provides that the network {{

}}

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2018. As part of these efforts, the analyses were adjusted and refined based on our experience with actual customer churn after the YES Network drop (the “2018 Viewership Analysis”). The 2018 Viewership Analysis confirmed our initial impressions, again showing that Comcast would be saving approximately {{ }} million annually – i.e., {{ }} – by simply dropping beIN rather than accepting beIN’s proposed [[]] million average annual fees. As noted above, passionate soccer fans who are Comcast customers have a vast amount of soccer programming to choose from, which we make available in various packages and tiers, and so we saw no need to overpay just to keep beIN on our systems.

22. I understand that beIN made a verbal offer to Comcast at a January 25, 2018 meeting with Mr. Brayford and Ms. Fisher that, while still unrealistic, more closely aligned with our expectations for a starting point for marketplace negotiations. However, on February 2, 2018, we received a counterproposal from beIN that substantially departed from beIN’s verbal offer and did little to alleviate the concerns we identified with the April 2017 Proposal. beIN’s new proposed fees, while lower than the April 2017 Proposal, were still very high, and were now combined with [[

]]. Specifically, the 2018 Viewership Analysis showed that under beIN’s newly-proposed rates, Comcast would still save around {{ }} over the course of beIN’s proposed [[]] term – i.e., {{ }} – and on average, roughly {{ }} annually – i.e., {{ }} – if Comcast were to drop the networks.

23. In addition, the counterproposal went *backwards* in several respects. It again did not [[

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]]. The counterproposal also added a number of vague new provisions[[

]] were muddled at best and extremely aggressive at worst, the impacts of which beIN could not quantify or explain how to realistically operationalize. My team was still in the process of reviewing and responding to beIN's counterproposal when beIN sent us a notice of intent to file a program carriage complaint on February 13, 2018.

24. On March 1, 2018, I joined Mr. Brayford and Ms. Fisher for an in-person meeting with beIN's Antonio Briceño, Roy Meyeringh, and Ken Tolle. Mr. Tolle began by informing us that [[

]]. We again expressed concern about the unrealistic nature of beIN's demands, including the continued lack of certainty regarding the content that would be offered on the channels and the effect of broader distribution of beIN on our SEP and H tiers, and we asked a number of questions about [[

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]]. In light of this discussion, I was surprised to see beIN's allegations in its program carriage complaint that, because its programming is carried by fuboTV, it no longer has value on SEP. This is directly inconsistent with what beIN acknowledged in our meetings. Although fuboTV does represent another source of competition, we are not particularly concerned with the impact of fuboTV on the SEP, particularly given that fuboTV's base package (which includes the beIN networks) costs \$44.99/month (and, to receive a comparable package to the SEP, which includes the popular NFL RedZone channel, customers would need to add fuboTV's \$8.99 Sports Plus package for a total cost of around \$54/month). In all events, we generally agree with beIN that it does not have a lot of value, even on SEP (and, to a lesser extent, the Xfinity Latino package). That only underscores our business judgment that beIN certainly has no incremental value on broader tiers and could not possibly be worth the enormous fee and distribution increases that beIN has demanded.

25. In addition, Mr. Tolle [[

]]. We expressed no interest in this proposal, but it reinforced that beIN's content and [[]] were still very unsettled. At the conclusion of the meeting, beIN agreed to provide a revised proposal aimed at addressing

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our questions. We told beIN that we would be willing to work through any remaining authentication issues.

26. On March 7, 2018, beIN provided its revised proposal. The proposal did not
[[

]] and instead could dilute the content on beIN's primary channels and cause customer confusion.

27. On March 12, 2018, Mr. Brayford, Ms. Fisher, and I held a call with Messrs. Briceño, Meyeringh, and Tolle to walk through the revised March 7 proposal. [[

]]. beIN also acknowledged that it could take weeks to discuss outstanding issues.

28. We conducted a follow-up call the next day, March 13, 2018, to continue the walk-through of beIN's proposal. beIN closed that call by informing us that it intended to file a program carriage complaint, which it then did on March 15, 2018. By the time Comcast submitted its Answer to the First Complaint, Comcast had no more clarity on the content beIN proposed to provide in the coming years, and, if anything, had more doubts about whether the programming will be of the same interest and marketability to Comcast customers over the [[
]] term beIN has demanded.

Subsequent Developments

29. In the time since beIN filed its First Complaint, a number of marketplace developments continue to undermine beIN's case for additional fees and carriage.

30. First, beIN remains available to the limited number of Comcast customers that want it. In fact, even prior to the expiration of the Expired Agreement on July 31, 2018, Comcast partnered with Dish to make Sling TV's programming available on Comcast's X1 platform. beIN has licensed its networks to Sling TV. So even after Comcast lost the rights to

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carry beIN Sports and beINE on its linear cable service, customers could still access both networks through a \$10 subscription to Sling TV’s “World Sports” package – essentially the same price those customers would have paid to watch beIN Sports and beINE on the SEP or H tier. Through innovative partnerships like these, Comcast has been able to facilitate the delivery of specialty content to the customers who seek it.

31. Secondly, by the end of the summer it became clear that Comcast was not alone in its assessment that beIN’s license fee and distribution demands were unjustified. One day after Comcast’s carriage of beIN ceased, beIN went dark on Verizon FiOS systems. And by the end of August, AT&T – the country’s largest MVPD and Comcast’s largest competitor – announced that it, too, would no longer carry the beIN networks on its DirecTV and U-verse systems. Both Verizon and AT&T stated publicly that beIN had sought aggressive increases in fees with inadequate assurances that its content could justify such sums. Although Verizon and beIN renewed their carriage agreement after a nine-day blackout, beIN achieved no discernable increase in carriage on Verizon systems – or on Dish, with whom beIN announced that it had renewed its carriage agreement a few weeks later – notwithstanding beIN’s purported ask for expanded carriage throughout the industry.⁶

32. In addition, by early August it was confirmed that beIN had lost the U.S. rights to carry Serie A, a cornerstone of beIN’s programming, to ESPN. Compounding this fundamental loss was the fact that one of soccer’s biggest stars, Cristiano Ronaldo, left beIN’s biggest remaining league, La Liga, for Serie A – the very league beIN no longer had the rights to carry.

⁶ Dish’s carriage of the beIN networks reflects the industry norm of distribution on premium and/or specialty tiers – similar to how Comcast carried the beIN networks under the Expired Agreement; Verizon remains a marketplace outlier in its carriage of beIN.

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33. On October 10, 2018, Mr. Briceño sent Comcast a revised renewal proposal (“October 2018 beIN Proposal”) and indicated that [[

]]. The October 2018 beIN
Proposal [[]] was still uncertain regarding
the type and amount of content [[

]]. Moreover, despite the loss of Serie A content and with no clear adequate substitute, beIN still proposed an *increase* to its fees from the Expired Agreement, with a base fee of
[[]] per month [[

]]. Given that Comcast was losing money even under the Expired Agreement (which included Serie A), and that beIN nonetheless continued to demand an increase in fees for still uncertain content, it was clear that Comcast and beIN had reached an impasse on the core economic terms of a potential renewal agreement.

34. I responded to Mr. Briceño by e-mail. I thanked him for the proposal, but informed him that, after careful consideration, Comcast was not inclined to re-open negotiations. Nevertheless, I wanted to keep the lines of communication open and invited Mr. Briceño to keep in touch and provide us with any material updates.

35. By that time, EBI had completed the first installation of its ordinary-course follow-up viewership analysis (“September 2018 Viewership Analysis”) and, shortly after we received the October 2018 beIN Proposal, EBI followed up with the October 2018 Viewership Analysis. As detailed in Andrew Brayford’s Declaration, these viewership analyses provided evidence of the financial impact to Comcast – based on actual customer behavior – from the expiration of beIN’s contract on July 31. The evidence was striking. The September 2018 Viewership Analysis, analyzing data from the first month without the beIN networks, revealed

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that only approximately {{ }} Comcast customers – accounting for approximately {{ }} in annual lost margin – had either dropped Comcast service altogether or cancelled their video subscription as a result of Comcast no longer carrying beIN. The October 2018 Viewership Analysis, analyzing 10 weeks of data, showed marginal further losses – a total of only approximately {{ }} customers, accounting for approximately {{ }} in annual lost margin, had churned. This data demonstrated how conservative the projections in the January 2018 Viewership Analysis really were. More importantly, this analysis confirmed that Comcast (a) had in fact been carrying beIN at a loss under the Expired Agreement; and (b) would have still been carrying beIN at a loss under the terms of Comcast’s December 2017 Offer. Even under beIN’s more recent October 2018 Proposal, the October 2018 Viewership Analysis showed that Comcast would lose more than {{ }} in the first year alone.⁷

36. I spoke by phone with Mr. Briceño on November 20, 2018 to discuss the October 2018 beIN Proposal. On that call, Mr. Briceño informed me that beIN has plans to [[

]]. Informed by the October 2018 Viewership Analysis, I explained that Comcast had experienced minimal customer response due to the loss of beIN over the last four months, and that the economic terms of the October 2018 beIN Proposal simply did not make business sense for Comcast. Mr. Briceño also volunteered

⁷ Taking into account the final January 2019 Viewership Analysis, which, as described in more detail by Andrew Brayford in his declaration, indicated approximately {{ }} churned customers, accounting for approximately {{ }} in annual losses, Comcast would lose approximately {{ }} over the life of the October 2018 beIN Proposal.

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on that call that the availability of the beIN networks on the X1 Sling TV app was beneficial to Comcast.⁸

37. I was surprised to receive a December 3, 2018 letter from beIN's outside counsel providing notice of intent to file the Second Complaint, [[

]], this proposal created even greater uncertainty. [[

]].


⁸ beIN itself is touting its networks' availability on Sling TV. *See* Ex. 7 at 9.

⁹ Letter from Pantelis Michalopoulos, Counsel for beIN Sports, LLC, et al., to Drew Brayford, Vice President of Programming, Comcast Cable Communications, LLC, et al., at 3 (Dec. 3, 2018) (Second Compl. Ex. 3).

I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: Philadelphia, Pennsylvania

February 8, 2019



Justin Smith

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EXHIBIT 3

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
beIN SPORTS, LLC,)	
<i>Complainant,</i>)	
	)	MB Docket No. 18-384
vs.	)	File No. CSR-8972-P
)	
COMCAST CABLE)	
COMMUNICATIONS, LLC)	
And)	
COMCAST CORPORATION,)	
<i>Defendants.</i>)	
)	

SUPPLEMENTAL DECLARATION OF ANDRES V. LERNER, PH.D.

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I. Introduction

1. I have been asked by counsel for Comcast Corporation on behalf of its subsidiary, Comcast Cable Communications, LLC (together with Comcast Corporation, “Comcast”), to supplement my initial declaration in order to assess, from an economic perspective, the claims made by beIN Sports, LLC (“beIN”) in its most recent carriage complaint (“Second Complaint”) against Comcast.¹ This declaration also addresses certain arguments made in the declaration of beIN’s economic experts, William Zarakas and Eliana Garcés, which was submitted in response to my initial declaration.²

2. Based on my analysis of the available information, including more recent marketplace data, and my review of the Second Complaint, I conclude that:

- beIN’s Second Complaint fails to offer any new evidence that there was adequate certainty or specificity regarding the programming that beIN would provide pursuant to its renewal proposals to Comcast. The “like for like” substitution provisions in beIN’s proposals created significant uncertainty regarding the programming that beIN would offer (as the Commission recognized when it dismissed beIN’s initial complaint), and therefore regarding the value of the network to Comcast. According to beIN’s proposals, beIN could have replaced the top-tier Italian Serie A and French Ligue 1 games with []

[]]. In my experience, such “like for like” provisions, that allow a network to substitute []

[] programming of the network, are not standard and are uncommon. And, contrary to beIN’s claims that []

[]], those provisions offer no meaningful protection, much less clarity. beIN could avoid triggering the provisions simply by invoking its “like for like” rights to

¹ beIN Sports, LLC v. Comcast Cable Communications, LLC, *Program Carriage Complaint*, December 13, 2018 (“Second Complaint”).

² Declaration of William Zarakas and Eliana Garcés, June 1, 2018 (“Zarakas/Garcés Decl.”).

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substitute [[]]. Moreover, the additional [[]] beIN recently proposed would create an inefficient and costly process. These provisions again highlight, rather than diminish, the significant uncertainty regarding the programming that beIN would provide.

- beIN’s Second Complaint fails to show that beIN Sports and beIN Sports en Español networks (collectively, the “beIN networks”) are similarly situated to NBC Sports Network (“NBCSN”) and Universo, and fails to address the critical shortcomings of beIN’s previous complaint (the “First Complaint”), as outlined in my initial declaration.³ In fact, updated analyses based on recent marketplace data confirms that the beIN networks are not similarly situated to NBCSN and Universo.
- beIN’s Second Complaint also fails to show that Comcast discriminated against the beIN networks in favor of NBCSN and Universo. The economic evidence indicates that Comcast’s carriage decisions were consistent with sound business judgment independent of any consideration of network affiliation. Recent events, including the limited subscriber losses after Comcast ceased carrying the beIN networks, AT&T/DIRECTV’s subsequent discontinuation of the beIN networks, and the decisions by Dish and Verizon not to expand distribution of the networks at renewal, highlight the very limited value that the beIN networks provided.
- The conclusions of beIN’s economic experts, Mr. Zarakas and Dr. Garcés, are economically flawed and/or unsupported by the marketplace evidence.

II. beIN’s Second Complaint Fails to Offer New Evidence that there Was Adequate Certainty Regarding the Programming that beIN Would Provide

3. In its Memorandum Opinion and Order, the Commission concluded that “beIN Sports has failed to provide evidence sufficient to support its claim that the programming it would provide under the renewal agreement is similarly situated to the video programming provided by

³ beIN Sports, LLC v. Comcast Cable Communications, LLC, *Program Carriage Complaint*, March 15, 2018 (“First Complaint”).

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Comcast’s affiliated vendors, NBCSN and Universo,” and dismissed beIN’s First Complaint.⁴ This conclusion was based on a detailed review of the evidence of the parties’ negotiating history, as presented by beIN in its First Complaint, and the fact that “the term sheets that beIN Sports and Comcast had exchanged before the Complaint was filed ... show significant uncertainty about what programming would be provided by beIN Sports in a renewal agreement.”⁵ In its Second Complaint, beIN claims that it “has supplied substantial evidence to cover the gap identified by the Bureau and prove the requisite specificity and certainty with respect to the rights to be provided by beIN Sports in a renewal agreement.”⁶ As I discuss in this section, beIN’s new arguments are unsound and only highlight the *lack* of certainty regarding the programming that beIN would provide pursuant to its various proposals to Comcast, which negates the claim that beIN’s programming would be “similarly situated” to the programming of NBCSN and Universo.

A. beIN’s renewal proposals reflect significant uncertainty regarding the programming beIN would provide

4. As the Commission’s detailed factual findings in the Memorandum Opinion and Order confirm, the various proposals by beIN to Comcast reflect significant uncertainty regarding the programming beIN would provide. The terms of beIN’s April 11, 2017 Renewal Proposal did not || ||.⁷

5. In its February 2, 2018 Counter Proposal, beIN ||

||. International soccer leagues vary widely in their breadth and intensity of appeal to consumers, and in their value to an MVPD. Including a “like for like” substitution provision without ||

⁴ beIN Sports, LLC v. Comcast Cable Communications, LLC, *Memorandum Opinion and Order*, 33 FCC Rcd. 7476 ¶ 13 (2018) (“FCC Memorandum Opinion and Order”).

⁵ FCC Memorandum Opinion and Order, ¶ 13.

⁶ Second Complaint, ¶ 7.

⁷ beIN Sports Renewal Proposal, April 11, 2017 (Second Complaint Exhibit 5).

⁸ beIN Sports Renewal Proposal, § 4, February 2, 2018 (Second Complaint Exhibit 7).

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]] creates significant uncertainty. Such

a vague provision leaves significant room for beIN to substitute [[

]]. In my experience,

having reviewed hundreds of sports programming agreements, such vague terms regarding the programming that could be substituted for core programming of a network are not standard, and are uncommon.

6. beIN's March 7, 2018 Revised Counter Proposal provided [[

]]. Moreover, the additional details provided in

that proposal highlight, rather than diminish, the significant uncertainty about the soccer programming that beIN would provide. In particular, the proposal included [[

⁹ beIN Sports Renewal Proposal, March 7, 2018 (Comcast Answer Exhibit 1, Attachment C).

¹⁰ Declaration of Justin Smith, February 11, 2019 ("Smith Decl."), ¶ 26: [[

]]

¹¹ Second Complaint, ¶ 62. See also Second Complaint, ¶ 66: [[

]]

]]¹²

7. The “like for like” terms in beIN’s proposals created significant uncertainty regarding beIN’s programing and the value of the networks to Comcast. beIN’s loss of Serie A, one of beIN’s touted top-tier leagues that was guaranteed under the former agreement, exemplifies this uncertainty.¹³ According to the terms of beIN’s proposals, it could have replaced the top-tier Italian Serie A with [[

]]. Again, in my extensive experience with sports programming agreements, such a vague “like for like” replacement mechanism, [[

]], is not standard or common. Such a mechanism itself creates significant uncertainty regarding what programming would be provided, and undermines the value of the network to subscribers and MVPDs. The lack of certainty made beIN’s renewal proposals unattractive from an economic perspective, especially when coupled with the increased fees and distribution that beIN demanded.

B. beIN offers no “new evidence” that there was “sufficient certainty” regarding the programming beIN would provide

8. In the Second Complaint, beIN claims that it provides “new evidence” that there is “sufficient certainty” that the beIN networks are “similarly situated” to NBCSN and Universo.¹⁴ These claims, in fact, amount to new unfounded arguments, not new evidence. First, beIN claims that it [[

¹² Second Complaint, ¶ 62.

¹³ beIN Sports lost its rights to one of the top tiered leagues, Serie A, in August 2018 to ESPN. Sam Carp, “Serie A goes OTT in US with ESPN+,” SportsPro, August 8, 2018, available at <http://www.sportspromedia.com/news/serie-a-rights-espn-usa-ott>, accessed on February 7, 2019.

¹⁴ Second Complaint, ¶ 7.

¹⁵ Second Complaint, ¶ 7.

¹⁶ Second Complaint, ¶ 7.

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]]¹⁷ And, the Commission nevertheless concluded that beIN did not offer sufficient certainty regarding the programming it would provide.

9. Indeed, consistent with the Commission’s conclusion, the fact that the “like for like” provision [[]] did not sufficiently lessen the uncertainty regarding the programming that beIN would provide. Clearly, beIN could still replace Italian Serie A and French Ligue 1 games with [[]]

]]¹⁸

10. As so-called “new evidence,” beIN also refers to oral communications leading up to the December 13, 2017 offer which it claims “described these rights to Comcast with great specificity.”¹⁹ Yet, Comcast executives present during the negotiations have already refuted these claims and confirmed again (as the Commission already found) that beIN was unable to guarantee the programming it would provide.²⁰ In all events, and as the Commission has already found, the actual term sheets proffered by beIN contradict this claim and “show[ed] significant uncertainty about what programming would be provided by beIN Sports in a renewal agreement.”²¹ In sum, the new arguments in beIN’s Second Complaint are unsupported and cannot overcome the clear

¹⁷ FCC Memorandum Opinion and Order, note 39 (emphasis added).

¹⁸ beIN proposals from April 2017, February 2018, and March 2018 [[]]

]] In contrast,

NBCUniversal’s rights for NHL, NASCAR, Olympics, and EPL, including the duration of these rights, are widely known.

¹⁹ Second Complaint, ¶ 7.

²⁰ Brayford Decl., ¶¶ 13, 22, 37, 41; Smith Decl., ¶¶ 19, 24, 27-28.

²¹ FCC Memorandum Opinion and Order, ¶ 13.

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evidence demonstrating that beIN's offers to Comcast failed to provide "sufficient certainty" regarding the programming that beIN would offer, as the Commission previously determined. From an economic perspective, it was reasonable for Comcast to conclude that beIN's renewal terms did not present a sound, much less attractive, business proposition.

C. Several terms in the beIN proposals highlight the significant uncertainty regarding the programming that beIN would provide

11. beIN claims that [[

12.

]], uncertainty regarding

programming can be very costly to an MVPD such as Comcast. [[

]], an MVPD such as Comcast often makes specific

investments in a network that it distributes, including marketing the network and creating channel line-ups. These specific investments would be lost if beIN did not deliver the programming.

[[

]].

²² Second Complaint, ¶ 66.

²³ Second Complaint, ¶ 61.

²⁴ Second Complaint, ¶ 61.

²⁵ FCC Memorandum Opinion and Order, note 51.

13. II

II. And, in all events, failing to deliver content can impose large costs on an MVPD, both in terms of the loss of specific investments and in customer dissatisfaction.

14. II

II. This new proposal does not create “sufficient certainty” about beIN’s programming and would potentially impose even more large costs on Comcast.

III. The beIN Networks Are Not “Similarly Situated” to NBCSN and Universo from an Economics Perspective

A. Differences in programming

15. As I explained in my initial declaration, even putting aside the significant uncertainty regarding the programming that beIN would provide, the beIN networks are not “similarly situated” to NBCSN and Universo from an economics perspective. The beIN networks offer niche programming focused on international soccer; in contrast, NBCSN and Universo offer a wide variety of programming, of which soccer accounts for a small fraction.²⁷ Universo features a wide

²⁶ December 3, 2018 Letter Re: beIN Sports, LLC Pre-Filing Notice at 3 (Second Complaint Exhibit 3).

²⁷ Lerner Decl., ¶¶ 15-19 and Table 1.

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array of Spanish-language non-sports programming (such as drama series, reality series, and audience participation shows) which accounts for the vast majority of Universo’s content.²⁸

16. In its Second Complaint, beIN recognizes these differences. It describes beIN as “a sports programming network that *primarily distributes top-flight European soccer*, including games of the Spanish La Liga and French Ligue I, as well as FIFA World Cup Qualifiers.”²⁹ But it describes NBCSN as “a national sports cable network that carries basketball, professional and college American football, soccer, hockey, motor sports, and golf among many other sports events.”³⁰ The Second Complaint also states that NBCSN is “the home of the Summer and Winter Olympics, National Hockey League (NHL), Premier League, Formula One, IndyCar (NBCSN), Tour de France, Premier Boxing Champions and beginning in 2015, NASCAR.”³¹ And, it describes that Universo’s programming “consists mostly of sports, *scripted and reality series, and music programming*.”³² These descriptions confirm the significant differences between the beIN networks, on the one hand, and NBCSN and Universo, on the other.

17. Marquee programming: According to beIN, “[s]occer ... is marquee programming for all four networks.”³³ beIN’s economic experts, Mr. Zarakas and Dr. Garcés similarly claim that “only a small portion of any network’s programming—that is, ‘marquee’ programming—is economically significant...” and that when one focuses on “marquee” programming, “NBCSN and Universo and beIN Sports and beIN Sports en Español are highly similar.”³⁴ However, neither beIN nor Mr. Zarakas and Dr. Garcés provides any economic evidence that the “marquee” programming of NBCSN and Universo are similar to the “marquee” programming of the beIN networks.

²⁸ Lerner Decl., ¶ 19 and Figure 1.

²⁹ Second Complaint, ¶ 17 (emphasis added).

³⁰ Second Complaint, ¶ 25.

³¹ Second Complaint, ¶ 71, citing to NBCSN page on NBCUniversal website.

³² Second Complaint, ¶ 26 (emphasis added).

³³ Second Complaint, ¶ 72.

³⁴ Zarakas/Garcés Decl., ¶ 4.

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18. Contrary to their assertions, the “marquee” programming of the beIN networks is focused on international soccer. In contrast, the “marquee” programming of NBCSN and Universo are much more diverse, with only a small share being soccer content. NBCSN has a diverse array of “marquee” sports programming, such as NHL (including the Stanley Cup Playoffs), NASCAR/motor sports, as well as other featured sports programming for numerous sports (*e.g.*, the Summer and Winter Olympics, Tour de France, and collegiate games).³⁵ In fact, beIN itself recognizes that “NBC Sports marquee events include the Summer and Winter Olympics, soccer’s English Premier League, PGA, NFL, NBA, NHL, IAAF World Championships, and the Six Nations Championship.”³⁶ Universo’s “marquee programming” includes drama/crime series (*Frontera/Seguridad de Frontera*), reality series (*Larrymania*, *Fugitivos de la Ley*, *The Riveras*, *I Love Jenni*), documentaries (*Padilleros*, *Encarcelados*), audience participation shows (*12 Corazones*), and variety shows (*Caso Cerrado*, *Quién Da Más*). In contrast, all of the “marquee” programming of the beIN networks is international soccer, including La Liga and World Cup Qualifiers.

19. One way to give more weight to “marquee” programming is to weigh programming by viewership. By weighting programming by viewership, programming that is highly demanded by subscribers receives much greater weight than programming that is less important, and “filler” programming receives relatively little weight. That is precisely the analysis that I provided in my initial declaration (Figure 3).³⁷ Updating those numbers for 2018 indicates that soccer-related programming made up [] percent of beIN Sports’ viewership, but only [] percent of NBCSN’s viewership. And, soccer-related programming made up [] percent of the viewership of beIN Sports en Español, but only [] percent of Universo’s viewership, as shown in Figure 1 below.³⁸

³⁵ NBCSN has exclusive broadcast television rights to the Olympic Games through 2032. See Liana Baker, “NBC makers surprise play to sign Olympics TV rights through 2032,” Reuters, May 7, 2014, available at <https://www.reuters.com/article/us-nbc-olympics/nbc-makes-surprise-play-to-sign-olympics-tv-rights-through-2032-idUSKBN0DN1DL20140507>, accessed on January 30, 2019.

³⁶ Second Complaint, ¶ 25.

³⁷ Lerner Decl., Figure 3.

³⁸ Nielsen ratings based on the person 2+, total day, live + 3 day linear/VOD viewership, 2018.

Figure 1: Soccer Programming Viewership by Network (2018)

[[

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20. Programming other than soccer made up the vast majority of viewership for both NBCSN and Universo. According to Nielsen data, Motor Sports made up [[]] percent, NHL made up [[]] percent, and the Olympics made up [[]] percent of the viewership of NBCSN, totaling over [[]] percent of NBCSN’s viewership—more than five times the viewership of soccer programming in 2018. Universo’s viewership was [[]] percent General Drama, [[]] percent General Variety, and [[]] percent Audience Participation, totaling almost [[]] percent of viewership. These statistics clearly contradict beIN’s claim that NBCSN and Universo have “a particular emphasis on soccer.”³⁹ Rather, the empirical evidence unambiguously shows that the programming of the beIN networks differs considerably from the programming of NBCSN and Universo, even if one focuses on “marquee” programming.

³⁹ Second Complaint, ¶ 85.

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21. The statistic provided by Mr. Zarakas and Dr. Garcés in support of their claim that a large share of the “marquee” programming of Universo is soccer events is misleading. In particular, they claim that in 2017, “17 out of the 50 top viewed programs on Universo have been soccer events.”⁴⁰ However, Universo’s “marquee” programming is made of largely drama series, reality series, audience participation series, and variety shows which are recurring series that have multiple telecasts.⁴¹ Although *individual* telecasts do not always command high viewership relative to one-time live events, they have consistent viewership over the season, and are key drivers of subscriber demand for Universo, with these types of series making up a very large share of viewership, as described above. The top 50 telecasts referred to by Mr. Zarakas and Dr. Garcés made up only [] percent of Universo’s overall viewership in 2017, and the soccer programming within those top 50 telecasts made up only [] percent of overall viewership.⁴² It is also noteworthy that if one focuses on the top 50 telecasts (as based on all top telecasts in 2017 by viewership), none of the top viewed telecasts on NBCSN were soccer programming—all were NHL and NASCAR related content. In contrast, of the top 50 viewed programs on beIN Sports and beIN Sports en Español (again, as based on all top telecasts in 2017 by viewership), 42 and 46 of the programs (respectively) were soccer events.⁴³

22. Rather than offer any rigorous empirical evidence, beIN claims that “NBC has launched an intensive advertising campaign focused on soccer.”⁴⁴ But beIN offers only superficial references to NBC Sports’ marketing and website. For instance, beIN refers to a “screenshot from NBC Sports’ soccer landing page.”⁴⁵ However, the screenshot is of the *soccer* section of the NBC Sports website, which is one of over 20 sports-related sections that NBC highlights, each with their

⁴⁰ Zarakas/Garcés Decl., ¶ 14.

⁴¹ For example, there were [] telecasts of episodes of the various Frontera and Seguridad de Frontera series; [] telecasts of episodes of 12 Corazones; and [] telecasts of Larrymania in 2017.

⁴² Source: Nielsen ratings data. Nielsen ratings based on the person 2+, total day, live + 3 day linear/VOD viewership.

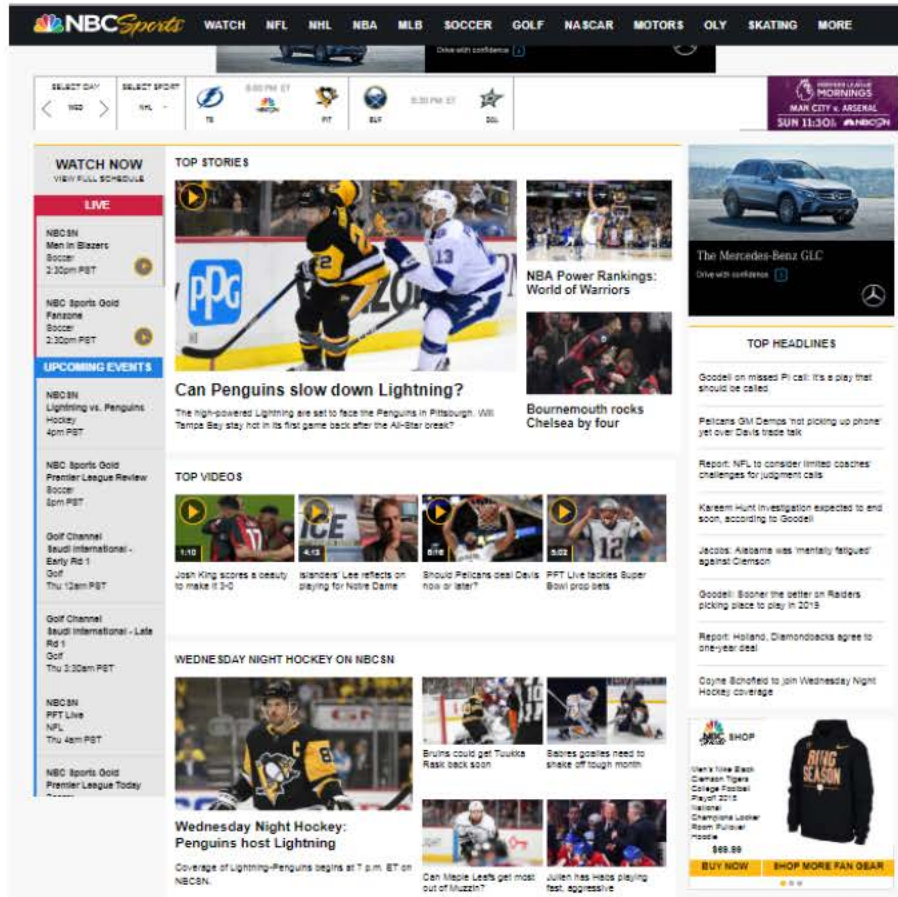
⁴³ Source: Nielsen ratings data. Based on the person 2+, total day, live + 3 day linear/VOD viewership, 2017.

⁴⁴ Second Complaint, ¶ 76.

⁴⁵ Second Complaint, ¶ 76.

own landing page.⁴⁶ The main landing page of the NBC Sports website, on any given day, includes top sports stories related to various sports programming and events, including among others, hockey, NBA basketball, Super Bowl, soccer, and golf.⁴⁷ A screenshot of the home page of NBCSports.com on January 30, 2019, for example, highlights hockey (Figure 2).⁴⁸

Figure 2: Screenshot of main home page of NBC Sports (January 30, 2019)



23. Claimed increase in NBCSN and Universo soccer programming: beIN also claims that NBCSN and Universo “are mounting a full court press, backed by enormous investment, on soccer.

⁴⁶ The NBC Sports website includes various sports sections including NFL, NHL, NBA, MLB, Soccer, Golf, NASCAR, Motors, Olympics, Skating, Horses, NCAA BK, NBC Sports BET, Rugby, NCAA FB, MMA, Dog Show, Cycling, Tennis, Auto Programming, and Outdoors. NBCSN website, www.nbcsports.com, accessed on January 30, 2019.

⁴⁷ NBC Sports website, www.nbcsports.com, accessed on January 30, 2019.

⁴⁸ NBC Sports website, www.nbcsports.com, accessed on January 30, 2019.

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It is no wonder that soccer accounts for an increasing percentage of both networks' lineup...."⁴⁹
In particular, beIN states that [REDACTED]

[REDACTED]⁵⁰ Yet, based on these figures, NBCSN's live soccer programming as a share of total programming *barely increased* during this two year period, from [REDACTED] percent to [REDACTED] percent. beIN further claims that [REDACTED]

[REDACTED]⁵¹ But even based on these figures reported by beIN, the share of total programming for Universo that is live soccer is only [REDACTED] percent. In contrast, as discussed in my initial report, live soccer programming accounted for a much larger share of programming on beIN Sports and beIN Sports en Español [REDACTED]

[REDACTED].⁵²

24. Even with respect to all soccer programming (not just live), analysis of 2017 Gracenote scheduling data contained in my initial report shows that soccer programming accounted for 55.1 percent and 72.3 percent of all programming minutes on beIN Sports and beIN en Español, respectively, compared to 9.9 percent of NBCSN's programming minutes and 5.5 percent of Universo's.⁵³ And, as discussed above, soccer programming accounted for a much greater share of total viewership for the beIN networks compared to NBCSN and Universo.

25. Other sports programming: beIN claims that all four networks are focused on "sports programming." For instance, it states in the Second Complaint that "[l]ike beIN, the two NBC networks are focused, exclusively (NBC Sports) or heavily (Universo), on sports programming."⁵⁴ Similarly, Mr. Zarakas and Dr. Garcés claim that "NBCSN also specializes in sports programming, and has recently invested in the rights for the NHL, Rugby, NASCAR and several other sports

⁴⁹ Second Complaint, ¶ 84. See also Briceño Decl., ¶¶ 19-20.

⁵⁰ Second Complaint, ¶ 84.

⁵¹ Second Complaint, ¶ 84; Briceño Decl., ¶ 20.

⁵² Lerner Decl., ¶ 24.

⁵³ Lerner Decl., Table 1.

⁵⁴ Second Complaint, ¶ 71.

including cycling and boxing.”⁵⁵ There is no doubt that NBCSN is focused on sports content, and has invested in obtaining long-term rights for various sports including NASCAR, NHL, and many others. But NBCSN carries much more diversified sports programming, which has much broader appeal than the niche international soccer programming of beIN Sports. The fact that all four networks carry sports (and that NBCSN is a sports network) does not mean that they are similarly situated. Sports networks vary widely in the nature of their programming, their value to an MVPD, their appeal to viewers, and their target audiences, among other things.⁵⁶ And, beIN provides no basis for its claim that its “non-soccer programming is also similarly situated to other sports programming offered by NBC Sports and Universo, including college sports, motor sports, boxing, rugby, track and field and mixed martial arts.”⁵⁷

26. As for Universo, as I stated in my initial declaration, the vast majority of programming has been non-sports related.⁵⁸ beIN’s claim that Universo is “focused on sports programming with a particular emphasis on soccer” is demonstrably incorrect.⁵⁹

B. Differences in the nature and breadth of viewership

27. Ratings: As I explained in my initial declaration, consistent with the niche nature of their programming, the beIN networks appeal to a relatively narrow viewer audience, whereas NBCSN and Universo offer content with broader appeal.⁶⁰ The average viewing audience of NBCSN, for instance, was more than 27 times the average viewing audience of beIN Sports in the first half of

⁵⁵ Zarakas/Garcés Decl., ¶ 13.

⁵⁶ Mr. Zarakas and Dr. Garcés argue that the “beIN networks, NBCSN and Universo all use popular sports programming to drive their viewership and attract advertisement, and compete with each other via marquee sports events.” Zarakas/Garcés Decl., ¶ 10; see also Zarakas/Garcés Decl., ¶ 16. However, this vague claim does not show that the programming of the networks is similar, or that the networks are “similarly situated.” All sports networks, and even some networks not focused on sports, “use popular sports programming to drive their viewership and attract advertising.”

⁵⁷ Second Complaint, ¶ 111.

⁵⁸ Lerner Decl., Figure 1. As illustrated in Figure 1, various non-sports programming genres made up the vast majority (almost 90 percent) of Universo’s programming, including reality, documentary, game shows, entertainment, drama, and other content.

⁵⁹ Second Complaint, ¶ 85.

⁶⁰ Lerner Decl. II.B.2.

2018.⁶¹ This multiple is even greater than what I reported in my initial declaration—that NBCSN’s average viewing rating was more than 10 times the average viewing audience of beIN Sports in 2017.⁶² This substantial increase in the first half of 2018 can be explained by the Winter Olympics telecast offered by NBCSN, as well as a drop in ratings for beIN Sports. These ratings data confirm that NBCSN appeals to a much wider audience than the niche soccer programming offered by beIN Sports.

28. beIN disputes these findings, claiming that *coverage area ratings* show that the networks have similar ratings.⁶³ Similarly, Mr. Zarakas and Dr. Garcés claim that the beIN networks and NBCSN and Universo are viewed by a similar share of consumers *who have access to the programming*, comparing *coverage area ratings* between the networks.⁶⁴ However, as I discussed in my initial declaration, comparing the viewership of networks based on coverage area ratings is inappropriate and misleading.⁶⁵ The beIN networks are distributed by virtually all MVPDs to a narrower population of households that are more likely to watch the beIN networks than the overall population of viewers (*e.g.*, sports fans or Spanish-speaking viewers). In contrast, NBCSN and Universo are distributed to a larger population of households (both by Comcast and other MVPDs) to a broader range of viewers. Thus, coverage ratings do not compare apples to apples. The implicit assumption in the comparison of coverage ratings is that distributing the beIN networks to a broader population of households would result in these networks attracting the same percentage of viewers as under the current, more limited distribution of the networks. But such an assumption is unlikely and even implausible—distributing the beIN networks on more highly penetrated tiers to more “casual” viewers and viewers who may not be sports fans or Spanish-speakers would not attract the same percentage of viewers as the current distribution. For these

⁶¹ Source: Nielsen ratings data. Nielsen ratings based on persons 2+, total day, live + SD linear/VOD viewership. The average viewing audience ratings for beIN Sports in the first half of 2018 was [] percent. In contrast, the average viewing audience for NBCSN was [] percent.

⁶² Lerner Decl., ¶ 27. The average viewing audience ratings for beIN Sports in 2017 was [] percent. In contrast, the average viewing audience for NBCSN was [] percent.

⁶³ Second Complaint, ¶¶ 91-92.

⁶⁴ Zarakas/Garcés Decl., ¶ 32.

⁶⁵ Lerner Decl., ¶¶ 28-31.

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reasons, Nielsen Media (the source of the ratings data) has a specific warning precisely *against* this type of comparison, stating that “The Coverage Area Rating for one cable network cannot be compared to another cable network’s coverage area rating or a broadcast network rating.”⁶⁶

29. Moreover, even if one ignores Nielsen’s clear warning and accepts the claim by beIN and its experts that coverage ratings are the appropriate measure of comparison, those ratings show that NBCSN appeals to a much wider audience than the niche soccer programming offered by beIN Sports. The coverage rating of NBCSN in the first half of 2018 was over seven times higher than that of beIN Sports.⁶⁷ This ratio is even greater than the result that I reported for 2017 in my initial declaration.⁶⁸ This shows that the difference in distribution cannot explain the tremendous difference in viewership between the networks.⁶⁹

30. Audience overlap: beIN also claims that “another indication of close similarity” between the viewers of beIN and the viewers of NBCSN and Universo is the audience overlap between the networks.⁷⁰ In particular, beIN claims that “[[

]]⁷¹ This, however, is a misleading estimate because it simply reflects the popularity of NBCSN and Universo. The same comparison can be made between the beIN networks and other popular, general audience networks. For example, a greater share of beIN Sports en Español viewers watched other Spanish language networks, including [[

⁶⁶ See Nielsen Media Glossary, <http://www.nielsenmedia.com/glossary/>, accessed on May 10, 2018.

⁶⁷ The coverage rating for beIN Sports in first half of 2018 was [[]] percent, while the coverage rating for NBCSN was [[]] percent. A similar difference is true for all of 2018, with coverage ratings of [[]] and [[]] for beIN Sports and NBCSN, respectively. Nielsen ratings data. Nielsen ratings data based on persons 2+, total day, live + SD linear/VOD viewership.

⁶⁸ Lerner Decl., ¶ 30. As I show in my initial declaration, the coverage rating of NBCSN in 2017 was over [[]] times higher than that of beIN Sports. The coverage area ratings were [[]] percent for beIN Sports and [[]] percent for NBCSN in 2017.

⁶⁹ As mentioned, the average viewing audience of NBCSN was over 27 times the viewing audience of beIN Sports, but NBCSN had roughly seven and a half times the distribution of beIN Sports in the first half of 2018.

⁷⁰ Second Complaint, ¶ 90.

⁷¹ Second Complaint, ¶ 90.

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]] as did those that watched Universo in 2017.⁷² But beIN does not claim that these other Spanish language networks are all similarly situated to beIN Sports en Español, despite their greater audience overlap.

Table 1: Share of beIN Sports en Español Viewers Watching Other Networks (2017)

[[

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31. Similarly, a comparable or greater share of viewers that watched beIN Sports also watched
[[]].⁷³ Again, beIN does not claim that these other networks are all similarly situated to beIN Sports, despite their greater audience overlap. The significant audience overlap simply reflects the popularity of these other networks, including NBCSN, not the fact that they are similarly situated to beIN Sports.

Table 2: Share of beIN Viewers Watching Other Networks (2017)

[[

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⁷² Source: Nielsen Duplication Data. Excludes “RSNs” from rankings. Data used is for 2017 in order to compare directly with beIN’s audience overlap estimates, which are also from 2017.

⁷³ Source: Nielsen Duplication Data. Excludes “RSNs” from rankings. Data used is for 2017 in order to compare directly with beIN’s audience overlap estimates, which are also from 2017.

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32. Moreover, as I illustrate in my initial declaration, there is limited viewer audience overlap between the beIN networks and either NBCSN or Universo, *when one evaluates NBCSN and Universo viewers that watch the beIN networks*.⁷⁴ In 2017, only [] percent of NBCSN viewers also viewed beIN Sports, and only [] percent of NBCSN viewers also viewed beIN Sports en Español. Similarly, only [] percent of Universo viewers also viewed beIN Sports. While [] percent of Universo viewers watched beIN Sports en Español, the network ranks [] in terms of viewer overlap with Universo, behind [] other Spanish-language networks, including []

33. The lack of material viewer overlap between NBCSN and Universo, on the one hand, and the beIN networks, on the other, shows that the beIN networks are not materially substitutable from the perspective of NBCSN and Universo viewers, and that Comcast therefore lacks economic incentives to discriminate against the beIN networks in favor of these networks.

