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REDACTED – FOR PUBLIC INSPECTION

March 15, 2018

By ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th St. NW
Washington, DC 20554
Attn: Media Bureau

RE: Complaint, *beIN Sports, LLC v. Comcast Cable Communications, LLC and Comcast Corporation*, File No. CSR-____-P

Dear Ms. Dortch:

beIN Sports, LLC submits the attached redacted version of its program carriage complaint against Comcast Cable Communications, LLC and Comcast Corporation. The "[[BEGIN CONFIDENTIAL]]" and "[[END CONFIDENTIAL]]" descriptions denote where Confidential Information has been redacted in the public version. The confidential version of this complaint is being simultaneously filed with the Commission along with a request for confidentiality.

Please contact me with any questions.

Respectfully submitted,



Pantelis Michalopoulos
Counsel to beIN Sports, LLC

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
beIN Sports, LLC,)	File No. CSR-____-P
Complainant,)	
)	
v.)	
)	
COMCAST CABLE COMMUNICATIONS,)	
LLC,)	
A Subsidiary of)	
COMCAST CORPORATION,)	
Defendant.)	
)	
)	
TO: Chief, Media Bureau)	

PROGRAM CARRIAGE COMPLAINT

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(305) 777-1900

March 15, 2018

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beIN Sports, LLC,)	File No. CSR-____-P
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COMCAST CABLE COMMUNICATIONS,)	COMPLAINT
LLC,)	
A Subsidiary of)	
COMCAST CORPORATION,)	
Defendant.)	
)	
)	
TO: Chief, Media Bureau)	

COMPLAINT

I. INTRODUCTION AND SUMMARY

1. This is an action seeking relief for violations by Comcast Cable Communications, LLC (“Comcast”) of the non-discrimination requirement that Congress directed the Federal Communications Commission (“FCC” or “Commission”) to impose on multichannel video programming distributors (“MVPDs”) in Section 616 of the Communications Act of 1934, as amended, 47 U.S.C. § 536, and that the Commission duly imposed in its implementing regulations, 47 C.F.R. §§ 76.1300-76.1302 (“Program Carriage Rules”).

2. Separately, this complaint also seeks relief for a violation on the part of Comcast of the non-discriminatory condition attached to the Commission’s approval of Comcast

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Corporation's acquisition of NBC Universal, Inc.¹ This condition applies to the complained-of conduct, which occurred before the condition expired on January 20, 2018.

3. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

4. The sports programming of beIN is similarly situated to the sports programming provided by two programming vendors affiliated with Comcast, NBC Sports and NBC Universo. Contrary to the view expressed by Comcast in correspondence with beIN, the relevant question that antecedes a finding of unlawful discrimination under the Program Carriage Rules is whether

¹ Applications of Comcast Corporation, General Electric Company and NBCU Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees, *Memorandum Opinion and Order*, 26 FCC Rcd. 4238 ¶ 121, 4358, Condition III(1) (2011) (“*Comcast-NBCU Order*”).

a vendor's *programming* is similarly situated to *programming* offered by an MVPD-affiliated vendor. Neither the statute nor the implementing rules require a showing that the two vendors' *networks* are similarly situated. But this distinction makes no practical difference here: both beIN's programming and its entire network are similarly situated to the sports programming offered by NBC Sports and NBC Universo, and to these two networks themselves. beIN is a sports network, and so is NBC Sports; as for NBC Universo, its programming consists mostly of sports, scripted and reality series, and music programming, with an increasing emphasis on soccer.

5. The Commission has already found that a sports network focused on football (the NFL Network) is similarly situated to Comcast-affiliated networks focused on golf, fishing and hunting programming. Here, the similarity among the programming of the four networks in question is much more pronounced. The programming belongs not only to the same genre—sports—but much of it also belongs to the same subgenre—soccer. Each of beIN, beIN en Español, NBC Sports and NBC Universo provides hundreds of live soccer games every year.

6. The programming of the four networks has the same target audience (sports fans in general, soccer fans in particular); the same target advertisers (beIN's largest advertisers, including [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] are common to beIN, NBC Sports and NBC Universo; they move business from beIN to the NBC networks and vice versa); 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.

7. In fact, the ratings of beIN's programming are comparable to those of programming on the two Comcast affiliated networks even without making any adjustment for

the much lower penetration to which beIN has access. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] And the similarity in ratings becomes superiority in beIN's favor if appropriate further adjustment is made to account for beIN's lower penetration. beIN bests, or holds its own against, NBC Sports and NBC Universo soccer programming based on a number of other coverage area metrics, too: average length of tune-in events, weekly average minutes of tune, general market household ratings, viewers per viewing households, Hispanic market households, \$100,000-plus income viewers, and many other criteria.

8. The proof of similarly situated status becomes even more granular and compelling when one examines the soccer games shown, close in time to one another, on beIN and on the Comcast affiliates. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] If this is not similarly situated programming, it is not clear what would be; if the program carriage rules did not constrain Comcast from favoring its own affiliated programming when it finds itself in such

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fierce neck-to-neck (literally, game-by-game) competition with the content of an independent programmer, the discrimination prohibition would have close to no meaning.

9. Comcast cannot be heard to argue that the programming on these four networks is not similarly situated because NBC Sports and NBC Universo enjoy much deeper penetration than beIN. That would be bootstrapping: Comcast cannot preclude a discrimination claim by the very discriminatory conduct that is the subject of this complaint—relegating beIN to the Siberia of less penetrated packages than the more penetrated tiers enjoyed by Comcast’s affiliated vendors.

10. The Comcast Offer discriminates in video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection, terms and conditions for carriage of these vendors’ programming. Specifically, the Comcast Offer discriminates against the programming of beIN and in favor of NBC Sports’ and NBC Universo’s similarly situated sports programming. Among other things:

- 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—[[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] 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).

- Comcast would [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

- Comcast would [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

even as it carries all of its affiliated soccer programming in High Definition.

- Comcast would not give beIN the right to authenticate Comcast viewers for watching online on beIN’s web-site and online application (“beIN Connect”), even as Comcast authenticates its viewers for online watching of Comcast-affiliated soccer

programming, [[BEGIN CONFIDENTIAL]]

[[END

CONFIDENTIAL]]

- Comcast would not allow beIN to supply a direct-to-consumer product derived from its core leagues, even as NBC Sports and NBC Universo offers English Premier League games as a direct-to-consumer product. [[BEGIN CONFIDENTIAL]]

[[END

CONFIDENTIAL]]

- The Comcast offer would also [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

11. beIN does not need to show the motivation for the different treatment meted out by Comcast to beIN for purposes of its *prima facie* case; nor does it need to show that this different treatment is not based on commercial conditions, or that Comcast will benefit from non-discriminatory treatment. Nevertheless, beIN submits that Comcast's discriminatory treatment can only be explained by Comcast's desire to favor its affiliates over these affiliates' competitor. [[BEGIN CONFIDENTIAL]]

² Letter from Francis Buono, Comcast Corp., to Pantelis Michalopoulos, Counsel to beIN Sports, LCC, at 1 (Feb. 23, 2018).

³ *Id.* at 2.

[[END

CONFIDENTIAL]]

12. Second, it is implausible that assigning beIN to a greater penetration tier would entail [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] No matter how much Comcast wants to obtain surcharges from subscribers, 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 (on top of the prices they pay for the Starter or Preferred tier) do so solely or primarily in order to watch beIN. By comparison, 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, much less than what Comcast subscribers have to pay. As a direct consequence of Comcast's pricing, it is unlikely that many subscribers pay Comcast the Sports and Entertainment or Latino packages solely or primarily in order to watch beIN, since they can pay less elsewhere.

13. Nor is it true that other distributors carrying beIN do so almost universally on upper level tiers. As 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 consigned beIN. Of them, Verizon gives beIN access to the vast majority of its subscriber base, with the sole exception of the FiOS skinny bundle.

14. As to other distributors, beIN's agreements with them predate the OTT phenomenon and FuboTV's wide carriage of beIN. beIN is therefore optimistic that these distributors, too, will agree that deeper penetration will entail [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] nor the loss of subscriber fees (because most subscribers purchasing special packages solely or primarily

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because of beIN have likely already left). beIN is also adding further value to its carriage by, among other things, providing additional content in the form of a new La Liga channel.

15. Third, 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. Further, greater penetration for beIN will result in greater advertising revenue for beIN, which will enable beIN to hold down the fees it charges Comcast's systems, as well as to Comcast itself under the standard ad avails provision that beIN has agreed to and is willing to renew.

16. Finally, as mentioned above, Comcast cannot convincingly allege that beIN lacks in value because Comcast's discriminatory actions deprive beIN of value. The Commission should resist being drawn into this vicious circle of self-referential justification by Comcast.

17. The discriminatory treatment meted out by Comcast restrains beIN's ability to compete fairly with NBC Sports and NBC Universo both for viewers and for advertisers. 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.

18. beIN respectfully requests that the Commission find Comcast in violation of Section 616 of the Communications Act of 1934, as amended, 47 U.S.C. § 536 and its implementing regulations, 47 C.F.R. §§ 76.1300-76.1302, as well as the condition in the *Comcast-NBCU Order*; enjoin Comcast from discriminating against beIN by requiring that Comcast carry beIN programming on terms that permit beIN to compete fairly with Comcast; and order any other appropriate relief.

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19. beIN believes that this complaint supplies the Bureau with ample information to allow the Bureau to not only make a *prima facie* determination but also to decide the case on the merits without discovery, and without need to refer the complaint to an administrative law judge.

II. PARTIES

A. beIN

20. beIN is a video programming vendor (“VPV”) as defined in Section 616: an entity “engaged in the production, creation, or wholesale distribution of video programming for sale.”

21. 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.

22. In addition to soccer, beIN’s English- and Spanish-language programming includes sports-related news and original programming, motor sports, college sports, rugby, track and field, combat sports, Conference USA football matches, and multiple boxing promotions.

23. beIN is independently owned and operated. It is unaffiliated with any MVPD.

24. beIN was incorporated in May 2012. In August 2012, it launched English and Spanish programming with DIRECTV and DISH and was launched on Comcast shortly thereafter. It launched that programming with Time Warner Cable in the fall of 2012, and with other major MVPDs—e.g., AT&T, Verizon, Cablevision, Cox—in 2013.

25. Since its launch, beIN has gained significant popularity among sports fans in the United States. beIN’s English language programming reaches about [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] its Spanish language programming (“beIN en Español”) reaches about [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] Over the past year, beIN's Spanish-language programming viewers achieved the [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

26. beIN's mailing address is 7291 Northwest 74 Street, Miami, FL 33166, and its phone number is 305-777-1900.

B. COMCAST

27. Comcast (comprising Comcast Corporation and Comcast Cable Communications, LLC, among others) is a cable operator and an MVPD within the meaning of the *Comcast-NBCU Order*, Section 602(13) of the Communications Act, and 47 C.F.R. § 76.1300(d).⁶

28. Comcast is the nation's largest cable operator, with 22.4 million subscribers across the United States.⁷ It is also vertically integrated with the providers of other products and services—Internet, phone service, home security, television programming, amusement parks, and more. Through its control and ownership of NBC Universal, Comcast owns many video programmers, including the national NBC and Telemundo broadcast networks, 28 broadcast

⁴ [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

⁵ [[BEGIN CONFIDENTIAL]]

[[END

CONFIDENTIAL]]

⁶ *Comcast-NBCU Order*, 26 FCC Rcd. at 4357, Appendix A, Condition I; 47 U.S.C. § 522(13); 47 C.F.R. § 76.1300(d).

⁷ Comcast Corporation, 2017 Annual Report on Form 10-K, <https://www.cmcsa.com/static-files/111ba611-eb85-4edc-9000-3907c84697d8>.

stations, the NBC Universal stable of some 16 national cable networks, as well as 15 regional sports and news networks.⁸ NBC Sports and NBC Universo are two of those cable networks.

29. NBC Sports is “dedicated to serving passionate sports fans.”⁹ It is a national sports cable network that carries basketball, professional and college American football, soccer, hockey, motor sports, and golf among many other sports events.¹⁰ 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.¹¹ NBC Sports is available on Comcast’s high penetration Starter tier.

