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REDACTED—FOR PUBLIC INSPECTION

February 25, 2019

By ECFS

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Attn: Media Bureau

Re: ***Complaint, beIN Sports, LLC v. Comcast Cable Communications and Comcast Corporation, MB Docket No. 18-384, File No. CSR-8972-P***

Dear Ms. Dortch:

beIN Sports, LLC (“beIN”) submits the enclosed public redacted version of its Opposition to the Objection to Protective Order Access of Comcast Corporation, Comcast Cable Communications, LLC, and NBCUniversal Media, LLC dated February 25, 2019. beIN has denoted with [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] where it has redacted Confidential Information. A confidential version of this filing is being simultaneously filed with the Commission.

Please contact me with any questions.

Respectfully submitted,

/s/
Pantelis Michalopoulos
Markham C. Erickson
Counsel to beIN Sports, LLC

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
beIN Sports, LLC,)	MB Docket No. 18-384
Complainant,)	File No. CSR-8972-P
)	
v.)	
)	
COMCAST CABLE COMMUNICATIONS,)	
LLC,)	
and)	
COMCAST CORPORATION,)	
Defendants.)	
)	
)	
TO: Chief, Media Bureau)	

beIN OPPOSITION TO OBJECTION TO PROTECTIVE ORDER ACCESS

beIN Sports, LLC (“beIN”) hereby opposes the Objection to Protective Order Access of Comcast Corporation and its affiliates Comcast Cable Communications, LLC (together, “Comcast”), and NBCUniversal Media, LLC (“NBCUniversal”). In one more of what is becoming a barrage of procedural attacks, Comcast is trying to deprive beIN’s outside industry expert, Mr. Eric Sahl, of access to the information Comcast uses in its effort to rebut Mr. Sahl’s own testimony. Mr. Sahl qualifies for access to that information under the Protective Order.¹

[[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] does not compete with Comcast, a *distributor* of multi-

¹ beIN Sports, LLC, Complainant, v. Comcast Cable Communications, LLC and Comcast Corporation, Defendants Request for Enhanced Confidential Treatment, *Order*, DA 19-65 (MB Feb. 8, 2019) (“Protective Order”).

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channel programming. Comcast similarly does not assert that [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

in the same market as any broadcast station owned by Comcast affiliate NBC. As for stations that operate in the same market with NBC “affiliates,” Comcast should know better: these broadcasters are entirely separate from Comcast; they merely carry NBC programming under a network affiliation agreement. As to the possibility that Mr. Sahl might represent competitors in the future because he has done so in the past, Comcast’s argument is untenable: by signing the Protective Order, consultants do not give Comcast a right to object to their future career. beIN has not raised one objection to the text of the Protective Order, which was drafted by Comcast, despite the breadth of that text, and even though it one-sidedly protects Comcast information. But the Bureau should not permit Comcast to prejudice beIN’s ability to make its case by outlandish interpretations of an already broad document.

beIN filed a declaration seeking access to Highly Confidential Information submitted by Comcast for its expert, Mr. Eric Sahl, on February 15, 2019. beIN’s request relates to an important part of beIN’s case. In his Declaration, Mr. Sahl testified that, in his view, representations beIN has made to Comcast about beIN’s rights to soccer programming afforded Comcast sufficient certainty. Among other things, Mr. Sahl testified that “NBC has itself certainly negotiated content covenants [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

and that he is “certain NBC has offered such assurances to its own distribution partners to gain carriage, as is standard in the industry.”² In rebuttal, Comcast’s expert witness Mr. Litman provides information about

² Declaration of Eric Sahl ¶ 5, attached as Exhibit 10 to beIN Sports, LLC, Program Carriage Complaint, MB Docket No. 18-384 (Dec. 13, 2018) (“Complaint”).

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NBC's relevant practices and the information NBC provides to distributors.³ Comcast is now trying to deny Mr. Sahl access to that information.