34. Demographics: beIN and Mr. Zarakas/Dr. Garcés claim that the viewers of the beIN networks, NBCSN, and Universo are “similar,” citing various demographic statistics (including percentage male/female, median income, occupation, home ownership status, and median age).⁷⁵ But there are also significant differences. For instance, as Mr. Zarakas and Dr. Garcés recognize, || ||⁷⁶ Moreover, they ignore a key demographic difference between the networks—compared to NBCSN, a much larger share of the audience of the beIN networks is Latino.⁷⁷ Mr. Zarakas and Dr. Garcés seem to try to dismiss this important disparity, claiming that “[s]occer is popular around

⁷⁴ Lerner Decl., ¶¶ 41-42.

⁷⁵ Second Complaint, ¶ 86; Briceño Decl., ¶ 23; Zarakas/Garcés Decl., ¶ 22.

⁷⁶ Zarakas/Garcés Decl., ¶ 23.

⁷⁷ In particular, in 2017, [] percent of beIN Sports viewership and [] percent of beIN Sports en Español viewership was Latino; in contrast, only [] percent of NBCSN viewership was Latino (based on Hispanic head of household). Lerner Decl., ¶ 38.

the world” and that there is “very little that is ‘ethnic’ about soccer.”⁷⁸ But soccer viewership in the U.S. skews considerably towards Latinos.⁷⁹

C. Differences in distribution by unaffiliated MVPDs

35. Tellingly, beIN and Mr. Zarakas/Dr. Garcés ignore a key empirical analysis that I presented in my initial declaration, showing that MVPDs unaffiliated with the networks carried the beIN networks very differently than they do NBCSN and Universo. Figure 4 of my initial declaration shows that MVPDs other than Comcast, on average, carried NBCSN and Universo to a much higher percentage of their subscribers compared to the beIN networks. The penetration of beIN Sports by other MVPDs was [] percent; in contrast, other MVPDs distributed NBCSN to more than three times that share—to [] percent of subscribers. Similarly, the penetration of beIN Sports en Español by other MVPDs was [] percent; in contrast, other MVPDs distributed Universo to more than twice that share—to [] percent of subscribers.⁸⁰ This disparity in how unaffiliated MVPDs carry the networks indicate that they do not view the beIN networks as being “similarly situated” to NBCSN and Universo.

D. NBCSN and Universo do not compete materially with the beIN networks

1. beIN provides no reliable evidence of competition for viewers

36. Neither the Second Complaint nor the declaration of Mr. Zarakas and Dr. Garcés provides any reliable evidence of competition for viewers between the beIN networks and NBCSN and Universo. Instead, beIN claims that “Comcast launched a campaign against beIN, including two short videos (one in English and one in Spanish) and a website. The videos attempt to lure beIN viewers to other soccer programming, much of which is, of course, provided by NBC Sports and

⁷⁸ Zarakas/Garcés Decl., ¶ 37.

⁷⁹ Simmons Essential Consumer Intelligence, “Family and Fandom: Hispanic Soccer Fans in the US,” November 3, 2017, available at <https://www.simmonsresearch.com/2017/11/03/family-and-fandom-hispanic-soccer-fans-in-the-us/>, accessed on February 7, 2019; Steven Goff, “This World Cup, ‘America’s Team’ is Mexico,” The Washington Post, April 16, 2018, available at https://www.washingtonpost.com/news/soccer-insider/wp/2018/04/16/this-world-cup-americas-team-is-mexico/?noredirect=on&utm_term=.f4180414c3fa, accessed on February 7, 2019.

⁸⁰ Lerner Decl., ¶ 32 and Figure 4, based on Kagan data and Comcast internal subscriber counts.

Universo.”⁸¹ It points to a page on Comcast’s Xfinity website which explains that soccer “games are also available on NBC, FOX, ESPN, Telemundo, Univision and other networks.”⁸² However, this does not show significant competition for viewers between the beIN networks and NBCSN and/or Universo. Rather, the webpage lists many different options, including various options not affiliated with Comcast, for viewing some content on the beIN networks. The webpage first describes that some beIN content can be viewed on the beIN SPORTS YouTube channel, on the La Liga and Ligue 1 YouTube channels, and on Sling’s World Sports package.⁸³ The webpage also lists several unaffiliated networks, including FOX and ESPN, as well as other NBCUniversal networks, including NBC and Telemundo.⁸⁴ Rather than showing significant competition for users between the beIN networks and NBCSN and/or Universo, the website highlights that beIN content, and additional soccer content, is accessible from various different channels, which confirms the limited value that the beIN networks would have provided Comcast.

2. beIN provides no reliable evidence of competition for advertisers

37. The Second Complaint reiterates beIN’s claim that its networks compete directly and materially with NBCSN or Universo for advertisers because they share several common advertisers.⁸⁵ As I demonstrated in my initial report, the mere existence of common advertisers on the four networks does not establish significant competition between the networks for advertising dollars. Nor do these “overlaps ... imply substitutability (or even similarity) between networks . . . [and o]ne can actually draw the opposite conclusion – . . . overlaps . . . may indicate that two networks are complementary.”⁸⁶

⁸¹ Second Complaint, ¶ 4.

⁸² Second Complaint, ¶ 4, Exhibit 14.

⁸³ www.xfinity.com/facts/beinsports, accessed February 7, 2019.

⁸⁴ www.xfinity.com/facts/beinsports, accessed February 7, 2019.

⁸⁵ Second Complaint, ¶¶ 105-110.

⁸⁶ Lerner Decl., ¶ 47.

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38. beIN argues that it “shares several key advertisers with NBC Sports and NBC Universo.”⁸⁷ To be sure, “all of beIN’s largest advertisers, [[

]] also purchase advertising on NBC Sports and NBC Universo.”⁸⁸ However, each of these companies is among the largest advertisers in the U.S. As I previously demonstrated, these major companies generally advertised across 60 to 90 different networks.⁸⁹ beIN’s continued reliance on these major advertisers as a measure of advertiser overlap does not provide any reliable evidence of substitutability or similarity.

39. In the Second Complaint, beIN argues that the fact that these companies advertise across a wide range of networks does not mean that the beIN networks are not a close substitute for NBCSN and Universo because “many large shared advertisers have advertising programs tailored to a few networks including the beIN and NBC Sports networks, or limited to beIN and NBC Sports.”⁹⁰ But beIN identifies only one advertising program in support of this new argument, claiming that [[

]] As an initial matter, this one example, even if relevant, cannot show that “many large shared advertisers have advertising programs tailored” to the beIN networks, NBCSN, and Universo.⁹² And beIN fails to show that [[

]]. More generally, beIN does not show that advertising programs on the beIN networks are more similar to advertising

⁸⁷ Second Complaint, ¶ 105.

⁸⁸ Second Complaint, ¶ 105.

⁸⁹ Lerner Decl., ¶ 49, Table 2; *see also* Litman Decl., ¶¶ 43-45.

⁹⁰ Second Complaint, ¶ 108.

⁹¹ Second Complaint, ¶ 108.

⁹² Second Complaint, ¶ 108.

⁹³ [[

programs on NBCSN and Universo, compared to those on many other networks in which those companies advertise.

40. beIN attempts to show greater advertising overlap between the networks in its Second Complaint, stating that “most important, there are not [REDACTED] advertisers buying airtime on both the beIN and the NBC networks.”⁹⁴ However, even if one considers a broader range of advertisers, say the top 100 companies that advertise on the beIN networks, those companies also advertise across a broad range of networks. Figure 3 below shows, for each network, the total advertising spend of beIN’s top 100 advertisers.⁹⁵ As the figure shows, these advertisers purchased airtime on *many* networks, with much greater ad spend on networks other than on the beIN networks, Universo, and NBCSN. For instance, beIN’s top 100 advertisers spent [REDACTED] times as much advertising on the top five networks on which these companies advertised ([REDACTED]) than on the beIN networks, and [REDACTED] times more than they spent on NBCSN and Universo combined. Overall, the beIN networks accounted for only [REDACTED] percent of the advertising spend across these networks; NBCSN and Universo accounted for only [REDACTED] percent and [REDACTED] percent, respectively. Other networks, including [REDACTED], among many others, comprised a much larger percentage. But beIN does not claim that there is substitutability by advertisers between the beIN networks and those other networks, or that those other networks compete for advertisers with the beIN networks, which invalidates beIN’s attempt to use advertising overlap as a measure of competition for advertisers.

⁹⁴ Second Complaint, ¶¶ 109-110. See also Briceño Decl., Attachment A.

⁹⁵ For graphical clarity, Figure 3 only shows the advertising spend on the top 50 networks on which the beIN networks’ top 100 advertisers purchased airtime. Those advertisers actually purchased airtime on 110 different networks.

Figure 3: Advertising Spend by Network for beIN's Top 100 Advertisers

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41. Appendix A provides a more granular look at the networks on which beIN's advertisers purchased airtime.⁹⁶ The appendix shows that for the vast majority of beIN's advertisers, advertising spend on other networks was much greater than spend on the beIN networks, NBCSN, and Universo. In particular, out of [[]] advertisers, the majority of advertisers ([[]]) allocated over 80 percent of their advertising spend to other networks. Only [[]] out of [[]] allocated a material percentage of their ad spend—more than 10 percent—to both the beIN networks and to NBCSN and/or Universo. These advertisers [[

]] made up only [[]] percent of beIN's advertising revenues. Moreover, many

⁹⁶ Source: Nielsen Advertising data. Data used is for Q4 2017 in order to compare directly with beIN's advertising estimates, which are also from Q4 2017. See Briceño Declaration, Attachment A.

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advertisers ([REDACTED]) purchased airtime on the beIN networks, but purchased *no* airtime on NBCSN or Universo, which also is at odds with beIN’s claim that there is significant advertiser overlap.

42. beIN points to a handful of advertisers for which it claims that “the platforms of the NBC and beIN networks are uniquely suitable as well as substitutable for another,” including [REDACTED]

[REDACTED].⁹⁷ However, these advertisers account for a very small share ([REDACTED] percent) of the beIN networks’ advertising revenue.⁹⁸ Moreover, even for some of these advertisers, there is not a significant overlap in advertising spend between the beIN networks and NBCSN and/or Universo. [REDACTED]

[REDACTED].

43. Lastly, beIN claims that “the purchase by some of these advertisers of time on beIN has resulted directly in less time bought by them on NBC Sports and NBC Universo, meaning that beIN is a direct substitute for NBC Sports and NBC Universo in the eyes of these advertisers.”⁹⁹ However, neither beIN nor Mr. Briceño provide any evidence of such substitution. In fact, the data show a lack of substitution by advertisers between the beIN networks and either NBCSN or Universo. Figure 4 below shows a scatterplot that compares, for each advertiser, the change in advertising spend on the beIN networks to the change in advertising spend on NBCSN and

⁹⁷ Second Complaint, ¶ 110. beIN claims that [REDACTED]

[REDACTED] Second Complaint, ¶ 110. But it is illogical to contend that beIN—a niche soccer network—is similar to [REDACTED] based on the fact that [REDACTED] places advertising on both networks. Second Complaint, ¶ 110.

⁹⁸ [REDACTED]

[REDACTED].

⁹⁹ Second Complaint, ¶ 105 (citing Briceño Decl., ¶ 36).

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Universo.¹⁰⁰ If advertising on the beIN networks was a close and “unique” substitute to advertising on NBCSN and Universo, one would expect a strong negative relationship between the change in advertising spend on beIN and advertising spend on NBCSN and/or Universo (*e.g.*, advertisers would proportionately increase their spend on NBCSN and/or Universo in response to a decrease in spend on the beIN networks). But the empirical analysis clearly refutes such a hypothesis. As the scatterplot shows, there is no inverse relationship between the change in advertising spend on the beIN networks and advertising spend on NBCSN and/or Universo.¹⁰¹ The correlation between these changes in advertising spend is $[[\quad]]$, which indicates that the change in advertising spend on the beIN networks is virtually uncorrelated (and, in fact, slightly *positively* correlated) to the change in advertising spend on NBCSN and Universo.¹⁰² In contrast, as a point of reference, if advertisers fully shifted their spend from beIN to NBCSN and Universo, one would expect a correlation close to *negative* 1.0.

¹⁰⁰ In particular, the analysis compares the change in advertising spend from October/November 2017 to October/November 2018, the last two months of available data.

¹⁰¹ For instance, advertisers shifting their spend from the beIN networks to NBCSN and/or Universo one-for-one (or vice versa) would appear on the 45 degree line. But very few data points (advertisers) appear close to that line. In other words, very few advertisers shifted their spend dollar-for-dollar from the beIN networks to NBCSN and/or Universo, or from NBCSN and/or Universo to beIN.

¹⁰² Correlation is a measure of the strength of a linear statistical relationship between two data series. Correlation is expressed by a “correlation coefficient,” which ranges from -1 to 1. A correlation coefficient of -1 means that there is a perfect negative relationship between two series—when one increases, the other decreases. A correlation coefficient of 1 implies a perfect positive relationship between two series—when one increases, so does the other, and when one decreases, so does the other. See, *e.g.*, David S. Moore and George P. McCabe, INTRODUCTION TO THE PRACTICE OF STATISTICS 126-131 (3rd ed. New York: W.H. Freeman and Company 1999).

Figure 4: Change in Advertising Spend on the beIN Networks versus NBCSN/Universo

||

44. Of course, advertisers change their spend over time for many reasons, but the absence of an inverse relationship between advertising spend on the beIN networks and NBCSN and/or Universo refutes beIN's claim that the beIN networks are close substitutes to NBCSN and Universo from the perspective of advertisers.

IV. Comcast Did Not Discriminate Against the beIN Networks in Favor of NBCSN and Universo

45. As I discussed in my initial report, there is no economic basis for beIN's claim that Comcast discriminated against the beIN networks in favor of NBCSN and Universo.¹⁰³ The economic evidence indicates that Comcast's carriage of the beIN networks is consistent with sound business

¹⁰³ Lerner Decl., ¶ 96.

judgment, independent of any consideration of network affiliation, given their niche nature and limited viewer appeal.

A. Distribution of beIN networks by other MVPDs

46. Other MVPDs distribute the beIN networks to a similar percentage of subscribers as did Comcast, which negates any reasonable inference of affiliation-based discrimination.¹⁰⁴ Comcast's carriage of the beIN networks was comparable to how the networks were carried in the marketplace by other traditional and virtual MVPDs. In particular, as I stated in my initial report, Comcast carried the beIN networks to [[]] percent of its subscribers, based on its commitment to [[]] million subscribers, while other MVPDs distributed beIN Sports and beIN Sports en Español to [[]] and [[]] percent of subscribers, respectively, according to Kagan data.¹⁰⁵ Comcast's carriage of the beIN networks under Comcast's proposed contract renewal terms would have been similar to Comcast's past carriage of the network, and therefore would offer similar carriage as offered by other MVPDs. Notably, the carriage by other MVPDs of the beIN networks is much lower than the carriage that beIN has demanded from Comcast ([[]] percent according to beIN's initial demand).¹⁰⁶ There is no marketplace basis for such a demand, or for beIN's claim that Comcast would distribute the beIN networks to such a share of subscribers but-for its affiliation with NBCSN and Universo.

47. Moreover, as I discuss in my initial report, virtually all MVPDs distribute the beIN networks on "upper-level" premium and specialty tiers (such as a sports or Latino tier).¹⁰⁷ In the Second Complaint, beIN claims that it is not "true that other distributors carrying beIN do so almost universally on upper level tiers: as many as seven distributors-Charter, CenturyLink, Frontier, fuboTV, Liberty Cablevision of Puerto Rico, Prism, and Verizon-give beIN access to general entertainment packages as opposed to specialty tiers."¹⁰⁸ However, beIN's claim is based

¹⁰⁴ Lerner Decl., ¶¶ 68-69 and Figure 5.

¹⁰⁵ Lerner Decl., ¶ 69.

¹⁰⁶ First Complaint, ¶ 51.

¹⁰⁷ Lerner Decl., ¶ 68.

¹⁰⁸ Second Complaint, ¶ 129.

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on cherry-picked evidence, and is misleading. beIN ignores that many MVPDs carry the beIN networks at low penetration levels.¹⁰⁹ And, contrary to beIN's claims, Charter offers the beIN networks on its highest tier, Spectrum Gold, and through Spanish-language packages, with a total penetration of approximately 15 percent according to beIN's own distribution data.¹¹⁰ Liberty Cablevision of Puerto Rico operates in a geographic area (Puerto Rico) that has a very high share of Latinos (98 percent according to some estimates), and therefore does not serve as an adequate benchmark for Comcast's footprint since a very large share of the viewership of the beIN networks also is Latino.¹¹¹ With respect to Verizon, beIN's relatively broad carriage on FiOS is the exception to the rule.

48. Mr. Zarakas and Dr. Garcés claim that other MVPDs distribute the beIN networks differently than does Comcast (and different than the distribution Comcast proposed under the December 2017 offer). In particular, they claim that other MVPDs carry the beIN networks on “bundles of diverse channels,” while Comcast carries (and proposes to carry) the beIN networks on “add-on” packages.¹¹² They assert that “Comcast's relegation of beIN to add-on ‘niche’ package is also at odds with virtually every other MVPD carrying beIN and beIN en Español.”¹¹³ However, whether a network is carried on an upper-level premium tier or an “add-on” package is not economically relevant if the penetration of those packages is similar. Comcast's Sports and Entertainment package is distributed as broadly, or more broadly, than many of the “premium” packages on which the beIN networks are carried by other MVPDs.¹¹⁴ Mr. Zarakas and Dr. Garcés

¹⁰⁹ Lerner Decl., ¶ 68.

¹¹⁰ Lerner Decl., ¶ 68; Zarakas/Garcés Decl., Attachment C.

¹¹¹ Lerner Decl., ¶ 72.

¹¹² Zarakas/Garcés Decl., ¶ 47.

¹¹³ Zarakas/Garcés Decl., ¶ 44.

¹¹⁴ According to the data provided by Mr. Zarakas and Dr. Garcés, Comcast carried the beIN networks at a higher penetration (23 percent) on its Sports and Entertainment package than Charter (12 percent), DISH (21 percent), AT&T (19 percent), and Cox (19 percent) carry or carried on their “premium” packages. Comcast's packaging differs from the packaging of other MVPDs in that other MVPDs generally do not have “add on” packages with as broad penetration as Comcast's Sports and Entertainment package. In particular, the “add on” packages of other MVPDs, as defined by Mr. Zarakas and Dr. Garcés, tend to be Spanish-language packages with very low penetration. Zarakas/Garcés Decl., Attachment C.

seem to confuse “add-on” packages with *a la carte* distribution, in which networks are distributed individually. They claim that, in contrast to “add-on” packages, networks distributed on “bundles of diverse channels” “can reach not only a dedicated fan base but also occasional sports viewers...”¹¹⁵ But Comcast’s “add-on” packages—including the Sports and Entertainment and Latino packages—are “bundles of diverse channels.”¹¹⁶ Distribution on these packages allows a network such as beIN to “reach not only a dedicated fan base but also occasional sports viewers”¹¹⁷ and, more specifically, occasional soccer viewers, just like premium packages on other MVPDs. Thus, the attempt by Mr. Zarakas and Dr. Garcés to draw a distinction between premium packages and “add-on” packages is economically unsound and factually misleading.

49. beIN and its experts also ignore the fact that many MVPDs do not carry the beIN networks *at all*, despite not being affiliated with networks that carry sports or soccer content.¹¹⁸ Moreover, they point to the fact that one online video distributor (“OVD”)—fuboTV—carries the beIN networks in a broadly distributed package,¹¹⁹ but ignore that most other OVDs *do not carry them at all*, including Sony PlayStation Vue, DIRECTV Now, YouTube TV, and Hulu Live (each of which, in comparison, do carry NBCSN and Universo).¹²⁰

B. Recent events confirm the limited value of the beIN networks

50. Limited subscriber losses after Comcast stopped carrying the beIN networks: Comcast stopped carrying the beIN networks on August 1, 2018. As part of its normal course of business, Comcast conducted further viewership analyses to estimate the number of subscribers that churned after discontinuing the carriage of the beIN networks. Data from its most recent analysis in January

¹¹⁵ Zarakas/Garcés Decl., ¶ 47.

¹¹⁶ Zarakas/Garcés Decl., ¶ 44.

¹¹⁷ Zarakas/Garcés Decl., ¶ 47.

¹¹⁸ Lerner Decl., ¶ 43.

¹¹⁹ Second Complaint, ¶ 129; Zarakas/Garcés Decl., ¶ 43.

¹²⁰ <https://www.playstation.com/en-us/network/vue/channels/>, accessed February 8, 2019; <https://www.directvnow.com/channels>, accessed February 8, 2019; <https://tv.youtube.com/welcome/>, accessed February 8, 2019; <https://www.hulu.com/live-tv>, accessed February 8, 2019.

2019 suggest that the effects of the drop largely ran their course by the end of December 2018. As Mr. Brayford states in his declaration, only approximately {{ }} subscribers (of the approximately [[]] million customers authorized to view the beIN networks) left Comcast or cancelled their video service as a result of beIN no longer being carried.¹²¹ This analysis confirms the relatively limited appeal of beIN’s niche programming to Comcast customers.

51. Further, these {{ }} customers accounted for a {{ }} annual loss in margin, compared to the approximately [[]] annual cost of carrying the beIN networks under the parties’ prior agreement. This amounts to a savings of approximately {{ }}, which confirms that Comcast was overpaying for and carrying the beIN networks at a loss. Further, when offset against the estimated [[

]] annual cost of beIN’s April 2017 Proposal, this amounts to a savings of approximately {{ }}. When compared against Comcast’s December 2017 Offer of [[]], it still amounts to a significant savings of {{ }}. These results support Comcast’s reasonable business judgment in its negotiations with beIN.¹²²

52. AT&T/DIRECTV stopped carrying the beIN networks: AT&T/DIRECTV also stopped its carriage of the beIN networks in August 2018.¹²³ According to Antonio Briceño, AT&T/DIRECTV sought to “keep beIN in higher more expensive tiers.”¹²⁴ AT&T/DIRECTV is the nation’s largest MVPD and competes directly with Comcast across its footprint. If AT&T/DIRECTV thought that Comcast would lose a lot of subscribers by ceasing carriage of the beIN networks, it would have incentives to continue to carry beIN in order to attract some of those subscribers. The fact that AT&T/DIRECTV dropped the beIN networks at a similar time as Comcast likewise suggests that the beIN networks are of limited value.

¹²¹ Brayford Decl., ¶ 51.

¹²² Brayford Decl., ¶ 51.

¹²³ “AT&T/DIRECTV Has Dropped beIN Sports,” BusinessWire, August 29, 2018, available at <https://www.businesswire.com/news/home/20180829005806/en/ATT-DIRECTV-Dropped-beIN-SPORTS>, accessed on January 12, 2019.

¹²⁴ “AT&T/DIRECTV Has Dropped beIN Sports,” BusinessWire, August 29, 2018, available at <https://www.businesswire.com/news/home/20180829005806/en/ATT-DIRECTV-Dropped-beIN-SPORTS>, accessed on January 12, 2019.

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53. Dish’s and Verizon’s decisions not to expand distribution of the networks: On August 2, 2018, Verizon announced that it, too, had stopped carrying the beIN networks, because “beIN Sports is demanding a significant rate increase for the same content they offer today.”¹²⁵ After a nine-day blackout, Verizon and beIN agreed to a new affiliation agreement; however, beIN gained no discernable distribution increase on Verizon systems under its new carriage deal.¹²⁶ Likewise, beIN reached a renewal agreement with Dish in September 2018, but Dish continues to carry the beIN networks only on premium and specialty tiers.¹²⁷ Dish’s and Verizon’s decisions not to expand distribution of the beIN networks at renewal are additional indicators of the relatively limited appeal and value of their niche programming.

¹²⁵ Kent Gibbons, “beIN Sports USA Channels Dropped From Fios,” Multichannel News, August 2, 2018, available at <https://www.multichannel.com/news/bein-sports-usa-channels-dropped-fios>, accessed February 7, 2019.

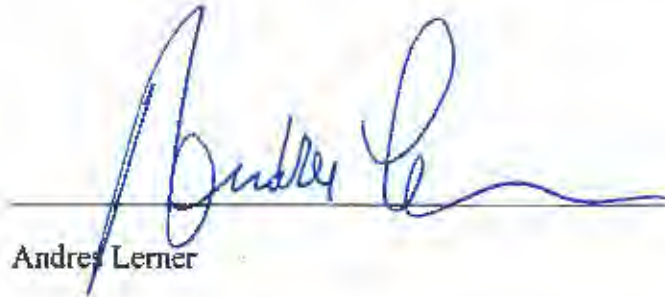
¹²⁶ See Comcast Answer to First Complaint, Exhibit 12, (May 14, 2018). The beIN networks remain on the same Verizon tiers. See “Verizon Fios Channel Lineup Tool,” Verizon, available at <https://www.verizon.com/info/channel-lineup/>, accessed February 8, 2019.

¹²⁷ “beIN SPORTS Reaches Long-Term Renewal Agreement with DISH, Sling TV,” BusinessWire, September 21, 2018, available at <https://www.businesswire.com/news/home/20180921005084/en/beIN-SPORTS-Reaches-Long-Term-Renewal-Agreement-DISH>, accessed February 7, 2019.

I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: Los Angeles, California

February 11, 2019



Andres Lerner

APPENDIX A

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**CONFIDENTIAL
DOCUMENT WITHHELD**

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ATTACHMENT A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
beIN SPORTS, LLC,)	
<i>Complainant,</i>)	
	)	MB Docket No. 18-90
vs.	)	File No. CSR-8954-P
)	
COMCAST CABLE)	
COMMUNICATIONS, LLC)	
And)	
COMCAST CORPORATION,)	
<i>Defendants.</i>)	
)	

DECLARATION OF ANDRES V. LERNER, PH.D.

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I. Introduction

A. Qualifications

1. I am an Executive Vice President at Compass Lexecon, an economics consulting firm. I received my bachelor's degree in Economics from the University of California at Berkeley and my master's and Ph.D. degrees in Economics at the University of California at Los Angeles. My areas of specialization include antitrust, industrial organization, regulation, and econometrics.

2. I have provided economic testimony in legal cases and regulatory proceedings in various forums, including the U.S. Federal Communications Commission ("FCC"), the Antitrust Division of the U.S. Department of Justice ("DOJ"), and the U.S. Federal Trade Commission ("FTC"). I have served as consultant for government agencies, including the FTC and DOJ. Before joining Compass Lexecon, I worked at two other economic consulting firms, Law and Economics Consulting Group ("LECG") and Economic Analysis LLC.

3. I have published scholarly articles in leading economic and legal journals, including the *American Economic Review*, the *Antitrust Law Journal*, and the *Antitrust Bulletin*. I also have co-edited a collection of seminal articles in antitrust economics. In addition, I have been named one of the foremost competition economists in *The International Who's Who of Competition Economists* each year since 2013. I also have been selected as one of the leading competition economists aged 45 and under by Who's Who Legal and Global Competition Review for the *Who's Who Legal: Competition – Future Leaders 2017* publication. I have taught Economics as a Visiting Professor at the University of Southern California Marshall School of Business. I am a member of the American Economics Association and the American Bar Association.

4. I have applied economic and econometric analysis to a wide range of issues, including various matters involving the MVPD sector, and the distribution of sports and non-sports

programming networks in particular. My *curriculum vitae*, including prior testimony and publications, is attached as Appendix A to this report.

B. Summary of claims

5. beIN Sports, LLC (“beIN”) claims that Comcast discriminated against the beIN Sports and beIN Sports en Español networks (collectively, the “beIN networks”) and in favor of Comcast-affiliated networks NBC Sports Network (“NBCSN”) and Universo “on the basis of affiliation . . . in the selection, terms and conditions for carriage of these vendors’ programming.”¹ According to beIN, the beIN networks are “similarly situated” to NBCSN and Universo.² beIN claims that Comcast’s December 13, 2017 offer to beIN containing renewal terms for carriage of the beIN networks is discriminatory because it would, among other things, ||

||³ Moreover, according to beIN, Comcast’s offer is discriminatory because “the license fees contained therein are lower than the price Comcast pays to its affiliates for similarly situated programming.”⁴ beIN alleges that Comcast’s offer would “unreasonably restrain beIN’s ability to compete fairly.”⁵

C. Assignment

6. I have been asked by counsel for Comcast Corporation on behalf of its subsidiary, Comcast Cable Communications, LLC (together with Comcast Corporation, “Comcast”) to assess,

¹ Complaint, ¶ 10.

² Complaint, ¶ 4.

³ Complaint, ¶ 3.

⁴ Complaint, ¶ 3.

⁵ Complaint, ¶¶ 96-99.

from an economic perspective, the claims made by beIN Sports in its carriage complaint (“Complaint”) against Comcast. I understand that, in order to establish that defendant Comcast has engaged in discriminatory conduct in violation of Section 616 of the Communications Act of 1934 (as amended) and the program carriage rules, beIN must demonstrate that:

- a) beIN Sports and beIN Sports en Español are “similarly situated” to Comcast-affiliated networks NBCSN and Universo;⁶
- b) Comcast’s conduct with respect to carriage of beIN Sports and beIN Sports en Español discriminated against these networks “on the basis of affiliation . . . in the selection, terms, or conditions for carriage of video programming”;⁷ and
- c) The effect of the challenged conduct is to “unreasonably restrain the ability” of beIN Sports and beIN Sports en Español “to compete fairly.”⁸

7. It is important at the outset to identify the conduct that beIN alleges as discriminatory and in violation of the Commission’s program carriage rules. beIN seems to allege that the discriminatory conduct by Comcast is the December 13, 2017 carriage agreement offer from Comcast to beIN Sports, LLC (“Comcast offer”).⁹ It also seems to claim that Comcast’s rejection of beIN’s earlier initial offer constitutes discriminatory conduct.¹⁰ However, a contract offer is distinct from a carriage decision, a carriage agreement, or even a refusal to enter into an agreement, as parties make offers as part of the normal negotiations process when negotiating contract terms.

⁶ 47 U.S.C. § 536(a)(3); 47 C.F.R. § 76.1301(c).

⁷ 47 U.S.C. § 536(a)(3); 47 C.F.R. § 76.1301(c).

⁸ 47 U.S.C. § 536(a)(3); 47 C.F.R. § 76.1301(c).

⁹ Complaint, ¶ 3.

¹⁰ Complaint, ¶ 3.

D. Summary of conclusions

8. Based on my analysis of the available information and my review of the Complaint, I reach the following conclusions:

- a) beIN fails to show that the beIN networks are “similarly situated” to NBCSN and Universo.
 - i. beIN focuses on the fact that all four networks carry sports content, and international soccer programming in particular. But such superficial comparisons do not inform the question of whether the networks are “similarly situated.” The beIN networks differ from NBCSN and Universo with respect to fundamental economic characteristics, including the type of programming carried and the nature of viewership and demand for the networks.
 - ii. The beIN networks offer niche programming focused on international soccer. In contrast, NBCSN and Universo offer a wide variety of programming, and soccer accounts for a small fraction of their overall programming. In fact, Universo is not even a sports network, but features a wide array of Spanish-language non-sports programming, including scripted series, reality series, game shows, movies, and music. These genres account for the vast majority of content carried by Universo.
 - iii. Consistent with the niche nature of their programming, the beIN networks appeal to a relatively narrow viewer audience. The average viewing audience of NBCSN, for instance, was more than ten times the average viewing audience of beIN Sports in 2017, indicating that NBCSN appeals to a much wider audience than the niche soccer programming offered by beIN Sports.

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- iv. beIN’s claim that the networks are “similarly situated” is further undermined by the fact that MVPDs other than Comcast distribute those networks to greater percentages of their subscribers than they carry the beIN networks.
 - v. There also is no evidence of meaningful competition between the beIN networks and either NBCSN or Universo for viewers or advertisers, which also indicates that the beIN networks are not “similarly situated” to NBCSN and Universo from an economic perspective.
- b) beIN fails to show that Comcast discriminated against the beIN networks in favor of NBCSN and Universo.
- i. The economic evidence indicates that Comcast’s carriage of the beIN networks is consistent with sound business judgment independent of any consideration of network affiliation.
 - ii. Comcast’s decision to carry the beIN networks in specialty tiers is economically rational given their niche nature and limited viewer appeal. The fact that most other MVPDs also distribute the beIN networks on “upper-level” premium and specialty tiers (such as a sports or Latino tier), and to a similar percentage of subscribers as does Comcast, negates any reasonable inference of affiliation-based discrimination.
 - iii. Many MVPDs do not carry the beIN networks *at all*, despite not being affiliated with networks that carry sports or soccer content. Similarly, most online video distributors (“OVDs”) do not carry the beIN networks, including Sony PlayStation Vue, DIRECTV Now, YouTube TV, and Hulu Live, but do carry NBCSN and Universo.

c) beIN fails to show that the challenged conduct unreasonably restrained the ability of the beIN networks to compete fairly.

- i. The video distribution marketplace is highly competitive. Subscribers today have a multitude of options for receiving video programming, including cable, DBS, overbuilders, and increasingly OVD services. The significant growth of “virtual MVPDs” in recent years, which offer subscription video services that deliver packages comprised of channels showing “linear” (i.e., scheduled) programming much like “traditional” MVPDs, has given programmers such as beIN additional options through which to distribute their programming.
- ii. beIN offers no evidence to support its assertion that the challenged conduct unreasonably restrained the ability of the beIN networks to compete fairly for viewers or advertisers.

II. The beIN Networks Are Not “Similarly Situated” to NBCSN and Universo from an Economics Perspective

A. The “similarly situated” standard from an economics perspective

9. I understand that demonstrating that Comcast has engaged in discriminatory conduct against the beIN networks requires beIN to establish that the beIN networks are “similarly situated” to NBCSN and Universo. From an economics perspective, the “similarly situated” criterion has two primary components. The first component is whether the networks have similar fundamental economic characteristics—in terms of the content offered, the nature and breadth of consumer appeal, and the value of the programming to subscribers and MVPDs—such that MVPDs unaffiliated with the networks would be expected to carry the networks similarly. Important to this component is whether marketplace evidence shows that unaffiliated MVPDs do,

in fact, carry the networks similarly in terms of the type of packages on which the networks are offered and the overall penetration of the networks. Evidence that unaffiliated MVPDs carry them markedly differently provides a strong indication that the MVPDs themselves do not view the networks as being “similarly situated.”

10. The second component of the “similarly situated” prong is whether the networks compete in a significant way for viewers and advertisers. If there is not significant substitution by viewers and advertisers between the networks, and therefore no significant competition, the vertically-integrated MVPD would have no incentive to engage in discrimination against the unaffiliated network. As a matter of economics, both components—(1) whether the networks have similar fundamental economic characteristics and (2) whether the networks compete in a significant way for viewers and advertisers—are necessary for two networks to be “similarly situated.”

11. beIN claims that the relevant test is not whether the *networks* are “similarly situated.”¹¹ Rather, beIN states that “the relevant question . . . is whether a vendor’s *programming* is similarly situated to *programming* offered by an MVPD-affiliated vendor.”¹² The claim that the “similarly situated” standard applies to specific programming rather than the overall networks makes no sense as a matter of economics. What determines whether MVPDs unaffiliated with the networks would carry the networks similarly is not a comparison of specific programming, but the overall programming offered by the networks as well as the nature and breadth of demand by subscribers for the overall networks. Take, for example, a broad-interest network that carries a

¹¹ Complaint, ¶ 4.

¹² Complaint, ¶ 4.

small amount of programming of a particular genre or subgenre (e.g., sports, game shows, documentaries). Another may be a niche network that carries only that type of programming. There is no economic basis to expect that unaffiliated MVPDs would carry these networks similarly, based solely on the fact that there is some overlap in the type of programming offered. Rather, the fundamental economics of (and value from) distributing these networks may differ considerably, despite the limited amount of overlap in the content carried. Distribution decisions by MVPDs and other distributors are made with respect to the overall bundle of programming content offered by the network, not with respect to specific programming. Thus, a “similarly situated” standard applied to specific programming offered by the networks would be uninformative and misleading.

12. As I discuss further below, beIN offers no reasonable evidence that the beIN networks have similar fundamental economic characteristics as NBCSN and Universo, such that MVPDs unaffiliated with these networks would be expected to carry them similarly. Nor does beIN make any attempt to show that MVPDs other than Comcast do tend to carry the beIN networks and either NBCSN or Universo in a similar manner. In fact, the available evidence indicates just the opposite—that other MVPDs tend to distribute NBCSN and Universo much more broadly than the beIN networks. beIN also offers no credible economic evidence of competition between the beIN networks and either NBCSN or Universo. Marketplace evidence again indicates the opposite.

B. The beIN networks differ from NBCSN and Universo with respect to fundamental economic characteristics

13. beIN claims that the “sports programming of beIN is similarly situated to the sports programming provided by two programming vendors affiliated with Comcast, [NBCSN] and NBC

Universo.”¹³ beIN focuses on the fact that all four networks carry sports programming, and international soccer programming in particular, stating that the “programming belongs not only to the same genre—sports—but much of it also belongs to the same subgenre—soccer.”¹⁴ beIN further states that “[a]ll four networks provide extensive coverage of soccer games featuring major European leagues and high profile international tournaments.”¹⁵

14. As I explain in this section, beIN’s claim that the beIN networks are “similarly situated” to NBCSN and Universo because they are sports networks that carry international soccer programming is wholly deficient and misleading. The beIN networks differ significantly from both NBCSN and Universo in their programming content, and in the nature and breadth of viewership and demand for their networks. The beIN networks are niche networks dedicated to international (primarily continental European) soccer leagues, while NBCSN is a multi-sports network that has broad viewer appeal, and Universo is not even a sports network.

1. The beIN networks offer niche content focused on international soccer, whereas NBCSN and Universo offer a wide variety of programming, a small share of which is soccer

15. The beIN networks: The beIN networks are niche networks dedicated to international soccer and, more specifically, European soccer leagues. As beIN describes in its Complaint, “beIN is a sports programming network that primarily distributes top-flight European soccer, including games of the Spanish La Liga, French Ligue 1 and Italian Serie A as well as FIFA World Cup Qualifiers.”¹⁶ The beIN networks are essentially single-sport networks, with

¹³ Complaint, ¶ 4.

¹⁴ Complaint, ¶ 5.

¹⁵ Complaint, ¶ 60.

¹⁶ Complaint, ¶ 21.

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soccer making up a very large share of programming. As Table 1 below shows, in 2017, soccer programming accounted for 55.1 percent and 72.3 percent of all programming minutes on beIN Sports and beIN Sports en Español, respectively.^{17, 18} For beIN Sports en Español, no other sport made up a substantial share of programming, while for beIN Sports, only tennis makes up more than 10 percent (12.5 percent of programming minutes). Neither beIN Sports nor beIN Sports en Español carried a material amount of non-sports programming.¹⁹

¹⁷ Source: Gracenote program scheduling data. Data is collected by Gracenote, a third-party company owned by Nielsen that provides programming schedules and content for each network, including the program title and the duration of the television program. Gracenote includes a genre and sub-genre categorization for each program. The genres in the above analysis are based on the categorization assigned by Gracenote. For programming content where Gracenote did not include a classification, which made up a small share of programming, the television programming was manually categorized where possible. Total program duration on each network is used to calculate the share of programming minutes on each network during 2017. Sports Programming includes Sports Events, Sports Non-Events, and Sports Talk. The “Auto” category includes the sub-genres “auto” and “auto racing.”

¹⁸ Similarly, in the first two months of 2018, soccer programming accounted for 57.6 percent and 75.5 percent of all programming minutes on beIN Sports and beIN Sports en Español, respectively.

¹⁹ As I discuss below, of the small share of non-sports programming carried by beIN Sports and beIN Sports en Español, essentially all is categorized as “shopping” and “consumer,” which is generally paid programming and infomercials that likely fill in available slots with low viewership.

Table 1: Share of Programming Minutes by Genre/Sub-Genre (2017)²⁰

	beIN Sports	beIN Sports en Español	NBCSN	Universon
Sports Programming	88.6%	85.9%	81.3%	11.8%
Soccer	55.1%	72.3%	9.9%	5.5%
Tennis	12.5%	1.7%	0.1%	0.0%
Motorcycle racing	5.6%	2.2%	1.2%	0.0%
Football	0.5%	2.1%	6.1%	0.2%
Auto	2.1%	0.0%	21.3%	0.0%
Hockey	0.0%	0.0%	8.7%	0.0%
Pro wrestling	0.0%	0.0%	0.0%	5.8%
Other	12.6%	7.6%	34.2%	0.3%
Non-Sports Programming	11.4%	14.1%	18.7%	88.2%
Consumer	8.6%	1.4%	14.1%	0.0%
Shopping	2.7%	12.6%	0.9%	0.0%
Travel	0.1%	0.0%	0.0%	0.0%
Special	0.0%	0.1%	0.5%	0.2%
Religious	0.0%	0.0%	0.0%	0.7%
Reality	0.0%	0.0%	2.7%	38.0%
Entertainment	0.0%	0.0%	0.4%	5.6%
Documentary	0.0%	0.0%	0.0%	18.9%
Game show	0.0%	0.0%	0.0%	12.1%
Drama	0.0%	0.0%	0.0%	5.1%
Soap	0.0%	0.0%	0.0%	2.8%
History	0.0%	0.0%	0.0%	1.5%
Spanish	0.0%	0.0%	0.0%	1.4%
Other	0.0%	0.0%	0.0%	1.7%
All Programming	100.0%	100.0%	100.0%	100.0%

Source: Gracenote program scheduling data.

16. NBCSN: In contrast to the beIN networks, NBCSN is a multi-sport, general interest network. NBCSN carries a wide variety of sports content, including the National Hockey League

²⁰ Table 1 shows all sports programming with greater than 5 percent of programming minutes for any of the four networks. “Other” sports programming for NBCSN includes bicycle racing, outdoor sports, card games, poker, rugby, curling, fishing, skiing, basketball, track and field, and horse racing, which together account for approximately 20 percent of programming minutes. Over 30 additional sports comprise the rest of the sports programming for NBCSN.

(NHL), Winter and Summer Olympic games, motor sports (e.g., NASCAR), rugby, cycling (e.g., the Tour de France), skiing, curling, horse racing, boxing, college football, and other college sports. Due to the variety and nature of the programming, NBCSN has broad viewer appeal. Sports content carried by NBCSN such as Olympics telecasts, NHL game telecasts, and NASCAR race telecasts enjoy broad appeal among U.S. viewers. For example, a single NASCAR Cup Series race telecast in 2017 attracted more than [] million viewers on NBCSN.²¹ In contrast, content carried by the beIN networks has much more narrow appeal—the single telecast that attracted the largest audience on the beIN Sports in 2017 was a Spanish League (La Liga) match with an audience of about [] viewers.²² Even with respect to soccer, I understand that the English Premier League soccer matches carried by NBCSN have the broadest appeal to U.S. viewers among all the European soccer leagues matches.²³

17. beIN acknowledges that NBCSN offers a wide variety of sports programming, describing the network as a “national sports cable network that carries basketball, professional and college American football, soccer, hockey, motor sports, and golf among many other sports events.”²⁴ Despite this recognition, beIN claims that its networks are “similarly situated” to NBCSN because they both carry international soccer games. However, soccer programming accounts for a relatively small share of content carried by NBCSN. As Table 1 above indicates, soccer accounted for less than 10 percent of programming minutes on NBCSN (compared to 55.1

²¹ Source: Nielsen ratings data. Nielsen ratings based on the persons 2+, total day, live + 3 day linear/VOD viewership.

²² Source: Nielsen ratings data. Nielsen ratings based on the persons 2+, total day, live + 3 day linear/VOD viewership.

²³ See, e.g., Georgios Nalbantis and Tim Pawlowski. (2016) “The Demand for International Football Telecasts in the United States.”