30. NBC Universo is a Spanish-language cable network launched under its current name and brand in February 2015.¹² The origin of NBC Universo is mun2, a Spanish language network that Comcast acquired as part of the Comcast-NBCU merger. But while Comcast used mun2’s carriage rights with distributors and retained its Spanish language format, NBCU Universo was an entirely new network in other respects. Specifically, in 2015, Comcast changed the network’s content, and relaunched it as NBC Universo to increase the awareness of viewing

⁸ See Comcast, *Company Overview*, <http://corporate.comcast.com/news-information/company-overview> (last visited Mar. 14, 2018); *NBCUniversal*, Comcast, <https://corporate.comcast.com/our-company/businesses/nbcuniversal#accordion-0> (last visited Mar. 14, 2018).

⁹ Comcast, <http://www.nbcuniversal.com/business/nbc-sports> (last visited Mar. 14, 2018).

¹⁰ *NBC Sports Network*, Wikipedia, <https://en.wikipedia.org/wiki/NBCSN> (last visited Mar. 14, 2018).

¹¹ *Id.*

¹² Comcast, *NBCUniversal Transaction*, <http://corporate.comcast.com/news-information/nbcuniversal-transaction> (last visited Mar. 14, 2018); Cynthia Littleton, *Spanish-Language Cabler Mun2 to Relaunch as NBC Universo*, *Variety* (Nov. 4, 2014), <http://variety.com/2014/tv/news/spanish-language-cabler-mun2-to-relaunch-as-nbc-universo-1201347484/>.

audiences that it is now part of the NBC family.¹³ NBC Universo's programming now "consists mostly of sports, scripted and reality series, and music programming."¹⁴ NBC Universo has also recently become the focal point of Comcast's Spanish language sports programming, showing the Spanish feeds of the Super Bowl, the Rio Olympics, FIFA World Cup Qualifiers for the 2018 FIFA World Cup, and English Premier League soccer games for the Spanish speaking audience, all programming available exclusively to NBC Universo.¹⁵ NBC Universo has been increasing its live soccer content.¹⁶ In some areas, NBC Universo is available on Comcast's high-

¹³ See, e.g., "Why mun2 is now NBC Universo," NBC Universal (Feb. 2, 2015), <http://www.nbcuniversal.com/article/why-mun2-now-nbc-universo>; Cynthia Littleton, *Spanish-Language Cabler Mun2 to Relaunch as NBC Universo*, Variety (Nov. 4, 2014), <https://variety.com/2014/tv/news/spanish-language-cabler-mun2-to-relaunch-as-nbc-universo-1201347484/> ("NBCUniversal is planning a relaunch of its Spanish-language cabler Mun2 that will accentuate the channel's affiliation with the Peacock.").

¹⁴ *Universo (TV Network)*, Wikipedia, [https://en.wikipedia.org/wiki/Universo_\(TV_network\)](https://en.wikipedia.org/wiki/Universo_(TV_network)) (last visited Mar. 14, 2018); see also *Universo*, Comcast, <http://www.nbcuniversal.com/business/NBCUniverso> (last visited Mar. 14, 2018) ("As one of the most widely available modern cable channels for U.S. Latinos, UNIVERSO delivers in Spanish language a thrilling mix of exclusive sports action – including FIFA World Cup™, NASCAR Mexico Series, NFL, Premier League and the 2016 Olympic Summer Games in Rio – along with signature series, blockbuster movies, music, must-see live events and strategic acquisitions.").

¹⁵ *Id.*

¹⁶ See Cynthia Littleton, *Spanish-Language Cabler Mun2 to Relaunch as NBC Universo*, Variety (Nov. 4, 2014), <https://variety.com/2014/tv/news/spanish-language-cabler-mun2-to-relaunch-as-nbc-universo-1201347484/> ("NBC Universo's programming focus will remain a mix of telenovelas, unscripted series and an expanded slate of sports on weekends. Telemundo and NBC Universo will carry the World Cup soccer championships in 2016, and it will be part of NBCUniversal's saturation coverage of the summer Olympics from Rio the same year. The World Cup build-up starts next year with broadcasts of four FIFA soccer events."); see also See, e.g., Press Release, *Telemundo Deportes Unveils More than 1,500 Hours of 2018 FIFA World Cup Russia™ Coverage Across All Platforms*, Comcast (Nov. 29, 2017), <http://www.nbcuniversal.com/press-release/telemundo-deportes-unveils-more-1500-hours-2018-fifa-world-cup-russia%E2%84%A2-coverage-across> (stating that "Telemundo Deportes will provide extensive multimedia coverage including more than 500 hours of World Cup-related programming across Telemundo Network and its sister cable network Universo . . . [including] more than 170 hours of programming on Universo.").

penetration Starter tier; it is offered in Preferred, Comcast's next-highest penetration package, in other markets.

31. This tight integration of NBC Universo into the NBC family appears to be part of Comcast's broader strategy to use its vertical integration to capture audiences away from independent programmers. This apparent strategy has made Comcast the subject of multiple program carriage complaints over time at the FCC.¹⁷

32. Comcast's mailing address is One Comcast Center, 1701 JFK Boulevard, Philadelphia, PA 19103, and its telephone number is 215-665-1700.

III. JURISDICTION, PRE-FILING NOTIFICATION, AND CERTIFICATION

33. The Commission has jurisdiction to adjudicate this matter pursuant to Section 616 of the Communications Act of 1934, as amended. This complaint is governed by the Commission's program carriage regulations, 47 C.F.R. § 76.1300 *et seq.*

34. The Commission also has jurisdiction to adjudicate this matter under the non-discrimination condition in the *Comcast-NBCU Order*, which allows a VPV to submit complaints in accordance with the program carriage procedures found in 47 C.F.R. § 76.1302.¹⁸

35. On February 13, 2018, beIN provided Comcast with written notice of its intent to file a program carriage complaint pursuant to 47 C.F.R. § 76.1302(b).¹⁹

¹⁷ A list of complaints that have been filed against Comcast is attached as Exhibit 1. *See also* Michal Lev-Ram, *How Comcast Lost Friends, Its Influence, and the Bid for Time Warner Cable*, *Fortune* (May 20, 2015 6:00 AM), <http://fortune.com/2015/05/20/how-comcast-lost-bid-for-time-warner/> ("For years Comcast has been embroiled in litigation and high-profile disputes with a dizzying list of cable programmers [m]ost of the disagreements have been over carriage-fee negotiations").

¹⁸ *Comcast-NBCU Order*, 26 FCC Rcd. at 4359, Appendix A, Condition III(4) ("For purposes of enforcing the Conditions of this Section III, any Video Programming Vendor may submit a dispute to the Commission in accordance with the Commission's program carriage complaint procedures, 47 C.F.R. § 76.1302.").

IV. STATUTORY AND REGULATORY BACKGROUND

A. Section 616 and the Carriage Rules Are Intended to Protect Competition and Diversity in the Programming Marketplace

36. Under Section 616 and the Program Carriage Rules, no MVPD may “engage in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated VPV to compete fairly by discriminating 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.”²⁰

37. Section 616 arose out of widespread concern on the part of the public and Congress itself about the growing vertical consolidation between powerful incumbent cable operators and programmers.²¹ After hearing testimony from independent programmers, Congress concluded that “[t]he cable industry has become vertically integrated As a result, cable operators have the incentive and ability to favor their affiliated programmers.”²²

38. As the Commission put it when discussing the Act, “Congress was concerned that increased horizontal concentration and vertical integration in the cable industry . . . created an imbalance of power between cable operators and program vendors.”²³ And, the Commission went on, Congress concluded that “vertically integrated cable operators have the incentive and

¹⁹ The pre-filing notice is attached as Exhibit 2 and Comcast’s response to that notice is attached as Exhibit 3.

²⁰ 47 C.F.R. § 76.1301(c).

²¹ Cable Television Consumer Protection and Competition Act of 1992, S. Rep. No. 102-92, at 25-27 (1991).

²² Cable Television Consumer Protection and Competition Act of 1992, Pub.L. No. 102-385 § 2(a)(5), 106 Stat. (1992).

²³ Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992, *Second Report and Order*, 9 FCC Rcd. 2642, 2643 ¶ 2 (1993) (“*Second Implementation Report*”).

ability to favor affiliated programmers over unaffiliated programmers with respect to granting carriage on their systems,” and that programmers that compete with such vertically integrated entities “may suffer harm to the extent that they do not receive such favorable terms.”²⁴

39. Congress acted, giving non-affiliated programmers several tools to redress such discrimination.²⁵ Subsection (a)(3) of Section 616 directed the Commission to issue regulations that would prevent an MVPD from being able to “unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors.”²⁶

40. The Commission has complied with Congress’ direction. Subsection (c) of 47 C.F.R. § 76.1301 implements this statutory mandate by providing: “[n]o multichannel video programming distributor shall engage in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating 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.”

41. A *prima facie* case of a violation of 47 C.F.R. § 76.1301(c) requires the complainant to demonstrate that the MVPD’s behavior had “the effect of unreasonably

²⁴ *Second Implementation Report*, 9 FCC Rcd. at 2643 ¶ 2.

²⁵ Cable Television Consumer Protection and Competition Act of 1992, S. Rep. No. 102-92, at 25-27 (1991); *see also* Testimony of Preston Padden (INTV), Media Ownership, Diversity and Concentration, at 308, *quoted in* S. Rep. No. 102-92, at 26 (1991) (“You don’t need a PhD in Economics to figure out that the guy who controls a monopoly conduit is in a unique position to control the flow of programming traffic to the *advantage* of the program services in which he has an equity investment and/or in which he is selling advertising availabilities, and to the *disadvantage* of those services, including local independent broadcasting stations, in which he does *not* have an equity position”) (emphasis in original).

²⁶ 47 U.S.C. 536(a)(3).

restraining the ability of [the complainant VPV] to compete fairly,”²⁷ that the complainant is “similarly situated to video programming” provided by the affiliated VPV,²⁸ and that the defendant MVPD has treated the complainant “differently than the similarly situated” affiliate.²⁹ The complainant can demonstrate that it is similarly situated through a “combination of factors, such as genre, ratings, license fee, target audience, target advertisers, target programming, and other factors.”³⁰ beIN meets all of these requirements.

42. The *Comcast-NBCU Order* also requires Comcast to not discriminate against unaffiliated VPVs.³¹ Comcast acquired NBC Universal in 2011 after a contentious proceeding that lasted well over a year before the Commission. Tens of thousands of public comments expressed concern over the potential public interest harms caused by the consolidation of the nation’s largest MVPD and the most powerful video programmer. The Commission, in approving the merger, recognized that the merger would “effectuate an unprecedented aggregation of video programming content with control over the means by which video programming is distributed to American viewers.”³² An obvious risk of the merger was that Comcast, due to the VPVs it was acquiring (including NBC, the broadcast stations, the cable

²⁷ 47 C.F.R. § 76.1302(d)(3)(iii)(A).

²⁸ 47 C.F.R. § 76.1302(d)(3)(iii)(B)(2)(i).

²⁹ 47 C.F.R. § 76.1302(d)(3)(iii)(B)(2)(ii).

³⁰ 47 C.F.R. § 76.1302(d)(3)(iii)(B)(2)(i).

³¹ *Comcast-NBCU Order* at 4287 ¶ 121 (“If program carriage disputes arise based on this non-discrimination condition, it will be sufficient for the aggrieved vendor to show that it was discriminated against on the basis of its affiliation or non-affiliation.”); *id.* at 4358, Condition III(1) (“Comcast shall not discriminate in Video Programming distribution on the basis of affiliation or non-affiliation of a Video Programming Vendor in the selection, price, terms or conditions of carriage (including but not limited to on the basis of channel or search result placement).”).

³² *Comcast-NBCU Order*, 26 FCC Rcd. at 4240 ¶ 3.

networks, and Telemundo), would have even more incentive than before to discriminate against non-affiliated VPVs that would be dependent upon Comcast in order to compete with Comcast's own programming. The Commission found this to be a harm from the merger, as it found that "Comcast currently favors its affiliated programming" in making carriage and placement decisions, that "this behavior stems from anticompetitive motives rather than due to reasons that arise from vertical efficiencies,"³³ and that "empirical analysis supports the conclusion that Comcast discriminates against unaffiliated programming in favor of its own."³⁴ The Commission found that the merger would result in anticompetitive action from Comcast unless some conditions were placed upon it to ensure it acted in a fair and competitive nature.³⁵

43. In order to obtain approval for the merger, Comcast agreed to accept several conditions that would bind it for seven years after the merger. Condition III.1 mirrors the language of Section 616 and prohibits Comcast from discriminating in video programming distribution on the basis of affiliation or non-affiliation with Comcast/NBCU.

