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May 14, 2018

VIA ELECTRONIC FILING

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

Re: REDACTED FOR PUBLIC INSPECTION
beIN Sports, LLC v. Comcast Cable Communications, LLC and Comcast Corporation, MB
Docket No. 18-90, File No. CSR-8954-P

Dear Ms. Dortch:

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

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

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

Respectfully submitted,



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

Enclosures

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

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

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

To: Chief, Media Bureau

ANSWER TO COMPLAINT

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ANSWER TO COMPLAINT

Defendants Comcast Corporation and Comcast Cable Communications, LLC (together, “Comcast”) submit this Answer to the Complaint (the “Complaint”) filed by beIN Sports, LLC (“beIN”) on March 15, 2018.

I. INTRODUCTION

The Complaint involves early renewal negotiations of a carriage agreement that is set to expire in July 2018. Beginning in April 2017 and continuing until days before filing its Complaint, beIN made a series of aggressive and unreasonable renewal proposals for its two niche soccer networks – an English-language channel, beIN Sports, and a Spanish-language channel, beIN Sports en Español (or “beINE”). Comcast has been carrying these networks to millions of its subscribers since 2012, and was the first cable operator in the United States to distribute them. beIN’s proposed renewal terms included (a) exorbitant price increases [|

|], (b) much broader carriage than beIN currently receives from

Comcast [|

|] and other distributors, and

(c) [] [] the length of the existing contract term [] []. beIN made these aggressive demands even while it was at the same time admitting that it was [] [] during the renewal term. In response, Comcast made an initial counterproposal to beIN that aligned more closely to the parties' current agreement and to actual customer demand for the programming based on Comcast viewership data. This initial counterproposal was also intended to set renewal discussions on a more realistic and reasonable path. beIN responded to that counterproposal with more aggressive demands, threats of a program carriage action, and the filing of this Complaint more than four months before the parties' current agreement expires.

The Complaint is baseless. Besides being an improper attempt to gain negotiating leverage, it fails to establish a prima facie case under the Commission's rules and precedent. beIN's networks are not similarly situated to NBC Sports Network ("NBCSN") or Universo, as objective marketplace evidence demonstrates. Nor can beIN show that it is unreasonably restrained from competing fairly by the terms of Comcast's initial counterproposal, which was part of normal marketplace negotiations. Beyond that fatal problem, the intensely competitive marketplace dynamics that beIN's own Complaint describes preclude such a showing here. Moreover, other distributors do not carry beIN in the way it has demanded carriage from Comcast, reinforcing that Comcast's refusal to agree to such terms was based on legitimate commercial considerations. In sharp contrast, beIN has no evidence that carrying its networks under such preferential, non-market terms would provide any benefit, let alone any "net benefit," to Comcast, as required by well-established Commission and judicial precedent. Thus, beIN has not shown – and has no prospect of proving – unlawful affiliation-based discrimination. The Complaint should be denied and dismissed.

II. SUMMARY OF ARGUMENT

At this pleadings stage, the Commission may – and should – dismiss beIN’s Complaint on several grounds: (1) beIN’s networks are not similarly situated to NBCSN and Universo; (2) Comcast has presented substantial evidence that its negotiation position was based on legitimate commercial considerations, and beIN presents no countervailing evidence; and (3) beIN cannot show – due to, among other things, its own gun-jumping – that it has been unreasonably restrained by Comcast’s initial counterproposal.

First, beIN cannot meet the Commission’s “similarly situated” standard. As beIN’s own data show, its networks are dominated by continental European soccer. This niche programming is plainly distinct from NBCSN’s diverse mix of marquee sports programming (e.g., NHL (including the Stanley Cup Playoffs), NASCAR, Olympics, Tour de France, English Premier League), and Universo’s general entertainment Spanish-language programming (e.g., Spanish-language reality and scripted series, music programming, movies) with occasional sports content. Objective, third-party data demonstrate that beIN’s networks carry upwards of *five to ten times* more soccer programming than do NBCSN and Universo and thus are clearly narrower offerings.

In addition, beIN’s networks attract different audiences than NBCSN and Universo. While beIN Sports appeals to a younger, more affluent and urban, and substantially Hispanic audience, NBCSN generally appeals to a relatively older, less affluent and urban, and non-Hispanic audience. And while beINE attracts an overwhelmingly male and relatively more affluent audience, Universo attracts a balanced female/male and less affluent audience. Even with respect to the overly narrow category of soccer viewers, there is limited overlap, as beIN itself acknowledges on its website: “70% of [Spanish soccer league] La Liga viewers on beIN’s English-language channel do not watch [English] Premier League on NBC Sports Network.”

beIN also relies on cherry-picked and misleading ratings data in comparing its networks to NBCSN and Universo. In fact, objective ratings data show, among other things, that NBCSN regularly garners *multiples* of beIN's audience. Nor does beIN offer any evidence that it competes in any direct and material way with NBCSN or Universo for advertisers.