²⁴ Complaint, ¶ 29.

percent and 72.3 percent for beIN Sports and beIN Sports en Español, respectively). Auto racing (including NASCAR) made up a much greater share of programming minutes (21.3 percent) than did soccer programming. NBCSN carries many other sports, including hockey, bicycle racing, outdoor sports, card games, poker, rugby, curling, fishing, skiing, basketball, track and field, horse racing, and over 30 additional sports. These other sports made up over 50 percent of NBCSN's programming minutes.

18. Universo: Universo is not a sports programming network, but rather a network that carries diverse programming that appeals to Spanish-language audiences. Soccer accounted for a small share of programming on Universo, in contrast to the beIN networks. As Table 1 above indicates, soccer programming accounted for only 5.5 percent of all programming minutes in 2017.²⁵

19. Universo features a wide array of *non-sports* programming, including scripted series, reality series, documentaries, movies, and music programming. Non-sports content accounted for the vast majority of Universo's programming. As illustrated in Figure 1 below, various non-sports programming genres made up the vast majority (88.2 percent) of Universo's programming, including reality, documentary, game shows, entertainment, drama, and other content.²⁶

20. In contrast, only 14.1 percent of the programming on beIN Sports en Español was non-sports programming.²⁷ beIN Sports en Español carries none of the non-sports genres that

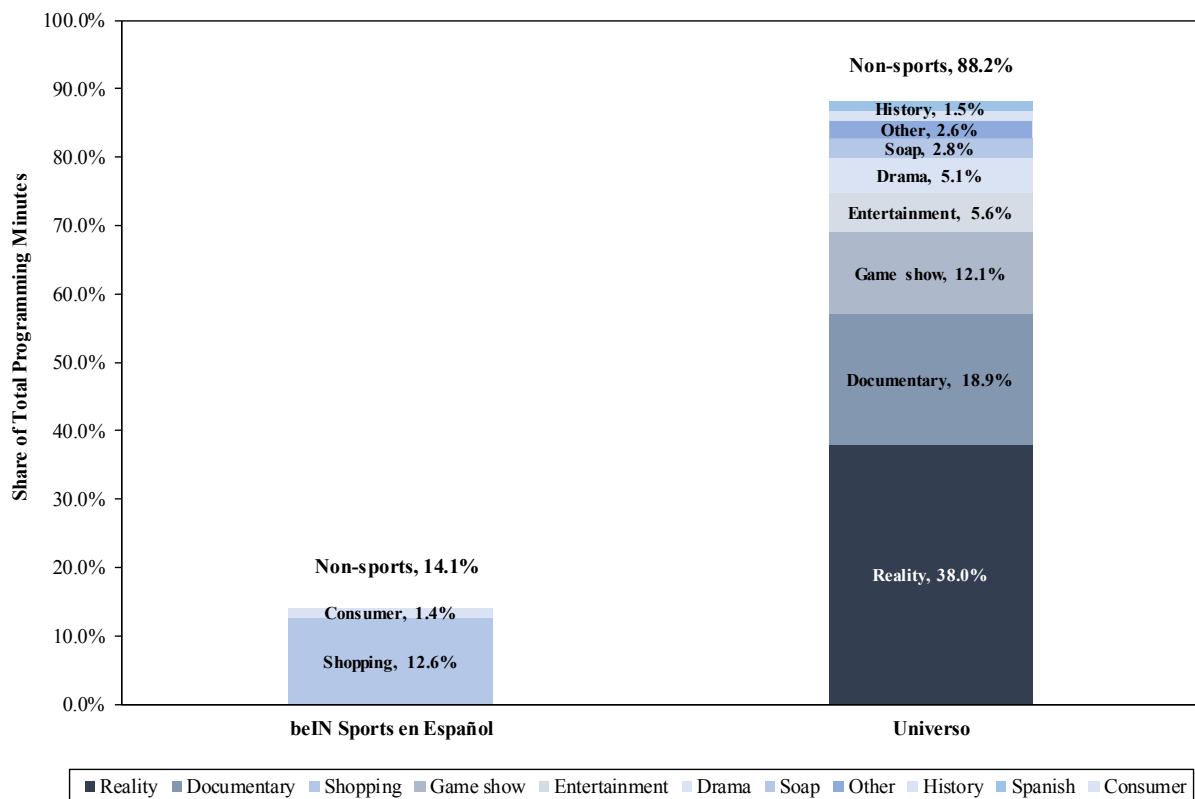
²⁵ In the first two months of 2018, soccer programming accounted for an even lower share—4.4 percent—of Universo programming minutes.

²⁶ In the first two months of 2018, these non-sports genres accounted for 89.1 percent of Universo's programming.

²⁷ In the first two months of 2018, non-sports programming accounted for 17.2 percent of the programming carried by beIN Sports en Español.

make up the vast majority of Universo’s programming—for instance, beIN Sports en Español did not carry any reality series, documentaries, and game shows, which alone account for roughly 70 percent of the content carried by Universo. Indeed, of the small share of non-sports programming carried by beIN Sports en Español, essentially all is categorized as “shopping” and “consumer,” which is generally paid programming and infomercials (e.g., “3 in 1 Tool-Best lawn tool ever!”) that likely fill in available slots with low viewership. This evidence of the lack of any material overlap in the type of programming carried by the networks clearly shows that Universo and beIN Sports en Español are not “similarly situated.”

Figure 1: Non-Sports Programming on beIN Sports en Español Versus Universo (2017)



Source: Gracenote program scheduling data

21. beIN recognizes that Universo is not a sports network, in contrast to both beIN Sports and beIN Sports en Español. For instance, beIN states that “beIN is a sports network, and

so is [NBCSN]; as for NBC Universo, its programming consists mostly of sports, scripted and reality series, and music programming, with an increasing emphasis on soccer.”²⁸ beIN nevertheless claims that its networks are similarly situated to Universo because “Universo has been increasing its live soccer content.”²⁹ However, despite modest increases, soccer programming still makes up a very small share of programming for Universo, as described above.

22. In sum, as shown in Figure 2 below, soccer-related content accounts for the vast majority of programming on beIN Sports and beIN Sports en Español (55.1 percent and 72.3 percent, respectively), but only a small share of total programming on NBCSN and Universo (9.9 percent and 5.5 percent, respectively).³⁰

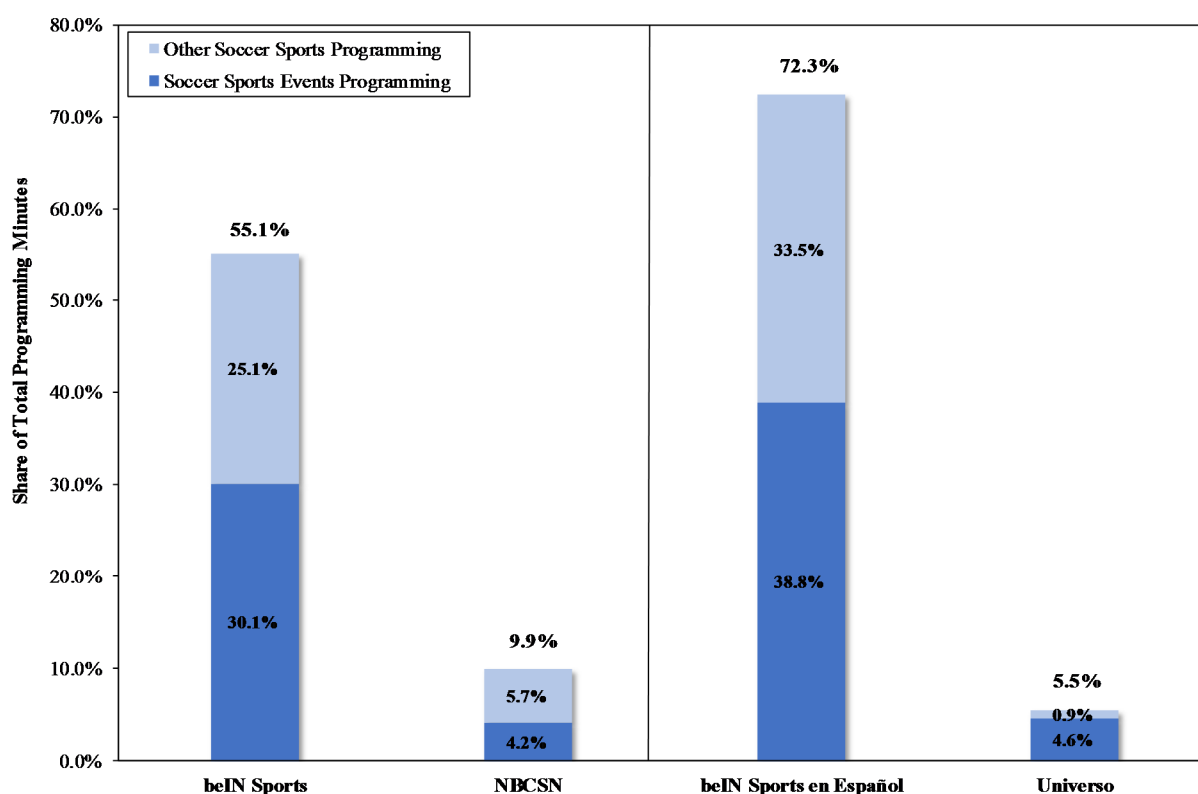
²⁸ Complaint, ¶ 4.

²⁹ Complaint, ¶ 30. See also Complaint, ¶ 63: ||

||

³⁰ Source: Gracenote program scheduling data. Soccer Sports Programming includes Sports Events, Sports Non-Events, and Sports Talk programming.

Figure 2: Soccer Programming Minutes as a Share of Total Programming Minutes (2017)



Source: Gracenote program scheduling data.

23. The significant divergence between the networks in terms of their focus on soccer is also evident when analyzing viewership of the networks. For instance, NBCSN viewers watch soccer programming far less than beIN Sports viewers. As Figure 3 shows, soccer-related programming made up [] percent of beIN Sports' viewership, but only [] percent of NBCSN's viewership.³¹ Similarly, soccer-related programming made up [] percent of the viewership of beIN Sports en Español, but only [] percent of Universo viewership.

³¹ Source: Nielsen ratings data. Viewership calculated as the number of telecasts of each program, times the average viewership of the program. Soccer-related programming includes soccer-related sports events, sports commentary, and sports anthology programming based on program types classified by Nielsen. Nielsen ratings based on the persons 2+, total day, live + 3 day linear/VOD viewership.

Figure 3: Soccer Programming Viewership by Network (2017)

[[

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24. This conclusion regarding the fundamentally distinct programming of the beIN networks and NBCSN and Universo is reinforced by the estimates beIN provides in its Complaint. beIN focuses on live soccer programming, rather than all soccer programming. But even accepting that live programming is the appropriate measure, beIN's estimates show that [[

]].³² And, these

estimates understate the divergence between the beIN networks and NBCSN and Universo in the

³² Complaint, ¶ 63.

type of programming carried because most of the other programming carried by beIN Sports and beIN Sports en Español also is soccer-related, as discussed above.

25. Despite the significant focus of the beIN networks on international soccer programming, and the diverse content offered on both NBCSN and Universo, beIN claims that these networks are similarly situated because they all carry some amount of international soccer programming. Such a claim makes no economic sense. According to beIN’s argument, any network carrying international soccer programming would be “similarly situated” to the beIN networks, irrespective of the share of programming made up by soccer programming, the nature of other content carried by the networks, or the viewership profile of the networks (e.g., the target demographics and/or breadth of appeal). All of these factors, and not just some modest overlap in programming, must be considered in determining whether networks are “similarly situated.”

2. The beIN networks appeal to a relatively narrow viewer audience, whereas NBCSN and Universo offer content with broader appeal

26. Due to the fundamentally distinct nature of the programming carried by the beIN networks compared to NBCSN and Universo, the nature and breadth of demand for the networks also varies considerably.

27. The beIN networks appeal to a small share of subscribers, as reflected in the ratings data for the networks. The average viewing audience ratings for beIN Sports in 2017 was || || percent.³³ In contrast, the average viewing audience for NBCSN was || || percent, more than

³³ Source: Nielsen ratings data. Nielsen ratings based on the persons 2+, total day, live + SD linear/VOD viewership.

10 times higher.³⁴ These ratings data confirm that NBCSN appeals to a much wider audience than the niche soccer programming offered by beIN Sports.³⁵ While there is some interest among U.S. viewers in telecasts of European soccer leagues matches, that interest is confined to a relatively narrow subset of viewers.

28. Despite these fundamental differences in the viewership profiles between the beIN networks and NBCSN and Universo, beIN claims that the networks have “comparable ratings.” Specifically, beIN claims that ||

||³⁶ However, beIN’s claim is based on a flawed comparison of ratings. beIN compares ratings between the beIN networks and NBCSN/Universo using *coverage area* Nielsen ratings.³⁷ Coverage area ratings measure network viewership based on the universe of viewers or households that actually receive the network.³⁸ Comparing the viewership of networks based on coverage area ratings is inappropriate and misleading.³⁹ In fact, Nielsen Media (the source of the ratings data) has a specific warning precisely against this type of comparison:

³⁴ Source: Nielsen ratings data. Nielsen ratings data based on persons 2+, total day, live + SD linear/VOD viewership.

³⁵ This significant disparity in the average viewing audience between NBCSN and beIN Sports cannot be due to the difference in penetration between the networks. Similar disparity in average viewer audience between the NBCSN and beIN Sports exists when one excludes Comcast.

³⁶ Complaint, ¶ 7. See also, Complaint, ¶ 67.

³⁷ Complaint, ¶ 7.

³⁸ See Nielsen Media Glossary, <http://www.nielsenmedia.com/glossary/>, accessed on May 10, 2018.

³⁹ In addition, beIN discusses viewership for six soccer match telecasts: ||

] Complaint, ¶ 8. These

The Coverage Area Rating for one cable network cannot be compared to another cable network's coverage area rating or a broadcast network rating. Only total U.S. Ratings or audience projections (estimated number of households or persons) can be compared between/among networks.⁴⁰

29. The beIN networks are distributed by Comcast and other MVPDs to a narrower population of subscribers—those who purchase the Sports and Entertainment and Latino packages—who are more likely to watch the beIN networks than the overall population of viewers. In contrast, NBCSN and Universo are distributed to a larger population of households (both by Comcast and other MVPDs, as discussed below) because they have a broader array of programming to attract a broader range of viewers. Thus, beIN's claims based on coverage ratings essentially compare viewership in a vastly different population of viewers.

30. To see the problem with coverage area comparison across networks, consider the total day Nielsen ratings for the persons 2+ demographic for viewership in 2017. For this viewership period and viewer demographic, the coverage area ratings were [] percent for beIN Sports and [] percent for NBCSN.⁴¹ However, the average number of viewers (persons 2+ demographic) during the period were about [] for beIN and [] for NBCSN. These numbers show that NBCSN on average had about 12 times as many viewers as beIN Sports. Such disparity in viewership hardly qualifies as having “comparable ratings.”

31. The implicit assumption in beIN's “comparable ratings” claim based on coverage ratings is that distributing beIN Sports and beIN Sports en Español to a broader population of

comparisons appear to have been cherry-picked and thus do not provide a relevant basis for comparison of viewership across networks.

⁴⁰ See Nielsen Media Glossary, <http://www.nielsenmedia.com/glossary/>, accessed on May 10, 2018.

⁴¹ Source: Nielsen ratings data. Nielsen ratings data based on persons 2+, total day, live + SD linear/VOD viewership.

households would result in beIN Sports and beIN Sports en Español attracting the same percentage of viewers as under the current distribution of the networks. But there is no plausible basis for this assumption. The current distribution of the beIN networks is targeted at the viewer populations that are more likely to view them. For example, Comcast distributes beIN Sports en Español on the H tier (Latino Package), which is more likely to have soccer fans than the overall population. It is implausible that distributing beIN Sports en Español on more highly penetrated tiers would attract the *same* percentage of viewers as the network does on the Latino Package.

3. The fact that unaffiliated MVPDs carry the beIN networks very differently than NBCSN and Universo demonstrates that they are not “similarly situated”

32. Consistent with the fact that the beIN networks are fundamentally different in terms of their content and the viewership profile from NBCSN and Universo, MVPDs unaffiliated with these networks carry them very differently. Figure 4 below shows the carriage of the four networks by MVPDs other than Comcast.⁴² As the figure indicates, MVPDs other than Comcast, on average, carry NBCSN and Universo to a much higher percentage of their subscribers compared to the beIN networks. In particular, the penetration of beIN Sports by other MVPDs is || || percent; in contrast, other MVPDs distribute NBCSN to more than three times that share—to || || percent

⁴² Source: Kagan, U.S. Multichannel Industry Benchmark; Kagan, Operating Metrics; Kagan, TV Network Summary; Comcast internal subscriber counts; Jeff Baumgartner, *Virtual MVPDs Ended 2017 with 5.3M Subs: Study*, Multichannel News, February 12, 2018. Subscribers to the beIN networks, NBCSN, and Universo on other MVPDs are calculated by subtracting (1) network subscribers on Comcast from (2) total network subscribers. Similarly, total subscribers of other MVPDs are calculated by subtracting (1) Comcast subscribers from (2) total MVPD subscribers, which include both traditional MVPD and virtual MVPD subscribers. Comcast subscribers for each network are based on December 2017 counts; total traditional MVPD subscribers are based on 2017; virtual MVPD subscribers are based on year-end 2017.

of subscribers. Similarly, the penetration of beIN Sports en Español by other MVPDs is [] percent; in contrast, other MVPDs distribute Universo to [] percent of subscribers.⁴³

Figure 4: Carriage of the Networks by Other MVPDs (2017)

[]

33. This evidence suggests that unaffiliated MVPDs find it optimal to distribute NBCSN and Universo much more broadly than the beIN networks. The differences in how unaffiliated MVPDs carry the networks indicate that MVPDs do not view the beIN networks as being “similarly situated” to NBCSN and Universo.

⁴³ Based on Kagan data and Comcast internal subscriber counts. According to Nielsen data, the penetration of the beIN networks by other MVPDs is even lower: [] percent for beIN Sports and [] percent for beIN Sports en Español. According to the Nielsen data, the penetration of NBCSN is [] percent and the penetration of Universo is [] percent. Source: Nielsen ratings data. Nielsen ratings on persons 2+, total day, live + SD linear/VOD viewership.

34. The evidence also shows that Comcast’s carriage of the beIN networks is comparable to that of other MVPDs on average, as shown in Figure 5 below.⁴⁴ Comcast carries the beIN networks to [] percent of its subscribers, based on its commitment to [] million subscribers. Data from Kagan indicates that other MVPDs distribute beIN Sports and beIN Sports en Español to [] and [] percent of subscribers, respectively.⁴⁵ This shows that other MVPDs likewise find it optimal to distribute beIN’s niche soccer programming less broadly, to more select audiences, and reinforces the fact that the beIN networks are not “similarly situated” to NBCSN and Universo. Importantly, beIN’s demand that Comcast distribute the beIN networks to at least [] percent of subscribers is wholly at odds with the marketplace evidence that other MVPDs, on average, distribute the beIN networks to a much lower share of subscribers.⁴⁶

⁴⁴ Source: Kagan, U.S. Multichannel Industry Benchmark; Kagan, Operating Metrics; Kagan, TV Network Summary; Comcast internal subscriber counts; Brayford Declaration, ¶ 20; Jeff Baumgartner, *Virtual MVPDs Ended 2017 with 5.3M Subs: Study*, Multichannel News, February 12, 2018. The network coverage share for the beIN networks on Comcast is based on Comcast’s [] million subscriber commitment. beIN’s demand from Comcast is based on the initial demand for distribution to [] percent of Comcast subscribers and the subsequent demand for carriage on Comcast’s [] tier, which is distributed to approximately [] million subscribers. Subscribers to the beIN networks on other MVPDs are calculated by subtracting (1) network subscribers on Comcast from (2) total network subscribers. Similarly, total subscribers of other MVPDs are calculated by subtracting (1) Comcast subscribers from (2) total MVPD subscribers, which include both traditional MVPD and virtual MVPD subscribers. Comcast subscribers for each network are based on December 2017 counts; total traditional MVPD subscribers are based on 2017; virtual MVPD subscribers are based on year-end 2017.

⁴⁵ The combined coverage of beIN Sports and beIN Sports en Español by other MVPDs is not available from public sources.

⁴⁶ Complaint, ¶ 51. beIN subsequently demanded that Comcast carry beIN Sports even more broadly—on Comcast’s [] tier, which is distributed to approximately [] million subscribers (over [] percent of subscribers), and that Comcast distribute beIN Sports en Español on []

[] beIN Sports Renewal Proposal, February 2, 2018; Brayford Declaration, ¶ 34.

Figure 5: Carriage of the beIN Networks by Comcast and Other MVPDs (2017)
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C. NBCSN and Universo do not compete materially with the beIN networks

35. As I discuss above, the second component of the “similarly situated” standard from an economic perspective is whether the networks compete in a significant way for viewers or advertisers. If the networks do not compete in a significant way, Comcast would have no incentive to discriminate against the beIN networks.

1. beIN provides no reliable evidence of competition for viewers

36. beIN provides no sound economic evidence that the beIN networks compete with NBCSN and Universo for viewers.

37. Programming content: beIN claims that the networks compete for viewers because they have the “same target programming (primarily soccer, as well as other sports common to the three, such as college basketball, motor sports, rugby, boxing and mixed martial arts); and comparable ratings.”⁴⁷ However, the fact that there is some overlap in the type of programming offered does not indicate the existence of material competition. Superficial similarity along some dimensions of network attributes, including limited overlap in the type of content, is not evidence of substitution. The significant differences between the programming carried by the beIN networks and the programming carried by NBCSN and Universo suggest that most viewers are unlikely to view these networks as close substitutes and, therefore, indicate an absence of significant competition between the beIN networks and either NBCSN or Universo.

38. Target audience: beIN also claims that “the programming of the four networks has the same target audience (sports fans in general, soccer fans in particular).”⁴⁸ However, beIN offers no evidence in support of this claim. On the contrary, the claim is inconsistent with the fact that viewer audiences for the beIN networks are largely distinct from the viewer audiences of both NBCSN and Universo. For instance, compared to NBCSN, a much larger share of the audience of the beIN networks is Latino. In particular, [] percent of beIN Sports viewership and [] percent of beIN Sports en Español viewership is Latino; in contrast, only [] percent

⁴⁷ Complaint, ¶ 6.

⁴⁸ Complaint, ¶ 6.

of NBCSN viewership is Latino (based on Hispanic head of household).⁴⁹ The beIN networks also appeal to younger households living in more urban counties compared to NBCSN.⁵⁰

39. Viewer demographics for Universo also differ substantially from those of the beIN networks. Although about half of Universo’s viewership is female ([] percent), the viewership of the beIN networks skews heavily male, with only [] percent female viewers for beIN Sports en Español and [] percent for beIN Sports.⁵¹

40. Audience overlap: The lack of substitution between the networks also is indicated by the limited degree of viewer audience overlap between the beIN networks and both NBCSN and Universo. A small viewer audience overlap shows that the networks primarily reach distinct sets of viewers, and further suggests that viewers overall do not perceive the two networks as close economic substitutes. For starters, the limited degree of viewer audience overlap between the beIN networks and NBCSN is apparent from beIN’s own marketing information—according to beIN, “70% of La Liga viewers on beIN’s English-language channel do not watch Premier League on NBC Sports Network.”⁵²

41. Analysis of Nielsen audience duplication data likewise shows that there is limited viewer audience overlap between the beIN networks and either NBCSN or Universo. For instance, only [] percent of NBCSN viewers also viewed beIN Sports, and only [] percent of

⁴⁹ Source: Nielsen ratings data. Nielsen ratings based on total day, live + 3 day linear/VOD viewership.

⁵⁰ Source: Nielsen ratings data. Nielsen ratings based on total day, live + 3 day linear/VOD viewership. Persons 55 or older accounted for [] percent of viewership on NBCSN, but only [] percent of viewership on beIN Sports and [] percent of viewership on beIN Sports en Español. Households that reside in A-counties (more urban counties) accounted for [] percent of viewership on NBCSN, but [] percent of viewership on beIN Sports and [] percent of viewership on beIN Sports en Español.

⁵¹ Source: Nielsen ratings data. Nielsen ratings based on total day, live + 3 day linear/VOD viewership.

⁵² See beIN website, <http://adsalesus.beinsports.com/research>, accessed on April 26, 2018.

NBCSN viewers also viewed beIN Sports en Español.⁵³ The lack of material viewer overlap between NBCSN and the beIN networks shows that the beIN networks are not materially substitutable from the perspective of NBCSN viewers, which indicates that Comcast lacks economic incentives to discriminate against the beIN networks in favor of NBCSN.

42. Similarly, only [] percent of Universo viewers also viewed beIN Sports.⁵⁴ While [] percent of Universo viewers watched beIN Sports en Español, the network ranks [] in terms of viewer overlap with Universo, behind [] other Spanish-language networks, including [].⁵⁵

The fact that various other networks—most of which are not sports networks—have a higher audience overlap with Universo suggests that beIN Sports en Español is not a close substitute to Universo compared to other networks.

43. Ratings: beIN also claims that similar ratings for the beIN networks and NBCSN and NBC Universal indicate substitution between them.⁵⁶ However, the beIN networks have much lower ratings than NBCSN, as I discuss above. Moreover, similar ratings for two networks would not in any way imply that the networks compete in a significant way for viewers or advertisers. For example, just because the Food Network and Disney Junior have similar ratings does not mean that the networks compete significantly for viewers.

⁵³ Source: Nielsen audience duplication data. Viewership is defined as having viewed a network for at least six minutes in the quarter. Nielsen audience data for Q2 2017, persons 2+ demographic, total day, live + 3 day linear/VOD viewership. Based on primary duplication.

⁵⁴ Source: Nielsen audience duplication data; Nielsen audience data for Q2 2017, persons 2+ demographic, total day, live + 3 day linear/VOD viewership. Based on primary duplication.

⁵⁵ Non-Spanish-language networks that rank ahead of beIN Sports en Español include FoxD, Nick, Toon, and Disney XD.

⁵⁶ Complaint, ¶¶ 67-69.

44. Soccer programming: beIN also incorrectly focuses on substitutability by viewers between the soccer programming on the beIN networks and the soccer programming on NBCSN and Universo. For instance, beIN states that “beIN’s soccer programming in particular, and sports programming in general, is a direct substitute for NBC’s soccer and sports programming, both for viewers and for many advertisers.”⁵⁷ However, the focus on potential substitution of soccer programming by viewers is misleading, since soccer makes up a small share of programming on both NBCSN and Universo.

45. Moreover, even if one incorrectly focuses narrowly on soccer, the soccer programming carried by NBCSN and Universo is unlikely to be a close substitute to the soccer programming carried by the beIN networks, and beIN does not provide any evidence that they are close substitutes. NBCSN carries live telecasts of the Premier League, which is an English soccer league. In contrast, beIN Sports and beIN Sports en Español mainly carry telecasts of the Spanish, Italian, and French soccer leagues. Soccer fans tend to be interested in specific leagues, teams, and/or matches; they do not generally find the matches of different leagues to be substitutes for each other, as beIN’s own marketing makes clear.⁵⁸

46. beIN’s expert witness, Mr. Eric Sahl, similarly focuses on soccer programming, claiming that viewers substitute between the beIN networks and NBCSN and Universo because

for even the most avid soccer fans, there is a finite amount of time in the day and the week and therefore a finite amount of soccer programming such fans can and will consume. Many soccer fans consistently make choices between watching one

⁵⁷ Complaint, ¶ 17.

⁵⁸ *Supra* note 52.

or another soccer game... The need for many soccer fans to make that choice is heightened by the fact that soccer games are heavily concentrated on the weekend.⁵⁹

However, Mr. Sahl's reasoning is circular, since it assumes that subscribers that watch soccer matches on the beIN networks also are interested in soccer matches on NBCSN and Universo. He provides no evidence to support this assumption, which is contradicted by beIN's own analysis that 70 percent of its viewers do not watch Premier League soccer matches on NBCSN.⁶⁰

2. beIN provides no reliable evidence of competition for advertisers

47. beIN also provides no sound economic evidence that the beIN networks compete with NBCSN and Universo for advertisers. beIN claims that advertiser overlaps between the beIN networks and NBCSN/Universo are indicative of substitution by advertisers. In particular, beIN states that the beIN networks "share[] several key advertisers with NBC Sports and NBC Universo. In fact, all of beIN's largest advertisers, [REDACTED], also purchase advertising on NBC Sports and NBC Universo."⁶¹ This claim is economically flawed. Advertiser overlaps do not imply substitutability (or even similarity) between networks. Just because an advertiser chooses to advertise on two networks does not mean that it views the networks as substitutes, or that the networks are competing to sell spots to the same advertiser. Advertiser overlaps do not indicate that advertisers shift marketing dollars between two networks in response to changes in the relative advertising rates and/or value. In fact, one can actually draw the opposite conclusion—that the advertiser does not need to *choose* between the networks but

⁵⁹ Sahl Declaration, ¶ 17.

⁶⁰ *Supra* note 52.

⁶¹ Complaint, ¶ 81. See also Briceño Declaration, ¶ 31.

instead chooses to advertise on both networks. Advertiser overlaps in fact may indicate that two networks are complementary, rather than substitutable, from the perspective of advertisers.

48. beIN’s suggested approach incorrectly would imply that many networks—even those that are clearly distinct—are “similarly situated.” For instance, beIN lists [] as a company that advertises on both the beIN networks and both NBCSN and Universo.⁶² However, [] advertises on virtually every cable network including CNN, Fox News, and National Geographic Channel. These networks clearly are not “similarly situated” to the beIN networks and to NBCSN and Universo, despite the fact that [] advertises on all these networks.

49. More generally, the largest advertisers on the beIN networks generally advertise across approximately 60 to 90 networks, as shown in Table 2 below. Thus, the logic in the beIN Sports Complaint would suggest that the beIN networks and all of these are “similarly situated,” which demonstrates that overlaps by large national advertisers are a meaningless indicator of substitutability between networks, and uninformative to the question of whether the networks are “similarly situated.”

⁶² Complaint, ¶ 81.

Table 2: Advertiser Spend on National Ad-Supported Cable Networks (2017)

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50. beIN also claims that “advertisers constantly move business between the beIN properties, on the one hand, and the NBC Sports and NBC Universo properties, on the other.”⁶³ However, beIN provides no evidence to support this claim. It also provides no evidence that any competition from the beIN networks for advertisers is more significant than the competition that NBCSN and Universo face from numerous other sports and non-sports networks. In fact, beIN cites the declaration of Mr. Sahl, stating that “[i]n Mr. Sahl’s experience, advertising time on virtually every sports programming is a substitute for time on any different sports programming in the eyes of many advertisers.”⁶⁴ Mr. Sahl’s opinion is fundamentally at odds with beIN’s claim that the beIN networks are “similarly situated” to NBCSN due to advertiser substitution, because it would imply that competition from the beIN networks is not unique, since NBCSN faces competition for advertisers from a myriad of other sports networks.

51. The absence of evidence of substitutability between the beIN networks and both NBCSN/Universo from the perspective of viewers and advertisers indicates that the beIN networks

⁶³ Complaint, ¶ 81.

⁶⁴ Complaint, ¶ 81.

and NBCSN/Universe do not compete materially, and therefore are not “similarly situated” from an economics perspective. The lack of significant substitution between the networks indicates that Comcast has no incentive to disadvantage the beIN networks in order to favor NBCSN and Universe. Consistent with this conclusion, as I discuss in Section III below, the economic evidence indicates that Comcast’s carriage decisions with respect to the beIN networks are consistent with rational business conduct absent any affiliation considerations.

III. There Is No Economic Evidence That Comcast Discriminates Against the beIN Networks on the Basis of Affiliation

A. The “discrimination” standard from an economics perspective

52. I understand that another prong of the test of whether Comcast has engaged in discriminatory conduct against the beIN networks requires beIN to show that Comcast has “discriminat[ed] in video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors.”⁶⁵ beIN claims that the “Comcast Offer discriminates against the programming of beIN and in favor of NBC Sports’ and NBC Universe’s similarly situated sports programming.”⁶⁶

53. From an economics perspective, discrimination implies favoring an affiliated network versus a comparable or “similarly situated” unaffiliated network. The fact that the beIN networks are not “similarly situated” to either NBCSN or Universe means that decisions with respect to carriage of the beIN networks cannot constitute discrimination. Nevertheless, for purposes of this section I explain that, even if the networks were deemed to be “similarly situated,” Comcast’s conduct does not amount to discrimination.

⁶⁵ 47 C.F.R. § 76.1301(c).

⁶⁶ Complaint, ¶ 10.

54. Differential carriage of two networks can amount to discriminatory conduct only if the differential treatment is driven by network affiliation considerations—i.e., incentives to steer viewers away from the unaffiliated networks and towards the affiliated network—rather than rational business judgment. If, on the other hand, carriage decisions can be explained on the basis of rational business judgment independent of any network affiliation, it cannot be concluded that differential treatment of the networks amounts to discrimination.

55. Thus, in order to assess from an economics perspective the question of whether Comcast has discriminated against beIN on the basis of affiliation, I analyze whether Comcast's conduct with respect to carriage of the beIN networks is consistent with rational business judgment absent any consideration of network affiliation; or, alternatively, whether Comcast's decisions can only be explained by Comcast's affiliation with NBCSN and Universo. As I discuss in this section, Comcast's proposal to carry the beIN networks in specialty tiers is economically rational given the niche nature and limited viewer appeal of the beIN networks. The license fee offered by Comcast also is economically rational given the limited value of the beIN networks to Comcast subscribers.

B. Comcast's proposed carriage of the beIN networks is consistent with sound business judgment independent of any consideration of network affiliation

1. Comcast's decision to carry the beIN networks in specialty tiers is economically rational given the niche nature and limited viewer appeal of the beIN networks

56. beIN provides no evidence that Comcast has discriminated against the beIN networks on the basis of affiliation. Rather, it merely asserts that because Comcast has proposed to carry the beIN networks in packages with lower penetration than NBCSN and Universo, such conduct amounts to discrimination. In particular, beIN states:

Comcast would place beIN soccer programming in packages that command much lower subscriber penetration than the tiers in which Comcast places its affiliated

soccer programming—[[

]], compared to the Starter tier for NBC Sports and the Preferred tier for NBC Universo (in some areas, Comcast places NBC Universo in its Starter tier too).⁶⁷

Moreover, beIN claims that according to Comcast’s offer, “Comcast would [[

]]⁶⁸ beIN’s claims, however, are deficient as a matter of economics because they fail to show that Comcast’s carriage decisions were driven by its affiliation with NBCSN and Universo, rather than reflecting other business considerations. Differential carriage of the networks does not show *discriminatory* treatment.

57. Network carriage decisions by MVPDs consider a multitude of factors, including the price of carriage, the appeal of the network’s programming, the value of network carriage to subscribers, network ratings, the likelihood that subscribers would switch MVPDs to view the network, and subscribers’ price sensitivity (demand elasticity) with respect to the network programming. Thus, whether it is reasonable for Comcast to carry the beIN networks on less penetrated tiers or, alternatively, on more highly-penetrated tiers, depends on the nature of the programming content and nature, breadth, and intensity of demand for those networks, as well as other factors.

58. beIN claims that “Comcast’s discriminatory treatment can only be explained by Comcast’s desire to favor its affiliates over these affiliates’ competitor.”⁶⁹ However, beIN offers

⁶⁷ Complaint, ¶ 10. See also, Complaint, ¶ 87.

⁶⁸ Complaint, ¶ 10. See also, Complaint, ¶ 88.

⁶⁹ Complaint, ¶ 11. See also, Complaint, ¶ 100.

no evidence that, but-for Comcast's affiliation with the networks, Comcast would carry the beIN networks in the same way as it carries NBCSN and Universo. Nor does beIN offer any evidence that Comcast would obtain the same or greater value from carrying the beIN networks in the same way it carries NBCSN or Universo. Thus, beIN lacks any basis for its claim that carrying NBCSN and Universo on more highly penetrated packages than the beIN networks is discriminatory.

59. A key determinant of whether a network is distributed on highly penetrated tiers is the breadth of appeal of the network's programming. It is generally economically rational to distribute programming with broad appeal on highly penetrated packages, consistent with demand for the programming from a large percentage of subscribers, and to distribute networks with niche programming on less penetrated specialty tiers. MVPDs can offer such specialty tiers to subscribers for a fee, thus allowing the limited share of subscribers that value the niche content to view their desired programming.

60. In contrast, carrying niche programming on broadly penetrated tiers would spread the cost of the network to a wide population of subscribers, many of which would not be interested in the programming. Spreading the costs of niche programming viewed by a small share of subscribers to a broad population of subscribers can be inefficient, and would be at odds with current marketplace realities, such as the significant competitive pressures to reduce programming costs in light of increased competition from OVDs. This competition from OVDs has created pressure to reduce the number of networks on broadly penetrated packages, especially niche networks that appeal to a small share of subscribers.

61. Carrying niche programming on specialty tiers also is economically rational because many of those subscribers may highly value the niche programming and thus may be willing to pay an additional fee for those tiers (e.g., \$9.95 for the Sports and Entertainment

package, or a promotional rate of \$4.99). In contrast, networks with broader appeal enhance the value of broadly penetrated tiers for many subscribers. And, if such networks were carried in specialty tiers for an additional fee, it is likely that a substantial share of potential viewers would be unwilling to pay such a fee. Thus, carrying a network with broad appeal on widely-penetrated tiers and niche programming on specialty tiers with lower penetration makes economic sense, and is consistent with fundamental economics of distribution in the MVPD industry.⁷⁰

62. Because the beIN networks offer niche programming that appeals to a small share of subscribers, it is economically rational to distribute those networks on specialty tiers, such as [REDACTED] [REDACTED]. These packages are available for purchase by subscribers interested in the programming carried by the beIN networks, as well as other programming carried in those packages.

63. beIN claims that “Comcast ignores the benefit that will accrue to it, at no additional cost, if it agrees to distribute beIN in greater penetration tiers: Comcast will attract and retain subscribers at lower price points and accordingly attract and retain more video subscribers, which is a critical metric for MVPD valuation.”⁷¹ However, beIN provides no evidence that the beIN networks would appeal to a material number of subscribers on more highly penetrated tiers. Because of the relatively limited interest in these niche soccer networks among Comcast’s customers, it makes economic sense for Comcast to continue to make beIN’s programming

⁷⁰ This fact is borne out by the wide array of other soccer programming to which Comcast customers have access from other cable networks. For example, ESPN, ESPN2, and FS1 carry select soccer programming (including programming from MLS, the German Bundesliga, and the Mexican Liga MX) as part of a general mix of sports programming with broader viewership appeal, much like NBCSN. And ESPN, ESPN2, and FS1 are typically distributed on widely-penetrated tiers like NBCSN. In contrast, ESPN Deportes, Univision Deportes, and Fox Deportes are Spanish-language networks and, like beIN Sports en Español, are generally carried on Comcast’s H tier. See Smith Declaration, ¶ 9.

⁷¹ Complaint, ¶ 15.

available in specialty tiers, in a similar way as virtually all other major MVPDs carry the programming.

64. beIN also seems to argue that it is not economically rational for Comcast to carry the beIN networks on the [REDACTED] packages because “it is unlikely that many subscribers pay Comcast [sic] the Sports and Entertainment or Latino packages solely or primarily in order to watch beIN, since they can pay less elsewhere.”⁷² beIN’s suggestion that there is little, if any, demand by subscribers to obtain the beIN networks in Comcast’s Sports and Entertainment and Latino packages because subscribers can “pay less elsewhere” is fundamentally at odds with its claim that it would be beneficial for Comcast to expand the distribution of the networks to more widely-penetrated packages. If there is insufficient demand for the beIN networks in the specialty tiers, there surely is insufficient demand in more broadly penetrated tiers.

65. beIN also seems to claim that it is economically irrational (other than resulting from its affiliation with NBCSN and Universo) for Comcast to not carry beIN in more broadly penetrated tiers because beIN offered Comcast a [REDACTED] for carriage of beIN Sports and beIN Sports en Español.⁷³ Therefore, according to beIN, there would be no [REDACTED] of offering the beIN programming to more Comcast subscribers. In particular, beIN states that

⁷² Complaint, ¶ 12. Specifically, beIN claims that subscribers interested in viewing the beIN networks could purchase fuboTV for “as low as \$19.99 during the first month, and \$44.99 thereafter” rather than spend \$9.95 per month for the Sports and Entertainment package.

⁷³ Complaint, ¶¶ 48-49, 51.

[[

]]⁷⁴ beIN's argument is incorrect and misleading.

66. First, despite the [[] in beIN's offer, beIN demanded much higher license fees than in the prior contract, and that [[

]]⁷⁵ beIN's initial April 2017 proposal included a monthly fee of [[]].⁷⁶

A [[

]] beIN demanded much higher fees for the increased penetration, [[]].

67. Second, beIN's offer contained ambiguous [[] provisions which could have provided beIN with even higher fees for distributing the beIN networks in more highly penetrated tiers. In particular, these [[

]] the terms of beIN's proposal may have required Comcast to pay higher fees to distribute the beIN networks in higher-

⁷⁴ Complaint, ¶ 11; see also, Complaint, ¶ 100.

⁷⁵ Complaint, ¶ 51.

⁷⁶ The proposed fee was an increase of [[]] percent from the current agreement [[]]. Brayford Declaration, ¶ 12.

⁷⁷ beIN Sports Renewal Proposal, February 2, 2018 at 3.

penetrated packages. Distributing the beIN networks in more highly penetrated tiers would be contrary to Comcast’s economic interests given these higher fees and the limited demand for the networks.

2. The fact that unaffiliated MVPDs distribute the beIN networks similarly demonstrates that Comcast’s carriage is consistent with sound business judgment independent of network affiliation

68. The conclusion that Comcast’s carriage of the beIN networks in the Sports and Entertainment and Latino packages is consistent with sound business judgment independent of network affiliation is corroborated by the fact that unaffiliated MVPDs generally distribute the beIN networks similarly. In particular, major MVPDs carry the beIN networks on “upper-level” premium and specialty tiers (such as a sports or Latino tier). For example:

- DirecTV only carries beIN Sports on its highest tier, the Premier tier,⁷⁸ and as an add on through the Sports Pack.⁷⁹ It carries beIN Sports en Español only as part of its “Paquetes en Español” including Optimo Mas, Mas Ultra, Mas Latino, and Lo Maximo.⁸⁰
- AT&T carries beIN Sports and beIN Sports en Español on its highest tier—the U450—and on its add-on Sports Package. The beIN networks also are available as

⁷⁸ DirecTV website, https://www.directv.com/cms2/support/channel_lineups/DTV_Channel_Lineup_Summer_2017.pdf, accessed on May 10, 2018.

⁷⁹ DirecTV website, https://www.directv.com/sports/sports_pack, accessed on May 10, 2018.

⁸⁰ DirecTV website, <https://www.att.com/directv/spanish-packages.html>, accessed on May 10, 2018; DirecTV also carries beIN Sports on the highest Spanish-language package Lo Maximo, which carries 350+ channels; see DirecTV website, <http://www.directv.com/DTVAPP/compare/printablePackageChannels.jsp?packageId=960022&skuId=sku930028>, accessed on May 10, 2018.

part of the “Latino” packages, which include U200 Latino, U300 Latino, and U450 Latino, and AT&T’s Paquete Español.⁸¹

- DISH only offers the beIN networks on its highest tiers, America’s Top 250 and America’s Everything Pack,⁸² its Latino packages,⁸³ and through its multi-sports package⁸⁴ and the Latino Bonus Pack.⁸⁵
- Charter also only offers the beIN networks on its highest tier, Spectrum Gold,⁸⁶ through its Latino package, Mi Plan,⁸⁷ and through the add-on package Latino View.⁸⁸
- Many MVPDs do not carry the beIN networks at all, despite not being affiliated with networks that carry sports or soccer content.⁸⁹

69. As I have previously shown in Figure 5, Comcast’s carriage of the beIN networks is comparable to how the networks are carried in the marketplace by other traditional and virtual MVPDs. Comcast carries the beIN networks to [] percent of its subscribers, based on its commitment to [] million subscribers, while other MVPDs distribute beIN Sports and beIN

⁸¹ AT&T website, <https://www.att.com/ecms/dam/att/consumer/support/landingpage/userguides/pdf/u-verse-channel-directory.pdf>, accessed on May 10, 2018.