44. While the *Comcast-NBCU Order* conditions expired by their own terms on January 20, 2018, the only reasonable reading of this expiration date is that the conditions apply to all conduct occurring prior to it, no matter that a complaint alleging such conduct is filed after that date. Otherwise, the term of the conditions would effectively become much shorter than intended. Comcast would be able to engage in conduct prohibited by the conditions prior to the conditions' expiration without being punished for it. As for programmers, the normal statute of

³³ *Id.*, Appendix B, Section 1.E., at 4402 ¶ 65.

³⁴ *Id.* at 4403 ¶ 70.

³⁵ *Id.*, Appendix B, Section 1.3, at 4402 ¶ 65.

limitations (one year from an offer)³⁶ would shrink to weeks or days, and they would be foreclosed from pleading a violation of the conditions if they did not run to the Commission almost immediately.

45. Of the elements of a program carriage claim discussed above, *see* ¶¶ 40-41, one (restraint in the vendor's ability to compete fairly) does not need to be shown under the Comcast-NBCU conditions.³⁷ Nevertheless, beIN provides evidence to establish a *prima facie* case for that element, too.

V. STATEMENT OF FACTS

A. Comcast's and beIN's First Carriage Arrangements

46. Even though this complaint is limited to the discrimination against beIN that Comcast has effected by means of its [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] that offer is not beIN's first brush with discrimination in the hands of Comcast. beIN had high hopes at first. When beIN first obtained Comcast's agreement to carry it in August 2012,³⁸ it made a major concession in price in order to give Comcast an incentive to expand beIN carriage to a large portion of Comcast's subscriber base.³⁹

47. The initial agreement was for [[BEGIN CONFIDENTIAL]]

³⁶ 47 C.F.R. § 76.1302(h)(2).

³⁷ *Comcast-NBCU Order*, 26 FCC Rcd. at 4287 ¶ 121.

³⁸ A copy of the beIN-Comcast carriage agreement is attached as Exhibit 4.

³⁹ Briceño Declaration ¶ 7.

[[END CONFIDENTIAL]]

48. To secure carriage and provide Comcast with an incentive to broaden that carriage, beIN agreed to a [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]].⁴¹ On the other hand,

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[[END CONFIDENTIAL]].⁴² beIN's hope was that Comcast would act according to this rational economic incentive and accept the "free lunch" it had

⁴⁰ Briceño Declaration ¶ 8.

⁴¹ *Id.*

⁴² *Id.*

secured.⁴³ Any motivation for Comcast to keep beIN in the low penetration buy-through packages in order to entice consumers to part with an additional \$5-10 of their money every month disappeared when other distributors such as Verizon and FuboTV started offering distribution of beIN in greater penetration tiers in 2013 and 2015, respectively. This means that most (if not all) subscribers purchasing Comcast's Sports and Entertainment or Latino package solely or primarily on account of beIN would likely choose to subscribe to these other platforms instead.

49. Nevertheless, beIN's initial hopes were not borne out. The apparent reason is that Comcast's desire to favor its affiliates and starve beIN from viewing eyeballs got in the way of its incentive to have that free lunch. In the same year, Comcast affiliate NBC Sports secured rights to European sports programming. Specifically, in October 2012, shortly after the beIN deal, NBC Sports acquired the rights to broadcast the English Premier League in the United States.⁴⁴ Reports state the NBC Sports renewed these rights in 2015 for six seasons for one billion dollars.⁴⁵ And in 2011, Telemundo—another Comcast affiliate—had acquired the rights to broadcast the 2018 and 2022 FIFA World Cups along with Fox.⁴⁶

⁴³ *Id.*

⁴⁴ Associated Press, *NBC wins \$250m rights to broadcast English Premier League in US*, The Guardian (Oct. 28, 2012), <https://www.theguardian.com/sport/2012/oct/29/nbc-250m-english-premier-league-epl-broadcast-us> (describing how NBC rebranded Versus to NBC Sports Network and acquired the English Premier League rights as part of its strategy to grow the channel's audience through live sports and identifying live sports as a key to growth).

⁴⁵ See Tom Teodorczuk, *How NBC Sports is Monetizing Its \$1 Billion Premier League Soccer Investment*, Market Watch (Dec. 19, 2017), <https://www.marketwatch.com/story/how-nbc-sports-is-monetizing-its-1-billion-premier-league-soccer-investment-2017-12-14>.

⁴⁶ See Jeré Longman, *Fox and Telemundo Win U.S. Rights to World Cups*, The New York Times (Oct. 21, 2011), <http://www.nytimes.com/2011/10/22/sports/soccer/fox-and-telemundo-win-us-rights-to-2018-and-2022-world-cups.html>.

50. The result? Today, beIN is carried only on Comcast's low penetration \$4.99 a month buy-through Sports and Entertainment package; beIN en Español, for its part, is carried on that package as well as the buy-through \$9.99 a month XFINITY Latino package.⁴⁷ Comcast has afforded beIN access to [[BEGIN CONFIDENTIAL]]

[[END

CONFIDENTIAL]]⁴⁸ By contrast, Comcast affiliate NBC Sports is carried on Comcast's high penetration Starter tier and NBC Universo on Comcast's Preferred tier (Comcast also offers NBC Universo on its Starter tier in some areas), and therefore enjoy access to the vast majority of Comcast's subscriber base.⁴⁹

B. Comcast's and beIN's Recent Carriage Negotiations

51. [[BEGIN CONFIDENTIAL]]

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52. Comcast remained utterly silent for a troubling eight months. It did not respond until [[BEGIN CONFIDENTIAL]]

⁴⁷ Briceño Declaration ¶ 10.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ A copy of the beIN renewal proposal is attached as Exhibit 5.

⁵¹ A copy of Comcast's counter-offer is attached as Exhibit 6.

[[END CONFIDENTIAL]]

53. beIN was disheartened with Comcast's proposal, as it failed to reflect the value that beIN's programming provides, and responded with a counterproposal on [[BEGIN CONFIDENTIAL]]

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54. beIN has attempted to engage in further negotiations, but these attempts have proved fruitless. beIN representatives met with Comcast executives on [[BEGIN

⁵² A copy of beIN's counterproposal is attached as Exhibit 7.

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CONFIDENTIAL]] [[END CONFIDENTIAL]] to review the Comcast proposal and I understand that Comcast indicated that there would be no opportunity for additional distribution. Nevertheless, Comcast invited beIN to make a counter proposal, and beIN did so on [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] beIN has since attempted to engage in further negotiations, but these attempts have proved fruitless. Specifically, accompanied by two other beIN representatives, I flew to Philadelphia to meet with Comcast executives on [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] Comcast requested clarification of beIN's offer.

55. [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] beIN responded to that clarification request, and reiterated beIN's value proposition to Comcast subscribers, including [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] beIN's clarification resulted in a [[BEGIN CONFIDENTIAL]]

⁵³ Letter from Francis Buono, Comcast Corp., to Pantelis Michalopoulos, Counsel to beIN Sports, LCC, at 1 (Feb. 23, 2018).

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ARGUMENT

VI. beIN's PROGRAMMING IS SIMILARLY SITUATED TO COMCAST'S AFFILIATED SPORTS PROGRAMMING

56. beIN's programming is similarly situated to the soccer and other sports programming provided by Comcast video programming vendors (NBC Sports and NBC Universo) affiliated with Comcast. The Commission has found that the sports programming offered by an independent network is similarly situated with sports programming offered by Comcast affiliates.

57. Specifically, in *NFL*, the Commission found that the NFL Network was similarly situated to Versus and the Golf Channel because they were all national sports networks competing in programming, advertising, and target viewers.⁵⁴ The Commission specifically rejected Comcast's argument that the programming was not similarly situated because the NFL Network did not show identical programming to Versus or the Golf Channel.⁵⁵ The Commission determined that two sports programs could be similarly situated, even though one is focused on golf and the other on American football.⁵⁶

⁵⁴ *NFL Enterprises LLC, Complainant v. Comcast Cable Communications, Defendant, Memorandum Opinion and Hearing Designation Order*, 23 FCC Rcd. 14787, 14822-23 ¶ 75 (2008); *see also TCR Sports Broadcasting Holding, LLP, d/b/a Mid-Atlantic Sports Network v. Comcast Corp., Memorandum Opinion and Hearing Designation Order*, 23 FCC Rcd. 14787, 14829 ¶ 90 (MB 2008).

⁵⁵ *See NFL*, 23 FCC Rcd. 14822-23 ¶ 75 ("Comcast appears to be arguing that a complainant must demonstrate that its programming is identical to an affiliated network in order to demonstrate discrimination. We find that this is a misreading of the program carriage statute and our rules.").

⁵⁶ *Id.*

58. And in *Tennis Channel*, the Commission found that the Tennis Channel, Golf Channel, and Versus were similarly situated because they all provided sports programming, targeted the same demographics, and had an overlap in advertisers.⁵⁷ The Commission emphasized the factors that it would consider, including similarity of programming, demographics, advertisers and ratings. The D.C. Circuit set aside the Commission’s *Tennis Channel* order on another evidentiary question, that of the benefit accruing to the distributor,⁵⁸ a question that is not part of the *prima facie* case for discrimination.⁵⁹ But the court did not fault the FCC’s finding that the networks’ programs were similarly situated. Indeed, the court acknowledged “evidence of important *similarities* between Tennis on the one hand and Golf and Versus on the other.”⁶⁰

59. beIN’s programming is similarly situated to the soccer and other sports programming offered by Comcast affiliates NBC Sports and NBC Universo to a much greater extent than in the facts examined by the Commission in these cases.⁶¹

60. **Genre.** First of all, both beIN and Comcast’s affiliates make substantial offerings of content that belongs not only to the same genre—sports—but also to the same subgenre—soccer. All four networks provide extensive coverage of soccer games featuring major European leagues and high profile international tournaments. Thus, while in many cases programs covering different sports are similarly situated to one another, and the Commission has so found,

⁵⁷ *Tennis Channel, Inc., Complainant v. Comcast Cable Communications, LLC, Defendant, Memorandum Opinion and Order*, 27 FCC Rcd. 8508, 8527 ¶¶ 51-54 (2012), *reversed on other grounds by Comcast Cable Communications, LLC v. FCC*, 717 F.3d 982 (D.C. Cir. 2013).

⁵⁸ *Comcast Cable Communications*, 717 F.3d at 987.

⁵⁹ 47 C.F.R. § 76.1302(d)(3)(iii).

⁶⁰ *Comcast Cable Communications*, 717 F.3d at 987 (emphasis in original).

⁶¹ Sahl Testimony ¶ 12.

here it is not even necessary to make that finding. In other words, not only do beIN and Comcast's affiliates both provide national sports programming, as in the case of prior Commission findings; they both provide soccer programming. Indeed, in a number of cases, beIN offers the exact same programming with Comcast's affiliates in different languages.⁶² For example, the 2016 FIFA World Cup qualifying game between the United States and Trinidad and Tobago was carried by beIN and by NBC Universo. The 2017 CONCACAF World Cup qualifying game between El Salvador and Mexico was also carried by beIN and by NBC Universo.

61. In its correspondence with beIN, Comcast has opined that beIN will be [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] in light of the Commission's decision in *Game Show Network*.⁶³ In Comcast's eccentric account of that decision, [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] In the quoted statement, the Commission was simply rejecting GSN's argument that its programming overlaps

⁶² Briceño Declaration ¶ 15.

⁶³ Letter from Francis Buono, Comcast Corp., to Pantelis Michalopoulos, Counsel to beIN Sports, LCC, at 2 (Feb. 23, 2018).

⁶⁴ *Game Show Network, LLC v. Cablevision Systems Corp.*, *Memorandum Opinion and Order*, 32 FCC Rcd. 6160, 6176 ¶ 50 (2017).

with that of WE tv (a vendor affiliated with Cablevision) as part of a “relationship” genre, and that, “of the 66 shows GSN aired between 2009 and 2011, four shows . . . involved ‘relationship’ elements that allegedly resemble three reality shows on WE tv”⁶⁵ It was reasonable for the Commission to find that relationships do not comprise a genre. On the other hand, the Commission has clearly acknowledged that sports *is* a genre. It follows that soccer is an even more clearly defined subgenre. In addition, the four GSN shows that were allegedly similar to the three WE tv shows are a far cry from the extent of the similarity at issue here.