Comcast has not demonstrated that Mr. Sahl is “involved in the analysis underlying the business decisions of any competitor of the Submitting Party” or “participate[s] directly in those business decisions.”⁴ As beIN advised Comcast's counsel, Mr. Sahl is no longer advising any of the distributors and programmers identified in paragraph 1 of Mr. Sahl's declaration to beIN's complaint. That paragraph states clearly that Mr. Sahl “has” advised these clients in the past. Such past experience is not disqualifying under the Protective Order, which uses language requiring that such engagements be ongoing.⁵ Rather than be disqualifying, such experience is a threshold requirement for Mr. Sahl to serve as an expert on these issues. beIN would be prejudiced if Mr. Sahl is not allowed access to Highly Confidential Information needed to fully respond to Comcast's contentions. Further, any decision preventing Mr. Sahl from accessing Highly Confidential Information would create a precedent that would be used to disqualify any expert with experience in programming matters from participation in future program carriage complaint proceedings.

Nor has Comcast shown that Mr. Sahl's [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] of Comcast.

[[BEGIN CONFIDENTIAL]]

³ Supplemental Declaration Peter Litman ¶¶ 19-20, attached as Exhibit 4 to Comcast Corporation and Comcast Cable Communications, LLC, Answer to Complaint, MB Docket No. 18-384 (Feb. 11, 2019).

⁴ Protective Order ¶ 4.

⁵ *Id.*

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[[END CONFIDENTIAL]] does not make them competitors of Comcast. Rather, it suggests that such programmers provide value for Comcast. Comcast claims that [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

Comcast does not explain why NBCUniversal should be considered a “Submitting Party” for purposes of the Protective Order. And, just as important, Comcast knows full well that NBC affiliates are not owned by Comcast. They simply broadcast NBC network programming. The fact that [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] Comcast does not state that [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

Additionally, the possibility of future engagements by Mr. Sahl is not a disqualification under the Protective Order. Mr. Sahl’s experience, which Comcast recognizes, is what allows him to serve as an expert on these core issues. The Protective Order obviously does not, and cannot, require him to forego serving as a consultant for programmers and distributors that compete with Comcast in the future. Rather, the Protective Order establishes numerous restrictions on the use of highly confidential information, including limiting the use of Highly Confidential Information to this proceeding, which limit Mr. Sahl’s ability to use Highly

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Confidential Information in future representations⁶ and should provide Comcast with sufficient comfort in that regard.

Respectfully submitted,

/s/

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Counsel to beIN Sports, LLC

February 25, 2019

⁶ *Id.* ¶ 9.

VERIFICATION OF MATTHEW R. FRIEDMAN

I, Matthew R. Friedman, have read beIN's Opposition to Objection to Protective Order Access in this matter, and state that, to the best of my knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted under existing law or a good faith argument for the extension, modification, or reversal of existing law. It is not interposed for any improper purpose.

A handwritten signature in black ink, appearing to read 'Matthew R. Friedman', written over a horizontal line.

Matthew R. Friedman
Counsel to beIN Sports, LLC

Dated: February 25, 2019

VERIFICATION OF ERIC SAHL

I, Eric Sahl, have read beIN's Opposition to Objection to Protective Order Access in this matter, and state that, to the best of my knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted under existing law or a good faith argument for the extension, modification, or reversal of existing law. It is not interposed for any improper purpose.



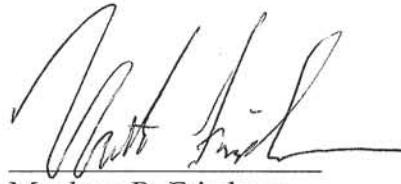
Eric Sahl
President
ID Media LLC

Dated: February 25, 2019

CERTIFICATE OF SERVICE

I, Matthew R. Friedman, hereby certify that on February 25, 2019, I caused a copy of the foregoing Opposition to Objection to Protective Order Access to be served by overnight mail (Confidential Version) and electronic mail (Confidential and Public Versions) upon the following:

Michael D. Hurwitz
Willkie Farr & Gallagher LLP
1875 K Street, NW
Washington, DC 20006-1238
Counsel to Comcast Corp.

A handwritten signature in black ink, appearing to read "Matt Friedman", written over a horizontal line.

Matthew R. Friedman