⁸² DISH website, America’s Top 250, <https://www.dish.com/programming/channels/>, accessed on May 10, 2018); see DISH website, America’s Everything Pack, <https://www.mydish.com/upgrades/english-packages/americas-everything-pack>, accessed on May 10, 2018.

⁸³ DISH website, <https://www.dish.com/programming/channels/>, accessed on May 10, 2018.

⁸⁴ DISH website, <https://www.mydish.com/upgrades/multisport>, accessed on May 10, 2018.

⁸⁵ DISH website, <https://www.mydish.com/upgrades/latino/latino-bonus>, accessed on May 10, 2018.

⁸⁶ Charter website, <https://www.spectrum.com/browse/content/new-channel-lineup>, accessed on May 10, 2018.

⁸⁷ Charter website, <https://www.spectrum.com/latino-plans.html>, accessed on May 10, 2018.

⁸⁸ Charter website, <https://www.spectrum.com/latino-view.html>, accessed on May 10, 2018.

⁸⁹ These include, among others, Wow!, Cable One, Armstrong Cable Services, Service Electric Cable TV, Cincinnati Bell, Blue Ridge Communication, GCI Liberty, Buckeye Broadband, and TDS.

Sports en Español to [] and [] percent of subscribers, respectively, according to Kagan data. Comcast’s carriage of the beIN networks under Comcast’s proposed contract renewal terms would have been similar to Comcast’s current carriage of the network, and therefore would offer similar carriage as offered by other MVPDs.

70. Notably, the carriage by other MVPDs of the beIN networks ([] percent and [] percent for beIN Sports and beIN Sports en Español, respectively) is much lower than the carriage that beIN has demanded from Comcast ([] percent according to beIN’s initial demand).⁹⁰ There is no marketplace basis for such a demand, or for beIN’s claim that Comcast would distribute the beIN networks to such a share of subscribers but-for its affiliation with NBCSN and Universo.

71. beIN claims that several MVPDs carry the beIN networks more broadly than does Comcast, stating that “[a]s many as seven distributors—Charter, CenturyLink, Frontier, fuboTV, Liberty Puerto Rico, Prism and Verizon—give beIN access to tiers with greater penetration than the packages to which Comcast has cosigned beIN. Of them, Verizon gives beIN access to the vast majority of its subscriber base, with the sole exception of the FiOS skinny bundle.”⁹¹ However, beIN’s claim is based on cherry-picked evidence, and is misleading. beIN ignores carriage by MVPDs that carry the beIN networks at low penetration levels, or do not carry the networks at all.

⁹⁰ Complaint, ¶ 51.

⁹¹ Complaint, ¶ 13. The Complaint shows the following penetrations for beIN: Liberty Puerto Rico [] percent; Verizon [] percent; Frontier [] percent; CenturyLink [] percent; Charter [] percent. Complaint, ¶ 102.

72. Moreover, the MVPDs that beIN focuses on are not adequate benchmarks for how Comcast would distribute the beIN networks but-for its affiliation with NBCSN and Universo. According to beIN, the MVPD that distributes the beIN networks to the [] of subscribers is Liberty Puerto Rico ([] percent). However, Liberty Puerto Rico operates in a geographic area (Puerto Rico) that has a very high share of Latinos (98 percent according to some estimates),⁹² and therefore does not serve as an adequate benchmark. As discussed, a very large share of the viewership of the beIN networks is Latino.⁹³ With respect to Verizon, beIN's relatively broad carriage on FiOS is clearly the exception to the rule. Moreover, beIN has made its niche soccer programming available on Verizon's go90 for no charge to consumers, which undercuts beIN's demands for higher license fees from Comcast.⁹⁴ Because beIN's expanded carriage on FiOS in 2015 was apparently directly connected to this go90 deal, Verizon is not an appropriate benchmark.⁹⁵

73. According to beIN, [] and [] distribute the beIN networks to [] percent and [] percent of subscribers, respectively.⁹⁶ However, given that [] carries the beIN networks on its highest tier, beIN's estimate of carriage by []

⁹² U.S. Census Bureau, *Population Estimates for Puerto Rico*, available at <https://www.census.gov/quickfacts/PR>, accessed May 10, 2018.

⁹³ *Supra* note 44.

⁹⁴ See Brayford Declaration, ¶¶ 23, 32; Smith Declaration, ¶ 16.

⁹⁵ Gibbons Kent, *beIN Sports Launches on Verizon's go90*, Multichannel News, Oct. 28, 2015, available at <http://www.multichannel.com/news/telco-tv/bein-sports-launches-verizons-go90/394886>, accessed on May 10, 2018; Press Release, Verizon, *beIN Sport Launches on Verizon FiOS TV*, March 19, 2013, available at <http://www.verizon.com/about/news/release-bein-sport-launches-verizon-fios-tv>, accessed on May 10, 2018.

⁹⁶ Complaint, ¶ 102.

appears to be overstated.⁹⁷ Moreover, even assuming the accuracy of beIN’s estimates, the estimates would imply that these cherry-picked MVPDs distribute the beIN networks to a much lower share of subscribers than beIN has demanded from Comcast (to at least [] percent of subscribers).

74. beIN also claims that the beIN networks are carried by OVDs, including fuboTV and Sling TV.⁹⁸ However, many OVDs also do not carry the beIN networks at all, including Sony PlayStation Vue, DIRECTV Now, YouTube TV, and Hulu Live. Sony PlayStation Vue dropped beIN from its service in June 2017.⁹⁹ And, according to the Complaint, Sling TV carries beIN to [] percent of its subscribers, nowhere near the [] percent or higher penetration that beIN has demanded from Comcast.¹⁰⁰

75. beIN seems to concede that many MVPDs carry the beIN networks to a similar or smaller percentage of subscribers compared to Comcast.¹⁰¹ However, it attempts to dismiss this evidence by claiming that “beIN is . . . optimistic” that these MVPDs will carry the beIN networks more broadly because beIN Sports’ agreements with these MVPDs “predate the OTT phenomenon

⁹⁷ Kagan Media Census data indicates that penetration of the beIN networks on [] was around [] percent in Q4 2017. As discussed above, [] only offers the beIN networks on its highest tier, the []

[]. These penetration estimates reported by Kagan would suggest that the penetration of the beIN networks are well below the estimated penetration of [] percent that beIN reports in its Complaint. Kagan Media Census data; Complaint, ¶ 102.

⁹⁸ Complaint, ¶ 102.

⁹⁹ Eric Anthony, *PlayStation Vue Announces It Is Dropping BeIN Sports*, Streaming Observer, June 7, 2017, <https://www.streamingobserver.com/playstation-vue-announces-dropping-bein-sports/>, accessed on May 10, 2018.

¹⁰⁰ Complaint, ¶ 102.

¹⁰¹ Complaint, ¶ 103.

and FuboTV’s wide carriage of beIN.”¹⁰² beIN’s attempt to dismiss the low penetration carriage of the beIN networks by major MVPDs is unavailing.

76. beIN’s optimism is speculative and misguided. For starters, fuboTV has relatively few subscribers (only about 100,000 as of the end of 2017),¹⁰³ which makes the claim that carriage by fuboTV would have a significant impact on carriage of the beIN networks by MVPDs tenuous, at best. Moreover, Sony PlayStation Vue dropped both beIN channels (beIN Sports and beIN Sports en Español) on June 8, 2017, which is inconsistent with beIN’s claim that marketplace trends are leading to greater carriage of the beIN networks by OVDs and virtual MVPDs.¹⁰⁴

C. The license fee offered by Comcast is economically rational given the limited value of the beIN networks to subscribers

77. beIN also alleges that Comcast has engaged in discriminatory conduct by offering beIN contract renewal terms that are less favorable than those given to NBCSN and Universo.¹⁰⁵ Specifically, beIN states that “beIN also believes that the Comcast Offer is discriminatory for another reason, too [sic]—the license fees contained therein are lower than the price Comcast pays to its affiliates for similarly situated programming.”¹⁰⁶

¹⁰² Complaint, ¶ 14. See also, Complaint, ¶ 103: “As to other distributors, beIN’s agreements with them predate the OTT phenomenon and FuboTV’s wide carriage of beIN.”

¹⁰³ PR Newswire, *FuboTV Passes 100K Subscribers*, Oct. 10, 2017, available at <https://www.prnewswire.com/news-releases/fubotv-passes-100k-subscribers-300533748.html>, accessed on May 10, 2018.

¹⁰⁴ As beIN stated at the time: “We made every possible effort to reach a deal with Sony since we believe the top sports leagues, games, insights and analysis should be made available to the largest possible audience of fans. Regrettably, Sony has decided that our value proposition is not enough for their viewers.” Eric Anthony, *PlayStation Vue Announces It Is Dropping BeIN Sports*, Streaming Observer, June 7, 2017, <https://www.streamingobserver.com/playstation-vue-announces-dropping-bein-sports/>.

¹⁰⁵ Complaint, ¶ 3.

¹⁰⁶ Complaint, ¶ 3.

78. However, there is no economic basis, and beIN does not provide any, that a license fee for the beIN networks that is lower than the license fee that Comcast pays for NBCSN and Universo would be discriminatory. beIN provides no evidence that the value of the beIN networks is the same or similar to the value of NBCSN and Universo. As discussed, NBCSN appeals to a broader set of subscribers, as reflected by the much higher ratings of the networks. beIN’s claims are also fundamentally at odds with the fact that the networks have very different programming budgets—NBCSN is projected to spend over [] million on programming in 2018, more than ten times as much as beIN Sports ([] million).¹⁰⁷ Given these vastly different programming costs between the networks, there is no economic basis for beIN’s claim that a license fee for beIN Sports that is lower than the license fee for NBCSN would be discriminatory. Moreover, the availability of beIN programming on OVDs such as fuboTV also may have decreased the value of carrying the beIN networks. In fact, beIN’s soccer programming also is available on Verizon’s free streaming service, go90, which dilutes the value of the beIN networks to MVPDs.

79. beIN’s own allegations suggest that the value of beIN to Comcast is likely very limited. For instance, beIN states that “very few if any of the subscribers paying an extra \$4.99 for the Sports and Entertainment package or \$9.99 for the Latino package . . . do so solely or primarily in order to watch beIN.”¹⁰⁸ beIN further explains that “FuboTV offers beIN within its most penetrated package alongside 70 other channels for as low as \$19.99 during the first month, and \$44.99 thereafter . . . As a direct consequence of Comcast’s pricing, it is unlikely that many

¹⁰⁷ Source: Kagan TV Network Summary reports.

¹⁰⁸ Complaint, ¶ 12.

subscribers pay Comcast [for] the Sports and Entertainment or Latino packages solely or primarily in order to watch beIN, since they can pay less elsewhere.”¹⁰⁹ beIN’s claims suggest that there is little value to Comcast of carrying the beIN networks, whether carried in the Sports and Entertainment or Latino packages, or in more broadly penetrated tiers. If there is little subscriber demand for the beIN networks in the specialty tiers, there surely is little demand in more broadly penetrated tiers.

80. Comcast’s ordinary course of business analyses show that its current carriage of the beIN networks likely results in operating losses relative to the cost of not carrying the networks and generates relatively little value for Comcast.¹¹⁰ Comcast estimated that the lost revenue from dropping beIN entirely was {{ }} of the [[]] million in average annual costs that Comcast would incur under beIN’s April 2017 proposal based on the proposed monthly fee increase [[]].¹¹¹ After beIN later modified its new fee demands in February 2018, Comcast’s viewership analyses indicated that the additional costs to Comcast would be approximately {{ }} million higher than the *maximum* projected losses from not carrying beIN over the proposed [[]] term of the renewal.¹¹² When adjusted {{ }}

¹⁰⁹ Complaint, ¶ 12.

¹¹⁰ See Brayford Declaration, ¶ 18; Smith Declaration, ¶¶ 19, 21.

¹¹¹ \$[[]] million based on the annual cost of the monthly flat fee [[]]. See Brayford Declaration, ¶ 18.

¹¹² \${{ }} million = \$[[]] million - (\${{ }} million projected yearly loss from drop * 6 years)), where the \$[[]] million is based on the annualized \$[[]] million revised proposed monthly fee from the February 2, 2018 proposal including [[]]. See Brayford Declaration, ¶ 33.

}}.¹¹³ Based on these analyses, Comcast determined that even under the most conservative calculations, the carriage price sought by beIN Sports for the beIN networks far exceeded the most conservative benefit to Comcast of carrying the networks. None of these analyses considered any effect of the carriage of the beIN networks on NBCSN and Universo.¹¹⁴

81. Moreover, despite beIN's demands for much higher license fees and penetration, I understand that beIN could not [[

]].

82. In short, the business factors underlying Comcast's offer to beIN reflect legitimate and sound economic considerations and are consistent with how other distributors in the industry have carried the beIN networks. This evidence undermines beIN's claims of affiliation-based discrimination.

¹¹³ {{ }} million = [[]] million - \${{ }} million. See Brayford Declaration, ¶ 31.

¹¹⁴ See Brayford Declaration, ¶¶ 4, 16-19, 30-31.

¹¹⁵ See Brayford Declaration, ¶¶ 34, 38-39, 41.

IV. Comcast’s Alleged Discriminatory Conduct Did Not “Unreasonably Restrain” the Ability of the beIN Networks to “Compete Fairly”

A. The “unreasonable restraint” standard from an economics perspective

83. I understand that another prong of the test of whether Comcast engaged in discriminatory conduct under Section 616 of the Communications Act of 1934 requires beIN to show that Comcast’s conduct “unreasonably restrain[ed] the ability of an unaffiliated video programming vendor to compete fairly.”¹¹⁶ From an economics perspective, this criterion is a test of whether the challenged conduct inhibited the beIN networks from being able to compete effectively.

84. beIN claims that the challenged conduct unreasonably restrained the ability of the beIN networks to compete for viewers and advertisers.¹¹⁷ However, beIN offers no evidence to support its assertion.

B. Comcast’s initial counterproposal is not an economically valid basis for beIN’s unreasonable restraint claims

85. beIN’s unreasonable restraint claims are based on the initial counterproposal that Comcast made to beIN in December 2017.¹¹⁸ However, a contract offer is not a carriage decision, a carriage agreement, or even a refusal to enter into an agreement. Parties typically make offers and counter-offers as part of renewal negotiations for virtually any kind of programming. I also understand that the Commission’s program carriage rules are intended to rely on such marketplace

¹¹⁶ 47 C.F.R. § 76.1301(c).

¹¹⁷ Complaint, ¶ 96.

¹¹⁸ Complaint, ¶ 3.

negotiations “to the greatest extent possible,” and are not intended to impede “legitimate, aggressive negotiations.”¹¹⁹

86. From an economic perspective, it is unreasonable to expect that Comcast would simply accept an initial proposal for a carriage renewal without making a counterproposal, as virtually all parties do in such circumstances. That is particularly true in this case, where beIN’s initial offer contained significant fee increases and distribution demands that were inconsistent with the limited appeal of its niche soccer programming to Comcast subscribers. Comcast’s initial counterproposal was part of normal marketplace negotiations; it is not a valid basis for beIN’s claim that Comcast unreasonably restrained beIN.

C. beIN fails to show that the challenged conduct had a material effect on the ability of the beIN networks to compete effectively for viewers

87. Even putting aside the lack of any final offer for renewal of the carriage agreement, beIN’s unreasonable restraint claims have no basis in fact. beIN states that it has achieved success in a relatively short time since its launch. The beIN networks were launched in 2012 with Comcast being one of the earliest distributors to carry the networks.¹²⁰ beIN claims that in the six years since its launch, the beIN networks achieved “explosive growth” with beIN having ||

|| and beIN Sports en Español having ||¹²¹

Notwithstanding the fact that beIN’s viewership estimates may be overstated,¹²² the growth of the beIN networks since their launch is inconsistent with beIN’s claim that the challenged conduct

¹¹⁹ 1993 Program Carriage Order, ¶¶ 14, 15; Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, §§ 2(b)(1)-(2), 106 Stat. 1460, 1463.

¹²⁰ Complaint, ¶ 24.

¹²¹ Complaint, ¶¶ 25, 79.

¹²² *Supra* note 97.

inhibited its ability to compete. There is no evidence that the challenged conduct had any material effect in restraining the growth of the beIN networks.

88. beIN’s claim that Comcast unreasonably restrained the ability of the beIN networks to compete also is at odds with the multitude of options for distributing video programming. The video distribution marketplace is highly competitive. Subscribers today have a multitude of options for receiving video programming. These options include cable, DBS, overbuilders, and increasingly virtual MVPDs.¹²³ And, programmers such as beIN have many options for reaching subscribers who are interested in receiving their programming. For example, subscribers residing in Comcast’s service territory may view the beIN networks via Comcast, as well as through other providers, including Verizon, Dish, DirecTV, overbuilders (such as RCN), and virtual MVPDs, including Sling TV (accessible through Comcast’s X1 platform). In fact, beIN explains that viewers in Comcast’s service territory have low-cost options for receiving the beIN networks, including from fuboTV and iGol.¹²⁴

89. The significant growth of these and other virtual MVPDs (including DirecTV Now, Sling TV, Sony PlayStation Vue, YouTube TV, Hulu Live TV) has given programmers such as beIN additional channels through which to distribute their programming. DirecTV Now reached

¹²³ According to the FCC, “most consumers have access to three MVPDs (two DBS MVPDs and a cable MVPD), [and] some consumers also have access to a telephone MVPD, for a total of four MVPDs.” FCC, *18th Annual Video Competition Report*, Jan. 17, 2017 at 3.

¹²⁴ The Complaint claims that “FuboTV offers beIN within its most penetrated package alongside 70 other channels for as low as \$19.99 during the first month, and \$44.99 thereafter.” Complaint, ¶ 101. The content carried by the beIN networks is also available from iGol, which is a video streaming provider that shows soccer match telecasts from various TV networks for \$9.99 per month. See iGol website, <https://www.igol.tv/>, accessed on May 10, 2018.

1.2 million subscribers by the end of 2017, a little over a year since its launch.¹²⁵ Similarly, by the end of 2017, Sling TV had 2.21 million subscribers, Sony PlayStation Vue had 445,000 subscribers, YouTube TV had over 300,000 subscribers, and Hulu Live TV had about 450,000 subscribers.¹²⁶ As I discuss above, several of these major virtual MVPDs do not carry beIN, including DirecTV Now, Sony PlayStation Vue, Hulu Live, and YouTube TV. The challenged conduct by Comcast does not preclude beIN from obtaining carriage with these virtual MVPDs.

90. The challenged conduct also does not preclude beIN from gaining subscribers outside of Comcast's service territory. Comcast serves approximately || || percent of U.S. paid TV subscribers.¹²⁷ And, || || of Comcast's subscribers are at issue in this case.¹²⁸ beIN can increase viewership by offering quality programming with broad appeal and/or by charging low prices for carriage.

91. Thus, the challenged conduct does not preclude beIN from competing for the vast majority of video subscribers in the U.S.

¹²⁵ Todd Spangler, *Amid Satellite TV Drop, DirecTV Now Streaming Service Hits 1.2 Million Subscribers*, Variety, Jan. 31, 2018, available at <http://variety.com/2018/digital/news/directv-now-subscribers-att-q4-2017-1202683048/>, accessed on May 10, 2018.

¹²⁶ Sarah Perez, *Sling TV now has 2.2M subscribers, making it the largest internet-based live TV service*, TechCrunch, Feb. 21, 2018, available at <https://techcrunch.com/2018/02/21/sling-tv-now-has-2-2m-subscribers-making-it-the-largest-internet-based-live-tv-service/>, accessed on May 10, 2018.

¹²⁷ Source: Kagan, U.S. Multichannel Industry Benchmark; Kagan, Comcast Cable Operating Metrics profile; Jeff Baumgartner, *Virtual MVPDs Ended 2017 with 5.3M Subs: Study*, Multichannel News, February 12, 2018. Includes both traditional MVPD and virtual MVPD subscribers.

¹²⁸ beIN seeks carriage to an additional || || million Comcast subscribers (approximately || || percent of U.S. paid TV subscribers).

D. beIN fails to show that the challenged conduct had a material effect on the ability of the beIN networks to compete effectively for advertisers

92. beIN also provides no reasonable evidence that it would be unable to compete effectively for advertisers without broader distribution by Comcast. The sole basis offered by beIN is the testimony of Mr. Sahl, who claims that “Comcast’s offer would negatively affect beIN’s ability to attract advertising, as advertisers will gravitate toward programmers that are on higher-penetrated tiers and have larger potential audiences.”¹²⁹ It is unclear what Mr. Sahl means by “gravitate toward programmers that are on higher-penetrated tiers.” Clearly, networks distributed on lower-penetrated tiers (including the beIN networks) can and do attract advertisers. In fact, beIN acknowledges that major advertisers on NBCSN and Universo also advertise on the beIN networks.¹³⁰ The beIN networks sell advertising spots and earn advertising revenue, despite not being carried widely by many MVPDs. Mr. Sahl does not quantify the effect of “Comcast’s offer” on the beIN networks’ ability to attract advertising; nor does he provide any factual support for the assertion that “Comcast’s offer would negatively affect beIN’s ability to attract advertising.”¹³¹ Overall, Mr. Sahl’s testimony provides no credible basis for the assertion that the challenged conduct restrained the beIN networks’ ability to compete for advertisers.

93. More generally, there is no basis to conclude that lack of scale has impeded beIN’s ability to attract advertisers, or that having broader distribution through Comcast would enhance beIN’s ability to do so.

¹²⁹ Sahl Declaration, ¶ 26.

¹³⁰ Complaint, ¶ 81; Briceño Declaration, ¶ 31.

¹³¹ Sahl Declaration, ¶ 26.

V. Conclusions

94. The economic evidence is wholly at odds with all three criteria for discriminatory conduct under Section 616 of the Communications Act of 1934: (1) that the beIN networks are “similarly situated” to NBCSN and Universo, (2) that Comcast discriminated against the beIN networks in favor of NBCSN and Universo, and (3) that the challenged conduct “unreasonably restrained” the ability of the beIN networks to compete.

95. beIN Sports and beIN Sports en Español are fundamentally different networks, as a matter of economics, from NBCSN and Universo. The beIN networks offer niche programming focused on international soccer, while NBCSN and Universo offer a wide variety of programming, of which only a small fraction is soccer. Universo is not a sports network at all, but features a wide array of Spanish-language non-sports programming. Consistent with the programming they offer, the nature and breadth of viewership of the networks also differs markedly—for instance, the average viewing audience of NBCSN is over 10 times that of beIN Sports.¹³² The distinct nature of the programming and viewership of the networks is recognized in the marketplace, with other MVPDs distributing NBCSN and Universo much more broadly than they do the beIN networks.

96. There also is no economic evidence that Comcast discriminated against the beIN networks in favor of NBCSN and Universo. Comcast’s carriage of the beIN networks is consistent with sound business judgment independent of any consideration of network affiliation. Comcast’s decision to carry the beIN networks in specialty tiers is economically rational given their niche nature and limited viewer appeal, as evidenced by the fact that unaffiliated MVPDs also distribute

¹³² *Supra* note 34.

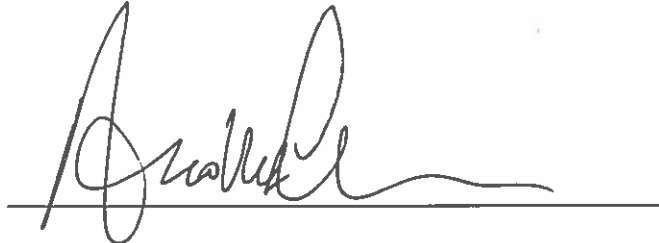
the beIN networks in specialty tiers, and to a similar percentage of subscribers as Comcast. In fact, many traditional MVPDs and virtual MVPDs do not carry the beIN networks *at all*, but do carry NBCSN and Universo.

97. beIN also fails to show that the challenged conduct unreasonably restrained the ability of the beIN networks to compete fairly. In today's highly competitive video distribution marketplace, programmers such as beIN have many options through which to distribute their programming.

I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: Los Angeles, California

May 14, 2018

A handwritten signature in black ink, appearing to read 'Andres V. Lerner', is written over a horizontal line.

Andres V. Lerner, Ph.D.

Appendix A

Andres V. Lerner
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EDUCATION

Ph.D., Economics, University of California at Los Angeles, 1999

MA, Economics, University of California at Los Angeles, 1996

BA, Economics, University of California at Berkeley, 1993

PROFESSIONAL EXPERIENCE

Executive Vice President, Compass Lexecon, Los Angeles, California, April 2013 to present.

Senior Vice President, Compass Lexecon, Los Angeles, California, March 2009 to March 2013.

Director, LECG, Los Angeles, California, April 2007 to March 2009.

Principal, LECG Los Angeles, CA, March 2004 to March 2007.

Visiting Professor, University of Southern California, Department of Economics, Los Angeles, California, May to August 2004.

Vice President, Economic Analysis LLC, Los Angeles, California, July 2003 to February 2004.

Senior Economist, Economic Analysis LLC, Los Angeles, California, June 2001 to June 2003.

Economist, Economic Analysis LLC, Los Angeles, California, 1999 to June 2001.

Teaching Associate, Department of Economics, University of California at Los Angeles, 1997 to 1999.

Teaching Associate, School of Public Policy, University of California at Los Angeles, 1998.

Teaching Associate, Anderson Graduate School of Management, University of California at Los Angeles, 1997.

FIELDS OF SPECIALIZATION

Antitrust, Industrial Organization, and Applied Econometrics.

AFFILIATIONS

American Bar Association, Associate Member

American Economics Association

RECENT PROFESSIONAL RECOGNITIONS

Who's Who Legal and Global Competition Review, *Who's Who Legal: Competition – Future Leaders 2017*, economist aged 45 and under.

Global Competition Review, *The International Who's Who of Competition Economists* (2013, 2014, 2015, 2016, 2017, 2018).

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Antitrust and Intellectual Property Conference, American Bar Association, Section of Antitrust Law, “Big Data and User Privacy in Antitrust: An Economic Perspective,” October 8, 2015.

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(April 2014 to July 2015)

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(December 2000 to June 2001)

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United States District Court, Central District of California, Case No. 00-06443 MMM (MANx).

(February 2001 to March 2001)

Arthur Simon et. al. v. American Telephone and Telegraph Corp., et. al.

United States District Court, Central District of California, Case No. CV 99-11641 RSW.

(April 2000 to January 2001)

Wal-Mart, et al. v. Visa, et al.

United States District Court, Eastern District of New York, Case No. CV-96-5238.

(February to April 2000)

The Coca-Cola Company, et al. v. Omni Pacific Company, et al. and related counterclaims.

United States District Court, District of Northern California, Case No. C-98-0784-SI.

(November 1999 to October 2000)

Kropinski, et al. v. Johnson & Johnson, et al.
Superior Court of New Jersey, Case No. 8886-96.
(September 1999 to January 2000)

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EXHIBIT 4

REDACTED – FOR PUBLIC INSPECTION

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
beIN SPORTS, LLC,)	
<i>Complainant,</i>)	
	)	MB Docket No. 18-384
vs.	)	File No. CSR-8972-P
)	
COMCAST CABLE)	
COMMUNICATIONS, LLC)	
And)	
COMCAST CORPORATION,)	
<i>Defendants.</i>)	
)	

SUPPLEMENTAL DECLARATION OF PETER LITMAN

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I. INTRODUCTION

1. My name is Peter Litman. I am a media consultant who has worked in the cable programming business for twenty-five years.¹ This declaration is a supplement to the declaration I provided as part of Comcast Corporation's ("Comcast") May 14, 2018 Answer (the "Answer") to the beIN Sports, LLC ("beIN") Program Carriage Complaint filed on March 15, 2018. beIN filed a similar Program Carriage Complaint (the "Complaint") on December 13, 2018, again asserting that Comcast's December 2017 offer to beIN (the "December 2017 Offer") discriminates against beIN by proposing to continue to carry the beIN networks, beIN Sports and beIN Sports en Español, as part of Comcast's sports and Hispanic tiers (as Comcast historically has done) while distributing affiliated networks, NBC Sports Network ("NBCSN") and Universo, on more highly penetrated tiers and paying them higher per subscriber fees.

2. In my initial declaration, I concluded that the beIN networks are niche soccer networks and are not similarly situated to NBCSN or Universo. I also found Comcast's December 2017 Offer to be reasonable, based on substantial data and analysis, and legitimate commercial considerations. Nothing in beIN's latest Complaint causes me to amend my prior findings. Indeed, since the time of the Answer, there have been a number of developments between the parties and in the television marketplace that provide additional support for the conclusions I drew in that declaration.

II. SCOPE OF ASSIGNMENT

3. As the Complaint largely restates the same claims beIN's first complaint alleged, and relies on the same evidence (though with some new arguments), the scope of this assignment is largely unchanged from my initial declaration, as are my methods and data sources. I have been asked by counsel for Comcast to offer my independent, expert view, based on beIN's latest Complaint, the declaration of beIN's industry expert Eric Sahl, and available objective data – including updating prior analyses in my initial declaration – as to the following claims:²

- a) Whether the beIN networks – beIN Sports, and beIN Sports en Español – are similarly situated to Comcast-affiliated networks, NBCSN and Universo;
- b) Whether Comcast's behavior with respect to beIN's networks is driven by an effort to favor its affiliated programming; and
- c) Whether Comcast's behavior unreasonably restrains beIN's ability to compete fairly in the marketplace for video programming.

¹ My qualifications are set out in my initial declaration. As I previously stated, I have no financial interest in the outcome of this case.

² I have personally performed all of this work. The materials I relied upon in preparing this written testimony are cited herein.

III. SUMMARY OF CONCLUSIONS

4. ***The lack of certainty about the content that would be carried on the beIN networks was, rightly, a core concern of Comcast during the parties' negotiations.*** Comcast had legitimate concerns about the content and the quality of the programming that beIN would be providing on its networks during the proposed renewal affiliation term. It is my opinion that the assurances beIN argues it provided Comcast during the negotiations did not address Comcast's concerns sufficiently, and that Comcast's December 2017 Offer and its subsequent discussions with beIN were reasonable given that uncertainty. The declaration of Eric Sahl, beIN's industry expert witness, regarding the sufficiency of beIN's alleged content assurances during negotiations [] is quite different from my experience with programming affiliation negotiations.

5. ***Additional evidence since the time of the Answer further demonstrates that beIN's renewal offers to Comcast were unrealistic in the marketplace and that Comcast's behavior towards beIN was reasonable.*** The affiliation agreement between the parties expired on July 31, 2018. There is no evidence that, upon affiliation renewals, MVPDs are repositioning the beIN networks to more highly penetrated packaging, as beIN had proposed to Comcast. In fact, in its recent renewals, it looks like beIN was *at best* able to hold onto its prior levels of distribution, often with some substantial difficulty. With the defection of *Serie A* to ESPN, beIN now provides less high-profile soccer content than it had during the parties' expired affiliation agreement. Additionally, beIN proposed (and continues to propose) complicated mechanisms in the event that it further reduces the high-profile soccer matches it would deliver on the networks during the proposed term. Critically, Comcast's viewership analyses demonstrate that Comcast is better off financially now that it no longer carries the beIN networks.

6. ***Numerous objective marketplace metrics, including each network's top telecasts and overall content, viewership, advertising interest, and carriage by other distributors, demonstrate that the beIN networks are not similarly situated to NBCSN or Universo.*** As I detailed in my prior declaration, the beIN networks are not similarly situated under an objective, industry-standard comparison. Updates to my prior analyses continue to support this conclusion. Both beIN networks are niche soccer networks that focus primarily on European soccer leagues and attract a modest audience by national cable standards. In contrast, NBCSN is a well-distributed, broad-appeal cable sports network with the kind of high-profile live sports events programming covered extensively in the sports media, and Universo is a Spanish-language general entertainment network with some sports event programming on weekends and has both East and West coast feeds. beIN's ratings analysis – focused on its modest coverage area ratings and other cherry-picked ratings data – is seriously flawed, and are not the kind of viewership analyses that any credible analyst would do.

7. ***Comcast's behavior towards beIN has not unreasonably restrained its ability to compete in the content marketplace.*** Other MVPDs continue to carry beIN's networks, and beIN itself states in the Complaint that its networks are growing. Despite the lack of

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an affiliation agreement between the parties, Comcast customers with the X1 set-top box continue to have access to beIN Sports and beIN Sports en Español. In its post-affiliation communications with customers, Comcast provides information to its customers consistent with industry standard approaches; it is not, as beIN alleges, attempting to lure customers to its own networks. To the extent beIN is struggling as a network provider, those limitations appear to continue to be primarily the result of its own poor business decisions and failure to recognize and adapt to the changing and more challenging multichannel environment for programming networks.

IV. THE CONTENT THAT BEIN WOULD PROVIDE DURING THE RENEWAL PERIOD WAS, AND CONTINUES TO BE, UNCERTAIN

8. *Fundamentally, it is the core business requirement for an MVPD to use the limited bandwidth on its cable systems and its other resources as wisely as possible to create services and packages at prices that its customers find attractive.* If the MVPD does not, its customers will buy fewer video services from the MVPD or go elsewhere for their video programming needs. Successful programming networks have to assure MVPDs that they will provide programming that appeals to a sufficient number of the MVPDs' customers to justify the associated license fees and bandwidth requirements.

9. During the beIN negotiations in 2017, beIN was unable to provide concrete responses to Comcast about which leagues and matches it committed to have on its channels during the renewal term.³ Comcast concluded that it could not justify providing beIN with high license fees and more distribution, particularly amid this uncertainty about the content beIN would provide over the proposed term.

10. In dismissing beIN's first Complaint, the FCC concurred with Comcast, finding the "term sheets [passed between Comcast and beIN] show significant uncertainty about what programming would be provided by beIN Sports in a renewal agreement."⁴

11. From my review of the beIN-Comcast term sheets, as well as a discussion with the Comcast Acquisition Team, it is my opinion that Comcast's business concerns were justified. First, it was unclear what soccer rights beIN had secured. beIN's networks simply do not have the production values and promotional power of other networks,⁵

[[

]]. Second, this uncertainty was compounded by beIN's failure to [[

]]. Third, it was unclear at that time if many matches would continue to be available for free to Verizon Wireless customers on its go90 mobile video service, diluting the value of this content in the video subscription Comcast would offer to its

³ Brayford Declaration ¶ 13.

⁴ FCC Dismissal Order ¶ 13.

⁵ Litman Declaration ¶ 26.

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customers, many of whom had access to the Verizon service.⁶ beIN's evasiveness about its future programming created significant risks that the renewal terms it proposed were unreasonable and, as such, would not be a good business proposition for Comcast.

12. ***There are a few widely accepted ways that cable programmers can mitigate the risk to MVPDs about the content that they will provide, but beIN had provided none of them at the time of the Comcast December 13, 2017 offer.*** A straightforward way for a programmer to eliminate risk regarding its future programming content is if it makes a contractual representation that the programmer has the rights to certain content for a specified term (i.e., a content guaranty), []

[]⁷ Another approach would be to give the MVPD the right to terminate the affiliation agreement if a performance threshold is not met. Finally, in some cases, the programmer allows the MVPD global or system-by-system deletion rights for the service, leaving the determination of whether the service is meeting its performance and value expectations to the discretion of the MVPD and its local management.

13. []

[]⁸ Although Mr. Sahl states now that "the rights are certain enough to protect Comcast,"⁸ I respectfully disagree. This new assertion is based on beIN's claims that there were oral discussions about its future programming with Comcast.⁹ Irrespective of what was said (as I understand that Comcast disputes these new claims), beIN never provided any [] []⁹, despite Comcast's clear and repeatedly expressed concerns on this issue. []

[]⁹.

14. Rather than provide content certainty, beIN proposed a "like for like" substitution mechanism in the February 2, 2018 proposal, which suggested that beIN itself had concerns about the soccer content it would be able to provide during renewal term. Furthermore, once revised and clarified in its March 7, 2018 proposal, beIN's proposed "like for like" substitution mechanism included substitutions from []

⁶ beIN Sports lists go90 as a television provider on its website, supporting Comcast's view that it was competitive. Screenshot is Exhibit 6. Verizon has since shut down go90.

⁷ Complaint Exhibit 4: beIN Sport-Comcast Term Sheet affiliation Agreement dated August 15, 2012, p. 41.

⁸ Sahl Declaration ¶ 5.

⁹ Meyeringh Declaration ¶ 4.

]].¹¹

15. Reserving this broad “like for like” substitution right would enable beIN to avoid
[[

]].¹²

16. beIN’s attempt to create complicated substitution mechanisms for its soccer content has become a recurring motif in its renewal proposals. Most recently, in its pre-filing notice of this Complaint, beIN proposed that [[

]].

It is a very inefficient way to do business.

17. ***Mr. Sahl’s belated attempt to shore up beIN’s content certainty is contradicted by objective marketplace facts.*** As part of beIN’s latest filings, Mr. Sahl claims that beIN’s “rights are certain enough to protect Comcast for many additional reasons” including beIN’s “years in the market, good reputation and distribution relationships with

¹⁰ <https://www.uefa.com/memberassociations/uefarankings/country/#/yr/2019>. Note that UEFA’s list is based on quality of team play, not appeal to U.S. audiences, where EPL is the clear leader. EPL was first on the other list referenced.

¹¹ <https://www.soccergearhq.com/best-soccer-leagues-in-the-world/>.

¹² Complaint ¶ 66.

¹³ Pantelis Michalopoulos and Georgios Leris, letter to Drew Brayford, Justin Smith, and Samantha Fischer, Comcast Cable, December 3, 2018.

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others.”¹⁴ But these are areas where beIN is, in fact, *weak* relative to major U.S. sports programmers.

18. beIN has only been in the market for six years—a fraction of the tenure of leading sports programmers like ESPN, Fox, or Turner. Moreover, beIN’s reputation as a sister company to the recently shuttered Al Jazeera America is at best “mixed” in the eyes of Comcast and other distributors, particularly given the ongoing bribery investigations involving beIN executives.¹⁵ Additionally, beIN’s business relationships with other distributors are far from complete and concrete. During negotiations in 2017, OVD PlayStation Vue dropped the beIN networks.¹⁶ Later, in 2018, AT&T/DirecTV did as well. There is no evidence that beIN made any material distribution gains from Dish or Verizon in their recent renewals (at best, beIN was able to maintain its prior levels of distribution, with some significant difficulty). beIN has never secured an affiliation agreement with the National Cable Television Cooperative, the organization of smaller cable operators, which is usually an early deal for most nascent programmers. Apart from fuboTV, beIN does not have affiliation agreements with any of the growing number of independent OVDs operating in the U.S.

19. Likewise, Mr. Sahl’s comparison of the content assurances that beIN provided to Comcast in 2017 with those that NBCSN provides to other MVPDs is not reasonable. NBCSN has many more years in the market than beIN, a better reputation for its programming, production, and promotion expertise, and much more comprehensive and stronger distribution relationships with MVPDs and OVDs. Unlike beIN, NBCSN’s long-term rights agreements with NASCAR, NHL, Olympics, and EPL have been widely reported, including the duration of these agreements.¹⁷ Furthermore, MVPDs know that established national sports programmers have powerful economic incentives to continue to provide high-appeal programming. They are expected to (and do) secure hundreds of millions, sometimes billions, of dollars in advertising revenue each year. In contrast, MVPDs fear that networks with limited sports rights, which typically rely much more on affiliate revenue than advertising, could lose much of their programming value to consumers with the loss of even one or two key sports rights agreements – as beIN has now experienced here.

Even with the trustworthiness NBCSN has in the marketplace, based on information that has been provided to me, {{

¹⁴ Sahl Declaration ¶ 5.

¹⁵ Brayford Declaration ¶ 24.

¹⁶ <https://www.multichannel.com/news/playstation-vue-drops-bein-sports-413347>.

¹⁷ http://www.espn.com/racing/nascar/cup/story/_/id/9503169/nbc-signs-10-year-deal-nascar-replaces-espn; <https://www.nhl.com/news/nhl-nbc-sign-record-setting-10-year-tv-deal/c-560238>; <https://www.nbcsports.com/chicago/chicago-fire/nbc-sports-retains-rights-premier-league-through-2021-22>; <https://money.cnn.com/2014/05/07/news/companies/nbc-olympics/index.html>.

}}.

21. I also disagree with Mr. Sahl's claim that [[

18

]].

22. [[

19

]].²⁰ Given the uncertainty about the content that beIN would be providing for the renewal term, a concern that Comcast voiced consistently during renewal discussions with beIN that went unaddressed,²¹ it seems abundantly clear to me that more common usage is what was meant by Comcast's use of [[in its December 2017 Offer.²²

¹⁸ Sahl Declaration ¶ 8.

¹⁹ Sahl Declaration ¶ 10.

²⁰ This interpretation is consistent with how Comcast used it with respect to authentication [[

]].

²¹ Brayford Declaration ¶¶ 13, 25.

²² Brayford Declaration ¶ 3.

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23. In all, Comcast's concerns about the status of beIN's programming rights were reasonable at the time of the December 2017 Offer, and those reasonable business concerns continue for Comcast today.

V. INDUSTRY DEVELOPMENTS SINCE THE FILING OF THE INITIAL ANSWER ALSO SHOW THAT BEIN'S STRATEGY IS NOT WELL ALIGNED WITH ITS MARKET OPPORTUNITY

24. *The distribution of niche sports content is increasingly moving from cable networks distributed via MVPDs to over-the-top streaming services distributed direct to consumers.* In August 2017, Turner Broadcasting, a major sports programmer, acquired a substantial package of soccer rights (UEFA Champions League and Europa League), and focused on distributing this content primarily on an over-the-top streaming service, and secondarily on its widely distributed cable TV networks, TNT and TBS.²³ In August 2018, the top Italian soccer league, *Serie A*, sold its U.S. rights (formerly held by beIN) to ESPN. Much like Turner, the primary distribution of these matches will be via ESPN+, an over-the-top streaming service, with only one game per week on its cable television networks, ESPN, ESPN2, and ESPN Deportes.²⁴ NBC Sports has taken a similar approach with certain EPL matches.²⁵ None of these companies, which operate multiple cable programming networks, were looking for this soccer content to help launch a new television network or to grow a smaller one. As I explained in my initial declaration, beIN might be more successful making its niche content available directly to consumers on an over-the-top basis rather than via traditional MVPDs.

25. *Furthermore, the sports cable TV programming business is getting more competitive.* Prior to beIN's launch and continuing since then, more sports networks have launched or are planning to launch on cable. These networks possess some rights, notably major college football and basketball games, that are often more compelling to broad local U.S. audiences than European professional soccer matches. The Big Ten Network, in partnership with Fox, launched in 2008.²⁶ The Longhorn Network, a joint venture of the University of Texas and ESPN launched in 2011.²⁷ The Pac-12 Network launched in 2012.²⁸ SEC Network launched in 2014, in partnership with ESPN.²⁹ The

²³ <https://www.nytimes.com/2017/08/17/sports/soccer/turner-champions-league-streaming-service.html>.