62. Some numbers illustrate that extent well. [[BEGIN CONFIDENTIAL]]

⁶⁵ *Id.*

⁶⁶ [[BEGIN CONFIDENTIAL]]

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⁶⁷ [[BEGIN CONFIDENTIAL]]

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63. [[BEGIN CONFIDENTIAL]]

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⁶⁸ [[BEGIN CONFIDENTIAL]]
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64. NBC Universo's increasing focus on soccer is further illustrated by its announced plan to show as many as 170 hours of FIFA World Cup related programming in connection with the 2018 soccer FIFA World Cup to be held in Russia.⁶⁹

⁶⁹ See Press Release, *Telemundo Deportes Unveils More than 1,500 Hours of 2018 FIFA World Cup Russia™ Coverage Across All Platforms*, Comcast (Nov. 29, 2017), <http://www.nbcuniversal.com/press-release/telemundo-deportes-unveils-more-1500-hours-2018-fifa-world-cup-russia%E2%84%A2-coverage-across> (stating that “Telemundo Deportes will provide extensive multimedia coverage including more than 500 hours of World Cup-related programming across Telemundo Network and its sister cable network Universo [including] more than 170 hours of programming on Universo.”).

65. In sum, then, beIN's and beIN en Español's programming is similarly situated to that of NBC Sports and NBC Universo because, among other things, each provides hundreds of live soccer games a year.

66. **Target Audience.** As beIN's expert witness, Mr. Eric Sahl, testifies, 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.⁷⁰ Many soccer fans consistently make choices between watching one or another soccer game, for example a game on the Spanish La Liga offered by beIN versus a game on the English Premier League offered by NBC Sports, or a game on the German Bundesliga offered by Fox Sports.⁷¹ The need for many soccer fans to make that choice is heightened by the fact that soccer games are heavily concentrated on the weekend.⁷² This results in many time conflicts between games played on different leagues. Examples abound: German Bundesliga games are often played at the same time as French Ligue 1 games, while the later in the day English Premier League games, which tend to be the marquee matchups, often conflict with Spanish La Liga games. While some consumers may choose to watch one game live and the other on DVR, many watch only one.⁷³

67. **Ratings.** beIN's targeting of the same demographic as that targeted by the soccer programming of NBC Sports and NBC Universo has reaped fruit. In many respects, beIN has managed to punch above its weight, overcome the handicap of significantly more limited penetration compared to that enjoyed by NBC Sports and NBC Universo, and achieve ratings

⁷⁰ Sahl Testimony ¶ 17.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

similar, or even superior, to those of NBC Sports and Universo.⁷⁴ In correspondence with beIN,
[[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] Not so. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]].

68. And the similarity in ratings becomes superiority in beIN's favor if appropriate further adjustment is made to account for beIN's lower penetration that all cable sports programmers had full distribution of all possible pay tv households. Under that assumption,
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⁷⁴ Briceño Declaration ¶ 20.

⁷⁵ Comcast Response to Pre-Filing Notice at 2.

⁷⁶ [[BEGIN CONFIDENTIAL]]

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⁷⁷ *Id.*

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69. The soccer programming of beIN is comparable to that of NBC Sports and NBC Universo based on a number of other coverage area metrics. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] The following charts from a presentation beIN made to a distributor in March 2017 depict these comparisons⁷⁹:

⁷⁸ [[BEGIN CONFIDENTIAL]]

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⁷⁹ [[BEGIN CONFIDENTIAL]]
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70. [[BEGIN CONFIDENTIAL]]

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71. *The conduct of Comcast and its affiliates.* The fact that beIN and Comcast-affiliated soccer programming target the same viewers is also demonstrated by the statements and conduct of Comcast itself. For example, Comcast targets soccer fans by advertisements that feature both beIN and its own affiliated programming. For instance, Comcast promoted both its own soccer programming and beIN in 2015 when describing the soccer programming available during the summer.⁸¹ Comcast has promoted beIN's soccer programming in many other ways, including in materials that omit any mention of NBC Sports and NBC Universo soccer offerings,⁸² thus undermining [[BEGIN CONFIDENTIAL]]

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72. Especially telling is NBC Universo's reaction in a case where both beIN and NBC Universo distributed the same game. In that case, beIN had acquired the English feed rights and NBC Universo had acquired the Spanish feed rights to the crucial final 2017 CONCACAF World Cup qualifying game between El Salvador and Mexico.⁸³ beIN decided to distribute the

⁸⁰ [[BEGIN CONFIDENTIAL]]
[[END CONFIDENTIAL]]

⁸¹ *Comcast's Summer of Soccer: More Ways to Watch than Ever*, Comcast (June 10, 2015), <https://corporate.comcast.com/news-information/news-feed/comcasts-summer-of-soccer-more-ways-to-watch-than-ever> (highlighting the soccer programming available on beIN and NBC Universo).

⁸² *See, e.g.*, Exhibit 11.

⁸³ Briceño Declaration ¶ 24.

English feed in both its beIN and beIN en Español channels. NBC Universo, concerned that it would lose a substantial number of viewers to beIN, remonstrated with beIN.⁸⁴

73. Just as important, both NBC and beIN were among the few public bidders for the English Premier League rights.⁸⁵ The Commission gives “significant weight” to this factor in deciding whether the programming of two vendors is similarly situated.⁸⁶

74. ***Public and marketplace perception.*** The treatment of beIN and Comcast affiliated sports networks in the press also demonstrates that the two target the same demographic. A plethora of news stories lump beIN and the Comcast sports networks together and describe them as appealing to the same viewers—soccer fans. A number of sources on the blossoming of soccer interest in the United States describes beIN and NBC Sports/NBC Universo as integral parts of that phenomenon, and specifically mentions NBC and beIN as competitors jumping into the marketplace.⁸⁷

⁸⁴ *Id.*

⁸⁵ Richard Sandomir, *NBC Retains Rights to Premier League In Six-Year Deal*, N.Y. Times (Aug. 10, 2015), <https://www.nytimes.com/2015/08/11/sports/soccer/nbc-retains-rights-to-premier-league-in-six-year-deal.html> (“The Premier League opened its bidding on Thursday with only NBC, Fox and beIN Sports known to have made submissions.”).

⁸⁶ *See Game Show Network*, 32 FCC Rcd. at 6176 ¶ 51 (“Our conclusion that GSN and WE tv targeted and aired different types of programming is supported by the lack of competition between GSN and WE tv in vying for rights to the same programming . . . there is no evidence of any competition to acquire programming during that time.”).

⁸⁷ *See, e.g.,* Ximena Cassab, *Why English-Language Soccer Broadcasting is Gaining Strength in the U.S.*, Portada (Apr. 5, 2017), <https://www.portada-online.com/2018/02/09/altice-usa-lets-cristiano-ronaldo-discover-american-football-can-new-consumers-discover-him-as-well/>; <https://www.portada-online.com/2017/04/05/why-english-language-soccer-broadcasting-is-gaining-strength-in-the-u-s/> (“For us, English-language properties are always something we recommend to our clients if the target market makes sense. We buy media with FOX, NBC, BeIN Sports and others regularly, because we know there is a growing viewership and we have to be talking to them,” says [the vice-president of a major marketing agency targeting sports programming].”); Matt Yoder, *NBC and the English Premier League Will Continue the Best Marriage in Sports Media*, Awful Announcing (Aug. 11, 2015), <http://awfulannouncing.com>.

75. The similarly situated status of beIN’s soccer programming compared to that provided by Comcast affiliates is further demonstrated by the statements and conduct of beIN when negotiating with a variety of distributors, including DISH, Charter and Verizon. For example, the presentation beIN made to [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] Similar presentations made by beIN to other distributors feature similar comparisons between beIN and beIN en Español on the one hand, and NBC Sports and NBC Universo, on the other.⁸⁹

76. In Mr. Sahl’s view, these presentations have a direct implication. Both beIN and the distributors carrying it view beIN’s soccer programming as a substitute for, and directly competitive with, the soccer programming of NBC Sports and NBC Universo.⁹⁰ It is for that reason that distributors want to hear how beIN stacks up against NBC Sports and NBC Universo based on a bewildering variety of viewer metrics; and it is for that reason that beIN devotes the most significant portion of its pitch to those comparisons.⁹¹

com/2015/nbc-and-the-english-premier-league-will-continue-the-best-marriage-in-sports-media.html (“Televised soccer rights in America has been a fierce competition the last decade amongst ESPN, NBC, Fox Sports, and beIn Sport.”); Jonathan Tannenwald, *Source: NBC Sports to Bid on UEFA Champions League Rights*, Philadelphia Inquirer (Dec. 2, 2013), <http://www.philly.com/philly/blogs/thegoalkeeper/Source-NBC-Sports-to-bid-on-UEFA-Champions-League-rights.html> (“In addition to ESPN, Fox and NBC, there’s also the potential for beIN Sport to bid for Champions League rights. The network, owned by Qatar-based al-Jazeera, has quickly swept up a wide collection of worldwide soccer rights since it launched last year.”).

⁸⁸ [[BEGIN CONFIDENTIAL]]
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⁸⁹ Briceño Declaration ¶ 25.

⁹⁰ Sahl Testimony ¶ 22.

⁹¹ Briceño Declaration ¶ 26.

77. *Comparison across other metrics.* But these comparisons are relevant for another reason, too. Just as important, they demonstrate that the soccer programming of beIN and that provided by NBC Sports and NBC Universo are in fact comparable under a number of different metrics.

78. The soccer programming of beIN and beIN en Español is comparable to that offered by Comcast affiliates in terms of [[BEGIN CONFIDENTIAL]]

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79. Additionally, beIN is still growing at a prodigious rate. [[BEGIN CONFIDENTIAL]]

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80. This is also reflected in the growth of beIN's average audience. At a time when most networks [[BEGIN CONFIDENTIAL]]

⁹² [[BEGIN CONFIDENTIAL]]

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⁹³ [[BEGIN CONFIDENTIAL]]

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81. *Overlapping advertisers.* As Mr. Sahl states, beIN competes directly with Comcast affiliated soccer programming for advertising dollars.⁹⁷ In 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.⁹⁸ As for soccer, Mr. Sahl views games on one league as substitutes for games on another league in the eyes of many advertisers, particularly national ones.⁹⁹ It is therefore no surprise that, as Mr. Antonio Briceño testifies, beIN shares several key advertisers with NBC Sports and NBC Universo. In fact, all of beIN's largest advertisers, [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] also purchase advertising on NBC Sports and NBC Universo.¹⁰⁰ What is more, these and other advertisers constantly move business between the beIN properties, on the one hand, and the NBC Sports and NBC Universo properties, on the other. Thus, 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.¹⁰¹

⁹⁵ [[BEGIN CONFIDENTIAL]]

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⁹⁶ *Id.*

⁹⁷ Sahl Testimony ¶ 23.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Sahl Testimony ¶ 23; Briceño Declaration ¶ 31.

¹⁰¹ Briceño Declaration ¶ 31.

82. And vice versa: beIN understands that it was the first programmer in which
[[BEGIN CONFIDENTIAL]]

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83. Another illustrative example of this competition for advertisers is provided by the September 6, 2016 match between the United States and Trinidad and Tobago, which was covered both by beIN and by NBC Universo. The four advertisers who purchased the most advertising time for this game bought time on both telecasts.¹⁰³ As Mr. Briceño explains, beIN and the NBC properties are locked in a constant battle to win more of the business of these and other overlapping advertisers.¹⁰⁴

84. ***Other Sports.*** beIN's non-soccer programming is also similarly situated to other sports programming offered by NBC Sports and NBC Universo, including college sports, motor sports, boxing, rugby, track and field and mixed martial arts. For example, in 2017, beIN carried the popular Rugby Six Nations Championship. NBC Sports is carrying it this year. Similarly, beIN carried the IAAF Diamond League track and field competition in 2016. NBC Sports carried it in 2017.

¹⁰² Briceño Declaration ¶ 32.

¹⁰³ Briceño Declaration at Table 1.

¹⁰⁴ Briceño Declaration ¶ 34.

VII. THE COMCAST OFFER DISCRIMINATES AGAINST beIN SPORTS IN PROGRAMMING AND IN FAVOR OF THE PROGRAMMING OF COMCAST-AFFILIATED VENDORS

85. The Comcast Offer discriminates in video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection, terms and conditions for carriage of these vendors' programming. Specifically, the Comcast Offer discriminates against the programming of beIN and in favor of NBC Sports' and NBC Universo's similarly situated sports programming.