Critically, other MVPDs do *not* view the beIN networks as comparable to NBCSN or Universo – which Chairman Pai has recognized as “powerful evidence” of whether two networks are similarly situated. Like Comcast, other distributors broadly distribute NBCSN and Universo but generally carry beIN's networks on specialty and less-penetrated tiers. As beIN candidly told the Commission just last year (in terms very different than what it claims in the Complaint): “Major Pay-TV companies tend to make beIN's English-language network available only as part of a sports package, which usually is distributed to about 20% of the MVPD's total subscribership.” Most smaller MVPDs and linear OVDs do not carry beIN's networks *at all*.

The attached declarations of Dr. Andres Lerner, an expert economist, and Peter Litman, an expert cable programming veteran, substantiate each of these points. For example, as Dr. Lerner observes, “beIN offers no reasonable evidence that the beIN networks have similar fundamental economic characteristics as NBCSN and Universo, such that MVPDs unaffiliated with these networks would be expected to carry them similarly.” And Mr. Litman similarly concludes: “Numerous objective marketplace metrics, including overall content, viewership, advertising interest, and carriage by other distributors, demonstrate that the beIN networks are not similarly situated to NBCSN or Universo.”

Second, beIN presents no evidence – and there is none – that Comcast's conduct toward beIN was intended to benefit Comcast's affiliated networks. As detailed in the attached declarations of two Comcast Content Acquisition executives, Andrew Brayford and Justin Smith,

Comcast's initial counterproposal was based on an assessment of the beIN networks' value proposition in the marketplace and the kind of renewal terms that would best allow Comcast to continue to offer this niche programming to interested customers at attractive price points. Analyses of actual viewership of the beIN networks by Comcast subscribers showed that the networks have relatively limited appeal that does not justify beIN's exorbitant price increases and other aggressive renewal proposals; indeed, these analyses showed that Comcast is *already* likely overpaying for the beIN networks. Relative to beIN's initial proposal for [] million in average annual fees, even the most conservative calculations indicated that Comcast would save a minimum of approximately { } million *annually* by simply dropping beIN's networks at the end of the contract term. Comcast also discovered that beIN was making its programming available *for free* online via Verizon's go90 service, which further diluted the value proposition of beIN's linear networks. Comcast's initial counterproposal reflected these economics, as well as beIN's []. Despite acknowledging [], beIN persisted in aggressive demands that continued to make no economic sense for Comcast's business.

Throughout these early negotiations, Comcast's conduct was based on the very type of legitimate commercial considerations that the Commission has affirmed in multiple prior cases and should uphold here. As Mr. Litman observes, "beIN's renewal offers to Comcast were exorbitant, lacked any coherent or compelling factual support, and were wildly unrealistic in today's highly competitive marketplace." Dr. Lerner similarly observes that "the economic evidence indicates that Comcast's carriage of the beIN networks is consistent with sound business judgment independent of any consideration of network affiliation"; "Comcast's decision to carry the beIN networks in specialty tiers is economically rational given the niche nature and

limited viewer appeal of the beIN networks,” and the initial “license fee offered by Comcast also is economically rational given the limited value of the beIN networks to subscribers.” Comcast’s unwillingness to overpay for beIN’s niche soccer programming was bolstered by the fact that Comcast provides a rich array of other soccer programming to its customers, including from multiple unaffiliated cable networks that it distributes both broadly and on specialty tiers.

Third, beIN cannot show how Comcast’s alleged conduct has unreasonably restrained beIN’s ability to compete fairly. beIN attempts to evade this prerequisite by invoking the expired *Comcast-NBCUniversal Order* Conditions (the “Conditions”). But beIN did not send its pre-filing notice or file its Complaint until *after* the Conditions had expired, so the Conditions do not apply here. Further, because beIN chose this litigation strategy while the parties were still negotiating core economic and other terms for renewal, any claimed restraint flowing from Comcast’s conduct is entirely speculative. The Commission has never recognized a theory of “anticipatory” unreasonable restraint, and should not do so here.¹ Beyond this flawed theory, any claimed unreasonable restraint – which courts have made clear requires a showing of significant impairment to competition – is implausible in today’s intensely competitive video distribution marketplace, as Dr. Lerner and Mr. Litman underscore. Comcast customers typically have no less than *five* additional pay TV options to watch the beIN networks, including two services (Sling TV and iGol) where the beIN networks are available for just an additional \$10/month, plus one other service option (go90) where it is available for free. And, as beIN acknowledges in the Complaint, there are a host of online distributors that do not currently carry