²⁴ <https://espnmediazone.com/us/press-releases/2018/08/more-than-340-serie-a-tim-matches-headed-to-espn-in-new-multi-year-u-s-rights-agreement-for-italian-football/>.

²⁵ <https://www.nbcsports.com/gold/premier-league>.

²⁶ <https://www.sportsbusinessdaily.com/Journal/Issues/2017/08/21/In-Depth/BTN-timeline.aspx>.

²⁷ <https://www.cornnation.com/2011/1/20/1945740/espn-texas-longhorn-network-good-for-college-sports>.

²⁸ <http://blogs.mercurynews.com/collegesports/2012/08/10/pac-12-networks-news-and-notes-from-the-stevenson-teleconference/>.

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ACC Network, also in partnership with ESPN, is launching later this year.³⁰ Even with such programming, many of these networks have had significant difficulty gaining carriage from larger MVPDs. For example, Comcast had a tough renewal negotiation with the Big Ten Network in 2018³¹ and does not carry The Longhorn Network. DirecTV has never distributed the Pac-12 Network.³²

26. Amid this increased supply of sports programming, beIN's remaining collection of niche soccer rights may be seen as less compelling now, as MVPDs make their editorial decisions over the best uses of their content dollars and bandwidth to compete with other distributors in today's radically changed and highly dynamic video marketplace.

VI. THE BEIN NETWORKS ARE NOT SIMILARLY SITUATED TO NBCSN OR UNIVERSO (UPDATED ANALYSES)

27. Below, I update data I provided in my initial declaration demonstrating that the beIN networks are not similarly situated to NBCSN and Universo.

A. beIN Sports Is Not Similarly Situated To NBCSN

Programming Analysis Update

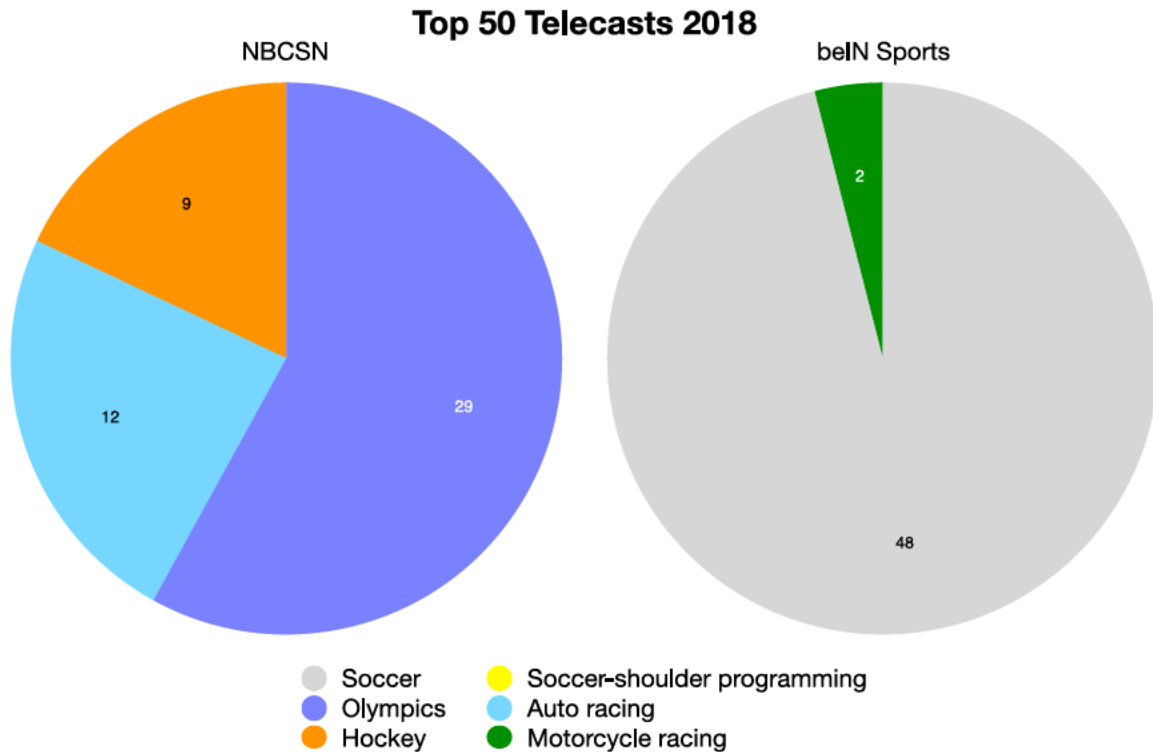
28. As I found in my initial declaration, NBCSN is a general sports network, featuring high profile programming year-round in multiple sports. beIN Sports is a niche English-language soccer programming network. The vast majority of the audience it attracts watches its soccer programming, and the audience for its other programming is limited. The following chart shows the top 50 most viewed telecasts of more than 60 minutes in duration on the two networks during 2018.

²⁹ <https://www.sbnation.com/college-football/2013/5/2/4293400/sec-network-tv-espn-announcement-details>.

³⁰ <https://www.newsobserver.com/sports/college/acc/article91504627.html>.

³¹ <https://www.indystar.com/story/sports/college/2018/08/24/big-ten-network-and-fs-1-agree-deal-comcast-football-games/1089206002/>.

³² <https://www.seattletimes.com/sports/pac-12/could-att-walk-away-from-the-pac-12-networks-and-take-directv-with-it/>.



29. Of NBCSN’s top 50 most viewed telecasts for 2018, *none* are soccer matches, 29 are Olympics coverage, 12 are auto races, and 9 are hockey games. The 50 telecasts ranged in audience size from [[] viewers to [] viewers. In aggregate, these 50 telecasts represented [] minutes of programming, just over three hours per week. Of beIN Sports’ most viewed telecasts in 2018, which ranged in audience size from [] viewers to [] viewers, 48 are soccer matches and two are motorcycle races. In aggregate, these 50 telecasts represented [] minutes of programming, almost exactly two hours per week.³³ The most viewed telecast on beIN Sports had a smaller audience than the top 287 telecasts on NBCSN.

30. These data show that Mr. Sahl’s statement that beIN Sports is “built around *La Liga*” as the NBC Networks are “built around EPL”³⁴ is a superficial and flawed analysis. In a non-Olympic year, NBCSN is built far more around NASCAR auto races and NHL hockey games than it is around EPL.

³³ The complete list of these programs is included in the Appendix as Exhibits 1 and 2. No soccer matches were more than 2.5 hours long; a large number of the Olympic programs, auto races, and hockey games were longer than that.

³⁴ Sahl Declaration ¶ 11.

Distribution Analysis

31. NBCSN and beIN Sports are also not similarly situated in the MVPD distribution marketplace. For January 2019, Nielsen estimated that NBCSN was distributed to [[]] households, while beIN Sports was distributed to only [[]], 80% fewer.

[[]]

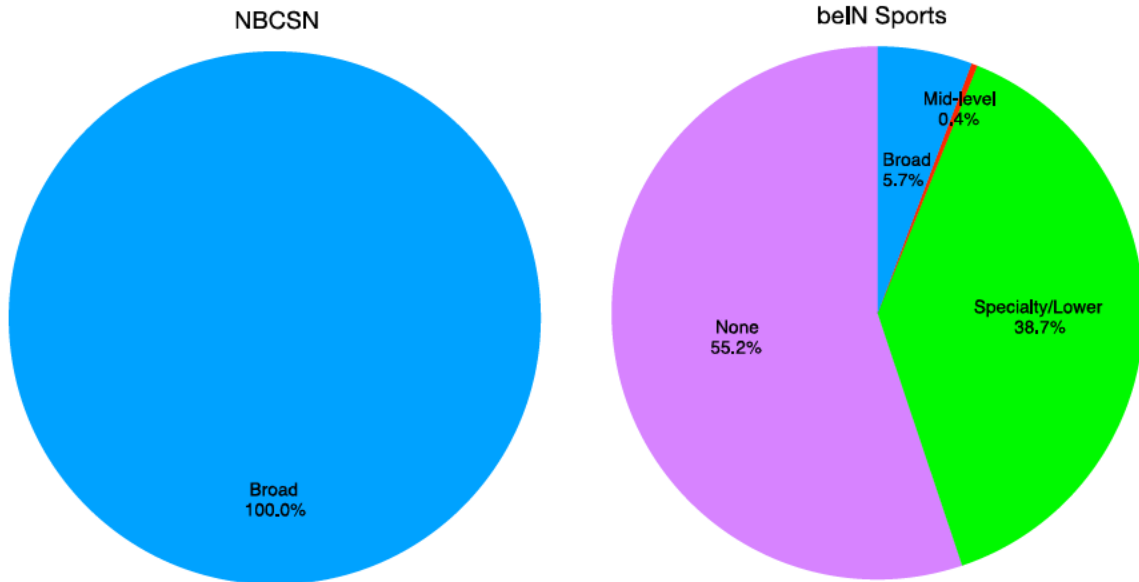
]]

32. NBCSN continues to be widely distributed by all major MVPDs. beIN Sports is widely distributed by only one – Verizon. Among the top 50 MVPDs in the continental U.S., 39 (nearly 80%) do *not* distribute beIN Sports *at all*. The chart below provides an updated summary of the packaging of NBCSN and beIN Sports on the systems of the top 50 MVPDs in the continental U.S. NBCSN is carried by *every one* of the top 50 MVPDs, and all of them distribute the network in packaging that reaches approximately 80% of their basic subscribers – i.e., broad distribution. In contrast, beIN Sports is not carried at all on systems representing a majority (55.2%) of basic subscribers. About 38.7% of basic subscribers are on systems which provide beIN Sports in Specialty/Lower distribution packaging.³⁵

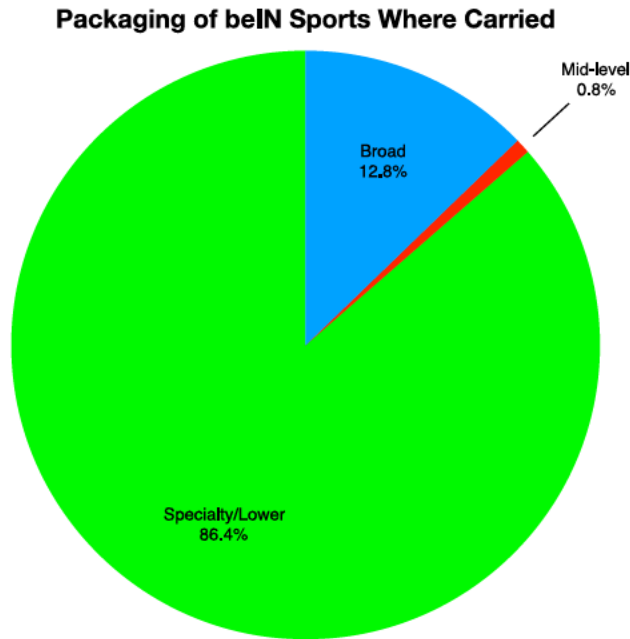
³⁵ If we exclude Comcast and consider only the other 49 largest MVPDs, 42% of the basic subscribers are on systems that do not carry beIN Sports and 51% are on systems that carry it in Specialty/Lower distribution packaging.

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Packaging and Carriage on Systems of the Top 50 MVPDs



33. Looking at it another way and focusing only on systems that *carry beIN Sports*, 86.4% of those basic subscribers are on systems which carry beIN Sports in a Specialty/Lower package.



Ratings Analysis

34. In 2018, beIN Sports had an average audience size across all of its rated hours of only [[REDACTED]]. NBCSN had an average audience of [[REDACTED]] people – *over 25 times the size of beIN's*.³⁶ Even on a coverage area basis (which, as discussed in my initial declaration, is not a meaningful metric here), ignoring the much greater universe of people who receive NBCSN, NBCSN's rating is over seven times higher than beIN Sports' rating, with a [[REDACTED]] rating versus beIN Sports' [[REDACTED]] (which represents a substantial decline from its [[REDACTED]] coverage area rating in 2017). beIN Sports had the smallest average audience of any English-language U.S. national sports network in 2018. If beIN Sports en Español were added to the chart of sports services below, it would rank behind every other network in the chart except beIN Sports in average audience ([[REDACTED]]) and above only beIN Sports, Fox Sports 2, Tennis Channel and ESPNU in coverage area rating ([[REDACTED]]).³⁷

³⁶ Data source: Nielsen NPOWER report Live+3 Days (+75 Hours), 1/1/2018-12/31/2018, Live+SD, Persons 2+, MC US AA Proj (000).

³⁷ Data source: Nielsen NPOWER report Live+3 Days (+75 Hours), 1/1/2018-12/31/2018, Live+SD, Persons 2+, MC US AA Proj (000).

[[

]]

35. Additionally, even ignoring NBCSN's much larger universe of households, the top event telecasts on NBCSN rate more highly than the top ones on beIN Sports, and the fall-off from the very top is not as dramatic for NBCSN. The most viewed telecast on NBCSN in 2018 (Winter Olympics programming on February 10) had a [[]] people rating in NBCSN's coverage universe, and the 10th most highly viewed, a NASCAR race, has a [[]] rating, 39% lower than its top telecast. By comparison, the most viewed program on beIN Sports in 2018, a *La Liga* match known as *El Clásico*³⁸ on May 6, had a [[]] rating in beIN Sports' much smaller coverage universe, and the 10th most highly viewed, another *La Liga* match, had a [[]] rating, 69% lower than its top telecast – a much sharper drop-off.³⁹

36. NBCSN also has a much broader base of viewership than does beIN Sports, as shown in the respective reach of these networks (i.e., the number of households that receive the network *and* that watch it for at least six minutes during the month). For the average month of 2018, [[]]% of people in households that received NBCSN watched it for at least six minutes which translates to [[]] million people, while for beIN Sports the comparable figures were only [[]]% and [[]] million people.⁴⁰

³⁸ This is a twice-annual match between Barcelona and Real Madrid, perennially the two top teams in *La Liga*.

³⁹ Data source: Nielsen NPOWER report Live+3 Days (+75 Hours), 1/1/2018-12/31/2018, Persons 2+.

⁴⁰ Data source: Nielsen NPOWER R&F Report Live+3 Days (+75 Hours), 1/1/2018-12/30/2018, Persons 2+, AA Monthly Reach with a Qualified Audience of 6 minutes. During an average month in 2017, [[]]% of people in households that received

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37. *Ratings of Individual Games.* I previously explained that beIN cherry-picked its ratings data by misleadingly focusing on ratings of its highest profile games, which are not representative, and this concern remains. In its latest Complaint, beIN again highlights ratings of *El Clásico* in 2015. The viewership of *El Clásico*, however, has declined since then and continued to decline in 2018. The two 2018 *El Clásico* telecasts drew considerably smaller audiences than the 2015 match cited by beIN: [] viewers on May 6 (the highest viewed beIN telecast of the year) and [] on October 28 (the second highest viewed beIN telecast).⁴¹ The May 6, 2018 *El Clásico* viewership is nearly **50** times beIN Sports' average viewership; again, hardly representative.

38. By comparison, for 2018, the highest rated telecast on NBCSN was a weekend Winter Olympics program on February 10 that averaged [] million viewers. This drew an audience **13** times the audience of the top-rated 2018 *El Clásico*. In the context of NBCSN's average viewership in 2018 of [], this represented **24** times NBCSN's average, making it less of an outlier than *El Clásico*.

Advertising Analysis

39. In the Complaint, beIN makes much of the overlap of advertisers between NBCSN and beIN Sports. There are thousands of products advertised on NBCSN and Universo in the course of a year. In the fractionalized world of cable television networks, it is probably the rule, not the exception, that advertisers are buying advertising from many different networks to meet the reach and frequency goals for their message. The idea that beIN's advertisers, facing the limited reach of the network, would try to find a larger, and different, audience on NBCSN is logical.⁴² The mere fact that advertisers place their ads on two separate services does not mean that the advertiser views those networks as similar; they may be complementary.

B. beIN Sports en Español Is Not Similarly Situated To Universo

Programming Analysis

40. There are likewise striking differences between beIN Sports en Español's most viewed programs and Universo's, as seen in the updated charts below. In 2018, soccer matches and post-match soccer shoulder programming make up every one of beIN Sports en Español's top 50 most viewed programs. Of Universo's top 50 most viewed programs

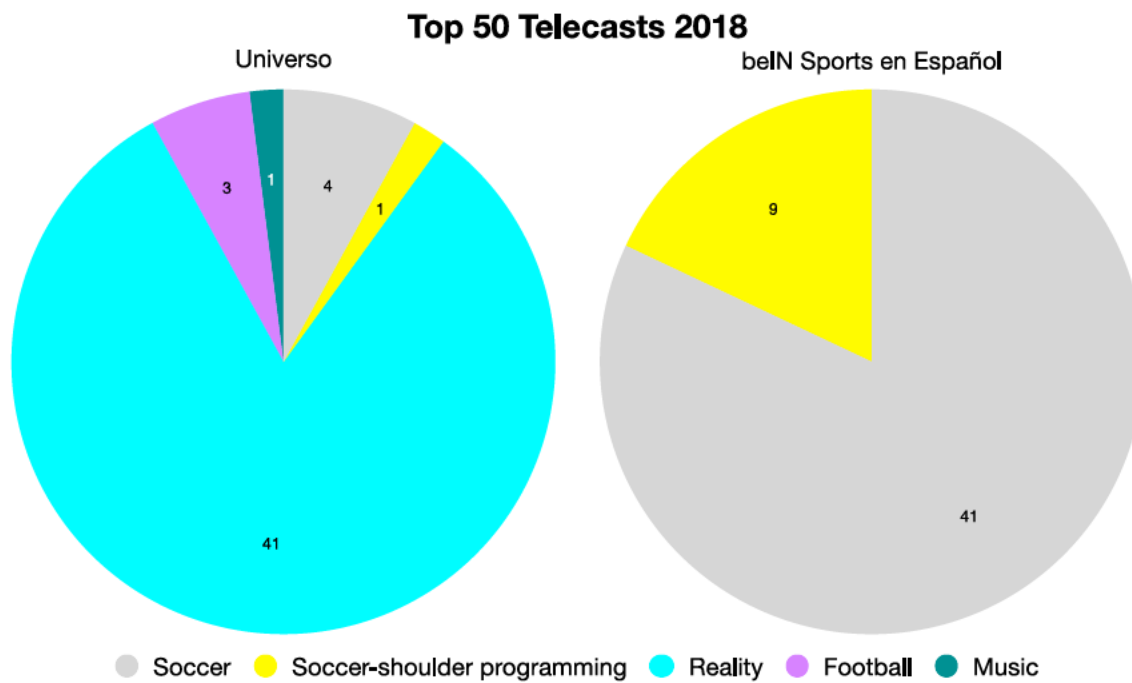
NBCSN watched for at least six minutes, which translates to [] million people. For beIN Sports, the comparable figure was only []% or [] million people. Data source: Nielsen NPOWER R&F Report Live+3 Days (+75 Hours), 1/1/2017-12/30/2017, Persons 2+, AA Monthly Reach with a Qualified Audience of 6 minutes. The above corrects Nielsen data provided in my initial declaration. Litman Declaration ¶ 33.

⁴¹ Exhibit 2 new.

⁴² Complaint ¶ 106.

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for 2018, only 5 were soccer matches, all of which were from the World Cup; none of which were EPL matches.⁴³ The other 45 programs include 41 episodes of reality shows, the Super Bowl and its pre- and post-game shows, and a music awards show.⁴⁴



⁴³ As shown in my prior declaration, in 2017, of Universo's top 50 most viewed programs, only 17 were soccer matches. The 2018 data contradicts Mr. Briceño's statement that Universo has been employing a strategy of focusing more on high-profile soccer programming over time.

⁴⁴ For this analysis, unlike the comparison between NBCSN and beIN Sports, I again considered all telecasts, not only event-length (over one hour) telecasts, because reality telecasts, which are carried on Universo, are rarely, if ever, more than 60 minutes in length. So looking at the ratings of only event-length telecasts is not representative of the Universo service.

Distribution Analysis

41. For January 2019, Nielsen estimates that Universo is available in over [[]] million households and beIN Sports en Español is available in fewer than [[]] million, over 60% fewer.⁴⁵

[[

]]

Ratings Analysis

42. The lack of similarity between Universo and beIN Sports en Español is readily apparent looking at prime time ratings, the time period with the highest amount of viewing. As a service programmed for U.S. Latinas, Universo's focus and strength is in prime time. In 2018, Universo had an average prime time audience of [[]] viewers, over three times that of beIN Sports en Español's average audience of [[]] viewers.⁴⁶ Unlike Universo, the top programming on beIN Sports en Español is typically during the daytime on weekends, and often Saturday morning, when it is Saturday afternoon in Europe, the time when professional soccer is traditionally scheduled for its home country's audience.

43. Universo has a much broader base of viewership than does beIN Sports en Español, as shown in each network's reach (i.e., the number of households that receive the network *and* that watch it for at least six minutes during the month). In 2018,

⁴⁵ Nielsen Cable Network Universe Estimates for January 2019.

⁴⁶ <https://www.indiewire.com/2018/12/network-ratings-top-channels-espn-cnn-fox-news-cbs-nbc-abc-1202030597/>.

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Universe's average monthly reach was [] million people, while beIN Sports en Español's average monthly reach was [] million, 47% fewer. beIN Sports en Español and Universo reached approximately the same percentage of people in the households that receive each network ([]% for beIN en Español and []% for Universo). However, this data is notable and, in fact, further highlights the viewership differences between the networks. Universo was able to reach a similar percentage of viewers despite the fact that it is distributed to a substantial number of non-Hispanic households, while beIN Sports en Español does not likewise reach many non-Hispanic households.⁴⁷

44. In short, under an objective, industry-standard comparison, the beIN networks are not similarly situated to NBCSN or Universo.

VII. SINCE BEIN FILED ITS INITIAL COMPLAINT, THERE IS A SUBSTANTIAL AMOUNT OF ADDITIONAL SUPPORT FOR COMCAST'S REASONABLE BUSINESS ASSESSMENT OF BEIN'S VALUE

45. Industry developments since the filing of Comcast's May 14, 2018 Answer further confirm that Comcast has acted, and continues to act, towards beIN in a commercially reasonable manner, and that its business judgment was not a pretext for benefitting NBCSN or Universo.

46. *Another major MVPD dropped the beIN networks.* On August 29, 2018, the largest MVPD, AT&T, also dropped the beIN networks⁴⁸ and, as of the date of this declaration, is still not carrying the networks. AT&T's DirecTV DBS and DirecTV Now OVD services compete nationally with Comcast Xfinity video service. After Comcast stopped carrying beIN, AT&T had the opportunity to consider a strategy of using carriage of beIN to differentiate its MVPD service from Comcast's, as beIN had suggested. However, AT&T clearly did not see that opportunity as sufficiently attractive under the terms that beIN was proposing. In fact, I have no knowledge that any MVPD used the

⁴⁷ Data source: Nielsen NPOWER R&F Report Live+3 Days (+75 Hours), 1/1/2018-12/30/2018, Persons 2+, AA Monthly Reach with a Qualified Audience of 6 Minutes. During 2017, each month on average [] million people in Universo households watched the network for at least six minutes, which represents []% of its coverage area. For beIN Sports en Español, the comparable figures are [] million people and []% of its coverage universe. beIN Sports en Español reached 37% fewer people each month than Universo. beIN Sports en Español did reach a larger percentage of its universe in 2017, but this is because, as noted, its available universe is more limited than that of Universo. Data source: Nielsen NPOWER R&F Report Live+3 Days (+75 Hours), 1/1/2017-12/31/2017, Persons 2+, AA Monthly Reach with a Qualified Audience of 6 Minutes. The above corrects 2017 Nielsen data provided in my initial declaration. Litman Declaration ¶ 56.

⁴⁸ <https://www.rbr.com/bein-sports-stays-on-dish-sling-as-other-disputes-continue/>.

absence of the beIN networks on Comcast as part of a major marketing push to acquire a large number of disaffected Comcast subscribers. In addition, AT&T also dropped the beIN networks from its wireline U-verse service (which competes with Comcast in certain markets), presumably because it also found beIN's proposed terms unreasonable.

47. ***There is no evidence that, upon affiliation renewals, MVPDs are repositioning beIN networks to more highly penetrated packaging, as beIN had proposed to Comcast. In fact, at renewals, it looks like beIN was at best able to hold onto its prior levels of distribution, often with some significant difficulty.*** beIN Sports and Dish Network renewed their affiliation agreement in September 2018. It does not appear that either Dish or Sling (Dish's over-the-top service) have repositioned the beIN networks to more highly penetrated packaging.⁴⁹

48. Verizon, which beIN cites as the major MVPD carrying its networks in high penetration packages, renewed its affiliation agreement with beIN. However, it appears that this negotiation was very challenging. Verizon dropped the beIN networks for nearly two weeks before the parties reached an agreement. Following the drop, but prior to the reinstatement, Verizon stated that “[u]nfortunately beIN Sports is demanding a significant rate increase for the same content they offer today.”⁵⁰ After an agreement was reached, Verizon did not participate in the press release announcing the deal.⁵¹ Verizon does not appear to have further expanded distribution of the beIN networks.

49. ***The programming value of the beIN networks was reduced with the move of Serie A games from beIN to ESPN and the move of the world's most famous soccer player to a club whose games are no longer carried by beIN.*** In July 2018, Cristiano Ronaldo left *La Liga*'s Real Madrid, to move to the *Serie A* club Juventus, whose matches beIN no longer carries. Ronaldo was widely regarded as the top star in *La Liga*, perhaps the world, and is mentioned several times in beIN's Initial Complaint.⁵²

50. ***Comcast's MVPD business is better off financially since it stopped carrying beIN Sports and beIN Sports en Español.*** In connection with Comcast's December

⁴⁹ Notably, the quote Dish provided for the press release was from its Vice President of Sling and Dish Latino. <https://www.marketwatch.com/press-release/bein-sports-reaches-long-term-renewal-agreement-with-dish-sling-tv-2018-09-21-181591914>. Much like Comcast, it appears that Dish, the former employer of both Mr. Sahl and Mr. Tolle, saw the primary value of beIN programming in the beIN Sports en Español service for the Latino marketplace.

⁵⁰ <https://www.multichannel.com/news/bein-sports-usa-channels-dropped-fios>.

⁵¹ <https://www.businesswire.com/news/home/20180813005436/en/beIN-SPORTS-Reaches-Agreement-Verizon-Fios>.

⁵² His star power is substantial; the first match of the 2018-2019 season that ESPN telecast featured Ronaldo Juventus and was carried on its flagship cable channel. <https://www.theguardian.com/football/2018/jul/10/cristiano-ronaldo-juventus-real-madrid>.

2017 Offer, Comcast’s Enterprise Business Intelligence (“EBI”) team prepared viewership analyses that assessed the value of the beIN networks to Comcast’s MVPD business. Specifically, the EBI team estimated the number of customers and amount of gross margin that Comcast might lose if it no longer carried the beIN networks and refined that analysis based on {{

}} in 2015. Comcast estimated that it could lose approximately {{ }} customers and around {{ }} million in annual gross margin.⁵³ This projected financial loss was substantially less than the costs of the renewal deal that beIN had proposed, which would have Comcast pay {{ }} million in license fees⁵⁴ in the first year and would also compromise the revenue it earned from the sale of the SEP and H tiers for which beIN Sports en Español was a significant draw.

51. Since Comcast stopped carrying the beIN networks on July 31, 2018, Comcast conducted additional analyses to examine which Comcast customers who were beIN viewers either dropped their Comcast video service or cancelled Comcast service altogether.⁵⁵ This analysis confirms that Comcast is far better off financially by no longer carrying the beIN networks. While there were some subscriber losses and video service cancellations, at the end of 2018, four months after the parties’ impasse, only approximately {{ }} customers left Comcast or cancelled their Comcast video service. This amounts to approximately only {{ }} million in lost gross margin on an annualized basis.⁵⁶ In contrast, the last proposal⁵⁷ on the table from beIN to Comcast at the time of the expiration of the affiliation agreement, dated March 7, 2018, called for Comcast to pay beIN {{ }} million in license fees in the first year alone.

52. *The information Comcast provides to its customers about the expiration of the beIN agreement is consistent with industry standard approaches.* I have reviewed the information that beIN provided as Exhibit 14 in the Complaint. Contrary to beIN’s claims in the latest complaint, this information was not “a marketing campaign against beIN”⁵⁸ designed to lure customers to NBCSN and Universo. Rather, it reflects an industry standard approach by an MVPD to mitigate the impact to consumers of the discontinuation of carriage of a network. The MVPD informs subscribers about the availability of alternative programming carried on the system. If it had not done so, Comcast would have been remiss in its obligations as an MVPD. Since, as I have noted earlier, viewers of both of the beIN networks primarily watch them for soccer programming, it is logical that Comcast redirects customers looking for that content to other available soccer programming. beIN fails to disclose that Comcast’s informational

⁵³ Brayford Declaration ¶ 31.

⁵⁴ Based on beIN’s April 11, 2017 proposal of {{ }} in monthly license fees, its proposal on the table when the EBI analysis was put together in January 2018.

⁵⁵ I.e., cancelling their Internet access or telephone service, as well as video.

⁵⁶ Brayford Declaration ¶ 51.

⁵⁷ Brayford Declaration ¶ 39.

⁵⁸ Briceño Declaration ¶ 12.

message also highlights the continued availability of the beIN networks to customers via online platforms like Sling TV, which is accessible through Comcast's X1 platform, and beIN's YouTube channel.⁵⁹ Comcast provides explicit directions for how its customers could access beIN via its X1 platform.⁶⁰ The information also lists several unaffiliated services (e.g., Fox, ESPN, Univision). The actual content of the information, therefore, disproves that Comcast was attempting to benefit its affiliated networks at the expense of beIN.

How can I continue to watch soccer?

There are several ways to enjoy soccer. Xfinity X1 customers can search or say "soccer" into the voice remote to find a collection of games, highlights, and more. Some beIN SPORTS content can be viewed on X1 using the beIN SPORTS YouTube channel. With X1, soccer programming can also be found on La Liga and Ligue 1 YouTube channels. beIN SPORTS currently can be viewed on X1 by subscribing to Sling's World Sports package. Go to the Apps menu and click on the Sling icon. You will need to sign in or create an account. Then navigate to "World Sports" under "Base Service" using the arrow keys on your remote. Customers who sign up will be billed by Sling for this package. 7 day free trials are periodically available. Soccer games are available on NBC, FOX, ESPN, Telemundo, Univision and other networks.

VIII. COMCAST'S CARRIAGE DECISIONS REGARDING BEIN DO NOT UNREASONABLY RESTRAIN BEIN'S BUSINESS OPPORTUNITIES

53. beIN describes Comcast's actions as putting it "between the devil and the deep blue sea."⁶¹ However, the reason beIN may find itself in this position is because of its own misreading of the available business opportunity. beIN hoped to use its renewal negotiations with Comcast as a way to gain increased license fees and higher penetration for its cable networks. It appears to me that beIN miscalculated the value proposition for its niche programming in today's highly competitive video marketplace. beIN is not the first programmer to underestimate the larger forces at play in this industry.

54. In 2010, the CEO of Time Warner, one of the largest entertainment companies, famously compared Netflix's prospects in the entertainment business with the possibility that the Albanian army could take over the world.⁶² Yet, by 2018, Netflix's market capitalization exceeded that of every other entertainment company⁶³ and Time Warner

⁵⁹ For clarity, beIN's YouTube channel shows video clips from the networks. The beIN networks in their entirety are not carried by YouTube TV, its co-owned OVD, but NBCSN and Universo are.

⁶⁰ Complaint Exhibit 14; Brayford Declaration ¶ 52; Smith Declaration ¶ 30.

⁶¹ Briceño Declaration ¶ 54.

⁶² <https://www.mediaplaynews.com/jeff-bewkes-legacy-more-than-surviving-the-albanian-army/>.

⁶³ <https://www.cnet.com/news/netflix-tops-disney-as-most-valuable-media-company-by-market-cap/>.

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was selling itself to AT&T, which has announced plans to use the programming assets to launch streaming services in competition with Netflix.⁶⁴

55. The popularity of streaming video has upended many traditional ways of doing business for MVPDs. Comcast started distributing Netflix on its X1 set-top box platform in 2016, and expanded that distribution in 2018, so it is available for its customers to buy and watch similar to HBO and Showtime.⁶⁵ As noted earlier, the beIN networks are available to Comcast customers as part of the Sling World Sports package, which is available to all X1 customers (which are the majority of Comcast video subscribers).⁶⁶

56. beIN also suggests that it was unable to accept Comcast's December 2017 Offer because it was boxed in by Most Favored Nation ("MFN") provisions that it had provided to others.⁶⁷ If beIN provided other MVPDs with MFN protections that were overly generous (for example, affording a smaller MVPD the benefit of more favorable deals beIN did with larger MVPDs), that is not a legitimate reason for Comcast to have to accept affiliation terms that exceeded the value that Comcast saw for the beIN networks. Putting aside that, in my opinion, it makes little business sense for beIN to offer or to agree to such MFNs, it is unclear how Comcast would be responsible for the MFN provisions that beIN had provided to other affiliates as it was not party to those deals.

57. Major MVPDs continue to distribute the beIN networks. beIN claims that it "is still growing at a prodigious rate" and that []

[]⁶⁸ These statements suggest that beIN has not experienced *any* meaningful restraint following the non-renewal of its agreement with Comcast.

IX. CONCLUSION

58. In summary, I believe that Comcast was reasonable in its concern that beIN had not committed to provide the programming on its networks that Comcast expected when beIN proposed Comcast enter into a [] renewal affiliation agreement for substantially more money and more carriage of the beIN networks.

59. Additional information since the time of beIN's Initial Complaint confirm that Comcast's concerns about beIN's programming were well founded, and that beIN's

⁶⁴ <https://www.cbsnews.com/news/now-with-time-warner-at-t-starts-streaming-tv-service/>.

⁶⁵ <https://media.netflix.com/en/press-releases/comcast-and-netflix-expand-partnership-following-successful-xfinity-x1-integration>.

⁶⁶ <https://www.telecompetitor.com/with-50-of-x1-subscribers-accessing-netflix-comcast-and-netflix-expand-their-business-relationship/>.

⁶⁷ Briceño Declaration ¶ 54.

⁶⁸ Complaint ¶ 103.

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aggressive renewal proposals were out of step with the value of its networks and more general trends in the MVPD programming marketplace.

60. Since the parties' impasse, beIN has done little to credibly address the lack of content certainty underlying Comcast's concern, which the Commission described in detail in its July 2018 Dismissal Order. beIN's recent proposal ||

|| is

unreasonable and, to my knowledge, unprecedented in the industry.

61. My updated analysis continues to demonstrate that the beIN networks are not similarly situated to either NBCSN or Universo. I base this assessment on objective industry data and my experience in the industry. Both beIN networks are niche soccer networks that attract a modest audience and have much more limited distribution among MVPDs and OVDs than NBCSN, a general sports network, and Universo, a Spanish-language general entertainment network.

62. Finally, Comcast's December 2017 Offer and related negotiations with beIN have not unreasonably restrained beIN's ability to compete fairly. Not only was Comcast's conduct reasonable in light of beIN's demands, beIN has also misjudged the market opportunity for small niche cable networks in today's highly competitive industry. I continue to see beIN's challenges as primarily a product of the competitive environment and *its own* business decisions and strategic missteps.

I have prepared this declaration using facts of which I have personal knowledge or based on information provided to me. I declare under penalty of perjury that the foregoing is true and correct to the best of my current information, knowledge, and belief.

Executed on February 6, 2019

A handwritten signature in black ink, appearing to read "P. Litman". The signature is written in a cursive, flowing style with a large initial "P" and a long, sweeping underline.

Peter Litman

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Appendix

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Exhibit 1: Top 50 Telecasts (greater than 60 minutes in duration) on NBCSN 2018⁶⁹
II

II

⁶⁹ Nielsen NPOWER report Live+3 Days (+75 Hours), 1/1/2018-12/31/2018, Persons 2+, Duration >60.

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Exhibit 2: Top 50 Telecasts (greater than 60 minutes in duration) on beIN Sports 2018⁷⁰
[[

]]

⁷⁰ Nielsen NPOWER report Live+3 Days (+75 Hours), 1/1/2018-12/31/2018, Persons 2+, Duration > 60.

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Exhibit 3: MVPD Carriage of NBCSN and beIN Sports; Basic Subscribers at end Q3 2018 from Kagan⁷¹

[[

]]

⁷¹ Frontier percentages are estimates based on relative subscriber counts at the time of the CA, FL, TX acquisition [[

]]. The Altice USA counts are based on its Q3 2018 financial statements.

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Exhibit 4: Top 50 Telecasts on Universo 2018⁷²

[[

]]

⁷² Nielsen NPOWER report Live+3 Days (+75 Hours), 1/1/2018-12/31/2018, Persons 2+.

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Exhibit 5: Top 50 Telecasts on beIN Sports en Español 2018⁷³

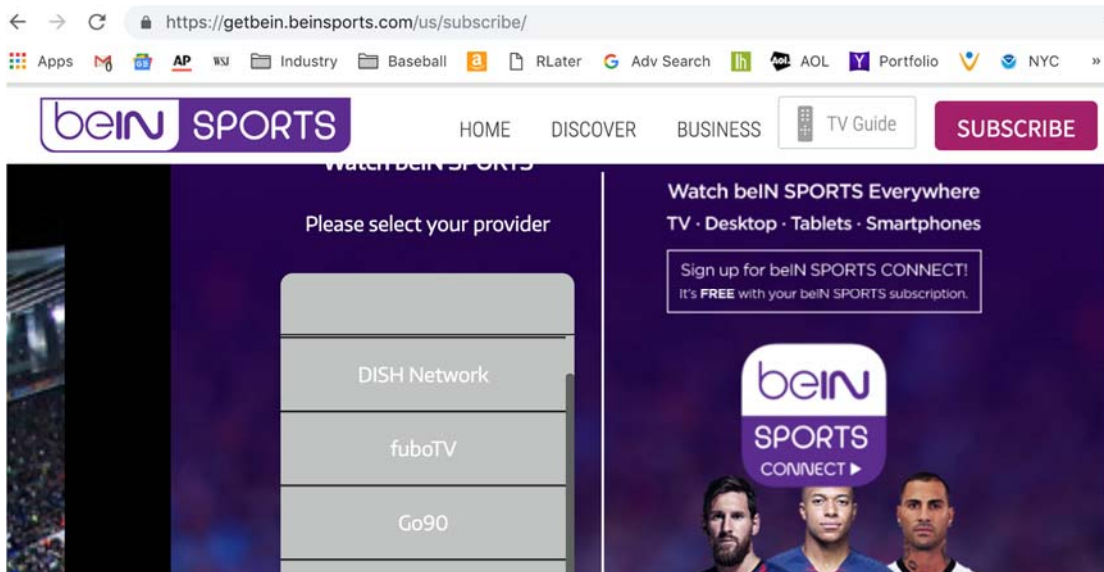
II

II

⁷³ Nielsen NPOWER report Live+3 Days (+75 Hours), 1/1/2018-12/31/2018, Persons 2+.

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Exhibit 6: Screen shot of getbein.beinsports.com/us/subscribe (retrieved January 30, 2019)



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ATTACHMENT A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
beIN SPORTS, LLC,)	
<i>Complainant,</i>)	
	)	MB Docket No. 18-90
vs.	)	File No. CSR-8954-P
)	
COMCAST CABLE)	
COMMUNICATIONS, LLC)	
and)	
COMCAST CORPORATION,)	
<i>Defendants.</i>)	
)	

DECLARATION OF PETER LITMAN

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I. INTRODUCTION

1. My name is Peter Litman. I am a media consultant who frequently works in the cable programming business. The majority of my practice is advising cable programming services on how to negotiate their distribution agreements with multichannel video programming distributors (“MVPDs”) and advising MVPDs on how to secure the programming for their systems. Additionally, I have worked extensively on business planning for new distribution opportunities that have arisen for cable programming companies, such as the creation of new cable channels, video-on-demand (“VOD”), high definition (“HD”) television, and Internet distribution.

2. I have been retained by counsel for Comcast Corporation (“Comcast”) to assess the merits of the beIN Sports, LLC (“beIN”) claim in its Program Carriage Complaint (the “Complaint”) filed on March 15, 2018. beIN asserts that Comcast discriminates against beIN by carrying the beIN networks, beIN Sports and beIN en Español, as part of Comcast’s sports and Hispanic tiers while distributing affiliated networks, NBC Sports Network (“NBCSN”) and Universo, on more highly penetrated tiers and paying them higher per subscriber fees. I have reviewed the Complaint, declaration, and exhibits, as well as the information that I requested.

II. QUALIFICATIONS

3. I graduated from Brown University with a Bachelor’s degree in applied mathematics. I earned my Master of Management degree (equivalent to an MBA) from the Kellogg School of Management at Northwestern University.

4. I have worked in the media industry for thirty years, the entirety of my professional career. I have extensive experience in the program carriage marketplace, where MVPDs negotiate with video programmers for carriage of their content. In addition to my work in multichannel television, I have also worked in broadcast television, radio, and digital media. I have very broad experience on both the content and distribution sides of multiple media. My first professional exposure to the cable television business was in 1990 when I worked for NBC Cable, which then had a single wholly owned cable network, CNBC. My first professional role with a cable television distributor was with Continental Cablevision in 1993; at the time it was the third-largest MVPD in the United States, as well as the owner of stakes in a number of cable television networks including Turner Broadcasting (CNN, TNT, TBS, Cartoon Network), Golf Channel, Food Network, E!, and the forerunners of the networks now known as NBCSN and Fox Sports 1. Since 1998, I have acted as an independent consultant and have worked for both major cable programmers and distributors, including a leading cable operator and a competitive MVPD. I worked extensively on a very successful channel development, Lifetime Movies, which was a thinly distributed channel available in 2 million households at the time that I began my work, and is now available in over 70 million households. My curriculum vitae is attached to this report.

5. Additionally, my experience in other media, notably radio, has given me experience with the rapid changes in the media industry in which the new competitive issues and concerns have changed the business dynamics for incumbents. In radio, the two largest companies in the industry, iHeart and Cumulus, are both in bankruptcy, in part because they underestimated the impact of Internet distribution of music programming on radio for listeners and the switch from brick-and-mortar retail to e-commerce for radio's advertisers.

6. Previously, I have been retained as an expert in matters concerning the cable programming industry. I have no financial interest in the outcome of this case.

III. SCOPE OF ASSIGNMENT

7. I have been asked by counsel for Comcast to offer my independent, expert view, based on the Complaint, the declaration of beIN's industry expert Eric Sahl, and available, objective data, as to the following claims:

- a) Whether the beIN networks – beIN Sports, and beIN Sports en Español – are similarly situated to Comcast-affiliated networks, NBCSN and Universo;
- b) Whether Comcast's behavior with respect to beIN's networks is driven by an effort to favor its affiliated programming; and
- c) Whether Comcast's behavior unreasonably restrains beIN's ability to compete fairly in the marketplace for video programming.

8. I performed my analysis using a variety of data sources, consistent with how I would prepare for a renewal of an affiliation agreement if I were advising a cable network or MVPD. Among these data sources are ratings and programming information available in the television trade and popular press, channel lineups and packaging information from systems owned by other MVPDs, Nielsen ratings data, cable programming industry data available from Kagan Research ("Kagan," a unit of S&P Global) about other networks and MVPDs, and any proprietary data available from my client. I generally focus on data from the most recently completed year, in this case 2017.

9. I have personally performed all of this work. The materials I relied upon in preparing this written testimony are cited herein.