A. Comcast Would Unfavorably Tier beIN's Programming

86. Vertically integrated MVPDs can use tiering to discriminate against non-affiliated programming. By placing affiliated programming on the widest-distributed tiers, a vertically integrated MVPD can create a larger potential viewing market for its affiliated programming. When an unaffiliated programmer competes with, or outperforms, an affiliated programmer, an MVPD can also retaliate by moving the unaffiliated programmer to a higher-priced tier, which naturally has a smaller subscriber base.

87. The Comcast Offer would discriminate against beIN programming by unfavorably tiering it compared to Comcast's affiliated and similarly situated programming. Although Comcast affiliated sports programming is carried on almost every tier, Comcast offers to carry beIN programming on its [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

B. The Comcast Offer Would Unfavorably Tier beIN's Spanish Language Programming While Favorably Tiering Its Affiliated Programming

88. The Comcast Offer would also [[BEGIN CONFIDENTIAL]]

[[END

CONFIDENTIAL]] By contrast, NBC Universo, despite having a smaller audience than beIN, is carried on the greater-penetration Preferred tier and, in some areas, the even-greater penetration Starter tier.

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C. Comcast Refuses to Carry beIN's HD Signal

89. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] By contrast, Comcast carries HD signals of its affiliated programming in all of its markets in almost all its tiers.

90. For sports programming, the quality of the signal is especially important to viewers.¹⁰⁵ Comcast understands that, and broadcasts all of its English Premier League games in HD, among other sports programming it broadcasts in HD. Other MVPDs also understand that, and carry beIN's HD signal.

D. Comcast Will Not Authenticate Comcast's Viewers for beIN's Online App, but Authenticates Its Own Viewers for Its Affiliated Programming

91. Streaming content is increasingly important to VPVs, as more and more consumers want to be able to watch content wherever they are and not just in front of their TV. Being able to authenticate users is crucial for VPVs to stream content, yet they often must rely upon the MVPDs for assistance in authentication.

92. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

¹⁰⁵ Briceño Declaration ¶ 37.

¹⁰⁶ *Id.*

¹⁰⁷ Briceño Declaration ¶ 38.

E. Comcast Would Continue to Restrict beIN's Ability to Offer Direct-to-Consumer Products While Allowing Its Affiliated Programmers to Do So

93. Comcast has restricted beIN's ability to offer a direct-to-consumer product derived from its core leagues while at the same time offering English Premier League as a direct-to-consumer product. This product generally represents an additional revenue stream for networks.¹⁰⁸ It also allows a network to offer all of its games live, rather than distributing one among several games that may be occurring simultaneously. For fans of lesser-known teams, such a product is essential, as their teams' games will normally be preempted for games of marquee teams.

F. Comcast's Carriage Fees Are Discriminatory and Less Than What It Pays to Its Affiliated Programmers

94. Comcast has also proposed changing beIN's compensation from [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

95. According to Comcast itself, [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] In addition, on information and belief, NBC Sports and NBC Universo are paid on a per subscriber basis,

¹⁰⁸ Briceño Declaration ¶ 39.

meaning that they benefit from additional subscribers joining the Comcast packages where they are offered.

VIII. COMCAST’S DISCRIMINATORY BEHAVIOR HAS UNREASONABLY RESTRAINED beIN’S ABILITY TO COMPETE FAIRLY

96. The discriminatory treatment meted out by Comcast restrains beIN’s ability to compete fairly with NBC Sports and NBC Universo both for viewers and for advertisers.¹⁰⁹ beIN’s soccer programming in particular, and sports programming in general, is a direct substitute for NBC’s soccer and sports programming, for viewers and advertisers alike. Comcast has proposed to reduce beIN’s fee by [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

97. This impact on the number of eyeballs to which beIN has access has in turn a domino effect that is felt by beIN in its dealings with advertisers. As Mr. Briceño states, beIN competes directly with Comcast affiliated soccer programming for advertising dollars. Mr. Briceño testifies that, to his knowledge, beIN shares several key advertisers with NBC Sports and NBC Universo, including [[BEGIN CONFIDENTIAL]]

¹⁰⁹ Sahl Testimony ¶ 24.

[[END CONFIDENTIAL]] What is more, the purchase by some of these advertisers of time on beIN resulted directly in less time bought by them on NBC Sports and NBC Universo, and vice versa, meaning that beIN is a direct substitute for NBC Sports and NBC Universo in the eyes of these advertisers.¹¹¹

98. Specifically, beIN understands that it was the first programmer [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] evidencing that the advertiser has one budget for “sports programming” and considers the two programmers similarly situated.¹¹²

99. The Comcast Offer would unreasonably restrain beIN’s ability to compete for advertisers. 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.¹¹³

IX. DISCRIMINATION IS THE ONLY RATIONAL EXPLANATION FOR COMCAST’S ACTIONS

100. beIN does not need to show the motivation for the different treatment meted out by Comcast to beIN for purposes of this complaint; nor does it need to show that this different treatment is not based on commercial conditions. Nevertheless, beIN submits that Comcast’s discriminatory treatment can only be explained by Comcast’s desire to favor its affiliates over

¹¹⁰ Briceño Declaration ¶ 31.

¹¹¹ *Id.*

¹¹² *Id.* ¶ 32.

¹¹³ Sahl Testimony ¶ 26.

these affiliates' competitor(s). Contrary to Comcast's assertion in correspondence with beIN, [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

101. Second, 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.¹¹⁵ No matter how much Comcast wants to obtain surcharges from subscribers, very few if any of the subscribers paying \$4.99 to Comcast for the Sports and Entertainment or \$9.99 for the Latino buy-through packages do so solely in order to watch beIN. While beIN is wildly popular with soccer fans, Comcast essentially offers it at a comparatively high price. By comparison, 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, a fraction of what Comcast charges for the Sports and Entertainment package.¹¹⁶ As a direct consequence of Comcast's pricing, it is unlikely that many subscribers pay the Sports and Entertainment or Latino price solely in order to watch beIN, since they can pay less than half elsewhere.

¹¹⁴ beIN believes that, in light of the abundant bandwidth available to Comcast on its cable system, the opportunity bandwidth cost to Comcast from greater beIN penetration is close to zero.

¹¹⁵ In 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 Starter and Preferred tiers.

¹¹⁶ 70+ *Live Channels. \$19.99 for Your First Month*, FuBo.TV, <https://www.fubo.tv/welcome/channels> (last visited Feb. 25, 2018).

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102. Nor is it true that other distributors carrying beIN do so almost universally on upper level tiers: as 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 consigned beIN. Of them, Verizon gives beIN penetration to the vast majority of its subscriber base, with the sole exception of the FiOS skinny bundle.

[[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

103. As to other distributors, beIN's agreements with them predate the OTT phenomenon and FuboTV's wide carriage of beIN. beIN is therefore optimistic that these distributors, too, will agree that [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] nor the loss of subscriber fees (most subscribers purchasing special tiers because of beIN have already left).

104. Third, Comcast ignores the benefit that will accrue to it, at no cost, if it agrees to distribute beIN in lower 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. Further, greater penetration for beIN will result in greater advertising revenue for beIN, which will enable beIN to hold down the fees it charges Comcast's systems as well as to

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Comcast itself under the standard ad avails provision that beIN has agreed and is willing to renew.

105. Finally, Comcast cannot convincingly allege that beIN lacks in value because Comcast's discriminatory actions deprive beIN of value. The Commission should resist being drawn into this vicious circle of self-referential justification by Comcast.

106. It is no surprise, therefore, that Comcast is the only distributor to not authenticate its subscribers to beIN's over-the-top option, even as it authenticates its viewers for online watching of Comcast-affiliated soccer programming; and it is also the only distributor to offer beIN only in SD in most of its areas. All other distributors, including Charter, DISH and Verizon, recognizing the intrinsic value of beIN's programming and the importance of HD to the enjoyment of soccer, offer beIN in HD in all areas and to all subscribers receiving it.

**COUNT I:
Discrimination on the Basis of Affiliation**

107. Complainant beIN repeats and re-alleges each and every allegation contained in paragraphs 46-106 of this Complaint.

108. By virtue of the acts described above, Comcast has discriminated against beIN by refusing to carry beIN programming on comparable terms and conditions as programming by Comcast affiliated programmers, thereby violating Section 616, 47 CFR § 76.1301(c), the Comcast-NBCU Conditions and the *Comcast-NBCU Order*.

**COUNT II:
Unreasonable Restraint to beIN's Ability to Compete Fairly**

109. Complainant beIN repeats and re-alleges each and every allegation contained in paragraphs 46-106 of this Complaint.

110. By virtue of the acts described above, Comcast has unreasonably restrained beIN's ability to compete fairly.

X. PRAYER FOR RELIEF

Complainant beIN respectfully requests that the Commission:

- (a) find Comcast in violation of 47 C.F.R. § 76.1301(c);
- (b) find Comcast in violation of the *Comcast-NBCU Order*;
- (c) enjoin Comcast from further program carriage discrimination;
- (d) order Comcast to carry beIN on equitable terms that do not unreasonably restrict beIN's ability to compete fairly, as determined by the Media Bureau; and
- (e) order any other relief that the Commission may deem appropriate.

Antonio Briceño
Deputy Managing Director, US & Canada
beIN Sports, LLC
7291 Northwest 74 Street
Miami, FL 33166
(305) 777-1900

March 15, 2018

Respectfully submitted,



Pantelis Michalopoulos
Markham C. Erickson
Georgios Leris
STEPTOE & JOHNSON LLP
1330 Connecticut Ave, NW
Washington, DC 20036
(202) 429-3000
Counsel to beIN Sports, LLC

VERIFICATION OF ANTONIO BRICEÑO

I, Antonio Briceño, have read beIN's Carriage Agreement Complaint in this matter, and state that, to the best of my knowledge, information, and belief formed after reasonable inquiry, the Complaint 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. The Complaint is not interposed for any improper purpose.



Antonio Briceño
Deputy Managing Director,
US & Canada
beIN Sports, LLC

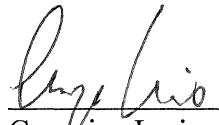
Dated: March 15, 2018

CERTIFICATE OF SERVICE

I, Georgios Leris, hereby certify that on March 15, 2018, I caused a copy of the foregoing Confidential Program Carriage Complaint, as well as a copy of the redacted version thereof electronically filed with the Federal Communications Commission on this day, to be served upon the parties listed below by overnight delivery.

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

Francis M. Buono
SVP & Sr. Deputy General Counsel
Comcast Corporation
300 New Jersey Avenue, NW
Suite 700
Washington, DC 20001



Georgios Leris

EXHIBIT 1

PROGRAM CARRIAGE COMPLAINTS FILED AGAINST COMCAST

Date of Complaint	Complainant	Docket Number	Principal Issue(s)	Hearing Designation Order or Initial Decision
6/14/2005	TCR Sports Broadcasting Holding, LLP	MB 06-148	Denial of Carriage; Demand for Financial Interest	21 FCC Rcd. 8989 (2006)
4/21/2008	Herring Broadcasting, Inc. (WealthTV)	MB 08-214	Denial of Carriage; Demand for Financial Interest	23 FCC Rcd. 14787 (2008)
5/06/2008	NFL Enterprises, LLC	MB 08-214	Tier Discrimination; Demand for Financial Interest	23 FCC Rcd. 14787 (2008)
7/01/2008	TCR Sports Broadcasting Holding, LLP	MB 08-214	Denial of Carriage	23 FCC Rcd. 14787 (2008)
1/05/2010	The Tennis Channel, Inc.	MB 10-204	Tier Discrimination	25 FCC Rcd. 14149 (2010)
6/13/2011	Bloomberg LP	MB 11-104	“Neighborhooding” Discrimination Under <i>Comcast-NBCU Order</i>	27 FCC Rcd. 4891 (2012)
4/8/2016	Liberman Broadcasting Inc.	MB 16-121	Denial of Carriage; Demand for Financial Interest	31 FCC Rcd. 9551 (2016); petition for reconsideration is pending
6/8/2017	Word Network Operating Company Inc.	MB 17-166	Discriminatory Carriage under <i>Comcast-NBCU Order</i> ; Demand for Financial Interest	32 FCC Rcd. 7704 (2017)

EXHIBIT 2

Redacted in Its Entirety

EXHIBIT 3

Redacted in Its Entirety

EXHIBIT 4

Redacted in Its Entirety

EXHIBIT 5

Redacted in Its Entirety

EXHIBIT 6

Redacted in Its Entirety

EXHIBIT 7

Redacted in Its Entirety

EXHIBIT 8

ANTONIO BRICEÑO DECLARATION

I, Antonio Briceño, being over 18 years of age, swear and affirm as follows:

1. I make this declaration using facts of which I have personal knowledge or based on information provided to me, in connection with the program carriage complaint of beIN Sports, LLC (“beIN”) against Comcast Cable Communications, LCC (“Comcast”) and the effects of Comcast’s program carriage offer on beIN.