IV. SUMMARY OF CONCLUSIONS

10. ***Numerous objective marketplace metrics, including overall content, viewership, advertising interest, and carriage by other distributors, demonstrate that the beIN networks are not similarly situated to NBCSN or Universo.*** It is my professional opinion that the beIN networks (beIN Sports and beIN Sports en Español) and the NBCUniversal networks (NBCSN and Universo) are not similarly situated under an objective, industry-standard comparison. Both beIN Sports and beIN Sports en Español are niche soccer networks that focus primarily on European soccer leagues and attract a modest audience

by national cable standards, and thus have more limited distribution by major MVPDs. In contrast, NBCSN is a well-distributed, broad-appeal cable sports network with the kind of high-profile live sports event programming covered extensively in the sports media, and Universo is a Spanish-language general entertainment network.

11. ***Comcast's negotiating positions were based on sound business reasons.*** beIN has claimed that Comcast's carriage decisions and negotiations for beIN are substantially motivated by an effort to protect NBCSN and Universo. I do not believe that is true. Comcast's renewal proposal and general approach in its relationship with beIN is much more simply and compellingly understood as the result of Comcast's executives exercising their reasonable business judgment of how to serve Comcast's customers in today's competitive marketplace.

12. ***beIN's renewal offers to Comcast were exorbitant, lacked any coherent or compelling factual support, and were wildly unrealistic in today's highly competitive marketplace.*** Comcast has distributed the beIN networks since their launch in 2012. The current agreement between the parties, [REDACTED], expires on July 31, 2018. In April 2017, beIN made an early and very aggressive proposal to renew its affiliation agreement with Comcast. Despite the limited viewership of its two networks, beIN proposed to Comcast that it pay substantially more in license fees. Notwithstanding that few cable networks are being added to highly penetrated tiers by MVPDs today, beIN also proposed that Comcast move the networks from their existing sports and Latino tiers (referred to as the Sports and Entertainment Package ("SEP") and H Tier, respectively) to highly penetrated mass-market packages. Simultaneous with these asks for more money and more distribution, beIN proposed [REDACTED]

[REDACTED]. I find this proposal to be surprising. Usually requests for higher fees and more distribution would be combined with [REDACTED]

[REDACTED]. Furthermore, the offer seems tone-deaf to MVPDs' general business needs and strategy. In the current highly competitive environment, smaller, niche networks are more likely to be pruned from high penetration packages than added.

13. ***Comcast's initial counter-offer was reasonable and consistent with beIN's carriage treatment by other distributors in the marketplace.*** Comcast countered with a proposal that was in line with the terms of the existing affiliation agreement and commensurate with the value that it assessed for the services. Comcast's proposed distribution terms are consistent with how virtually every other major MVPD carries the beIN networks. The [REDACTED] that Comcast proposed should be seen as a strong signal that beIN's initial proposal was far too aggressive. Comcast's proposal was reasonable, based on substantial data and analysis and legitimate commercial considerations, and in line with the marketplace.

14. Before the parties had the opportunity to fully negotiate through their differences, beIN lodged this Program Carriage Complaint, presumably to improve its bargaining position and support its aggressive ask. In my opinion, beIN's positions are poorly supported and unreasonable in the current cable programming and distribution

environment. To the extent beIN is limited in its success as a network, those limitations appear to be primarily the result of its own failures to recognize and adapt to the changing multichannel environment in which it is operating.

V. THE BEIN NETWORKS ARE NOT SIMILARLY SITUATED TO NBCSN OR UNIVERSO

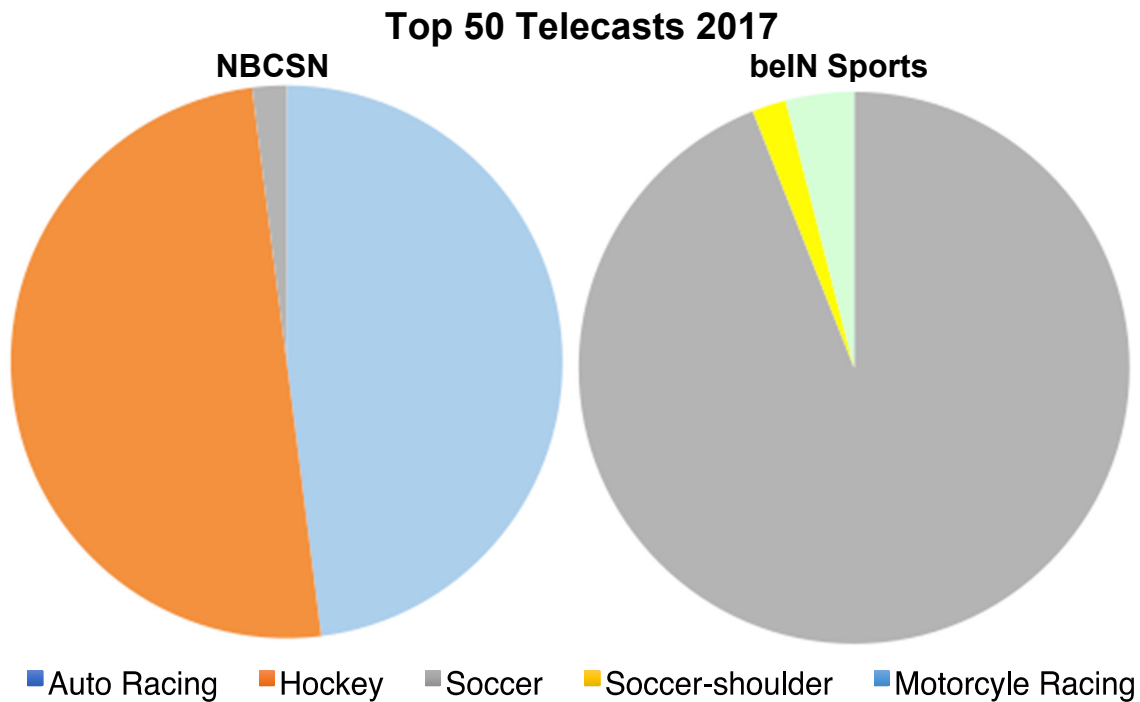
A. beIN Sports Is Not Similarly Situated To NBCSN

Programming Analysis

15. While both NBCSN and beIN Sports air sports programming and broadcast in the English language, the similarities do not go far beyond that. NBCSN is a general sports network, featuring high profile programming year-round in multiple sports. beIN Sports is essentially a single-sport, niche programming network. The vast majority of the audience it attracts watches its soccer programming, and the audience for its other programming is limited.

16. Because a television network has 168 hours per week to program, inevitably much of the programming even on the top sports networks like ESPN is filler – replays, highlight shows, sports talk and the like. The primary value that MVPDs see in sports networks is in their highest profile or “marquee” programming – that is programming that they promote in their subscriber acquisition campaigns, and that their local ad sales operations highlight to potential advertisers.

17. In terms of their marquee programming, NBCSN and beIN Sports are starkly different. The following charts show the top 50 most viewed telecasts of more than 60 minutes in duration on the two networks during 2017.



18. Of NBCSN’s top 50 most-viewed telecasts for 2017, only one is a soccer match, 24 are auto races, and 25 are NHL games. The 50 telecasts ranged in audience size from [] viewers to [] viewers. In aggregate, these 50 telecasts represented [] minutes of programming, just under three hours per week. Of beIN Sports’ top 50 most-viewed telecasts, which ranged in audience size from [] to [] viewers, 47 are soccer matches, two are motorcycle races, and one was a 65-minute wrap-up show that ran on the same day as a World Cup qualifying soccer match. In aggregate, these 50 telecasts represented [] minutes of programming, almost exactly two hours per week. The most-viewed telecast on beIN Sports had a smaller audience than 238 telecasts on NBCSN.¹

19. This mix of top shows reflects NBCSN’s strategy to program big sports properties that appeal to a range of different and substantial demographic groups in order to reach a broad range of sports fans throughout the year, including casual fans. The two most popular sports on NBCSN are auto racing, which generally does very well in the South and in rural areas, and hockey, which performs well in urban and suburban areas in the North. NBCSN has high-profile programming throughout the year. This includes, for example, the Olympics in even years (in February for winter; August for summer) –

¹ The complete list of these programs is included in the Appendix as Exhibits 1 and 2. No soccer matches were more than 2.5 hours long; a large number of auto races and hockey games were longer than that.

NBCSN programs more hours of the Olympics than any other network. It also includes the *Tour de France* in July² and major college sports, especially football in the Fall.³

20. Although it is true that English Premier League soccer is an important piece of NBCSN's programming mix, it was not the appeal of soccer in general, but rather the potential of this league as a source for sports storytelling over many months of the year, that NBCUniversal found attractive when it added the programming to the NBCSN schedule. As NBC Sports President Jon Miller noted in a recent interview: "We don't want to be the network of soccer. We want to be the network of the Premier League. There's a big difference. We feel the Premier League stands above every other soccer league out there including the domestic league here."⁴

21. beIN Sports, in contrast, is the network of soccer. []

]].

22. Similarly, beIN's presentation to []

]].⁶ All of Comcast's marketing of the beIN networks focused on the soccer offerings.⁷ beIN's marketing also emphasizes this niche soccer focus: "Fans choose beIN SPORTS because, unlike other networks, we cover soccer, football, fútbol, calcio. No matter how you call it, we got it. Every single day."⁸

23. By beIN's analysis, in 2017, sports minutes programming comprised [] % of beIN Sports schedule and [] % of NBCSN's. However, only [] % of NBCSN's

² In 2017, NBCSN aired 16 *Tour de France* telecasts watched by more than [] people. The highest rated telecast, at 8AM on July 9, 2017, had an average audience of [] viewers. This was the 258th most viewed program on NBCSN that year; only one telecast on beIN Sports in all of 2017 exceeded an audience of this size. Data from Nielsen NPOWER Live+3 Days (+75 Hours), 1/1/2017-12/31/2017, Persons 2+.

³ Jon Miller interview, April 11, 2018.

⁴ <https://www.marketwatch.com/story/how-nbc-sports-is-monetizing-its-1-billion-premier-league-soccer-investment-2017-12-14>.

⁵ Complaint Exhibit 4, pp. 3-7.

⁶ beIN Sports presentation []
excluding appendix.

⁷ Brayford Declaration ¶ 5.

⁸ <http://adsalesus.beinsports.com/about-us/>.

[] – Complaint Exhibit 10,

programming was live soccer, while []% of beIN Sports' programming was live soccer, more than four times as much.

24. To be sure, quality professional international soccer from one league has some similarity to quality professional international soccer from another league, but the audience appeal of the leagues is very different. The English Premier League is the soccer league with the most interest from U.S. viewers. According to a 2016 study of 6,500 U.S. soccer fans from Universitaet Tübingen, the greatest interest was in the English Premier League, followed by the UEFA Champions League, and American Major League Soccer. beIN's top programming, *La Liga* (Spain), was fourth, *Serie A* (Italy) sixth, and *Ligue 1* (France) seventh.⁹ This same study found that "the Spanish-speaking population occupies a disproportionately important position among soccer fans," consistent with Comcast's experience.

25. Likewise, all professional soccer is clearly not of the same value to MVPDs or networks. After GolTV lost the rights to *La Liga*, the top professional league in Spain, when it was outbid by beIN, Comcast dropped the network, despite GolTV's continued carriage of the professional soccer leagues of Portugal and Venezuela.¹⁰ []

[]¹¹ One observer echoed that point: "The big three of ESPN, Fox Sports and NBCSN seem happy to leave the likes of *La Liga*, *Serie A* and *Ligue 1* with beIN Sports while battling each other for the major properties."¹²

26. Beyond the intrinsic audience appeal of the soccer matches, the quality of soccer programming on a network is seen in its production values, reporting, and storytelling. On these elements, NBCSN is far above beIN. The prior rights holders of the English Premier League used it as filler programming, running the international TV feeds of the host country. In contrast, NBC Sports uses its own talent to improve the storytelling around the matches for the American audience, and they actually call the games live from the stadium.¹³ NBC's production of English Premier League games was described as "simply the best coverage any network has of any sports league,"¹⁴ and NBC Sports' marketing of the English Premier League was so notable that it was the subject of an

⁹ <https://www.sciencedaily.com/releases/2017/01/170117083030.htm>.

¹⁰ <https://www.businesswire.com/news/home/20160210006102/en/GolTV-Acquires-Rights-Venezuela%E2%80%99s-Division-Soccer-League>.

¹¹ Jon Miller interview, April 11, 2018.

¹² <https://www.forbes.com/sites/bobbymcmahon/2015/10/18/the-last-decade-has-brought-major-changes-to-soccer-tv-in-us/#4032c2c5583f>.

¹³ Jon Miller interview, April 11, 2018.

¹⁴ <http://awfulannouncing.com/2015/nbc-and-the-english-premier-league-will-continue-the-best-marriage-in-sports-media.html>.

article in *Sports Illustrated*, the top U.S. magazine devoted to sports.¹⁵ In contrast, beIN's play-by-play talent calls the games from a studio in Miami over a TV feed.¹⁶

27. Finally, one of the clearest distinctions between NBCSN and beIN Sports is the size of their programming budgets. The cost of programming rights is a major point used by sports networks to justify the cost of their services and the cost of acquiring rights is well covered in the cable industry trade press. NBCSN is projected to spend [] million on programming in 2018; this amount is more than ten times that of beIN Sports' [] million.¹⁷ There is an enormous amount of sports programming that could be televised in the U.S. What differentiates sports programming television networks is the interest of the potential audience in the programming, and fees for sports rights usually track the level of interest.

Distribution Analysis

28. NBCSN and beIN Sports are also not similarly situated in the MVPD distribution marketplace. According to Nielsen, in February 2018, NBCSN reached [] U.S. households, while beIN Sports reached only [], 74% fewer. []

]]

¹⁵ <https://www.si.com/extra-mustard/2013/08/10/english-premier-league-soccer-nbc-ad-new-york-neighborhoods>; <http://abcas3.auditedmedia.com/ecirc/magtitlesearch.asp>.

¹⁶ <http://awfulannouncing.com/soccer/peek-inside-ray-hudsons-magisterial-world.html>; <https://vimeo.com/219690195> (beIN sizzle reel for 2017 showing play-by-play calls in front of TV monitors).

¹⁷ Kagan Network Comparison Reports for NBCSN and beIN Sports.

29. NBCSN is widely distributed by all major MVPDs. beIN Sports is widely distributed by only one – Verizon. Among the top 50 MVPDs in the continental U.S., 38 do not distribute beIN Sports at all. The networks also differ dramatically in how they are packaged by MVPDs. MVPD carriage of some basic cable networks is simple; they are carried to the vast majority of the video customers on the system.¹⁸ Describing the carriage for a network like beIN Sports is more complex – it may be carried in a few different packages – a sports tier, a Latino tier, a more expensive package with premium services. To distill the analysis of MVPD packaging, I have categorized carriage into four main groups:

- a) Broad distribution – The network is included in one or more packages so that around 80% or more of a system’s basic subscribers receive it. beIN Sports on Verizon FiOS would qualify for this group.
- b) Mid-level distribution – At a higher retail price than broad carriage, but included in packaging so that more than approximately 50% of a system’s basic subscribers receive it. beIN Sports carriage on CenturyLink’s Prism TV and on Comcast’s Digital Preferred in certain markets are in this group.
- c) Specialty/Lower distribution carriage – The network is in a sports tier and/or a Spanish tier and/or in one or more higher-priced packages. Note that in areas with a large concentration of Latinos, if beIN Sports is in a Spanish tier, this combination might have substantial penetration.
- d) None/No carriage – Systems where the network is not offered at all.

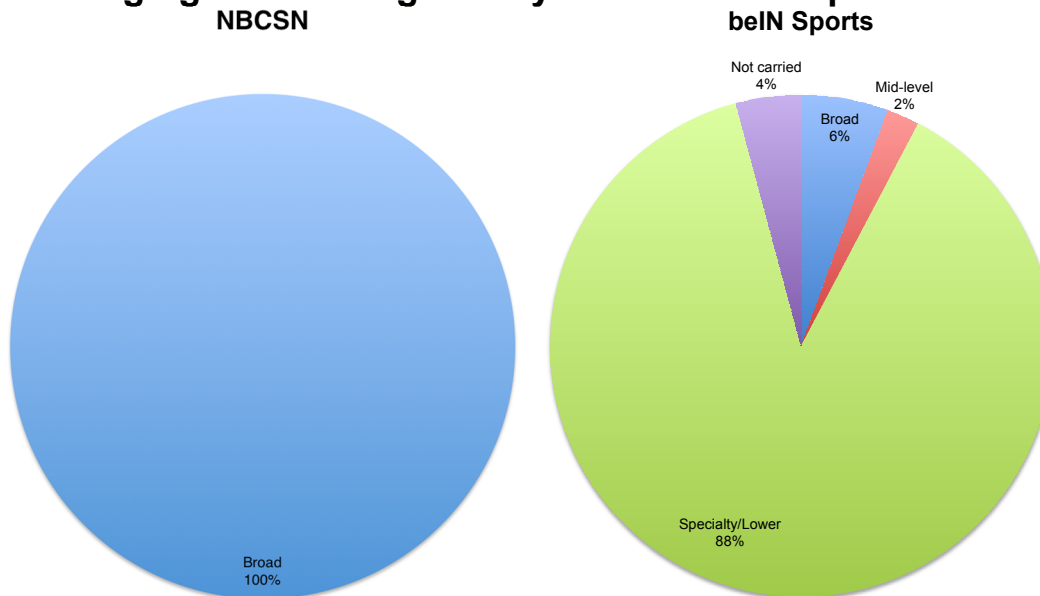
30. The chart below summarizes the packaging of NBCSN and beIN Sports on the systems of the top 50 MVPDs in the continental U.S.¹⁹ Based on data from SNL Kagan, NBCSN is carried by every one of the top 50 MVPDs, and all of them distribute the network in packaging that reaches approximately 80% of their basic subscribers – i.e., Broad distribution. In contrast, beIN Sports is available to the vast majority (88%) of the basic subscribers only in Specialty/Lower distribution packaging.²⁰

¹⁸ This excludes the Basic Service Tier, consisting primarily of local broadcast stations.

¹⁹ The data used to create this chart are included in the Appendix as Exhibit 3.

²⁰ Notably, there are almost as many basic subscribers on systems that do not carry beIN Sports at all as there are in systems that carry it in Broad distribution packages.

Packaging and Carriage on Systems of the Top 50 MVPDs



31. Moreover, the license fees paid by MVPDs for beIN Sports are not substantially similar to those of NBCSN. According to Kagan estimates, in 2017 NBCSN's average license fee per subscriber per month was \$[REDACTED]; beIN Sports was 62% lower at \$[REDACTED].²¹

Ratings Analysis

32. Under any reasonable and customary ratings analysis, beIN's ratings are not substantially similar to those of NBCSN. In 2017, beIN Sports had an average audience size across all of its rated hours of only [REDACTED] people. NBCSN had an average audience of [REDACTED] people – *over 12 times the size of beIN's*.²² Even on a coverage area basis (which, as discussed below, is not a meaningful metric in this situation), ignoring the much greater universe of people who receive NBCSN, NBCSN's ratings are over three times higher than beIN Sports' with a [REDACTED] rating versus beIN Sports'

²¹ Kagan Network Profiles for beIN Sports and NBCSN.

²² Data source: Nielsen NPOWER report Live+3 Days (+75 Hours), 1/1/2017-12/31/2017, Live+SD, Persons 2+, MC US AA Proj (000). Assuming a zero audience for the [REDACTED] non-Nielsen-rated minutes, beIN Sports average audience would be [REDACTED]. Note that among Nielsen-rated telecasts for beIN Sports in 2017, over one-quarter of its telecast schedule, [REDACTED] minutes, had an audience that rounded to zero.

[[]]. beIN Sports had the smallest average audience of any English-language U.S. national sports network in 2017.²³
[[]]

²³ Data source: Nielsen NPOWER report Live+3 Days (+75 Hours), 1/1/2017-12/31/2017, Live+SD, Persons 2+, MC US AA Proj, MC Cvg AA%. Note: ESPN's average audience was [[]] persons. Note that, while the other networks in this table are rated on every minute of the year – including all of the low-viewership overnight hours – beIN Sports' average excluded [[]]% of the annual minutes. Were they included, beIN Sports' average audience would very likely be even smaller.

33. Additionally, even ignoring NBCSN's much larger universe of households, the top event telecasts on NBCSN rate more highly than the top ones on beIN Sports and the fall-off from the very top is not as dramatic for NBCSN. The most viewed telecast on NBCSN in 2017 (a NASCAR race on July 30) had a [] people rating in NBCSN's coverage universe and the 10th most highly viewed, another NASCAR race, has a [] rating, only 24% lower than its top telecast. The most viewed program on beIN Sports in 2017, a *La Liga* match known as El Clásico on April 23, had a [] rating in beIN Sports' much smaller coverage universe and the 10th most highly viewed, another *La Liga* match, had a [] rating, 67% lower than its top telecast – a much sharper drop-off.²⁴

34. NBCSN has a much broader base of viewership than does beIN Sports. This difference is clearly seen in their reach, which represents the number of households that receive the network and that watch it for at least six minutes during the month. During 2017, []% of people in households that receive NBCSN watched for at least six minutes, which translates to [] million people. For beIN Sports, the comparable figure was only []% or [] million people.²⁵ Looked at from another

²⁴ Data source: Nielsen NPOWER report Live+3 Days (+75 Hours), 1/1/2017-12/31/2017, Persons 2+.

²⁵ Data source: Nielsen NPOWER report Live+3 Days (+75 Hours), 1/1/2017-12/31/2017, Persons 2+, AA Reach with a Qualified Audience of 6 minutes.

perspective, [] % of the people who currently receive beIN Sports do not watch the network even a modest amount.

35. beIN's discussion of the ratings of both of its networks is misleading. In fact, beIN includes additional ratings analyses that actually demonstrate how *dissimilar* the beIN and NBCU networks are.²⁶

36. []

[].

37. Ratings of Individual Games. In another attempt to demonstrate its alleged ratings similarity, beIN also provides an analysis consisting of references to individual games rather than broad measures of the appeal of the network. Specifically, beIN references the ratings of []

[]²⁸ Mr. Briceño notes that, in 2015, []

[]. However, to cherry-pick the single highest profile event on beIN's schedule and then compare it to another soccer match that happened to be on NBCSN at around the same time is not a reasonable, much less generally accepted, approach. Notably, []

[]; it is hardly representative of the viewership of the channel.

²⁶ Complaint ¶¶ 69-70, pp. 32-34.

²⁷ Complaint ¶ 69, p. 32; Briceño Declaration ¶ 22.

²⁸ Complaint ¶¶ 8, 70, pp. 4, 33.

²⁹ Briceño Declaration ¶ 23.

³⁰ Exhibit 2.

38. On an apples-to-apples basis, the highest rated program during 2017 on NBCSN was a NASCAR race on July 30 that averaged [] million viewers.³¹ This event drew *seven* times the audience of the []. In the context of NBCSN's average viewership in 2017 of [], this represented 27 times NBCSN's average, making it less of an outlier than [].

39. Coverage Area Ratings. beIN also compares the ratings of beIN Sports and beIN Sports en Español to NBCSN and Universo within each network's coverage universe. In his declaration, Antonio Briceño, Deputy Managing Director of beIN Sports notes that []

[]³² That sounds similar, until one realizes that the [] network is NBCSN and the [] network is beIN Sports en Español. It is not reasonable to compare NBCSN to beIN Sports en Español, irrespective of their ratings – the networks are in different languages, and the overall Spanish-language audience in the U.S. is much smaller than the English-language audience. Similarly, it is unreasonable to compare the English-language beIN Sports ([]) to the Spanish-language Universo ([]). Co-mingling both beIN networks with both NBCUniversal networks confuses the comparisons. The only reasonable comparisons are between the networks that are in the same language.

40. Irrespective of the cross-language comparisons, beIN's ratings analysis based on coverage area ratings is not methodologically sound. The beIN networks' current MVPD carriage is overwhelmingly in tiers for a Hispanic audience and/or for the self-selecting sports fans. This is especially true for beIN Sports en Español. The households that subscribe to these packages (and hence receive the beIN networks) would logically have a disproportionately large number of Latinos and sports fans. Conversely, the households who do not subscribe to those packages would have to have a much lower proportion of Latinos and sports fans. It is a mathematical certainty that beIN would not rate as highly if it were in a universe that had proportionately fewer Latinos and sports fans.

41. beIN's analysis extrapolates its ratings from its current "target-rich" universe to the larger mass-market universe of all cable television households.³³ This approach is illogical, unreliable, and not accepted in the cable programming industry in this context. The implication is that the viewership of beIN Sports in its current universe would be similar if its universe were "full penetration of all possible pay tv households." There is no basis for such a conclusion.³⁴

³¹ Exhibit 1.

³² Briceño Declaration ¶ 20; Complaint ¶ 67, p. 31.

³³ Briceño Declaration ¶ 21 ("[T]he similarity in ratings becomes vast superiority in beIN's favor if an appropriate adjustment is made to account for beIN's lower penetration."); Complaint ¶ 68, p. 31.

³⁴ Coverage area ratings could be used to project viewing levels if a network had more distribution, but only if the households that do not currently receive the network are

Demographic Analysis

42. There are also substantial differences between beIN viewers and NBCSN viewers. beIN Sports' audience is much more Hispanic and much more likely to live in an A county (i.e., urban) than NBCSN's audience.³⁵ The beIN Sports audience is materially younger and more affluent than the audience for NBCSN.³⁶ Both networks, as is typical for sports networks, skew heavily male.

Market Segment	NBCSN	beIN Sports
Head of household is Hispanic	||	
Lives in an A County		
Gender – male		||
Audience under 55 years of age	53%	67%
Household income over \$75K	44%	61%

Advertising Analysis

43. beIN's claim that its "overlap" of advertisers indicates that beIN Sports and NBCSN are substantially similar is not credible.³⁷ The overlap of the advertisers between NBCSN and Universo and the beIN networks is not unusual. The advertisers cited by beIN are mass-market advertisers – [

||.³⁸

These advertisers buy advertising on many television networks, including many networks with sports programming. For example, in 2017, [||

||.³⁹

44. Overall, among all U.S. advertisers, all of the advertisers cited by beIN were among the top 50 advertisers: [

equally likely to watch the network as the households that currently receive the network. That is certainly not the case here.

³⁵ Data source first three lines of the table: Nielsen, All Ad Insertable Networks 2017 – Demos and Market Breaks.

³⁶ Data source for the other lines of the table:

www.comcastspotlight.com/offerings/overview.

³⁷ Complaint ¶ 81, p. 38.

³⁸ Complaint ¶ 81, p. 38; Briceño Declaration ¶ 31.

³⁹ *Year in Sports Media Report U.S. 2017* by Nielsen Sports, pp. 32-33.

]].⁴⁰ In that year, across both beIN networks, Kagan estimated their total advertising billings at less than [] million.⁴¹ If these [] advertisers bought *all* of the advertising on the beIN networks, that would have accounted for a tiny amount of the advertisers' media spending – just one-half of one percent.

45. In short, under any reasonable analysis, beIN Sports is not similarly situated to NBCSN. beIN Sports is a soccer-focused service that does not have a broad range of high-profile events like NBCSN. NBCSN's top events are auto races and hockey games. NBCSN is a nearly fully-distributed cable sports service. beIN Sports is generally carried in specialty or low-penetrated packages, is almost never carried broadly, and on many systems is not carried at all. The viewership of beIN Sports is a tiny fraction of NBCSN's, and even when adjusted for its coverage area it is still a small fraction. beIN's claim that if it were available in more households it would be viewed proportionally more is illogical. The demographics of the networks are different and beIN's claims regarding the overlap of their advertisers are not meaningful.

B. beIN Sports en Español Is Not Similarly Situated To Universo

Programming Analysis

46. beIN Sports en Español's programming is not substantially similar to that of Universo. Both are Spanish-language networks. Universo is a general entertainment network with some high profile sports programming, almost exclusively on weekends. It is not a sports network, and its schedule on most days includes no sports programming at all. Universo's program schedule and mix of entertainment genres and sports is similar to a general entertainment network like TBS, and dissimilar to a dedicated sports network like ESPN. Reality programming and movies are Universo's two largest programming genres. Universo also programs a significant amount of professional wrestling, which, with its staged bouts, is not a sport covered by the sports media.

47. By beIN's own analysis of [] data, sports represented only []% of Universo's 2017 schedule, while sports programming represented []% of beIN Sports en Español programming and soccer programming represented []%.⁴² I also understand that Dr. Lerner's analysis demonstrates that soccer dominates beIN Sports en Español's programming time (72.3% of programming minutes in 2017), and makes up a small fraction of Universo's (5.5%).⁴³ beIN Sports en Español programs a large amount of soccer match replays, highlights, and soccer talk programming;⁴⁴ Universo programs essentially none, as its programming model is not limited to sports.

⁴⁰ 2017 Leading National Advertisers Fact Pack by Advertising Age, pp. 6-7.

⁴¹ Kagan Network Profile Report for beIN Sports ([] million gross advertising sales) and beIN Sports en Español ([] million).

⁴² Briceño Declaration, chart, p.7; Complaint ¶ 63, chart, p. 29.

⁴³ Lerner Declaration, Table 1.

⁴⁴ Collectively these are categorized as soccer "shoulder" programming.

48. This difference also is seen in the way that distributors that carry both networks describe the channels. Sling TV describes Universo as “Modern entertainment for Latinos, with a thrilling mix of premium sports, signature reality series, compelling dramas, blockbuster movies, music and must-see live events.”⁴⁵ In contrast, beIN Sports en Español is described as “Exclusive live coverage of the top international soccer leagues, including Spain’s *La Liga*, Italy’s *Serie A*, France’s *Ligue 1* and more. Welcome to the best place to watch Ronaldo, Messi, Neymar, and all the biggest stars in soccer.”⁴⁶

49. Universo and beIN en Español are also not similar in what they spend on programming. Universo’s programming expenses are double that of beIN Sports en Español. According to Kagan, in 2017, Universo’s programming expenditures were [[] million, while beIN Sports en Español’s were [[] million.⁴⁷

50. beIN Sports en Español’s most viewed programs do have some degree of overlap with Universo’s, but the differences are more striking than are the similarities, as evidenced in the charts below. As shown in the charts below, of beIN Sports en Español’s top 50 most viewed programs, all are soccer matches or post-match “shoulder” programming (similar to beIN’s English-language channel). Of Universo’s top 50 most viewed programs for 2017, only 17 were soccer matches. However, the other two-thirds included 28 episodes of reality shows, three wrestling programs, and two movies.⁴⁸

51. For this analysis, unlike the comparison between NBCSN and beIN Sports, I considered all telecasts, not only event-length (over one hour) telecasts. NBCSN and beIN Sports are both live sports networks; Universo clearly is not.⁴⁹

⁴⁵ <https://www.sling.com/c/channels/nbc-universo?classification=us>.

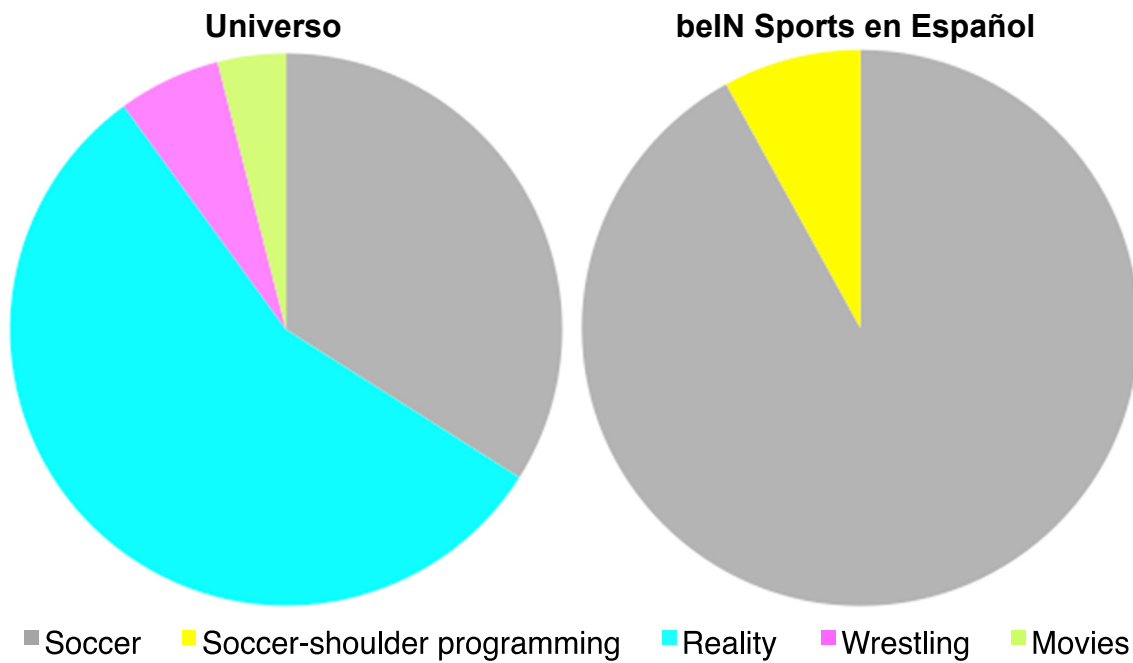
⁴⁶ <https://www.sling.com/c/channels/bein-sports-espanol?classification=international-sports>.

⁴⁷ Kagan Network Profile Reports for Universo and beIN Sports en Español.

⁴⁸ The complete list of the top 50 telecasts for each network is included in the Appendix as Exhibits 4 and 5.

⁴⁹ If restricted to telecasts longer than 60 minutes, as in the NBCSN-beIN Sports analysis above, beIN Sports en Español’s top 50 telecasts would have included 48 soccer matches and 2 soccer shoulder programs. Universo’s top 50 telecasts would have included an even mix of soccer and non-soccer programming – 25 soccer matches (all of the top 12), 15 wrestling telecasts, 8 movies, and 2 specials (music and occult). However, there were no high-rated reality telecasts more than 60 minutes in length, and this is one of the biggest programming genres for Universo. So a focus on longer telecasts is not representative here.

Top 50 Telecasts 2017



Distribution Analysis

52. In February 2018, Nielsen estimated that Universo reached over [] million households and beIN Sports en Español reached less than [] million, over 50% fewer. []

]]

53. MVPDs distribute the beIN Sports en Español and Universo networks very differently. I understand from NBCUniversal that Universo is not carried in a sports package by any MVPD.⁵⁰ beIN Sports en Español, in contrast, is carried in sports packages, as well as in Spanish-language packages, by eight of the top 10 MVPDs. Like all major sports networks which focus on live sports, beIN Sports en Español does not provide a separate feed for cable operators in the Pacific Time Zone.⁵¹ By contrast, like most entertainment networks, Universo has a separate West Coast feed.

54. In addition, Universo has lower license fees than beIN Sports en Español. Kagan estimated beIN Sports en Español's average affiliate revenue per sub per month for 2017 at \$[[]]. Universo's was 20% lower at \$[[]].⁵² This is not necessarily surprising. Sports networks tend to have higher license fees than certain entertainment programming, particularly entertainment that has an audience that targets women.

Ratings Analysis

55. As previously explained, beIN's ratings analysis is misleading. Moreover, the patterns of viewership for Universo and beIN Sports en Español are substantially different. Universo's strength and focus is in prime time. In 2017, Universo had an average prime time audience of [[]] viewers, nearly double that of beIN Sports en Español's average audience of [[]] viewers.⁵³ Much of the viewing of beIN Sports en Español is during the daytime on weekends, and often Saturday morning, when it is Saturday afternoon in Europe, the time when professional soccer is traditionally scheduled for its home country's audience.

56. Universo has a much broader base of viewership than does beIN Sports en Español. This difference is seen in reach, which represents the number of people in households that receive the network and that watch it for at least six minutes. Given Universo's greater variety of programming, I would expect it would have greater reach than a niche sports service. During 2017, each month [[]]% of people in Universo households watched the network for at least six minutes, which represents [[]] million people.⁵⁴ For beIN Sports en Español, the comparable figures are [[]]% and [[]] million people or 37% fewer.⁵⁵ beIN Sports en Español audience is made of a small group of viewers who watch it frequently. In short, it is a classic niche service.

⁵⁰ Jon Miller interview, April 11, 2018.

⁵¹ Operators in the Central and Mountain Time zones typically distribute the East feed.

⁵² Kagan Network Profile Reports for Universo and beIN Sports en Español.

⁵³ <http://www.indiewire.com/2017/12/highest-network-ratings-2017-most-watched-hbo-cbs-espn-fx-msnbc-fox-news-1201911363/>.

⁵⁴ That many distributors package Universo in high penetration tiers, not solely in Latino tiers, lowers this reach penetration percentage, as the denominator (its universe of households) is much larger than that of beIN Sports en Español.

⁵⁵ Data source: Nielsen NPOWER report Live+3 Days (+75 Hours), 1/1/2017-12/31/2017, Persons 2+, AA Reach with a Qualified Audience of 6 Minutes.

Demographic Analysis

57. The audience for Universo is substantially different from that of beIN Sports en Español. Universo's audience is relatively balanced between men and women; beIN Sports en Español, like beIN Sports and NBCSN has a predominantly male audience.⁵⁶ The audience for Universo also is much less likely to live in an A county than the audience for beIN Sports en Español. For both services, the vast majority of the audience is in a household headed by someone of Hispanic origin. The beIN audience has a relatively larger percentage of households with income above \$75K.⁵⁷

Market Segment	Universo	beIN Sports en Español
Gender – female	||	
Lives in an A County		
Head of household is Hispanic		
Household income above \$75K		||

58. In short, under any reasonable analysis, beIN Sports en Español is not similarly situated to Universo. Universo is a general entertainment network. It shows all of the characteristics of a general entertainment network, none of which are true of beIN Sports en Español: its programming focus is prime time; its top programs are in a variety of genres; it has a broader reach; it has little gender skew; it is never distributed in a sports tier; and it provides distributors a separate West Coast feed. beIN Sports en Español, by contrast, is a Spanish-language soccer network. The points of similarity are that they are both Spanish-language services and a very small fraction of Universo's schedule is live soccer. That hardly makes the two networks similarly situated under any recognized industry metric.

VI. COMCAST'S RENEWAL OFFER TO BEIN WAS BASED ON REASONABLE BUSINESS CONSIDERATIONS, NOT AFFILIATION

A. Comcast's Renewal Offer to beIN Was Reasonable

59. beIN's approach to the Comcast renewal was and has been very aggressive from my perspective; it does not surprise me that this approach did not yield a resolution. The initial proposal was made at a meeting on April 11, 2017, over fifteen months prior to the current deal's expiration, ||

||.⁵⁸

60. In my experience, a renewal deal with such substantial additional costs would usually need to be accompanied by either a clear demonstration of benefit to the MVPD or that the service had a much greater value in the marketplace than the current terms reflect or both. beIN's proposal was even more aggressive in the context of Comcast's

⁵⁶ Data source: Nielsen, All Ad Insertable Networks 2017 – Demos and Market Breaks.

⁵⁷ Data source: Nielsen, All Ad Insertable Networks 2017 – Demos and Market Breaks.

⁵⁸ Brayford Declaration ¶¶ 11-12.

concerns, which were shared with beIN, about the *devaluation* of the beIN networks by beIN's decision to provide its programming on the free video service of the leading mobile telephone company.⁵⁹ ||

||.⁶⁰ These concerns should not be dismissed as the ordinary "jockeying for position" at the start of a negotiation. Cable subscriptions have been declining and, as a recent survey of consumers noted "subscribers perceive a widening value gap between what they expect and what pay TV providers actually deliver."⁶¹

61. Subsequent to the initial proposal, there were several more discussions between the parties. Comcast provided its first proposal on December 13, 2017. This is more than seven months prior to the current deal's expiration. Subsequently, beIN provided a new proposal on February 2, 2018 and then a revised proposal to clarify the February 2 proposal on March 7, 2018.

62. It is my view that Comcast's proposal to beIN dated December 13, 2017 is a reasonable offer for a renewal of the parties' affiliation agreement. In my opinion, Comcast's willingness to engage with such an aggressive proposal is gracious; many times a very early, very aggressive proposal will not get any counter-proposal from an MVPD, particularly so far in advance of the current agreement's expiration.

Length of Term

63. The || || proposed by Comcast tracked the structure of the current affiliation agreement.

Packaging of the beIN Networks

64. Comcast's proposed carriage commitment || || was generally in line with Comcast's historic carriage of beIN. It also was informed by Comcast's viewership analyses of the beIN networks, demonstrating that the network had limited appeal. As detailed further below, it was also consistent with the packaging of the beIN networks on AT&T/DirecTV, the largest MVPD, as well as most other MVPDs.⁶² The proposal also is consistent with Comcast's video programming strategy in general, as I had understood it prior to my involvement with this matter.

⁵⁹ Brayford Declaration ¶¶ 23, 32.

⁶⁰ Brayford Declaration ¶ 32.

⁶¹ <https://www2.deloitte.com/insights/us/en/industry/technology/digital-media-trends-consumption-habits-survey.html>.

⁶² Brayford Declaration ¶ 27.

License Fee Payments

65. Comcast's proposal for a [] was consistent with the viewership analyses Comcast had performed, showing that it is already likely losing money under the current agreement, and with the fact that []]. It is also what I would expect for a proposal with a programmer with whom an MVPD intends to complete a deal, particularly one that has made an aggressive offer to start the discussions. Comcast's proposal was not labeled as a final offer and many details in the proposal were [] []

[]

66.

67.

68.

69. [] Indeed, it began its U.S. business by outbidding GolTV for its most valuable programming, *La Liga*. When GolTV lost *La Liga*, Comcast and DirecTV dropped the network altogether, despite the fact that it still had significant foreign professional soccer rights. []

⁶³ Section 4 of Comcast Proposal.

70.

I.

Management Uncertainty

71. For an MVPD, cable programming decisions are often long-term strategic choices. MVPDs tend to affiliate with networks for long periods of time, and they have rarely swapped networks in and out of core packages. Almost all of the most widely distributed and valuable programming networks have roots back at least fifteen years and are run by companies with their top management based in the U.S. and with the U.S. as their biggest market. For example, ESPN launched in 1979 and now reaches a Nielsen Universe of about [] million households. Fox Sports 1, launched in 1996 as Speedvision, now reaches approximately [] million households.

72. There are a number of elements of beIN's ownership and management that would create concern for a U.S.-based MVPD. beIN is as a foreign-owned programmer with a relatively short operating history in the U.S. Its CEO, Nasser Al-Kelaifi, is facing criminal proceedings in Switzerland over alleged bribery related to securing rights to soccer games and events.⁶⁷ beIN shares ownership with Al Jazeera, which folded its American channel a little over three years after it acquired most of its subscribers from an earlier news network. DirecTV sued Al Jazeera over violations of the terms of its affiliation agreement.⁶⁸ As one industry analyst noted in the wake of its demise, "Costly mistakes made at launch in 2013 were adding up fast while ratings were not growing fast enough. The channel's distributors were dissatisfied. And falling oil prices were testing the patience of Al Jazeera's parent, the oil-rich emirate of Qatar."⁶⁹ Comcast describes its

⁶⁴ Smith Declaration ¶ 23.

⁶⁵ Brayford Declaration ¶ 39; see also Brayford Declaration, Attachment C.

⁶⁶ Brayford Declaration ¶ 34.

⁶⁷ <http://www.cbc.ca/sports/soccer/fifa-world-cup-broadcasting-rights-bribery-1.4351606>.

⁶⁸ <https://www.hollywoodreporter.com/thr-esq/directv-al-jazeera-settle-75-820396>.

⁶⁹ <http://money.cnn.com/2016/01/22/media/al-jazeera-america-what-went-wrong/index.html>.

own experience with Al Jazeera as “mixed.”⁷⁰ Comcast has several reasonable causes for concern about entering into a much more extensive affiliation relationship with beIN.

73. To achieve a large increase in revenue and carriage, I would expect the programmer to be offering a clearly better value for the MVPD and/or a context in which the carriage that the MVPD is being asked to provide is consistent with what others have done and/or an alignment with the MVPD’s business needs. beIN’s offer does none of that. During the nearly six years of the parties’ current affiliation, beIN has programmed networks of some level of quality and consistency. However, there is almost nothing to suggest that beIN Sports had much value to the mass-market audience. In fact, Comcast notes that broader distribution could actually dilute the value of the SEP and H Tiers – a point that ||⁷¹

beIN’s Recent Proposal

74. beIN’s last proposal, dated March 7, 2018, in the context of its position in the marketplace, was still very aggressive and did not alleviate Comcast’s concerns. beIN still proposed considerably higher license fees than in the current agreement, considerably broader packaging than in the current agreement, and ||⁷². At the same time, beIN’s proposal continued to substantially reduce ||

||⁷³
In totality, beIN was asking for a lot more from Comcast for the networks and ||.

B. Comcast Has Legitimate and Compelling Business Reasons for Its General Approach to beIN as a Programming Supplier

75. beIN asserts that Comcast’s behavior towards beIN was driven by a desire to support and protect NBCSN and Universo from competition from the beIN networks.⁷⁴ I see no basis whatsoever for that claim. To accept it, one would have to ignore the multitude of legitimate business reasons that Comcast has for its distribution choices for beIN done as part of its renewal negotiations.

⁷⁰ Brayford Declaration ¶ 24.

⁷¹ Brayford Declaration ¶¶ 21, 37, 41.

⁷² ||

||.

⁷³ Brayford Declaration ¶¶ 30, 31, 34.

⁷⁴ Complaint ¶ 85, p. 40.

76. First, Comcast conducted a substantial, fact-based evaluation of the beIN networks and found that the business risk of not carrying the networks was substantially smaller than the price that beIN was requesting for their carriage. Second, virtually all of the other major MVPDs have made similar distribution choices with respect to the beIN networks. Finally, the MVPD marketplace has fundamentally changed in the past decade and, as a result, distributors, including Comcast, have necessarily changed their strategies, and Comcast's approach to beIN reflects these marketplace dynamics.

Comcast Conducted a Reasonable, Thorough Analysis About the Value of the beIN Networks to Inform its Actions

77. The Viewership Analysis prepared by Comcast's Enterprise Business Intelligence ("EBI") team in January 2018 attempts to value the networks provided by beIN and the impact Comcast might expect if they were removed from the channel lineup.⁷⁵ I found the analysis to be very thorough and reasonable. The value of the beIN networks that resulted from this financial analysis was less than its current cost to Comcast, and substantially less than what beIN was proposing in its || || renewal deal.⁷⁶ There is *no* element of the analysis that reflects concern for how Comcast's carriage of beIN's networks would benefit any other networks, much less NBCSN or Universo.⁷⁷

beIN's Carriage by Other MVPDs

78. Comcast's treatment of beIN Sports is well within the industry mainstream. Every major MVPD in the United States distributes NBCSN in more highly penetrated packages than they do beIN Sports. Or, to put it another way, not a single major MVPD found beIN Sports to be "similarly situated" to NBCSN when making carriage decisions.

⁷⁵ Brayford Declaration, Attachment A. The "EBI" is Comcast's in-house business analytics group that supports the content acquisition team.

⁷⁶ Other MVPDs might have different results and might find much more value in the beIN networks, even using the exact same model, especially if they are serving heavily Hispanic markets.

⁷⁷ The methodology the group used analyzed the churn of subscribers based on two standards. {{

}}. The approach is consistent with sound methodological practices. The data are objective and scaled appropriately to beIN. The results seem both reasonable and intuitive: {

}}.

79. For example, DirecTV distributes NBCSN in all but one of its base packages, but distributes beIN Sports only in its highest-level package.

Network	DirecTV English Packages ⁷⁸					
	Select	Entertainment	Choice	Xtra	Ultimate	Premier
NBCSN		✓	✓	✓	✓	✓
beIN Sports						✓

80. Dish Network distributes NBCSN in all of its packages, but distributes beIN Sports only in its highest-level package.

Network	Dish Network Packages ⁷⁹			
	AT120	AT120+	AT200	AT250
NBCSN	✓	✓	✓	✓
beIN Sports				✓

81. Verizon, which distributes beIN Sports significantly more broadly than any other major MVPD, as explained below, distributes NBCSN more widely than beIN Sports. beIN Sports is not included in any of its Custom TV genre packages.

Network	Verizon FiOS “Traditional” packages ⁸⁰		
	Preferred	Extreme	Ultimate
NBCSN	✓	✓	✓
beIN Sports	✓	✓	✓

Network	Verizon FiOS “Custom” packages ⁸¹							
	Kids & Pop	Action & Entertainment	Lifestyle & Reality	Infotainment & Drama	Sports & News	Home & Family	News & Variety	TV Mundo Total
NBCSN					✓	✓	✓	
beIN Sports								

82. The analysis of beIN’s distribution provided in Mr. Sahl’s declaration is flawed.⁸² It does not justify broader distribution by Comcast. The MVPDs that have provided beIN with high penetration distribution have been outliers in the MVPD business and are notable for their poor financial performance and innovative, but often unsuccessful,

⁷⁸ <https://www.directv.com/DTVAPP/pepod/configure.jsp?hd=true&packageId=960004&packageType=ENGLISH#package-section>.

⁷⁹ <https://www.dish.com/programming/channels/#>.

⁸⁰ <https://www.verizon.com/about/sites/default/files/Fios-TV-Channel-Lineup-May-2017.pdf>.

⁸¹ <https://www.verizon.com/about/sites/default/files/Fios-TV-Channel-Lineup-May-2017.pdf>.

⁸² Sahl Declaration ¶ 29, p. 16.

content licensing. The assertion that Comcast would benefit more by the inclusion of the beIN networks in packaging other than how it is currently offered is both unsupported and even contradicted by statements within Mr. Sahl's declaration.

83. Mr. Sahl claims that it is not true that other distributors carrying beIN do so "almost universally" on upper level tiers, and cites "seven distributors" who distribute beIN more favorably than Comcast ("tiers with greater penetration than the packages to which Comcast has consigned beIN").⁸³ This assertion loses most of its meaning when closely examined, as you will see in the following paragraphs. I do not have access to the precise penetration of the beIN networks on other distributors, but the packaging of the networks is publicly available.

84. The largest of the distributors cited is Charter. Charter had approximately 17 million basic subscribers at year-end 2017, and is the second largest cable distributor to Comcast. On its systems that have its nationally promoted packages, Charter distributes both beIN networks in its highest-level package "Spectrum Gold" and certain Latino packages. In contrast, it distributes NBCSN in its lowest level digital package "Spectrum Select" and Universo on its second level digital package "Spectrum Silver."

Network	Charter Spectrum Packages ⁸⁴		
	Select	Silver	Gold
NBCSN	✓	✓	✓
Universo		✓	✓
beIN Sports			✓
beIN Sports en Español			✓

85. Among beIN's list of seven distributors, CenturyLink II]. CenturyLink's OTT TV service referenced by beIN, known as "CenturyLink Stream," was launched in 2017, and never found much of a following before it was shut down in early 2018.⁸⁵ CenturyLink's Prism TV is a facilities-based service similar in technology to AT&T's U-Verse. It has been in operation for many years. However, it has been reported that CenturyLink has stopped offering its Prism TV video service to new customers, and the company has publicly stated that it does "not plan to expand [its]

⁸³ Sahl Declaration ¶ 29, p. 16; Complaint ¶¶ 13, 102, pp. 7, 47.

⁸⁴ Based on a review packaging for zip codes in legacy Charter systems (Milwaukee/Madison, WI (53051, 53119, 53717), East Los Angeles, CA (90032), San Bernadino, CA (92324, 91764), Fort Worth, TX (76017, 76063), Fairfield County, CT (06468, 06801) and St. Louis, MO (63101, 63005, 63040)); former Bright House Networks systems (Tampa/Lakeland, FL (33860 34442, 34601), Orlando, FL (32835, 32901, 32701), and Antelope Valley, CA (93501, 93536, 93560), and former Time Warner Cable systems (Charlotte, NC (28012, 28379, 28226), Cleveland, OH (44055, 44132), Dallas, TX (75150, 75287), and New York, NY (10025)).

⁸⁵ <https://www.multichannel.com/news/centurylink-pulling-plug-ott-tv-beta-service-418278>.

Prism TV service offering.”⁸⁶ This is hardly a relevant comparison to Comcast. I also note that CenturyLink’s Prism TV service also distributes NBCSN and Universo more favorably than the beIN networks. It carries NBCSN and Universo in all of its core packages, and beIN Sports only on its highest-level package.

Network	Prism TV Packages ⁸⁷		
	Essential	Complete	Preferred
NBCSN	✓	✓	✓
Universo	✓	✓	✓
beIN Sports			✓
beIN Sports en Español			

86. beIN also cites Liberty Puerto Rico,⁸⁸ which (though the largest operator in the territory) is not in the continental U.S. and serves a primarily Spanish-speaking market that is far more interested in soccer than typical markets in the continental U.S. It is not a comparable distributor to Comcast, which serves a primarily English-speaking market.

87. The other distributors on beIN’s list – Verizon, Frontier, and fuboTV – are worth discussing in some greater detail.⁸⁹

Verizon is a Poor Comparison MVPD for Comcast

88. Verizon is the fifth largest MVPD by basic video subscribers and the only major MVPD to carry beIN networks broadly. However, Verizon is significantly unlike Comcast in the way that it operates its MVPD business.

89. Verizon’s MVPD business is a relatively small part of the company as a whole – most of Verizon’s value is related to its mobile business, which represents 74% of the company’s 2017 revenues.⁹⁰ To benefit its substantial mobile phone business, it launched an advertiser-supported mobile video service called go90, for which it acquired a material amount of soccer programming from beIN to support. beIN has suggested publicly that the “added value” of this content from beIN was a *quid pro quo* for the broader carriage that beIN received on Verizon’s FiOS systems – both were announced at the same time, and a beIN representative noted: “this represents the highest level of national penetration it has obtained with any platform to date: the English- and Spanish-language versions of

⁸⁶ <https://www.fiercecable.com/cable/centurylink-no-longer-working-to-expand-prism-tv-service>.

⁸⁷ <http://www.centurylink.com/prismtv/channelLineupTable.html?marketName=las-vegas-nevada> (confirmed that the same packaging is used in Denver and Phoenix).

⁸⁸ Complaint ¶¶ 13, 102, pp. 7, 47.

⁸⁹ Complaint ¶¶ 13, 102, pp. 7, 47.

⁹⁰ <http://www.verizon.com/about/investors/quarterly-reports/4q-2017-quarter-earnings-conference-call-webcast> (\$87.511 million out of \$118.191 million).

the service will reach the majority of 5.8 million FiOS TV customers.”⁹¹ Verizon’s decision to provide broad carriage to beIN, thus, appears to be related to its *non-MVPD* business objectives.

90. But, even as an MVPD, Verizon has made a number of business decisions that make it an unlikely model for others. Verizon has created or tried to create business arrangements outside of the norms for the cable programming business, which have confused customers and alienated important programming suppliers. Typically MVPDs have several core packages (variations on good/better/best) for the mass market (English language) and often one or two tiers targeted at Latinos. Verizon had that structure for many years before launching another packaging scheme, “Custom TV,” side by side with it. Many programmers believed that Custom TV was a violation of their affiliation agreement; Disney/ESPN filed a lawsuit against Verizon claiming breach of its contract.⁹²

91. Verizon touted this approach as consumer-friendly, but *Consumer Reports* found it confusing: “After sifting through all the new Verizon FiOS packages for TV, I’d hate to see what things would look like if the company were to try any harder to confuse customers.”⁹³ Verizon also publicly announced a viewership-based business model in 2013 (announced that same month as beIN launched) that does not appear to have gained any traction in the industry with any important programming supplier.⁹⁴ Verizon’s FiOS service has also had a difficult time in the marketplace, and it stopped the expansion of its FiOS systems in 2010.⁹⁵ Verizon divested over 1.2 million FiOS video subscribers to Frontier, which is now trying to sell the assets to relieve its own financial distress.⁹⁶

92. beIN cites Frontier as another distributor that has provided beIN with high penetration carriage.⁹⁷ I note that most of that carriage is on FiOS systems that Frontier acquired from Verizon. So it is likely that distribution of beIN in those systems is a function of inheriting Verizon’s distribution choices, not a choice made by Frontier.

fuboTV is a Not a Reasonable Comparison for Comcast

93. beIN’s argument that Comcast should look to fuboTV as its model is well off the mark. fuboTV carries both of the beIN networks to [[]]% of its customers. At year-

⁹¹ <http://www.multichannel.com/news/telco-tv/bein-sports-launches-verizons-go90/394886>.

⁹² <https://www.multichannel.com/news/espn-sues-verizon-over-custom-tv-390115>.

⁹³ <https://www.fiercecable.com/cable/verizon-s-revamped-custom-tv-package-pricing-incredibly-confusing-consumer-reports-says>.

⁹⁴ <https://www.wsj.com/articles/SB10001424127887324392804578362943263175884>.

⁹⁵ http://usatoday30.usatoday.com/money/industries/telecom/2010-03-26-verizon-fios_N.htm.

⁹⁶ <https://www.bloomberg.com/news/articles/2018-02-02/frontier-is-said-to-consider-sale-of-ex-verizon-landline-assets>.

⁹⁷ Complaint ¶¶ 13, 102, pp. 7, 47.

end 2017, it had approximately 100,000 customers,⁹⁸ while Comcast had more than 22 million. fuboTV's CEO described the service to the *Wall Street Journal* as a "niche product" with more than half of its subscribers Hispanic and 90% of them male.⁹⁹ fuboTV is also not a traditional facilities-based MVPD service but rather a pure OTT service.

94. Moreover, all other OVDs besides fuboTV, described as a "phenomenon" in the beIN Complaint,¹⁰⁰ in aggregate, do not widely distribute beIN's networks.¹⁰¹

OVD	2017 Estimated Subs (MM)	beIN Penetration	beIN Subs (MM)
Sling TV	2.30	II II%	II II
DirecTV Now	1.20	0%	-
PlayStation Vue	0.60	0%	-
Hulu with Live TV	0.45	0%	-
YouTube TV	0.30	0%	-
fuboTV	0.15	II II%	II II
Philo	0.05	0%	-
Subtotal	5.05	II II%	II II
Other	0.25		
TOTAL	5.30		

95. Looking at the OVD marketplace as a whole provides support for the view that many distributors do not see the value in carrying the beIN networks. The largest linear OVD, Sling TV, carries the beIN networks II

II. The next four largest linear OVDs do not carry the beIN networks *at all*. Notably one of them, Sony PlayStation Vue, which had distributed the beIN networks, dropped them when the parties were unable to reach a renewal agreement, with beIN noting that Sony said it was "unable to come to an agreement on terms with the network" and that "Sony has decided that our value proposition is not enough for their viewers."¹⁰²

96. Beyond this, long-established cable operators like Comcast have very different needs than new distributors. Legacy distributors primarily need to appeal to the mass audience that they already serve. New distributors might find their opportunity in appealing to niches that may very well be underserved by larger MVPDs.

⁹⁸ <https://www.broadcastingcable.com/news/fubotv-surpasses-100k-subs-169225>.

⁹⁹ <https://www.wsj.com/articles/fubotv-enters-the-big-leagues-1481727601>.

¹⁰⁰ Complaint ¶ 103, p. 47.

¹⁰¹ <https://www.multichannel.com/news/virtual-mvpds-ended-2017-53m-subs-study-418107>, beIN penetrations from the beIN Complaint.

¹⁰² <https://www.multichannel.com/news/playstation-vue-drops-bein-sports-413347>.

97. Each distributor looks at its target market and assembles its channel lineup accordingly. Indeed, some OVDs are focused very much on soccer. In addition to fuboTV, another linear OVD, iGol, distributes a subscription package focused entirely on live soccer networks, including several different feeds from beIN for only \$9.99 per month.¹⁰³ Meanwhile, Philo TV, another linear OVD, does not carry beIN at all, consistent with its strategy not to include sports as part of its offering. Sling TV, the top linear OVD, does not include local broadcast channels in its offering, a strategy almost unheard of in the pay TV marketplace prior to Sling's launch.

MVPD Needs Have Changed and Are Inconsistent with beIN's Proposal

98. If beIN is benchmarking itself against NBCSN, it is ignoring (among other things) how much the multichannel distribution world has changed over the last twenty years. NBCSN launched much earlier (in 1995 as Outdoor Life Network) in a very different cable programming environment. Over time, the network garnered broad distribution in the marketplace. After its first five years of operation, the network was distributed to only 26 million subscribers.¹⁰⁴ In that earlier time, MVPDs had compelling business reasons to add more channels to highly penetrated tiers. Cable customer counts were increasing and cable operators were under rate regulation, which allowed them to raise their retail pricing if they added channels to highly penetrated packages.¹⁰⁵ In addition, the then-newly launched DirecTV and Dish Network networks created competitive pressure to have more channels as they launched with bigger packages than most cable operators offered at the time. Almost all of the most widely distributed cable programming networks launched before 2007, when Netflix began its streaming network.

99. In the intervening years, with the growth of online video distribution and streaming options, cable operators have lost significant and accelerating numbers of video subscribers over the last 2 years.¹⁰⁶ The top six cable providers lost about 660,000 subscribers in 2017 (1.4% of their total), up from 275,000 in 2016 (0.6%).¹⁰⁷ In contrast, Netflix, the leading over-the-top subscription video provider, had 54.75 million U.S. subscribers at year-end 2017, a gain of 5.32 million (11% of its total) from 2016.¹⁰⁸

¹⁰³ www.igol.tv.

¹⁰⁴ Economics of Basic Cable Networks, 2017 Edition, p. 23.

¹⁰⁵ 47 C.F.R. § 76.922.

¹⁰⁶ In contrast, Netflix, the leading over-the-top subscription video provider, had 54.75 million U.S. subscribers at year-end 2017, a gain of 5.32 million (11% of its total) from year-end 2016. In 2016, it had a gain of 4.69 million (10%).

¹⁰⁷ <https://www.leichtmanresearch.com/major-pay-tv-providers-lost-about-1495000-subscribers-in-2017/>.

¹⁰⁸ This was on top of an increase of 4.69 million subscribers (10%) between 2015 and 2016. <https://www.statista.com/statistics/250937/quarterly-number-of-netflix-streaming-subscribers-in-the-us/>.

Linear OVDs (virtual MVPDs) had an estimated 5.3 million subscribers as of year-end 2017.¹⁰⁹

100. The strong growth of Netflix and other streaming video providers (e.g., Sling TV, DirecTV Now, YouTube TV) has had a major impact on cable operators' priorities. Foremost, MVPDs have responded by trying to improve their networks to provide elements offered by streaming video providers. All of these streaming services have modern interfaces, can be viewed on televisions as well as computers and mobile devices, and are available for consumers to use them both inside the home as well as outside the home.

101. The priority for most MVPDs today is to provide more value via an improved user experience, rather than a greater quantity of programming at higher subscriber costs. There are many free, quality programming networks available, but Comcast does not carry many of them because they would add more "clutter." Curating the networks it chooses for its packages is a primary function for an MVPD. The type of niche sports programming that beIN is selling, along with its demand for significantly greater, more expensive distribution as a linear channel, are simply not a good fit with Comcast's changing market needs or the needs of most major MVPDs.

102. Specifically, to improve the customer experience, Comcast has made investments in its user interface (X1) to make it easier for viewers to use the channels that they already have. Comcast and other cable operators have also invested in apps, including the Xfinity Stream app, which allow customers to access programming on a variety of devices, like smartphones, tablets, and computers, both inside and outside the home.

103. In general, cable operators now are rarely making significant additions of channels to highly penetrated packages, as beIN proposed and is asking the FCC to impose. That was the strategy of an earlier time when cable operators were increasing video penetration and could generate additional revenue and profits by charging more for highly penetrated video tiers with more channels. Now the cable video business is mature and facing substantial competition from services that are not offering traditional cable television service. In today's environment, cable operators generate higher returns and profits by investing in other product lines. That means that less incremental bandwidth devoted to the video business – for additional channels or high definition feeds. In addition, Comcast is under increasing competitive pressure to "*slim down* the number of total channels [it] make[s] available in broadly penetrated packages, especially those that do not garner significant customer passion or broad viewership."¹¹⁰

104. beIN seems to suggest that Comcast does not carry its networks in HD in order to disadvantage beIN,¹¹¹ rather than as a result of having to manage a scarce and valuable

¹⁰⁹ <https://www.multichannel.com/news/virtual-mvpds-ended-2017-53m-subs-study-418107>.

¹¹⁰ Smith Declaration ¶ 8 (emphasis in original).

¹¹¹ Complaint ¶ 89, p. 47; Briceño Declaration ¶ 37.

resource, i.e., bandwidth on its cable systems. Though not required under the current affiliation agreement, Comcast has voluntarily distributed beIN en Español in HD in eight markets.¹¹² I note that Comcast carries Universo's HD feed on systems serving fewer than []% of its basic subscribers.

105. In this context, Comcast's desire in an affiliation agreement with beIN is, quite reasonably, to have the programming available on its system only for those customers that want it and are willing to pay for it. On its highly penetrated tiers that are received by the majority of their customers, lack of channels is not an MVPD's primary product issue to address and increasing the retail price of such tiers is not its primary profit growth opportunity. To the extent that a customer calls up to disconnect service, Comcast can provide a "bonus" of getting an additional tier for free to retain that specific customer. In both cases, it is not good business for Comcast to provide the programming at greater cost to a large number of customers who may not value it. beIN's desire for carriage in high-penetration packaging seems to make little sense for Comcast, and likely its other MVPD customers, as it is inconsistent with its strategy.

Comcast's Distribution of beIN Is Reasonable

106. In light of the competitive environment, distribution of beIN on the SEP and H Tier makes sound business sense for Comcast. An MVPD such as Comcast creates a number of programming packages to meet the different needs of customers for content and expense. Some programming has broad appeal and/or has been carried in a highly penetrated package on a cable system for decades.

107. According to Mr. Sahl, "beIN is wildly popular with soccer fans."¹¹³ However, he dismisses that this popularity is precisely why Comcast would include the network in the SEP. As beIN asserts, without any quantitative support, "it is implausible that assigning beIN to a greater penetration tier would entail any meaningful loss of subscriber fees for the Sports and Entertainment Package."¹¹⁴ It is counter-intuitive that the removal of networks "wildly popular" with the fans of any sport would not negatively impact Comcast's ability to sell the package that includes it. Conversely, if the network does not meaningfully help sell the package, as Mr. Sahl claims, then Comcast should not carry or pay for it *at all*. Indeed, a beIN representative, []

[]¹¹⁵

¹¹² Brayford Declaration ¶ 10.

¹¹³ Sahl Declaration ¶ 28; Complaint ¶ 101, p. 46.

¹¹⁴ Sahl Declaration ¶ 28; Complaint ¶ 101, p. 46.

¹¹⁵ Brayford Declaration ¶¶ 37, 41.

108. In fact, a customer could buy Digital Starter and the Sports Entertainment Package for a total of \$59.98, far below the price of a Digital Preferred package, according to the pricing in beIN's own Complaint.¹¹⁶

109. Perhaps recognizing this weak argument, beIN added a footnoted caveat "[i]n any event, any small loss of subscriber fees would be substantially offset by added value to Comcast from the acquisition of new subscribers to the [REDACTED]".¹¹⁷ This assertion lacks any supporting evidence or calculations and should be discounted.

110. beIN fails to recognize and acknowledge that MVPDs, as explained above, have in recent years shifted from a strategy of adding channels to broadly penetrated packages in favor of other enhancements to the packages, like better navigation and on-demand and out-of-home access to content, to provide more value to their customers from the channels that they already carry and pay for. Comcast content executives confirmed that relatively few networks have been added to high penetration tiers in recent years.¹¹⁸

111. For newer networks, like those from beIN, frequently the MVPD distribution opportunity is to be carried in an add-on package (e.g., Cox's Sports & Info Pak,¹¹⁹ or Altice Optimum's Sports & Entertainment Pak¹²⁰) or the highest-level package (as beIN is carried on DirecTV, Charter, Dish, AT&T U-Verse, and many other MVPDs).

112. It is my opinion that Comcast's business decisions in this case were reasonable and consistent with its business needs and other objective marketplace evidence. As detailed above, virtually all major and even small distributors have made similar carriage choices with respect to beIN Sports and beIN Sports en Español. If Comcast thought broader distribution of beIN would improve its business, it would have been amenable to moving the channel to a broader tier during the term of this agreement, as the [REDACTED] [REDACTED] provided Comcast that option. However, Comcast did not think it worthwhile [REDACTED] [REDACTED]. To the extent other distributors have the same fee structure as Comcast [REDACTED] [REDACTED], few have seen beIN's "free lunch" as appetizing.

113. That beIN positions its networks versus other sports networks does not mean that the public or distributors view them as comparable and worthy of similar distribution. As support for their similarity, beIN cites that *it compared itself* to NBCSN and Universo in [REDACTED] [REDACTED].¹²¹ However, it is not clear to me why it must follow that MVPDs saw the networks as comparable.¹²² beIN's comparisons are aspirational – naturally it wants to be considered similar to more established and trusted networks.

¹¹⁶ Complaint ¶ 88, p.41.

¹¹⁷ Complaint ¶ 101 n.115, p.46.

¹¹⁸ Justin Smith and Andrew Brayford interview, April 12, 2018.

¹¹⁹ <https://www.cox.com/residential/tv/sports-and-tv-packages.html>.

¹²⁰ <https://www.optimum.com/digital-cable-tv/sportspackages>.

¹²¹ Complaint, Exhibit 10.

¹²² Complaint ¶ 76, p. 36; Sahl Declaration ¶ 22.

While beIN solely controls its own marketing materials and can describe itself however it wishes, the marketplace evidence tells a far different story. In any event, [

].

114. beIN's claim that Comcast would make significantly more local advertising sales revenue if beIN Sports were on a more highly penetrated tier is also questionable.¹²³ The local advertising sales market would not expand because of this additional supply of advertising inventory.¹²⁴ beIN is unlikely to provide any material incremental value to Comcast's local ad inventory. That may have once been true in the cable television business; a once-new channel like HGTV allowed local cable ad sales representatives to present an attractive new option to home improvement centers and related advertisers. That's much less the case now. And Mr. Sahl's experience with the less-desirable, non-geographically-targeted advertising sales inventory of his former employer, Dish Network, was very different from the local ad sales potential for a cable operator who has a large share of the local advertising markets in which it has systems.

115. Comcast's ability to decide and implement its best strategy for serving customers is the core part of running its business. It is essential that Comcast retain editorial discretion and be able to manage its costs to compete in this highly competitive environment.

VII. COMCAST'S CARRIAGE DECISIONS REGARDING BEIN DO NOT UNREASONABLY RESTRAIN BEIN'S BUSINESS OPPORTUNITIES

116. beIN can compete in the content marketplace without Comcast. beIN makes little effort in its Complaint to demonstrate that it has been unreasonably restrained from competing by Comcast's carriage decisions.¹²⁵ (This is not all that surprising since the parties never reached any endpoint in their renewal negotiations prior to beIN's filing of the Complaint.)

117. Simply put, the market opportunity for beIN on MVPDs is likely smaller and different than beIN wishes it to be. Certainly Comcast itself sees the market opportunity for smaller English-language networks to be challenging. Three of the networks with much larger prime time audiences than beIN Sports in 2016 were NBCUniversal's Esquire Network (with over ten times the prime time viewership of beIN Sports), Chiller

¹²³ Complaint ¶¶ 15, 104, pp. 8, 47.

¹²⁴ Brayford Declaration ¶ 40.

¹²⁵ Complaint ¶¶ 17, 96, pp. 8, 44.

(over four times the viewership) and Cloo (over three times the viewership).¹²⁶ NBCUniversal subsequently shut down all three television networks.¹²⁷

118. NBCUniversal has not been the only company to notice that the opportunity for smaller cable channels is much smaller than it once was. This change has taken place rapidly and has been well reported. Last year Dish's top content negotiator said "in 2014 it was 'unthinkable' to suggest to a big media company to 'pick your winners' and get rid of the teeny networks. Now 'it's almost accepted as inevitable.'"¹²⁸ beIN appears to be in a tough position in this environment. In a 2017 *Wall Street Journal* analysis of 100 cable channels, beIN Sports had the second worst cost relative to its viewership.¹²⁹ Another network focused on soccer, Fox Soccer Channel, shut down in 2013. In its place, Fox provided distributors FXX, an entertainment channel expansion of its popular FX network. FXX debuted with much higher ratings than Fox Soccer enjoyed.¹³⁰

119. These facts all suggest that beIN's programming does not have the sort of appeal that generates or would justify the significantly increased distribution that beIN has requested.

120. In addition to the potentially limited market opportunity for beIN on high penetration MVPD tiers, beIN has also made some business choices that likely have hampered its chances of success in the marketplace. []

[], The more recent sports networks that have achieved broader distribution are often owned by their rights holders – NFL Network, MLB Network, NBA TV, and NHL Network – who control long-term access to their content.

121. Additionally, it is unclear if beIN has done a good job with its affiliate marketing – there are [] and Xfinity (Comcast) presentations, for example. The presentation to Comcast was given []. beIN has also not completed an affiliation agreement with the National Cable Television Cooperative, which would give potential access to millions more customers on smaller cable providers.

¹²⁶ <http://www.indiewire.com/2016/12/cnn-fox-news-msnbc-nbc-ratings-2016-winners-losers-1201762864/>.

¹²⁷ <http://deadline.com/2017/11/chiller-shut-down-cable-channel-nbcuniversal-slasher-1202209932/>; <http://variety.com/2017/tv/news/esquire-network-1201962261/> (Esquire did continue as an online-only service).

¹²⁸ <https://www.wsj.com/articles/small-cable-channels-you-pay-forbut-dont-watchare-dying-1490111102>.

¹²⁹ <https://www.wsj.com/articles/small-cable-channels-you-pay-forbut-dont-watchare-dying-1490111102>.

¹³⁰ <https://www.hollywoodreporter.com/live-feed/tv-ratings-fxx-solid-start-619877>.

122. As the difficulties of other soccer-focused cable networks demonstrate, beIN's business model – distribution through MVPDs – may not be the right business model for niche content at this time. beIN might have been more successful taking its niche programming with a passionate fan base direct to the consumer on an over-the-top basis than via traditional cable operators that have less appetite for niche programming in high penetration tiers. This was precisely the strategy that World Wrestling Entertainment (“WWE”) used to go to market. WWE had been approaching MVPDs with a 24/7 cable channel with its programming for several years, before it launched as an over-the-top monthly subscription service (the same business model as Netflix) in February 2014. Since then, WWE has been praised as “a media juggernaut.” CNN noted that WWE's decision to distribute WWE Network itself “turned out to be at the front of a shift to direct-to-consumer content that's shaken up the industry.”¹³¹ WWE's total revenue in 2014 was \$524 million; in 2017 it was \$801 million.¹³² While the network has only about 2 million subscribers, because of its much higher revenue per subscriber from the direct-to-consumer model, it has been a clear success.

VIII. CONCLUSION

123. In summary, I believe that the beIN networks are not similarly situated to either NBCSN or Universo. I base this assessment on objective industry data and my experience in the industry. Both beIN networks are niche soccer networks that attract a modest audience and have much more limited distribution among major MVPDs than NBCSN, a general sports network, and Universo, a Spanish-language general entertainment network.

124. I further find that Comcast's initial counterproposal to beIN was reasonable, based on substantial data and analysis, and legitimate commercial considerations. Comcast's proposal is also consistent with beIN's carriage treatment by other distributors in the marketplace. beIN's renewal offers to Comcast for higher fees, greater distribution, and [] did not align with the networks' value proposition for Comcast and were unrealistic in today's highly competitive marketplace. This disconnect between beIN's cost and value is particularly striking given beIN's lack of []

[] on the networks over the term of the proposed agreement. In my view, there is no evidence that Comcast's decisions regarding beIN were motivated by a desire to favor NBCSN or Universo.

125. Finally, in my opinion, Comcast's initial counterproposal has not unreasonably restrained beIN's ability to compete fairly. In today's marketplace, the market opportunity for small niche cable networks is not what it was twenty years ago. Moreover, beIN's challenges are likely a product of *its own* business decisions, not Comcast's.

¹³¹ <http://money.cnn.com/2018/02/07/news/companies/wwe-vince-mcmahon-wrestling/index.html>.

¹³² <http://quotes.wsj.com/WWE/financials/annual/income-statement>.

I have prepared this declaration using facts of which I have personal knowledge or based on information provided to me. I declare under penalty of perjury that the foregoing is true and correct to the best of my current information, knowledge, and belief.

Executed on May 11, 2018

A handwritten signature in black ink, appearing to read "P. Litman". The signature is written in a cursive style with a horizontal line underneath the first part of the name.

Peter Litman

Appendix

Exhibit 1: Top 50 Telecasts (greater than 60 minutes in duration) on NBCSN 2017¹³³

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¹³³ Nielsen NPOWER report Live+3 Days (+75 Hours), 1/1/2017-12/31/2017, Persons 2+, Duration >60.

Exhibit 2: Top 50 Telecasts (greater than 60 minutes in duration) on beIN Sports 2017¹³⁴

II

II

¹³⁴ Nielsen NPOWER report Live+3 Days (+75 Hours), 1/1/2017-12/31/2017, Persons 2+, Duration > 60.

Exhibit 3: MVPD Carriage of NBCSN and beIN Sports; Basic Subscribers at year end 2017 from Kagan¹³⁵

II

II

¹³⁵ Frontier percentages are estimates based on relative subscriber counts at the time of the CA, FL, TX acquisition (1.197 million subscribers acquired in April 2016); 69.8% of the 1.628 million total reported by Frontier at end of June 2014.

Exhibit 4: Top 50 Telecasts on Universo 2017¹³⁶

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¹³⁶ Nielsen NPOWER report Live+3 Days (+75 Hours), 1/1/2017-12/31/2017, Persons 2+.

Exhibit 5: Top 50 Telecasts on beIN Sports en Español 2017¹³⁷

II

II

¹³⁷ Nielsen NPOWER report Live+3 Days (+75 Hours), 1/1/2017-12/31/2017, Persons 2+.

Peter Litman

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EXPERIENCE

1998-present

Independent Consultant

New York

- Advising an established sports programmer on distribution strategy and business development (e.g., TV Everywhere). Participating “at the table” in negotiations with distributors. Responsible for annual MFN compliance analysis.
- Advised a major broadcast programmer on its broadcast and cable distribution issues, including development of distribution analytics and analyzing its Most Favored Nation’s (MFN) compliance issues.
- Negotiated multiple retransmission consent agreements with major network affiliates for the 2012-2014 cycle for a new fiber-to-the-home multichannel television service.
- Advised an established DBS public interest programming service on its distribution opportunities including cable and over-the-top. Helped develop its Roku channel application.
- Successfully negotiated multiple retransmission consent agreements for a top-five cable operator for the 2009-2011 cycle. Analyzed and suggested strategy for operator’s premium TV business.
- Retained as an expert witness by a major sports programmer to assist in its litigation with another top-five cable operator.
- Provided advice on distribution strategy for a top-ten cable programmer for over eight years.
 - Developed rate cards and structured deals for a fully distributed basic cable network to drive its revenue growth and the distribution of its additional services. Analyzed deal terms and contract compliance.
 - Negotiated deals with both major DBS providers, most top ten cable operators and major telephone companies. As part of those deals, negotiated retransmission consent agreements on behalf of a top television station group with DBS and cable operators.
- Advised a major basic cable network for over five years.
 - Wrote the business plan for its online venture to secure multi-million dollar funding from the company’s ownership and negotiated deals to acquire two related web sites.
 - Helped to develop network’s free video-on-demand strategy for cable operators.

1994-1998

MediaOne/Continental Cablevision (now part of Comcast)

Boston

Director, Programming (1995-1998)

- Licensed cable and broadcast video content for US cable systems in lead and support roles.
- Assisted on the negotiation of an agreement to move NBC Sports Boston (then SportsChannel New England) to basic carriage and to acquire an option for 50% ownership of the service. Successfully led MediaOne’s financial preparation and advocacy in the subsequent appraisal hearing. Negotiated and assisted on partnership issues for content investments including E!, Food Network, NBCSN (then Outdoor Life) and Fox Sports 1 (then Speedvision).

Associate Director, Programming (1994-1995)

1989-1994

NBC

Manager, Financial Planning WMAQ-NBC5 (1991-1994)

Management Associate (1990-1991)

Financial Analyst WMAQ-NBC5 (1989-1990)

Chicago

New York

Chicago

EDUCATION

Northwestern University / Kellogg School Of Management

Evanston IL

1990 M.Mgmt. Marketing and Finance (Beta Gamma Sigma honor society)

Brown University

Providence

1985 A.B. Applied Mathematics (Phi Beta Kappa, Sigma Xi honor societies)

References available upon request

Apr 2018

REDACTED – FOR PUBLIC INSPECTION

EXHIBIT 5

REDACTED – FOR PUBLIC INSPECTION

**CONFIDENTIAL
DOCUMENT WITHHELD**

REDACTED – FOR PUBLIC INSPECTION

APPENDIX A

REDACTED – FOR PUBLIC INSPECTION

Appendix A: Key Excerpts from Comcast's Answer

beIN's Proposals Lacked Programming Certainty

- In April 2017, “beIN proposed a monthly fee of [REDACTED]. This fee increase was substantially more than major programmers, even large broadcast groups, typically seek in renewal. beIN’s proposal also required Comcast to distribute one or both of the beIN networks to [REDACTED]. And beIN proposed a [REDACTED]. Despite these demands, beIN could not [REDACTED].” (Answer ¶ 6)
- “beIN’s [REDACTED] was another major obstacle to a deal. Because [REDACTED], it was particularly unreasonable for beIN to expect increased fees and carriage under these circumstances.” (Answer ¶ 9)
- “Other aspects of the February 2 Proposal were either silent or went backwards from beIN’s April 2017 offer. beIN again refused to [REDACTED].” (Answer ¶ 15)
- “[A]t each turn of the parties’ negotiations, beIN insisted on unrealistic terms that were out of step with the marketplace and bore no relationship to the actual value of the beIN networks to Comcast and its customers. Further, beIN could not even provide [REDACTED].” (Answer ¶ 60)
- “I also asked beIN to clarify [REDACTED], as it did in the original August 2012 agreement. beIN was unable to provide a concrete response to this fundamental question.” (Brayford Decl. ¶ 13)
- “[T]here were other fundamental issues about beIN’s renewal proposal that were unresolved and could significantly affect the value proposition of the networks. For example, beIN had not [REDACTED].” (Brayford ¶ 22)
- “We also noted that the February 2 Proposal failed to clarify [REDACTED].” (Brayford ¶ 38)

The beIN Networks Are Not Similarly Situated to NBCSN or Universo

Programming

- “beIN cannot meet the Commission’s ‘similarly situated’ standard. As beIN’s own data show, its networks are dominated by continental European soccer. This niche programming is plainly distinct from NBCSN’s diverse mix of marquee sports programming (e.g., NHL (including the Stanley Cup Playoffs), NASCAR, Olympics, Tour de France, English Premier League), and Universo’s general entertainment Spanish-language programming (e.g., Spanish-language reality and scripted series,

REDACTED – FOR PUBLIC INSPECTION

music programming, movies) with occasional sports content. Objective, third-party data demonstrate that beIN's networks carry upwards of *five to ten times* more soccer programming than do NBCSN and Universo and thus are clearly narrower offerings.” (Answer at 3)

- “Based on a comprehensive review of publicly available TV programming guide data that categorizes, by genre, the programs aired on the networks in 2017, Dr. Lerner found that soccer programming accounted for 55.1 and 72.3 percent of all programming minutes on beIN Sports and beINE, respectively. In contrast, less than 10 percent of NBCSN's programming minutes consisted of soccer programming during the same time period. . . . As for Universo, less than 6 percent of its programming minutes during the same period consisted of soccer programming.” (Answer ¶ 28)

Audience

- “beIN's networks attract different audiences than NBCSN and Universo. While beIN Sports appeals to a younger, more affluent and urban, and substantially Hispanic audience, NBCSN generally appeals to a relatively older, less affluent and urban, and non-Hispanic audience. And while beINE attracts an overwhelmingly male and relatively more affluent audience, Universo attracts a balanced female/male and less affluent audience. Even with respect to the overly narrow category of soccer viewers, there is limited overlap, as beIN itself acknowledges on its website: ‘70% of [Spanish soccer league] La Liga viewers on beIN's English-language channel do not watch [English] Premier League on NBC Sports Network.’” (Answer at 3)

Ratings

- “NBCSN has a substantially broader viewership base than beIN Sports, drawing significantly larger average audience sizes. NBCSN also outperforms beIN Sports across a number of standard Nielsen ratings metrics. Dr. Lerner further observes that the average viewing audience ratings for beIN Sports in 2017 was [] percent, whereas NBCSN's was more than 10 times higher.” (Answer ¶ 39)

Advertisers

- “beIN has failed to present any credible evidence that its networks compete directly and materially with NBCSN or Universo for advertisers. In fact, as in the *GSN* case, ‘the very substantial differences in programming and demographics’ among these networks makes ‘it unlikely that advertisers would regard [them] as substitutes.’” (Answer ¶ 45)

Carriage by Other MVPDs

- “Critically, other MVPDs do *not* view the beIN networks as comparable to NBCSN or Universo – which Chairman Pai has recognized as ‘powerful evidence’ of whether two networks are similarly situated. Like Comcast, other distributors broadly distribute NBCSN and Universo but generally carry beIN's networks on specialty and less-penetrated tiers. As beIN candidly told the Commission just last year (in terms very different than what it claims in the Complaint): ‘Major Pay-TV companies tend to make beIN's English-language network available only as part of a sports package, which usually is distributed to about 20% of the MVPD's total subscribership.’ Most smaller MVPDs and linear OVDs do not carry beIN's networks *at all*.” (Answer at 4; *see* chart below)

REDACTED – FOR PUBLIC INSPECTION

Carriage of NBCSN, Universo, beIN Sports, and beINE by Top MVPDs

MVPD		Tier of Carriage																
		beIN Sports/beINE					NBCSN					Universo						
		Broad	Mid-level	Upper/Premium	Spanish Tier	Sports Tier	Broad	Mid-level	Upper/Premium	Spanish Tier	Sports Tier	Broad	Mid-level	Upper/Premium	Spanish Tier	Sports Tier	Other Specialty Tier	
AT&T	DirecTV	Dropped by AT&T/DirecTV 8/2018					✓	✓	✓	✓			✓	✓	✓	✓		
	U-verse						✓	✓	✓	✓		✓	✓	✓	✓			
Charter				✓	✓		✓	✓	✓				✓	✓	✓	✓		
DISH Network				✓	✓	✓	✓	✓	✓					✓	✓			
Verizon		✓ *	✓	✓	✓ **	✓	✓	✓	✓	✓			✓	✓	✓	✓		
Cox				✓	✓	✓	✓	n/a	✓					✓ ^	✓		✓ ^	
Altice USA	Optimum			✓	✓ **	✓	✓	✓				✓ ^	✓	✓	✓	✓		
	Suddenlink	NOT CARRIED					✓	✓	✓					✓ #	✓ #	✓ #		
Frontier	FiOS	✓ *#	✓ *#	✓ *#	✓ *#	✓ #	✓	✓	✓			✓ ^		✓	✓	✓		
	Vantage			✓ #	✓ #	✓ #	✓	✓	✓				✓	✓	✓	✓ #		
Mediacom					✓ ^	✓	✓						✓ #			✓ #		✓ #
TPG Capital	RCN			✓ *	✓ **/**		✓	n/a	✓						✓	✓ ^		
	Grande	NOT CARRIED					✓	✓	✓						✓			✓
	Wave	NOT CARRIED					✓						✓ ^			✓ ^		✓ ^
WOW!		NOT CARRIED					✓	✓						✓ #				
Cable One		NOT CARRIED					✓						✓ ^			✓		
CenturyLink (Prism)			✓ *	✓ *	✓ **	✓ *	✓	✓	✓				✓	✓	✓			
Liberty Puerto Rico		✓ **	✓			✓		✓			✓	✓			✓			✓
Atlantic Broadband				✓ #	✓ *#		✓	n/a	✓					✓	✓ #			

Carriage data based on review of public MVPD channel-lineups from zip codes across at least 10 of the top markets by subscriber count for each MVPD (or complete set of markets where an MVPD operates in fewer than 10 markets). There may be some limited variation within certain markets. Unless otherwise indicated, carriage includes both beIN Sports and beIN Sports en Español.