2. I am currently the Deputy Managing Director, US & Canada, for beIN. In that capacity, I am responsible for the overall operation and P&L for beIN Sports US & Canada. I have served in that capacity since August 1, 2012. Before that, I was the VP of Programming & Distribution for Imagina US. I have a degree in Communications from Catholic University Andres Bello in Caracas, Venezuela and an MA in Communications Industry Management from Emerson College in Boston plus two years of post-graduate studies in Film and Video at the Savannah College of Art and Design. I started my career 25 years ago working as a producer for Radio Caracas TV in Venezuela. With extensive experience in programming, marketing and production, I have held key management positions including director of programming at Pan-American Sports Network and director of programming and sales at Digital Latin America. I began my professional career in the U.S. as creative services director at Movie City in Atlanta.

3. beIN is independently owned and operated. It is unaffiliated with any MVPD.

4. beIN was incorporated in May 2012. In August 2012, it launched English and Spanish programming with Comcast, DIRECTV and DISH. It launched that programming with Time Warner Cable in the fall of 2012, and with other major MVPDs—e.g., AT&T, Cablevision, Cox—in 2013.

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5. 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. In addition to soccer, beIN's English- and Spanish-language programming includes sports-related news and original programming, motor sports, college sports, rugby, track and field, combat sports and others. beIN carries Conference USA football matches, and multiple boxing promotions.

6. Since its launch, beIN has gained significant popularity among sports fans in the United States. beIN's English language programming reaches about [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] its Spanish language programming ("beIN en Español") reaches about [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

I. COMCAST CARRIAGE AGREEMENT AND NEGOTIATIONS

7. beIN had high hopes at first about its relationship with Comcast. When beIN first obtained Comcast's agreement to carry it in August 2012, it made a major concession in price in order to give Comcast an incentive to expand beIN carriage to a large portion of Comcast's subscriber base. The initial agreement was for [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

8. To secure carriage and provide Comcast with an incentive to broaden that carriage, beIN agreed to a [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]. On the other hand, [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] beIN's hope was that Comcast would act according to this rational economic incentive and accept the "free lunch" it had secured. Any motivation for Comcast to keep beIN in the low penetration buy-through packages in order to entice consumers to part with an additional \$5-10 of their money every month disappeared when other distributors such as Verizon and FuboTV started offering distribution of beIN in greater penetration tiers in 2013 and 2015, respectively. This means that most (if not all) subscribers purchasing Comcast's Sports and Entertainment or Latino package solely or primarily on account of beIN would likely choose to subscribe to these other platforms instead.

9. Nevertheless, that hope was not borne out. The apparent reason is that Comcast's desire to favor its affiliates got in the way of its incentive to have that free lunch. For example, in October 2012, shortly after the beIN deal, I understand that NBC Sports acquired the rights to broadcast the English Premier League in the United States. And in 2011, Telemundo—another Comcast affiliate—had acquired the rights to broadcast the 2018 and 2022 FIFA World Cups along with Fox.

10. Today, beIN is carried only on Comcast's low penetration \$4.99 a month buy-through Sports and Entertainment package; beIN en Español, for its part, is carried on that package as well as the buy-through \$9.99 a month XFINITY Latino package. Comcast has afforded beIN access to [[BEGIN CONFIDENTIAL]]

[[END

CONFIDENTIAL]], close to the bare minimum under the agreement. By contrast, I understand that Comcast affiliate NBC Sports is carried on Comcast's high penetration Starter tier and NBC Universo on Comcast's Preferred tier (Comcast also offers NBC Universo on its Starter tier in some areas), and therefore enjoy access to the vast majority of Comcast's subscriber base.

11. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] Comcast remained utterly silent for a troubling eight months. It did not respond until [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] when it made its counter-offer.

12. beIN was disheartened with Comcast's proposal, as it failed to reflect the value that beIN's programming provides to Comcast. beIN representatives met with Comcast executives on [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] to review the Comcast proposal and I understand that Comcast indicated that there would be no opportunity for additional distribution. Nevertheless, Comcast invited beIN to make a counter proposal, and beIN did so on [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] beIN has since attempted to engage in further negotiations, but these attempts have proved fruitless. Specifically, accompanied by two other beIN representatives, I flew to Philadelphia to meet with Comcast executives on [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] and the same team has engaged in further discussions as outlined below. In each instance, Comcast was dismissive of beIN's proposal, and has consistently refused to provide any indication that beIN could achieve any additional distribution on the Comcast platform.

13. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

beIN responded to that clarification request, and reiterated beIN's value proposition to Comcast subscribers, including [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

beIN's clarification resulted in a [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

II. beIN'S PROGRAMMING IS SIMILARLY SITUATED TO COMCAST'S AFFILIATED SPORTS PROGRAMMING

14. The discrepancy in the tiers in which Comcast offers its affiliated sports programming versus the packages it offers beIN's sports programming is surprising. It is my belief that beIN's programming is similarly situated to the soccer and other programming of NBC Sports and NBC Universo. That is demonstrated by a number of factors.

15. **Genre.** First, both beIN and Comcast's affiliates make substantial offerings of content that belongs not only to the same genre—sports—but also to the same subgenre—soccer. All four networks provide extensive coverage of soccer games throughout the nation. Indeed, in a number of cases, beIN offers the exact same programming with Comcast's affiliates in different languages. For example, the 2016 FIFA World Cup qualifying game between the United States and Trinidad and Tobago was carried by beIN and by NBC Universo. The 2017 CONCACAF World Cup qualifying game between El Salvador and Mexico was also carried by beIN and by NBC Universo.

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16. Some numbers illustrate that extent well. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

17. [[BEGIN CONFIDENTIAL]]

¹ [[BEGIN CONFIDENTIAL]]

[END

CONFIDENTIAL]]

² [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

³ [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

[[END CONFIDENTIAL]]

[[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

18. NBC Universo's increasing focus on soccer is further illustrated by its announced plan to show as many as 170 hours of FIFA World Cup related programming in connection with the 2018 soccer FIFA World Cup to be held in Russia.⁴

⁴ See Press Release, *Telemundo Deportes Unveils More than 1,500 Hours of 2018 FIFA World Cup Russia™ Coverage Across All Platforms*, Comcast (Nov. 29, 2017), <http://www.nbcuniversal.com/press-release/telemundo-deportes-unveils-more-1500-hours-2018-fifa-world-cup-russia%E2%84%A2-coverage-across> (stating that "Telemundo Deportes will provide extensive multimedia coverage including more than 500 hours of World Cup-related programming across Telemundo Network and its sister cable network Universo [including] more than 170 hours of programming on Universo.").

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19. ***Target Audience.*** Second, all four networks target the same audience—soccer fans. Soccer fans consistently make choices between watching one or another soccer game, including because of the many time conflicts between games played on different leagues.

20. ***Ratings.*** Third, beIN targets the same demographic as that targeted by the soccer programming of NBC Sports and NBC Universo. Based on the ratings I have reviewed, in many respects, beIN has managed to punch above its weight, overcome the handicap of significantly more limited penetration compared to that enjoyed by NBC Sports and NBC Universo, and achieve ratings similar, or even superior, to those of NBC Sports and Universo. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

21. And the similarity in ratings becomes vast superiority in beIN's favor if an appropriate adjustment is made to account for beIN's lower penetration. And the similarity in ratings becomes superiority in beIN's favor if appropriate further adjustment is made to account for beIN's lower penetration that all cable sports programmers had full distribution of all possible pay tv households. Under that assumption, [[BEGIN CONFIDENTIAL]]

[[END
CONFIDENTIAL]]

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22. The soccer programming of beIN is comparable to that of NBC Sports and NBC Universo based in a number of other coverage area metrics I have reviewed. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] The following charts from a presentation beIN made to a distributor in March 2017 depict these comparisons⁶:

⁵ [[BEGIN CONFIDENTIAL]]

CONFIDENTIAL]]

[[END

⁶ [[BEGIN CONFIDENTIAL]]
[[END CONFIDENTIAL]]

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[[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

[[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

23. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

24. *The conduct of Comcast and its affiliates.* Fourth, Comcast's conduct appears to treat beIN as targeting the same advertisers. For example, in 2017, beIN acquired the English feed rights and NBC Universo acquired the Spanish feed rights to the crucial final 2017 CONCACAF World Cup qualifying game between El Salvador and Mexico. beIN decided to distribute the English feed in both its beIN and beIN en Español channels. NBC Universo, concerned that it would lose a substantial number of viewers to beIN, remonstrated with beIN.

25. *Public and marketplace perception.* Fifth, the similarly situated status of beIN's soccer programming compared to that provided by Comcast affiliates is further demonstrated by the statements and conduct of beIN when negotiating with a variety of distributors, including DISH, Charter and Verizon. For example, the presentation beIN made to [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] Similar presentations made by beIN to other distributors feature similar comparisons between beIN and beIN en Español on the one hand, and NBC Sports and NBC Universo, on the other.

26. Both beIN and the distributors carrying it view beIN's soccer programming as a substitute for, and directly competitive with, the soccer programming of NBC Sports and NBC Universo. It is for that reason that distributors want to hear how beIN stacks up against NBC

⁷ [[BEGIN CONFIDENTIAL]]
[[END CONFIDENTIAL]]

Sports and NBC Universo based on a bewildering variety of viewer metrics; and it is for that reason that beIN devotes the most significant portion of its pitch to those comparisons.

27. *Comparison across other metrics.* Sixth, the soccer programming of beIN and that provided by NBC Sports and NBC Universo are in fact comparable under a number of different metrics.

28. The soccer programming of beIN and beIN en Español is comparable to that offered by Comcast affiliates in terms of [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

29. Additionally, beIN is still growing at a prodigious rate. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

⁸ [[BEGIN CONFIDENTIAL]]

CONFIDENTIAL]]

[[END

⁹ [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

¹⁰ [[BEGIN CONFIDENTIAL]]

CONFIDENTIAL]]

[[END

30. This is also reflected in the growth of beIN's average audience. At a time when most networks [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

31. *Overlapping advertisers.* Finally, beIN shares several key advertisers with NBC Sports and NBC Universo, including [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] What is more, the purchase by some of these advertisers of time on beIN 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.

32. This movement in advertisers' business occurs in both directions. Specifically, it is my understanding that beIN was the first programmer [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

evidencing that the advertiser has one budget for "sports programming" and considers the two programmers similarly situated.

33. Another illustrative example of this competition for advertisers is provided by the September 6, 2016 match between the United States and Trinidad and Tobago, which was covered both by beIN and by NBC Universo. The four advertisers who purchased the most

¹¹ [[BEGIN CONFIDENTIAL]]

CONFIDENTIAL]]

¹² *Id.*

advertising time for this game bought time on both telecasts. As the table below shows (which illustrates the ad views of the game as provided by Nielsen), beIN and the NBC properties are locked in a constant battle to win more of the business of these and other overlapping advertisers.

Table 1

[[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

III. COMCAST'S DISCRIMINATORY CONDUCT

34. It is my belief that Comcast's offer discriminates against the programming of beIN and in favor of NBC Sports' and NBC Universo's similarly situated sports programming. Specifically, the Comcast Offer discriminates against the programming of beIN and in favor of NBC Sports' and NBC Universo's similarly situated sports programming.

35. First, the Comcast Offer would discriminate against beIN programming by unfavorably tiering it compared to Comcast's affiliated and similarly situated programming. Although Comcast affiliated sports programming is carried on almost every tier, Comcast offers to carry beIN programming on its [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

36. Second, the Comcast Offer would also [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] By contrast, NBC Universo, despite having a smaller audience than beIN, is carried on the greater-penetration Preferred tier and, in some areas, the even-greater penetration Starter tier.

37. Third, [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] By contrast, Comcast carries HD signals of its affiliated programming in all of its markets in almost all its tiers. For sports programming, the quality of the signal is especially important to viewers. Comcast understands that, and broadcasts all of its English Premier League games in HD, among other sports programming it broadcasts in HD. Other MVPDs also understand that, and carry beIN's HD signal.