* beIN Sports only

** beIN Sports en Español only

Carried only in select market(s)

^ Carriage tier varies by market

REDACTED – FOR PUBLIC INSPECTION

beIN Has Not Been Unreasonably Restrained in Its Ability To Compete Fairly

- “beIN cannot show how Comcast’s alleged conduct has unreasonably restrained beIN’s ability to compete fairly. . . . [A]ny claimed unreasonable restraint – which courts have made clear requires a showing of significant impairment to competition – is implausible in today’s intensely competitive video distribution marketplace, as Dr. Lerner and Mr. Litman underscore. Comcast customers typically have no less than *five* additional pay TV options to watch the beIN networks, including two services (Sling TV and iGo!) where the beIN networks are available for just an additional \$10/month, plus one other service option (go90) where it is available for free. And, as beIN acknowledges in the Complaint, there are a host of online distributors that do not currently carry the beIN networks but offer potential new distribution outlets for its niche soccer programming. Given these marketplace realities, beIN cannot demonstrate how Comcast could unreasonably restrain the beIN networks’ ability to compete fairly simply by continuing to carry them on terms commensurate with their commercial value.” (Answer at 6-7)
- “At bottom, beIN’s claim of unreasonable restraint is based on nothing more than Comcast’s (a) unwillingness simply to accept the excessive renewal demands that beIN proposed and (b) attempt to move the negotiations toward a more reasonable and realistic outcome.” (Answer ¶ 81)

Comcast’s Negotiations with beIN Were Based on Legitimate, Non-Discriminatory Business Decisions

- “Comcast’s initial counterproposal was based on an assessment of the beIN networks’ value proposition in the marketplace and the kind of renewal terms that would best allow Comcast to continue to offer this niche programming to interested customers at attractive price points. Analyses of actual viewership of the beIN networks by Comcast subscribers showed that the networks have relatively limited appeal that does not justify beIN’s exorbitant price increases and other aggressive renewal proposals; indeed, these analyses showed that Comcast is *already* likely overpaying for the beIN networks. Relative to beIN’s initial proposal for [] million in average annual fees, even the most conservative calculations indicated that Comcast would save a minimum of approximately [] million *annually* by simply dropping beIN’s networks at the end of the contract term. . . . Comcast’s initial counterproposal reflected these economics, as well as beIN’s []. Despite acknowledging [], beIN persisted in aggressive demands that continued to make no economic sense for Comcast’s business.” (Answer at 5)
- “Comcast legitimately concluded that beIN’s April Proposal and subsequent proposals were a bad deal for Comcast and did not make business sense given the limited value of the beIN networks to Comcast customers.” (Answer ¶ 59)
- “beIN claims that a desire to favor two affiliated networks, NBCSN and Universo, is the ‘only rational explanation’ for Comcast’s December Offer to beIN. That bare assertion falls far short of the Commission’s requirement that a complainant demonstrate that its unaffiliated status ‘actually motivated’ the MVPD’s conduct, and is refuted by the fact (as shown above) that virtually all other major MVPDs have made the same carriage choices for the beIN networks, NBCSN, and Universo. That ‘powerful evidence’ alone negates beIN’s rote claim of affiliation-based discrimination and warrants dismissal of the Complaint.” (Answer ¶ 57)

EXHIBIT 6

VIEWER
PROFILE



GENDER

Male:	73.0%
Female:	27.0%



HOUSEHOLD INCOME

\$100K+:	29.1%
\$75K - \$99,999:	14.8%
\$50K - \$74,999:	16.4%
\$30K - \$49,999:	23.6%



EDUCATION

Graduated College:	32.4%
Some College:	30.9%



HOME OWNERSHIP

Own Home:	71.1%
Rent:	26.2%



AGE

18 – 34:	24.2%
35 – 54:	29.2%
55+:	46.6%



PRESENCE OF CHILDREN

1+ Child in HH:	26.3%
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MARITAL STATUS

Single (Never Married):	27.1%
Married:	56.1%

Source: Nielsen Scarborough USA Plus-MRI/Mosaic, De15-Apr17, Adults 18+, Cable Networks Watched Past 7 Days: NBCSN (NBC Sports Network).

FEATURED
PROGRAMS

- Olympics
- NFL Turning Point
- NHL Games
- The Dan Patrick Show
- Tour de France
- NASCAR America
- Collegiate Games
- Premier League

Program list is a sample from the network. Shows may change or be cancelled without notice. Cancelled shows may still air in repeats.

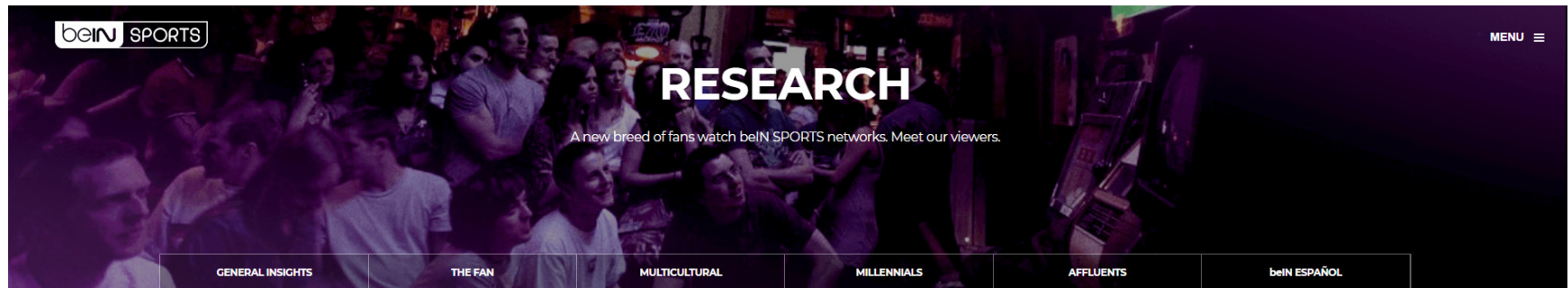
COMCAST
SPOTLIGHT™



NBC Sports Network, part of the NBC Sports Group, is dedicated to serving passionate sports fans. The network is the cable television home of the Summer and Winter Olympics, National Hockey League (NHL), Major League Soccer (MLS), IndyCar Series, Tour de France and the 34th America's Cup, the Premier League and Formula One.

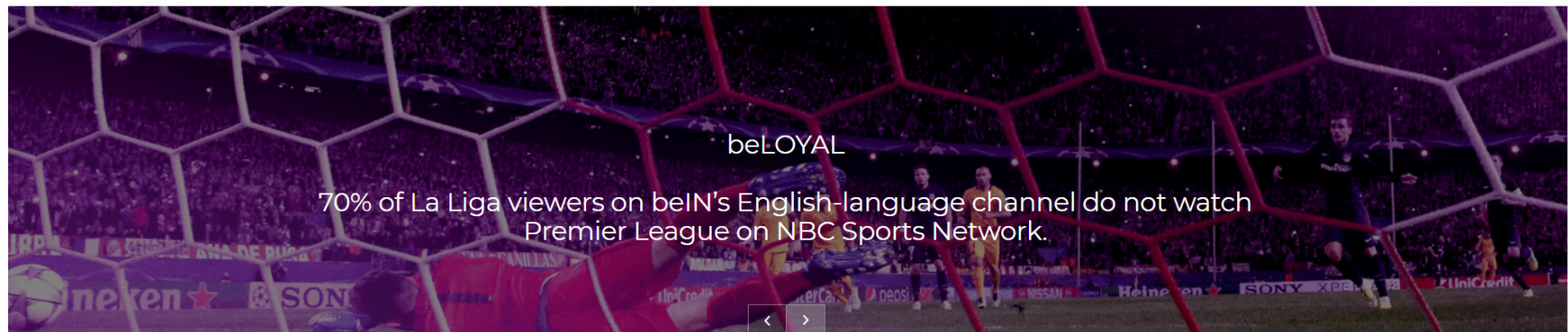
EXHIBIT 7

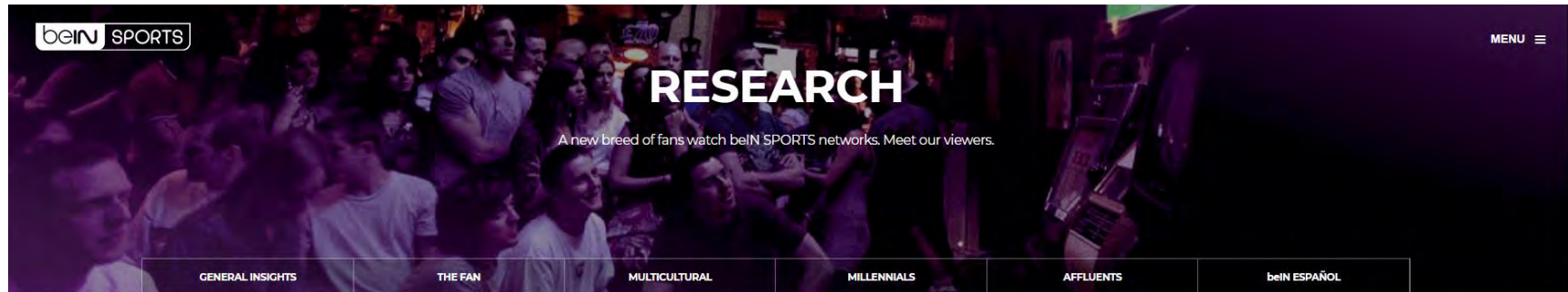
Screenshots from <http://adsalesus.beinsports.com/research/> (last visited Apr. 30, 2018)



GENERAL INSIGHTS

Over the past 5 years, soccer viewership in the U.S. has grown over 20%. And beIN SPORTS, home to every fan, is at the forefront of this growth.





GENERAL INSIGHTS

Over the past 5 years, soccer viewership in the U.S. has grown over 20%. And beIN SPORTS, home to every fan, is at the forefront of this growth.

The screenshot shows the beUNIQUE section of the website, which features a background image of a soccer player in a white jersey. The text in this section includes:

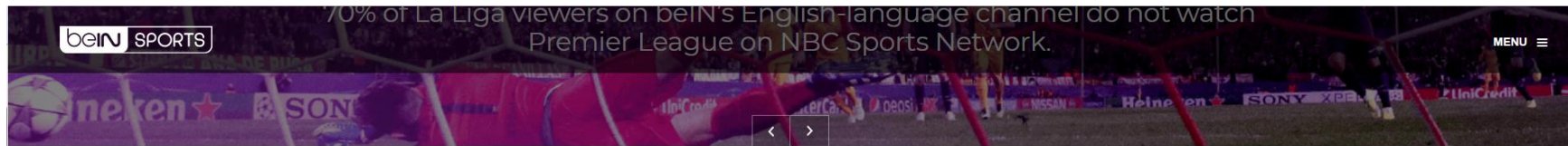
beUNIQUE

77% of La Liga viewers on beIN's Spanish-language channel do not watch Major League Soccer on Fox Deportes or Univision Deportes.

81% of La Liga viewers on beIN's English language channel do not watch Major League Soccer on ESPN and 89% do not watch MLS on Fox Sports 1 or 2.



Nielsen Live+SD. 2Q16 R&F Duplication report with a 6-min qualifier. P2+. Repeats excluded on programs.

Navigation arrows (left and right) are located at the bottom center of the section.

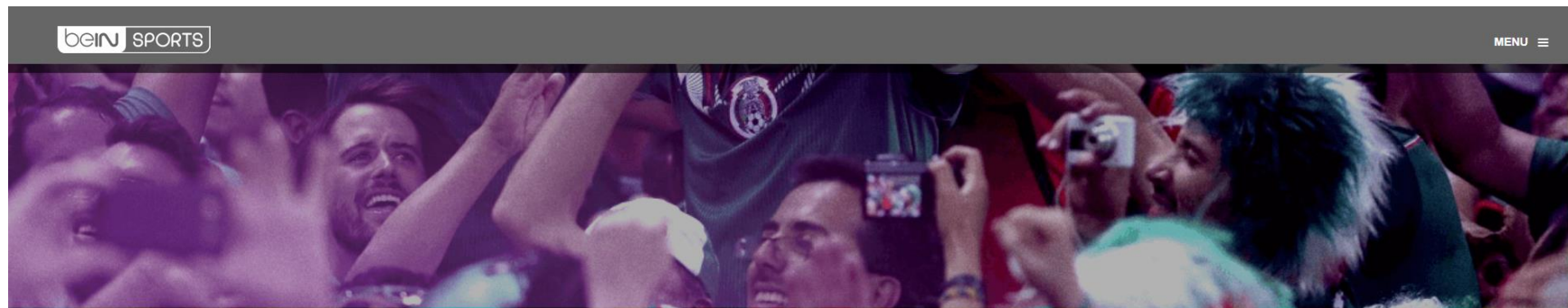


THE FAN

Fans first, everyone else second. Now more than ever, sports are captivating a new breed of TV viewer. Some have been around before, some are new and learning. All of their passion is contagious. beIN is home to every fan.

	71% of ENGLISH channel viewing comes from repeat loyal viewers (high frequency and duration)		83% of SPANISH channel viewing comes from repeat loyal viewers (high frequency and duration)
72% of beIN viewers are heavy La Liga viewers on the ENGLISH channel		85% of beIN viewers are heavy La Liga viewers on the SPANISH channel	



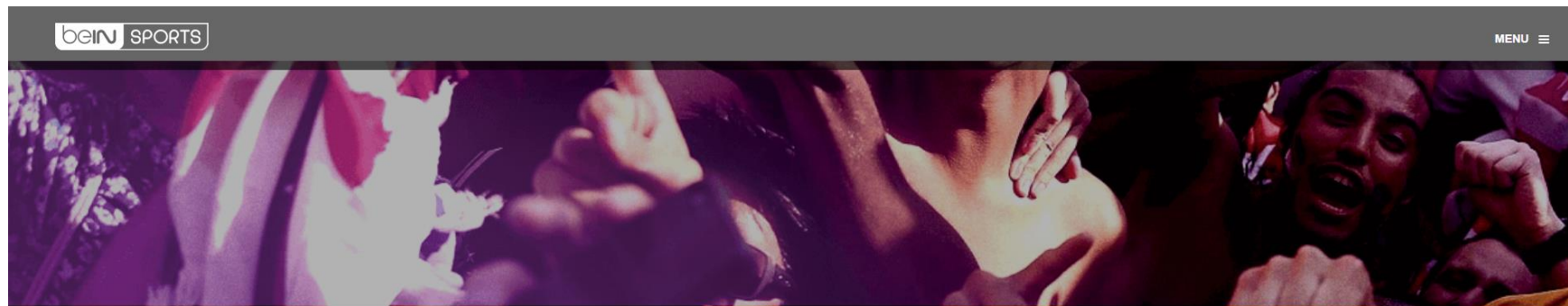


MULTICULTURAL

At beIN SPORTS, we are focused on reaching total market.

78% of beIN's English-language channel Hispanic audience and 71% of the Spanish one are bilingual.	68% of beIN's Spanish-language channel viewers are of Central/South American, Spanish, and Caribbean descent.	24% of beIN's English-language channel total viewers are of Mexican descent.
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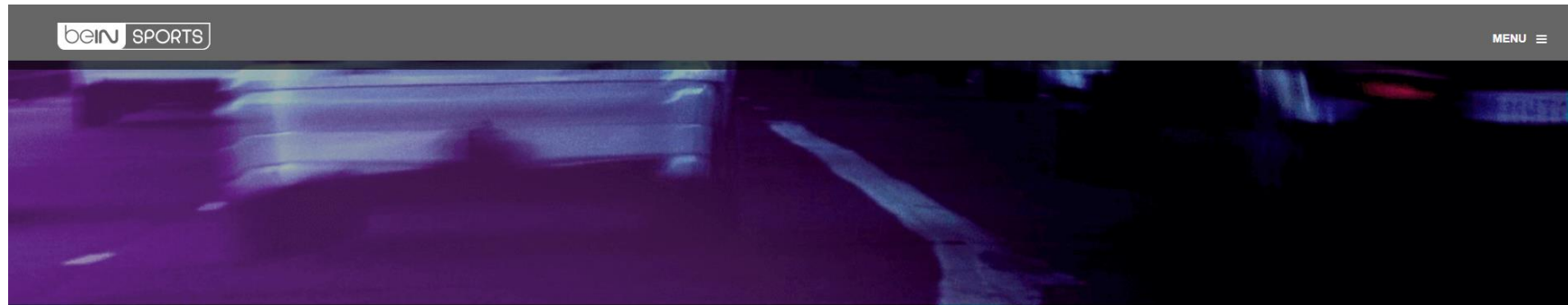




MILLENNIALS

Millenials are changing the future of sports and broadcast. The next generation has different habits, like mobile viewership and second screen use. And beIN overindexes in reaching these viewers.

60% More likely to delivery millennial males than the average cable sports network. With 27% of viewers A18-34 and 21% M18-34, beIN SPORTS English-language channel delivers the largest percentage of Millennial viewers, more than any other sports network for the 2015/16 Season.	27% With 27% of viewers A18-34 and 21% M18-34, beIN SPORTS English-language channel delivers the largest percentage of Millennial viewers, more than any other sports network for the 2015/16 Season.	At 37 We have the youngest median age of any Sports network – English Sports net average median age: 49.	37% of our site visitors are Millennials aged 18 to 34.	23 to 35 The median age of our digital users across all platforms.
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AFFLUENTS

Mid-to-high affluent viewers are avid consumers of sports content.



This Season, beIN SPORTS English-language channel delivered a higher median household income than the English cable sports network average.

44%

beIN English's audience has the highest percentage of upscale viewers (44%) compared to the competition and has a 26% advantage over the average sports nets HH income. (based on P2+ HH \$100K+ % comp)


15%

beIN en Espanol's audience is 15% more upscale than the SL cable average (based on HH HH \$125K+ % comp)


MENU 

beIN ESPAÑOL

#1
beIN Sports en Español is the #1 Spanish language Cable network among Total viewers as well as various key demos including P18-34, P18-49, and P25-54.


During beIN Español's prime programming block, it boasts the longest average length of viewing and events tuned compared to all Spanish Language cable networks.

68%
Of beIN Español's viewers are of non-Mexican, Hispanic descent, compared to just 43% among Spanish language Cable Sports nets.

SCROLL TOP 

beIN OVERVIEW

beIN SPORTS is a global media network of sports channels, broadcasting the top content to viewers across the United States.

STAY INFORMED


send


LATEST TWEETS


@beINSPORTSUSA Unfortunately technical issues mean there will be no #FootballCrazy this week. In the meantime, you can feast your...
<https://t.co/Sf20WexZJ>


@beINSPORTSUSA Let the @SSalburyShow explain why we should believe that the @Raptors can get over their @cavs "problem." Or ca...
<https://t.co/tbzV095nV6>

@beINSPORTSUSA 🌟 Zidane expects a "big performance" from visiting @FCBayernEN on Tuesday and says @realmadriden needs to counter w...
<https://t.co/XBRk5KQJL>

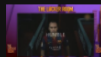
View all

Follow


View all

Follow


LATEST YOUTUBE VIDEOS




The Locker Room: Iniesta to leave Barcelona
beIN SPORTS USA
2802 views




WTA | Porsche Tennis Grand Prix FINAL
beIN SPORTS USA
430 views







This is Paris: Misspelle's only 19!
beIN SPORTS USA
206 views

View all 

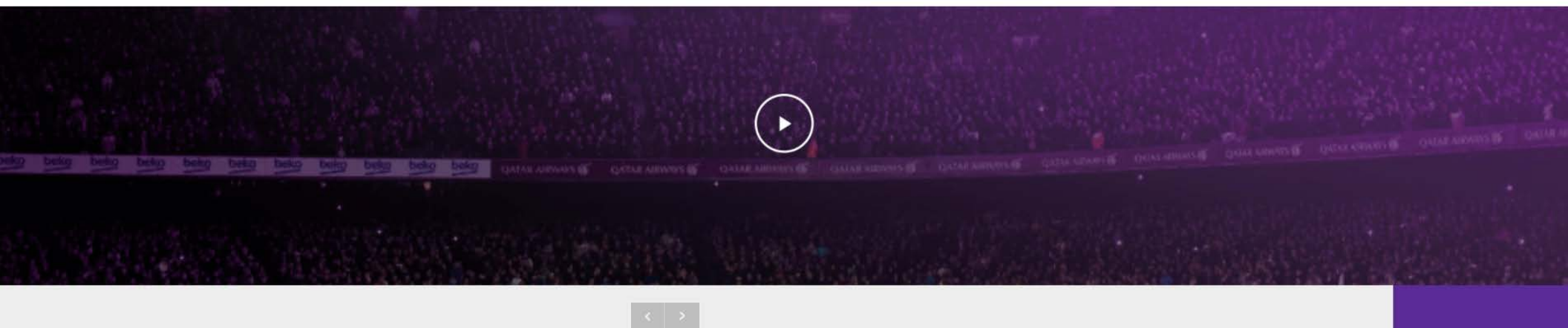


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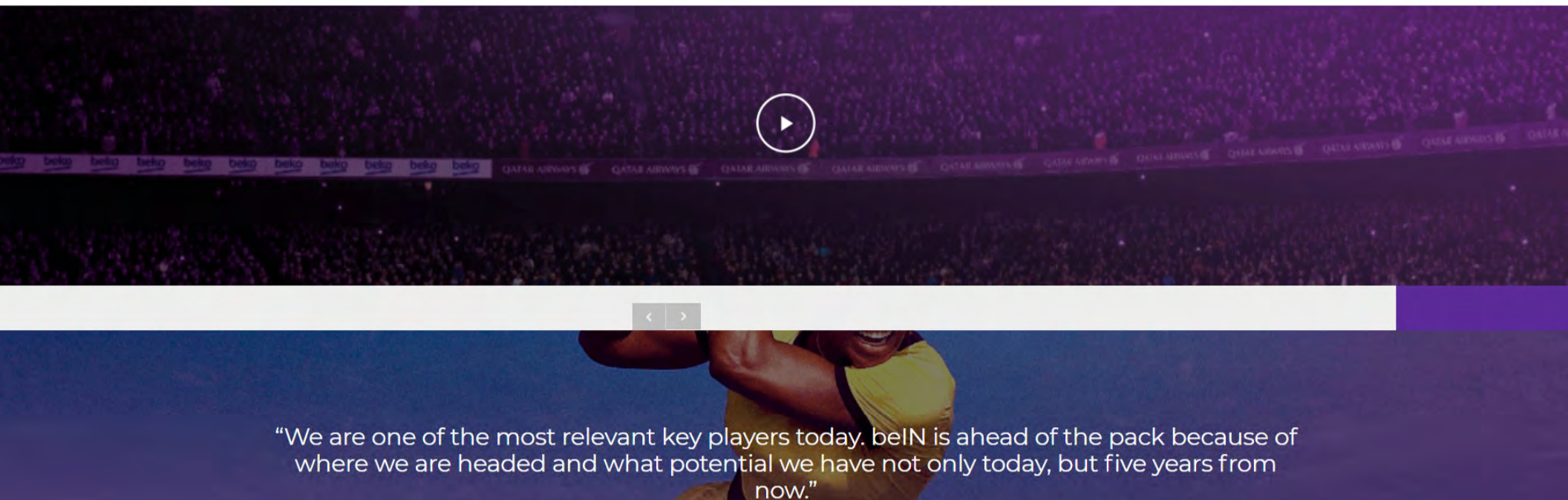
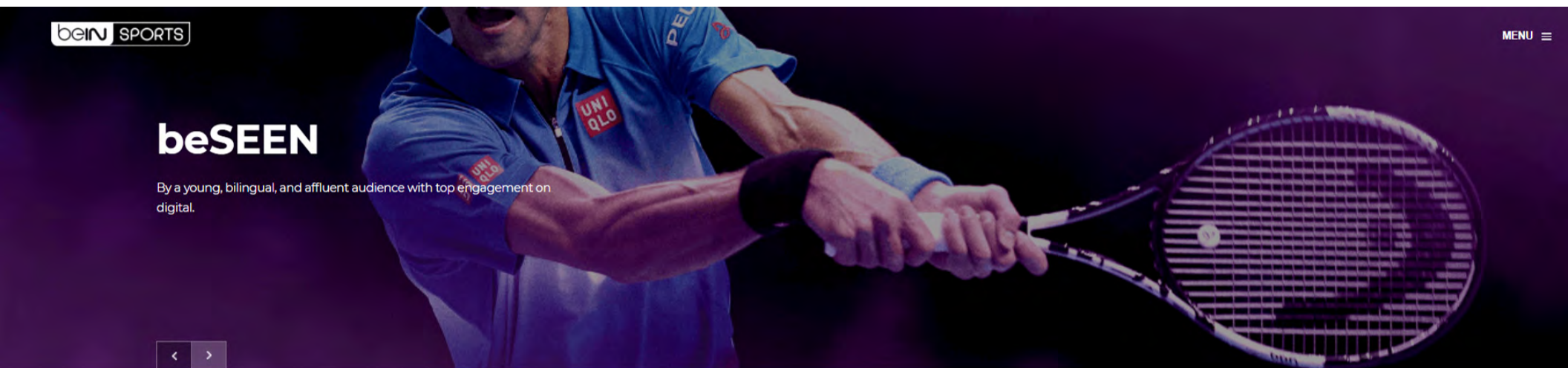
[Terms](#) [Privacy](#) [Contact](#) [Visit beinsports.tv](#)



Screenshots from <http://adsales.beinsports.tv/> (last visited Apr. 30, 2018)



"The appetite for world class soccer continues to grow and nothing demonstrates this better than the viewership numbers of El Clásico. The beIN SPORTS family of networks aims to give sports fans the best international sporting events available on television and our live streaming platform."



ABOUT US

beIN SPORTS is part of beIN MEDIA GROUP, a global leader in TV production, distribution, and media rights acquisition. We bring major international sporting events across multiple platforms to millions of viewers around the world.

OUR BRAND

OUR MISSION

OUR GLOBAL NETWORKS

OUR BRAND

beIN SPORTS is committed to creating the highest quality viewing experience for sports audiences. We provide our viewers with premium content and connect like-minded fans to the sports we all love.

bePASSIONATE

Fans choose beIN SPORTS because, unlike other networks, we cover soccer, football, fútbol, calcio. No matter how you call it, we got it. Every single day.



Screenshot from <https://www.beinsports.com/us/> (last visited Jan. 25, 2019)

The screenshot shows the beIN SPORTS website interface. The browser address bar displays <https://www.beinsports.com/us/>. The website header includes the beIN SPORTS logo, navigation links for Live Scores, Soccer, Motorsports, Tennis, College, and More Sports, and buttons for Videos, Watch Live, and TV Guide. A secondary navigation bar features 'Keep beIN', 'Sports Burst', 'Football Crazy Podcast', 'The XTRA', and a 'Get beIN' button. A large banner at the top promotes 'BEST OF SPANISH TV + SLING ORANGE' for \$30 a month, with a 'WATCH 7 DAYS FREE' button. Below this, a central promotional image features two soccer players (Lionel Messi and Cristiano Ronaldo) in action, with the text 'BEST OF SPANISH TV' and 'FOR JUST \$10 A MONTH'. Logos for beIN SPORTS, LaLiga, and beIN SPORTS fi are visible. To the right, another promotion for 'THE BEST SOCCER AND MORE' for \$10 a month is partially visible. The bottom of the page shows a 'RESULTS' button and a date 'JANUARY 21'.

EXHIBIT 8

VIEWER PROFILE



GENDER

Male:	74%
Female:	26%



HOUSEHOLD INCOME

\$100K+:	44%
\$75K - \$99,999:	17%
\$50K - \$74,999:	19%
\$30K - \$49,999:	14%



EDUCATION

Graduated College:	31%
Some College:	62%



HOME OWNERSHIP

Own Home:	62%
Rent:	38%



AGE

18 – 34:	25%
35 – 54:	42%
55+:	34%



PRESENCE OF CHILDREN

1+ Child in HH:	39%
-----------------	-----

Source: Nielsen Npower. Calendar Year 2017. Viewership Demographics by percentage of impressions on Network: beIN Sports

FEATURED PROGRAMS

- The Locker Room
- 90 in 30
- The Xtra
- The Express
- Football Countdowns
- La Liga News
- El Club
- beIN Legends

Program list is a sample from the network. Shows may change or be cancelled without notice. Cancelled shows may still air in repeats.

COMCAST
SPOTLIGHT



beIN Sports is America's International Sports Network. Exclusive live coverage of top international soccer leagues including La Liga, Series A, Ligue 1 and the Premier League. It's the only place to watch Messi, Ronaldo, Neymar and other world super stars year round. The action doesn't stop there, as beIN carries Rugby, Tennis, Boxing, MMA and several motor sports.

EXHIBIT 9

VIEWER PROFILE



GENDER

Male:	46.6%
Female:	53.4%



HOUSEHOLD INCOME

\$100K+:	15.7%
\$75K - \$99,999:	8.4%
\$50K - \$74,999:	13.9%
\$30K - \$49,999:	31.5%



EDUCATION

Graduated College:	17.8%
Some College:	26.6%



HOME OWNERSHIP

Own Home:	48.9%
Rent:	48.1%



AGE

18 – 34:	27.3%
35 – 54:	34.6%
55+:	38.2%



PRESENCE OF CHILDREN

1+ Child in HH:	43.5%
-----------------	-------



MARITAL STATUS

Single (Never Married):	28.7%
Married:	50.7%

Source: Nielsen Scarborough USA Plus-MRI/Mosaic, De15-Apr17, Adults 18+, Cable Networks Watched Past 7 Days: NBC Universo.

FEATURED PROGRAMS

- El Vato
- 12 Corazones
- WWE Raw
- Larrymania
- Premiere League
- I Love Jenni
- WWE Smackdown
- The Walking Dead
- Top Chef Mexico

Program list is a sample from the network. Shows may change or be cancelled without notice. Cancelled shows may still air in repeats.

COMCAST
SPOTLIGHT™




UNIVERSO

NBC UNIVERSO gives fans an exclusive
look into the thrilling new line-up of
adrenaline-filled sports, bold dramas, the
hottest music and new season of their
favorite shows.

REDACTED – FOR PUBLIC INSPECTION

EXHIBIT 10

REDACTED – FOR PUBLIC INSPECTION

Carriage of beIN Sports and beIN en Español by Top MVPDs

MVPD		Total Basic Subscribers	Tier of Carriage
AT&T	DirecTV	[[	<i>DROPPED AUG. 2018</i>
	U-verse		
Charter			Gold (200+) Latino View Mi Plan Latino
DISH Network			America's Top 250 (290+) America's Everything (330+) Multi-Sport Pack Latino Bonus Pack DishLATINO Basico (55+) DishLATINO Clasico (180+) DishLATINO Plus (190+) DishLATINO Dos (225+) DishLATINO Max (270+)
Verizon			Preferred HD (325+) (beIN Sports only) Extreme HD (400+) Ultimate HD (500+) Global Sports Pack FiOS TV Mundo (340+) (beINE only) FiOS TV Mundo Total (350+) (beINE only)
Cox			Contour TV Ultimate (250+) Sports & Information Pak^ Sports Pack 2^ Latino Pak
Altice USA	Optimum		Optimum Premier (420+) Optimum Gold (420+) Sports & Information Pak Optimum en Español (beINE only)
	Suddenlink		<i>NOT CARRIED</i>
Frontier	FiOS (Only CA, FL, & TX markets)		Prime HD (240+) (beIN Sports only) Extreme HD (325+) (beIN Sports only) Ultimate HD (400+) (beIN Sports only) Sports Pass (beIN Sports only) Global Sports Pack FiOS TV Mundo (beINE only) FiOS TV Mundo Total (beINE only) Spanish Language (beINE only)
	Vantage (Only CT market)		Vantage TV Ultimate (300+) The Sports Package Custom Global Sports Paquete Español
Mediacom			Sports & Information Digital Pak Canales Latinos^
TPG Capital	RCN		Premiere (380+) (beIN Sports only) MiVision Plus (beIN Sports only/beINE only/both)
	Grande		<i>NOT CARRIED</i>
	Wave		<i>NOT CARRIED</i>
WOW!			<i>NOT CARRIED</i>
Cable One			<i>NOT CARRIED</i>
CenturyLink (Prism)			Prism Preferred (310+) (beIN Sports only) Prism Premium (340+) (beIN Sports only) Sports Plus (beIN Sports only) Paquete Latino (beINE only)

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Atlantic Broadband <i>(Only Miami Beach, FL; Cumberland, MD; Grasonville, MD; & Middletown, DE markets)</i>		More TV (240+) Mundo Latino (Miami Beach only)
Liberty Puerto Rico	II	Español de Primera (75+) (beINE only) Ultimate (175+) Pick Sports

Subscriber data based on a review of publicly reported numbers through Q3 2018, unless otherwise indicated. Carriage data based on review of public MVPD channel-lineups from zip codes across at least 10 of the top markets by subscriber count for each MVPD (or complete set of markets where an MVPD operates in fewer than 10 markets). There may be some limited variation within certain markets. Carriage includes both beIN Sports and beIN Sports en Español (“beINE”), unless otherwise indicated.

* Kagan Estimate. See Top Cable MSOs 9/18 Q, SNL Kagan, <https://www.snl.com/web/client?auth=inherit#industry/topCableMSOs>.

** Data available through year-end 2016.

^ Carriage tier varies by market.

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Carriage of NBCSN and Universo by Top MVPDs

MVPD		Tier of Carriage	
		NBCSN	Universo
AT&T	DirecTV	Entertainment (160+) Choice (185+) Xtra (235+) Ultimate (250+) Premier (330+) Optimo Mas (205+) Mas Ultra (240+) Lo Maximo (350+)	Xtra (235+) Ultimate (250+) Premier (330+) Mas Latino (125+) Optimo Mas (205+) Mas Ultra (240+) Lo Maximo (350+)
	U-verse	U200 (360+) U300 (470+) U450 (550+) U200 Latino (420+) U300 Latino (520+) U450 Latino (590+)	U200 (360+) U300 (470+) U450 (550+) Paquete Español U200 Latino (420+) U300 Latino (520+) U450 Latino (590+)
Charter		Spectrum Select (125+) Spectrum Silver (175+) Spectrum Gold (200+)	Spectrum Silver (175+) Spectrum Gold (200+) Latino View Mi Plan Latino
DISH Network		America's Top 120 (190) America's Top 120+ (190+) America's Top 200 (240+) America's Top 250 (290+) America's Everything (330+)	America's Top 250 (290+) America's Everything (330+) Latino Bonus Pack DishLATINO Clasico (180+) DishLATINO Plus (190+) DishLATINO Dos (225+) DishLATINO Max (270+)
Verizon		Custom TV – Sports & News (235+) Custom TV – News & Variety (235+) Custom TV – Home & Family (265+) Preferred HD (325+) Extreme HD (400+) Ultimate HD (500+) FiOS TV Mundo (245+) FiOS TV Mundo Total (245+)	Extreme HD (400+) Ultimate HD (500+) FiOS TV Mundo (340+) FiOS TV Mundo Total (350+)
Cox		Contour TV (140+) Contour TV Ultimate (250+)	Contour TV Ultimate (250+)^ Variety Pak^ Latino Pak
Altice USA	Optimum	Optimum Core (210+) Optimum Value (220+) Optimum Preferred (310+) Optimum Select (340+) Optimum Silver (375+) Optimum Premier (420+) Optimum Gold (420+)	Optimum Preferred (310+) Optimum Silver (375+) Optimum Premier (420+) Optimum Gold (420+) Optimum en Español
	Suddenlink	Expanded (90+) Value (225+) Select (315+) Premier (355+)	Expanded (90+)^# Value (225+)^# Select (315+)^# Premier (355+)^# Conexion Unica^#

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MVPD		Tier of Carriage	
		NBCSN	Universe
Frontier	FiOS	Prime HD (240+) Extreme HD (325+) Ultimate HD (400+) Premium Sports Package^	Extreme HD (325+) Ultimate HD (400+) FiOS TV Mundo (CA, FL, & TX markets only) FiOS TV Mundo Total Spanish Language (CA, FL, & TX markets only)
	Vantage	Vantage TV Prime (200+) Vantage TV Extreme (250+) Vantage TV Ultimate (300+)	Vantage TV Prime (200+) Vantage TV Extreme (250+) Vantage TV Ultimate (300+) Paquete Español (CT market only)
Mediacom		Family TV (230+)	Family TV (230+) [#] Kids & Variety Digital Pak [#] Canales Latinos [#]
TPG Capital	RCN	Signature (280+) Premiere (380+)	Premiere (380+) MiVision Lite^ MiVision Plus^ MiMúsica^
	Grande	Preferred TV (190+) Premier TV (245+)	Premier TV (245+) Variety Pak
	Wave	Expanded Content (100+)	Expanded Content (100+)^ Digital Variety Tier^ Paquete en Español^
WOW!		Medium Cable (130+) Large Cable (275+)	Large Cable (275+) [#]
Cable One		Standard (100+)	Hispanic Tier
CenturyLink (Prism)		Prism Essential (165+) Prism Complete (215+) Prism Preferred (310+) Prism Premium (340+)	Prism Essential (165+) Prism Complete (215+) Prism Preferred (310+) Prism Premium (340+)
Atlantic Broadband		Value Service (100+) Value Plus (100+) More TV (240+)	More TV (240+) (Miami Beach, FL only) Mundo Latino (Miami Beach, FL only) Canales Españoles (Plainfield & Waterford, CT only)
Liberty Puerto Rico		Ultimate (175+) Pick Sports	Español de Primera (75+) Ultimate Spanish Tier Pick Action

Carriage data based on review of public MVPD channel-lineups from zip codes across at least 10 of the top markets by subscriber count for each MVPD (or complete set of markets where an MVPD operates in fewer than 10 markets). There may be some limited variation within certain markets.

[#] Carried only in certain market(s)

[^] Carriage tier varies by market

EXHIBIT 11

MVPD Distribution Data

Distributor / Package	Type	Penetration	Subscribers	beIN Sports	beIN Sports Español
AT&T					
U-Basic	General	13%	513,866		
U-Family	General	25%	956,250		
U200	General	15%	573,750		
U300	General	20%	765,000		
U450	General	19%	726,750	✓	✓
U200 Latino	Add-On	3%	114,750	✓	✓
U300 Latino	Add-On	5%	191,250	✓	✓
Sports Pack*	Add-On	0%	-	✓	✓
DirectTV					
Select	General	15%	3,202,050		
Entertainment	General	10%	2,134,700		
Choice	General	11%	2,348,170		
XTRA	General	9%	1,921,230		
Ultimate	General	6%	1,280,820		
Premier	General	27%	5,763,690	✓	
Optimo Mas	Add-On	3%	640,410	✓	✓
Mas Ultra	Add-On	8%	1,707,760	✓	✓
Lo Maximo	Add-On	1%	213,470	✓	✓
Comcast Offer					
Limited Basic	General	10%	2,061,612		
Economy	General	8%	1,737,099		
Starter	General	15%	3,136,959		
Preferred	General	39%	8,220,996		
Preferred Plus	General	0%	-		
Premier	General	26%	5,417,034		
Basic Latino (TV 150 Latino)	Add-On	1%	171,801	✓	✓
Economy Latino (TV 200 Latino)	Add-On	0%	97,566	✓	✓
Economy Plus Latino (TV 300 Latino)	Add-On	1%	139,986	✓	✓
(Starter Latino (TV 450 Latino)	Add-On	1%	226,947	✓	✓
Sports & Entertainment Package	Add-On	23%	4,878,300	✓	✓
Charter					
Basic	General	28%	4,417,067		
Select	General	29%	4,574,820		
Silver	General	31%	4,890,324		
Gold	General	12%	1,893,029	✓	✓
Mi Plan Latino	Add-On	3%	473,257	✓	✓
Dish					
Flex Pack	General	7%	933,240		
America Top 120	General	30%	3,999,600		
America Top 200	General	19%	2,533,080		
America Top 250	General	17%	2,266,440	✓	✓
America's Everything Pack	General	4%	533,280	✓	✓
DishLatino Basic	Add-On	1%	133,320	✓	✓
DishLatino Clasico	Add-On	1%	133,320	✓	✓
DishLatino Plus	Add-On	2%	266,640	✓	✓
DishLatino Dos	Add-On	0%	33,330	✓	✓
DishLatino Max	Add-On	2%	266,640	✓	✓
World Sports	Add-On	0%	-	✓	✓
Cablevision-Altice					
Broadcast Basic	General	6%	145,235		
Optimum Value	General	7%	169,441		
Optimum Preferred	General	12%	290,471		
Optimum Silver	General	15%	363,089		
Optimum Gold	General	20%	484,118	✓	✓
Optimum Core	General	22%	532,530		
Optimum Select	General	10%	242,059		
Optimum Premier	General	8%	193,647	✓	✓
Optimum en Esp	Add-On	0%	-	✓	✓

Distributor / Package	Type	Penetration	Subscribers	beIN Sports	beIN Sports Español
Cox					
TV Starter	General	28%	945,253		
Contour TV	General	15%	524,238		
Contour TV Flex	General	38%	1,285,381		
Contour TV Ultimate	General	19%	631,861	✓	✓
Sports & Information Package	Add-On	11%	379,726	✓	✓
Sports Pak 2	Add-On	7%	227,429	✓	✓
Latino Pak	Add-On	2%	67,687	✓	✓
Verizon					
FiOS TV Local	General	18%	751,712		
Preferred HD	General	32%	1,336,378	✓	
Extreme HD	General	14%	584,665	✓	✓
Ultimate HD	General	22%	918,760	✓	✓
Fios TV Mundo	Add-On	3%	125,285	✓	✓
Mediacom					
Local Plus	General	49%	351,029		
Family TV	General	51%	365,356		
Sports & Information	Add-On	12%	85,966	✓	✓
Canales Latinos	Add-On	6%	42,983	✓	✓

Source: Data provided by beIN.

CERTIFICATE OF SERVICE

I, Samuel Eckland, certify that on this 11th day of February 2019, I caused true and correct copies of the foregoing Answer to Complaint, as well as a copy of the redacted version thereof electronically filed with the Commission this day, to be served by overnight mail (Highly Confidential Version) and electronic mail (Confidential Version and Public Version) on the following:

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Samuel Eckland

February 11, 2019