38. Fourth, the Comcast Offer [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

39. Fifth, Comcast has restricted beIN's ability to offer a direct-to-consumer product derived from its core leagues while at the same time offering English Premier League as a direct-to-consumer product. This product generally represents an additional revenue stream for networks. It also allows a network to offer all of its games live, rather than distributing one among several games that may be occurring simultaneously. For fans of lesser-known teams, such a product is essential, as their teams' games will normally be preempted for games of marquee team.

40. Finally, Comcast has also proposed changing beIN's compensation from
[[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

41. According to Comcast itself, [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] In addition, on information and belief, NBC Sports and NBC Universo are paid on a per subscriber basis, meaning that they benefit from additional subscribers joining the Comcast packages where they are offered.

IV. COMCAST’S BEHAVIOR UNREASONABLY RESTRAINS beIN’S ABILITY TO COMPETE FAIRLY

42. The discriminatory treatment meted out by Comcast restrains beIN’s ability to compete fairly with NBC Sports and NBC Universo both for viewers and for advertisers. beIN’s soccer programming in particular, and sports programming in general, is a direct substitute for NBC’s soccer and sports programming, for viewers, rightsholders and advertisers alike. As with authentication, the issue would be shelved for discussion.

43. Comcast has proposed to reduce beIN’s fee by [[BEGIN CONFIDENTIAL]]

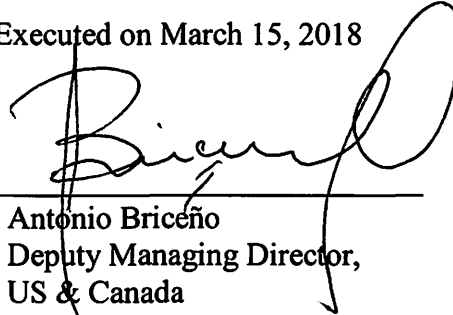
[[END CONFIDENTIAL]]

44. This impact on the number of eyeballs to which beIN has access has in turn a domino effect that is felt by beIN in its dealings with advertisers. As I mention above, beIN competes directly with Comcast affiliated soccer programming for advertising dollars. The Comcast Offer would unreasonably restrain beIN’s ability to compete for advertisers. 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.

* * * *

The foregoing declaration has been prepared using facts of which I have personal knowledge or based upon 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 March 15, 2018

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

Antonio Briceño
Deputy Managing Director,
US & Canada
beIN Sports, LLC

EXHIBIT 9

ERIC SAHL TESTIMONY

1. My name is Eric Sahl. I have significant experience in the program carriage marketplace, where multichannel video programming distributors (“MVPDs”) negotiate with video programmers for carriage of their content. In fact, most of my career has been devoted to the pay television industry, domestically and abroad. I worked in the programming content acquisition department of DISH Network (“DISH”) from September 2000 until February 2009, eventually serving as Senior Vice President of Programming, the chief officer in charge of programming decisions. Since 2009, I have established my own consulting firm and provided strategic advice both to distributors such as CenturyLink and Digicel (supporting both their MVPD and emerging OTT platforms) and to various content programmers (independently owned and operated and otherwise), including Game Show Network (GSN), Hulu, Outside Television, WeatherNation et al. I have advised such programmers in connection with, among other things, dealings with MVPDs. I have thus been afforded intimate views on the industry from both sides of the negotiating table. My experience with DISH, as well as with my distributor clients who are not vertically integrated with any programmer, has equipped me well to compare the motivations and actions of such a distributor with those of a distributor who has its own programming interests.

2. I have been asked by beIN to offer my expert view on whether beIN’s programming, and its two networks, beIN and beIN en Español, are similarly situated to the programming of NBC Sports and NBC Universo, and those two networks; whether the offer that Comcast made beIN on December 13, 2017, which among other things places beIN en Español in lower penetration package (the Latino package) than the tiers featuring NBC Sports and NBC Universo, would unreasonably restrain beIN’s ability to compete fairly; and whether the offer

that Comcast made beIN on December 13, 2017 appears based on commercial considerations other than Comcast's interest in favoring its own affiliated programming. My view is that the programming and networks of beIN are similarly situated to the programming and networks of NBC Sports and NBC Universo; that the discriminatory treatment of beIN reflect in Comcast's December 13, 2017 offer would unreasonably restrain beIN's ability to compete fairly; and that Comcast's offer seems motivated by favoritism as opposed to commercial considerations as to how to best serve consumers

I. PARTIES

3. **beIN.** beIN is a sports programming channel that primarily distributes top-flight European soccer, including games of the Spanish La Liga, French Ligue 1 and Italian Serie A as well as World Cup Qualifiers.

4. beIN is independently owned and operated. It is unaffiliated with any MVPD.

5. beIN was incorporated in May 2012. In August 2012, it launched English and Spanish programming with Comcast, DIRECTV and DISH. It launched that programming with Time Warner Cable in the fall of 2012, and with other major MVPDs—e.g., AT&T, Cablevision, Cox—in 2013.

6. Since its launch, beIN has gained significant popularity among sports fans in the United States. beIN's English language programming reaches about [[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]] its Spanish language programming ("beIN en Español") reaches about [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

¹ [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

7. In addition to soccer, sports-related news and original programming, motor sports, college sports, rugby, track and field, combat sports, Conference USA football matches, and multiple boxing promotions.

8. **Comcast.** Comcast is the nation’s largest cable operator, with 22.4 million subscribers across the United States.³ It is also vertically integrated with the providers of other products and services—Internet, phone service, home security, television programming, amusement parks, and more. Through its control and ownership of NBC Universal, Comcast owns many video programmers, including the national NBC and Telemundo broadcast networks, 28 broadcast stations, the NBC Universal stable of some 16 national cable networks, as well as 15 regional sports and news networks.⁴ NBC Sports and NBC Universo are two of those cable networks.

9. NBC Sports is “dedicated to serving passionate sports fans.”⁵ It is a national sports cable network that carries basketball, professional and college American football, soccer,

[[END CONFIDENTIAL]]

² [[BEGIN CONFIDENTIAL]]

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³ Comcast Corporation, 2017 Annual Report on Form 10-K, <https://www.cmcsa.com/static-files/111ba611-eb85-4edc-9000-3907c84697d8>.

⁴ See Comcast, *Company Overview*, <http://corporate.comcast.com/news-information/company-overview> (last visited Mar. 14, 2018); *NBCUniversal*, Comcast, <https://corporate.comcast.com/our-company/businesses/nbcuniversal#accordion-0> (last visited Mar. 14, 2018).

⁵ Comcast, <http://www.nbcuniversal.com/business/nbc-sports> (last visited Mar. 14, 2018).

hockey, motor sports, and golf among many other sports events.⁶ 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.⁷ NBC Sports is available on Comcast's high penetration Starter tier.

10. NBC Universo is a Spanish-language cable network launched under its current name and brand in February 2015.⁸ The origin of NBC Universo is mun2, a Spanish language network that Comcast acquired as part of the Comcast-NBCU merger. But while Comcast used mun2's carriage rights with distributors and retained its Spanish language format, NBCU Universo was an entirely new network in other respects. Specifically, in 2015, Comcast changed the network's content, and relaunched it as NBC Universo to increase the awareness of viewing audiences that it is now part of the NBC family.⁹ NBC Universo's programming now "consists mostly of sports, scripted and reality series, and music programming."¹⁰ NBC Universo has also recently become the focal point of Comcast's Spanish language sports programming, showing the Spanish feeds of the Super Bowl, the Rio Olympics, FIFA World Cup Qualifiers for the 2018 FIFA World Cup, and English Premier League soccer games for the Spanish speaking audience,

⁶ *NBC Sports*, Wikipedia, https://en.wikipedia.org/wiki/NBC_Sports (last visited Mar. 14, 2018).

⁷ *Id.*

⁸ Comcast, *NBCUniversal Transaction*, <http://corporate.comcast.com/news-information/nbcuniversal-transaction> (last visited Mar. 14, 2018); Cynthia Littleton, *Spanish-Language Cabler Mun2 to Relaunch as NBC Universo*, Variety (Nov. 4, 2014), <http://variety.com/2014/tv/news/spanish-language-cabler-mun2-to-relaunch-as-nbc-universo-1201347484/>.

⁹ See, e.g., "Why mun2 is now NBC Universo," NBC Universal (Feb. 2, 2015), <http://www.nbcuniversal.com/article/why-mun2-now-nbc-universo>; Cynthia Littleton, *Spanish-Language Cabler Mun2 to Relaunch as NBC Universo*, Variety (Nov. 4, 2014), <https://variety.com/2014/tv/news/spanish-language-cabler-mun2-to-relaunch-as-nbc-universo-1201347484/> ("NBCUniversal is planning a relaunch of its Spanish-language cabler Mun2 that will accentuate the channel's affiliation with the Peacock.").

¹⁰ *Universo (TV Network)*, Wikipedia, [https://en.wikipedia.org/wiki/Universo_\(TV_network\)](https://en.wikipedia.org/wiki/Universo_(TV_network)) (last visited Mar. 14, 2018).

all programming available exclusively to NBC Universo.¹¹ NBC Universo has been increasing its live soccer content.¹² In some areas, NBC Universo is available on Comcast's high-penetration Starter tier; it is offered in Preferred, Comcast's next-highest penetration package, in other markets.

II. beIN's PROGRAMMING IS SIMILARLY SITUATED TO COMCAST'S AFFILIATED SPORTS PROGRAMMING

11. I understand that the Federal Communications Commission has found that, in 2008, the NFL Network was similarly situated to the Golf Network and Versus—both networks affiliated with Comcast.¹³ And in 2012, the FCC found that the Tennis Channel, Golf Channel, and Versus were similarly situated because they all provided sports programming, targeted the same demographics, and had an overlap in advertisers.¹⁴

¹¹ *Id.*

¹² See Cynthia Littleton, *Spanish-Language Cabler Mun2 to Relaunch as NBC Universo*, Variety (Nov. 4, 2014), <https://variety.com/2014/tv/news/spanish-language-cabler-mun2-to-relaunch-as-nbc-universo-1201347484/> (“NBC Universo’s programming focus will remain a mix of telenovelas, unscripted series and an expanded slate of sports on weekends. Telemundo and NBC Universo will carry the World Cup soccer championships in 2016, and it will be part of NBCUniversal’s saturation coverage of the summer Olympics from Rio the same year. The World Cup build-up starts next year with broadcasts of four FIFA soccer events.”); See Press Release, *Telemundo Deportes Unveils More than 1,500 Hours of 2018 FIFA World Cup Russia™ Coverage Across All Platforms*, Comcast (Nov. 29, 2017), <http://www.nbcuniversal.com/press-release/telemundo-deportes-unveils-more-1500-hours-2018-fifa-world-cup-russia%E2%84%A2-coverage-across> (stating that “Telemundo Deportes will provide extensive multimedia coverage including more than 500 hours of World Cup-related programming across Telemundo Network and its sister cable network Universo . . . [including] more than 170 hours of programming on Universo.”).

¹³ NFL Enterprises LLC, Complainant v. Comcast Cable Communications, Defendant, *Memorandum Opinion and Hearing Designation Order*, 23 FCC Rcd. 14787, 14822-23 ¶ 75 (2008).

¹⁴ Tennis Channel, Inc., Complainant v. Comcast Cable Communications, LLC, Defendant, *Memorandum Opinion and Order*, 27 FCC Rcd. 8508, 8527 ¶¶ 51-54 (2012), *reversed on other grounds by Comcast Cable Communications, LLC v. FCC*, 717 F.3d 982 (D.C. Cir. 2013).

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12. beIN's programming is similarly situated to the soccer and sports other programming offered by Comcast affiliates NBC Sports and NBC to a much greater extent than in that case.

13. **Genre.** First of all, both beIN and Comcast's affiliates make substantial offerings of content that belongs not only to the same genre—sports—but also to the same subgenre—soccer. All four networks provide extensive coverage of soccer games throughout the nation. Thus, while in many cases programs covering different sports are similarly situated to one another, and the Commission has so found, here it is not even necessary to make that finding. In other words, not only do beIN and Comcast's affiliates both provide national sports programming, as in the case of prior Commission findings; they both provide soccer programming. Indeed, in a number of cases, beIN offers the exact same programming with Comcast's affiliates in different languages. For example, the 2016 FIFA World Cup qualifying game between the United States and Trinidad and Tobago was carried by beIN and by NBC Universo. The 2017 CONCACAF World Cup qualifying game between El Salvador and Mexico was also carried by beIN and by NBC Universo.

14. Some numbers illustrate that extent well. [[BEGIN CONFIDENTIAL]]

¹⁵ [[BEGIN CONFIDENTIAL]]

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15. [[BEGIN CONFIDENTIAL]]

¹⁶ [[BEGIN CONFIDENTIAL]]

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¹⁷ [[BEGIN CONFIDENTIAL]]
[[END CONFIDENTIAL]]

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16. NBC Universo's increasing focus on soccer is further illustrated by its announced plan to show as many as 170 hours of FIFA World Cup related programming in connection with the 2018 soccer FIFA World Cup to be held in Russia.¹⁸

17. **Target Audience.** 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 or

¹⁸ See Press Release, *Telemundo Deportes Unveils More than 1,500 Hours of 2018 FIFA World Cup Russia™ Coverage Across All Platforms*, Comcast (Nov. 29, 2017), <http://www.nbcuniversal.com/press-release/telemundo-deportes-unveils-more-1500-hours-2018-fifa-world-cup-russia%E2%84%A2-coverage-across> (stating that “Telemundo Deportes will provide extensive multimedia coverage including more than 500 hours of World Cup-related programming across Telemundo Network and its sister cable network Universo . . . [including] more than 170 hours of programming on Universo.”).

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another soccer game, for example a game on the Spanish La Liga offered by beIN versus a game on the English Premier League offered by NBC Sports, or a game on the German Bundesliga offered by Fox Sports. The need for many soccer fans to make that choice is heightened by the fact that soccer games are heavily concentrated on the weekend. This results in many time conflicts between games played on different leagues. Examples abound: German Bundesliga games are often played at the same time as French Ligue 1 games, while the later in the day English Premier League games, which tend to be the marquee matchups, often conflict with Spanish La Liga games. While some consumers may choose to watch one game live and the other on DVR, many watch only one.

18. ***Ratings.*** beIN's targeting of the same demographic as that targeted by the soccer programming of NBC Sports and NBC Universo has reaped fruit. In many respects, beIN has managed to punch above its weight, overcome the handicap of significantly more limited penetration compared to that enjoyed by NBC Sports and NBC Universo, and achieve ratings similar, or even superior, to those of NBC Sports and Universo.¹⁹ [[BEGIN CONFIDENTIAL]]

[[END

CONFIDENTIAL]] I do not find this to be accurate. [[BEGIN CONFIDENTIAL]]

¹⁹ Briceño Declaration ¶ 20.

[[END CONFIDENTIAL]] And the similarity in ratings becomes superiority in beIN's favor if appropriate further adjustment is made to account for beIN's lower penetration that all cable sports programmers had full distribution of all possible pay tv households. It is easy to compare the ratings of the four networks on an apple-to-apples, level-playing field basis by assuming that all cable sports programmers had a distribution of 100 million households. Under that assumption, [[BEGIN CONFIDENTIAL]]

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19. The soccer programming of beIN is comparable to that of NBC Sports and NBC Universo based in a number of other coverage area other metrics. [[BEGIN CONFIDENTIAL]]

²⁰ [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

²¹ *Id.*

²² [[BEGIN CONFIDENTIAL]]

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CONFIDENTIAL]]

[[END CONFIDENTIAL]] The following charts from a presentation beIN made to a distributor in March 2017 depict these comparisons²³:

[[BEGIN CONFIDENTIAL]]

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²³ [[BEGIN CONFIDENTIAL]]
[[END CONFIDENTIAL]]

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20. [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] Importantly, I

understand that beIN, NBC Sports and NBC Universo all compete for soccer rights.²⁵

21. ***Public and marketplace perception.*** The similarly situated status of beIN's soccer programming compared to that provided by Comcast affiliates is further demonstrated by the statements and conduct of beIN when negotiating with a variety of distributors, including DISH, Charter and Verizon. In those negotiations, beIN positions itself as comparable to other sports networks, including Comcast affiliated networks providing national sports programming.²⁶ Similar presentations made by beIN to other distributors feature similar comparisons between beIN and beIN en Español on the one hand, and NBC Sports and NBC Universo, on the other.

22. In my view, these presentations have a direct implication. Both beIN and the distributors carrying it view beIN's soccer programming as a substitute for, and directly competitive with, the soccer programming of NBC Sports and NBC Universo. It is for that reason that distributors want to hear how beIN stacks up against NBC Sports and NBC Universo based on a variety of viewer metrics; and it is for that reason that beIN devotes the most significant portion of its pitch to those comparisons.

²⁴ [[BEGIN CONFIDENTIAL]]
[[END CONFIDENTIAL]]

²⁵ Matt Yoder, *NBC and the English Premier League Will Continue the Best Marriage in Sports Media*, Awful Announcing (Aug. 11, 2015), <http://awfulannouncing.com/2015/nbc-and-the-english-premier-league-will-continue-the-best-marriage-in-sports-media.html> ("Televised soccer rights in America has been a fierce competition the last decade amongst ESPN, NBC, Fox Sports, and beIn Sport."); Jonathan Tannenwald, *Source: NBC Sports to Bid on UEFA Champions League Rights*, Philadelphia Inquirer (Dec. 2, 2013), <http://www.philly.com/philly/blogs/thegoalkeeper/Source-NBC-Sports-to-bid-on-UEFA-Champions-League-rights.html> ("In addition to ESPN, Fox and NBC, there's also the potential for beIN Sport to bid for Champions League rights. The network, owned by Qatar-based al-Jazeera, has quickly swept up a wide collection of worldwide soccer rights since it launched last year.").

²⁶ Briceño Declaration ¶ [x].

23. *Overlapping advertisers.* I also believe that beIN competes directly with Comcast affiliated soccer programming for advertising dollars. In my experience, advertising time on virtually every sports programming competes for time on any different sports programming in the eyes of many advertisers. As for soccer, I view games on one league as substitutes for games on another league in the eyes of many advertisers, particularly multi-national and national ones. I therefore agree with the testimony of beIN's Mr. Antonio Briceño that, to his knowledge, beIN shares several key advertisers with NBC Sports and NBC Universo, [[BEGIN

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[[END

CONFIDENTIAL]] What is more, these and other advertisers constantly move business between the beIN properties, on the one hand, and the NBC Sports and NBC Universo properties, on the other. Thus, the purchase by some of these advertisers of time on beIN resulted directly in less time bought by them on NBC Sports and NBC Universo, and vice versa, meaning that beIN is a direct substitute for NBC Sports and NBC Universo in the eyes of these advertisers.²⁸ Another illustrative example of this competition for advertisers is provided by the September 6, 2016 match between the United States and Trinidad and Tobago, which was covered both by beIN and by NBC Universo. The four advertisers who purchased the most advertising time for this game bought time on both telecasts.²⁹

III. COMCAST'S DISCRIMINATORY BEHAVIOR HAS UNREASONABLY RESTRAINED beIN'S ABILITY TO COMPETE

24. The discriminatory treatment meted out by Comcast restrains beIN's ability to compete fairly with NBC Sports and NBC Universo both for viewers and for advertisers. beIN's

²⁷ Briceño Declaration ¶ 31.

²⁸ Briceño Declaration ¶ 33.

²⁹ Briceño Declaration at Table 1.

soccer programming in particular, and sports programming in general, is a direct substitute for NBC's soccer and sports programming, for viewers and advertisers alike. Comcast has proposed to reduce beIN's fee by [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

25. This impact on the number of eyeballs to which beIN has access has in turn a domino effect on beIN in its dealings with advertisers. As I have mentioned, beIN competes directly with Comcast affiliated soccer programming for advertising dollars. As mentioned above, Mr. Briceño testifies that, to his knowledge, beIN shares several key advertisers with NBC Sports and NBC Universo, [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] What is more, the purchase by some of these advertisers of time on beIN resulted directly in less time bought by them on NBC Sports and NBC Universo, and vice versa, meaning that beIN is a direct substitute for NBC Sports and NBC Universo in the eyes of these advertisers.³¹

26. I believe that the Comcast Offer would unreasonably restrain beIN's ability to compete for advertisers. Comcast's offer would negatively affect beIN's ability to attract

³⁰ Briceño Declaration ¶ 31.

³¹ *Id.*

advertising, as advertisers will gravitate toward programmers that are on higher-penetrated tiers and have larger potential audiences.

IV. DISCRIMINATION IS THE ONLY EXPLANATION FOR COMCAST'S ACTIONS

27. I believe that Comcast's actions can only be explained by Comcast's desire to favor its affiliates over these affiliates' competitor(s). Contrary to Comcast's assertion in correspondence with beIN, [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

28. Second, 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.³² No matter how much Comcast wants to obtain surcharges from subscribers, very few if any of the subscribers paying \$4.99 to Comcast for the Sports and Entertainment or \$9.99 for the Latino buy-through packages do so solely or primarily in order to watch beIN. While beIN is wildly popular with soccer fans, Comcast essentially offers it at a comparatively high price. By comparison, 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, a fraction of what Comcast charges for the Sports and Entertainment package.³³ As a direct consequence of Comcast's

³² In 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 Starter and Preferred tiers.

³³ 70+ Live Channels. \$19.99 for Your First Month, FuBo.TV, <https://www.fubo.tv/welcome/channels> (last visited Feb. 25, 2018).

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pricing, it is unlikely that many subscribers pay the Sports and Entertainment or Latino price in order to watch beIN, since they can pay less than half elsewhere.

29. Nor is it true that other distributors carrying beIN do so “almost universally” on upper level tiers: as 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 consigned beIN. Of them, Verizon gives beIN penetration to the vast majority of its subscriber base, with the sole exception of the FiOS skinny bundle.

30. As to other distributors, beIN’s agreements with them predate the OTT phenomenon and FuboTV’s wide carriage of beIN. beIN is therefore optimistic that these distributors, too, will agree that [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

nor the loss of subscriber fees (most subscribers purchasing special packages solely or primarily because of beIN have likely already left in light of cheaper options for obtaining beIN’s programming).

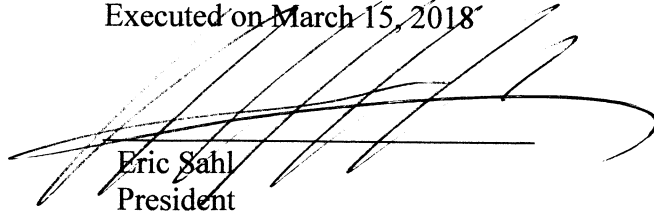
31. Third, Comcast ignores the benefit that will accrue to it, at no cost, if it agrees to distribute beIN in lower tiers: Comcast will attract and retain subscribers at lower price points and accordingly attract and retain more video subscribers, which is a critical metric for MVPD valuation. Further, greater penetration for beIN will result in greater advertising revenue for beIN, which will enable beIN to hold down the fees it charges Comcast’s systems as well as to Comcast itself under the standard ad avails provision that beIN has agreed and is willing to renew.

32. In my view, in today’s cost-cutting environment, the benefit to Comcast in retiering and affecting subscribers by placing beIN and beIN en Español in a lower penetration tier significantly outweigh any lost fees for the Sports and Entertainment or Latino packages.

* * * *

The foregoing declaration has been prepared using facts of which I have personal knowledge or based upon 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 March 15, 2018

A handwritten signature in dark ink, consisting of several overlapping, slanted strokes, positioned over the printed name and title.

Eric Sahl
President
ID Media LLC

EXHIBIT 10

Redacted in Its Entirety

EXHIBIT 11

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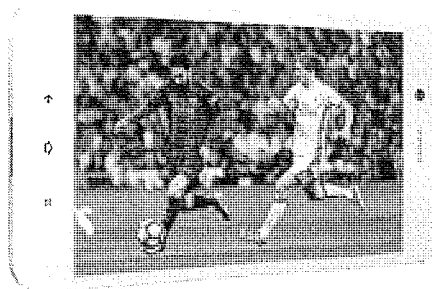
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beIN Sports en Español.

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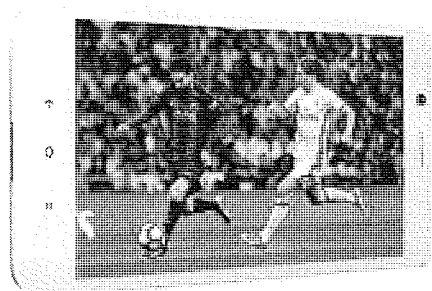
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