¹ Indeed, beIN’s resort to filing this Complaint well before its current contract expires – and for the clear purpose of enhancing its leverage, as beIN candidly admitted – contravenes both Congress’s and the Commission’s intent as to the program carriage regime and may properly be viewed as frivolous as well as meritless.

the beIN networks but offer potential new distribution outlets for its niche soccer programming. Given these marketplace realities, beIN cannot demonstrate how Comcast could unreasonably restrain the beIN networks' ability to compete fairly simply by continuing to carry them on terms commensurate with their commercial value.

For all these reasons, the Commission should deny and dismiss beIN's Complaint.

III. FACTS²

1. beIN launched in the United States and on Comcast systems in August 2012. It is owned by the Qatar-based beIN Media Group, and has the same ultimate financial backer as the Al Jazeera Media Network, whose United States cable network, Al Jazeera America, was carried on Comcast systems from 2013 until 2016 before going out of business.

2. Under the parties' current agreement (the "Agreement"), Comcast has the right to distribute two linear channels, beIN Sports and beINE, that []

Because beIN Sports and beINE are essentially single-sport niche channels, []

II.

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

3. The Agreement provided that Comcast would pay beIN []

[].

4. Comcast currently carries beIN Sports on its Sports Entertainment Package (“SEP”) in most Comcast markets, and on its Preferred, Premier, and SEP packages in select markets. Comcast carries beINE on both the SEP and the basic Latino (“H”) package in nearly all Comcast markets. These packages “bolt on” to lower tiers (SEP can be added onto packages starting with Digital Starter (“DS”), and H generally can be added onto packages starting with Limited Basic).³

5. In August 2015, Comcast allowed the Agreement to []

[]. The monthly []

[]. The

Agreement expires on July 31, 2018.

³ Comcast provides an array of other soccer programming to its customers, including from multiple unaffiliated cable networks that it distributes broadly (e.g., ESPN, ESPN2, and FS1 on DS) and on specialty tiers (e.g., ESPN Deportes, Fox Deportes, and Univision Deportes on the H tier as well as other tiers). These networks feature programming from leagues – including MLS, the German Bundesliga, and the Mexican Liga MX – that are on par, in terms of customer interest, with the leagues beIN features.

Initial Renewal Negotiations

6. At beIN's request, the parties began negotiating a renewal agreement in April 2017, more than 15 months prior to the expiration of the current agreement.⁴ Mr. Brayford and Samantha Fisher, Assistant General Counsel for Comcast's Content Acquisition team, met with beIN's Roy Meyeringh and Ken Tolle on April 11, 2017 at Comcast's Philadelphia offices. At the meeting, beIN made a marketing pitch followed by aggressive and unrealistic renewal demands. beIN proposed a monthly fee of []

]]. This fee increase was substantially more than major programmers, even large broadcast groups, typically seek in renewal. beIN's proposal also required Comcast to distribute one or both of the beIN networks to []

]]. And beIN proposed a []

]]. Despite these demands, beIN could not []
]].

Comcast's Deliberations

7. beIN's aggressive proposal impelled Comcast to review beIN's value proposition. In June 2017, the Content Acquisition team commissioned some initial analyses of beIN's viewership from Comcast's in-house Enterprise Business Intelligence ("EBI") team. {{

⁴ In Comcast's experience, carriage renewal negotiations usually begin three or four months prior to expiration of an agreement – or around the time that Comcast is submitting its Answer here.

}}.

8. For beIN, Comcast's preliminary viewership analyses showed that, even at the current fees under the existing Agreement, Comcast is *likely already losing money* from carriage of the beIN networks relative to the cost of not carrying them. After factoring in the [[

]] fee increases that beIN requested for renewal, the projected lost revenue from dropping beIN entirely was {{ }} of the [[]] in average annual costs that Comcast and its subscribers would incur under beIN's April Proposal (even putting aside [[

])). The analyses also showed that very few Comcast customers were watching the beIN networks regularly, and there was no business justification to carry them more broadly. Comcast customers who want beIN Sports and beINE already subscribe to the SEP and H tiers. Broader distribution of the beIN networks would simply dilute the value of the SEP and H tiers, since the small number of passionate beIN viewers would no longer purchase those tiers.

9. beIN's [[]] was another major obstacle to a deal. Because [[]], it was particularly unreasonable for beIN to expect increased fees and carriage under these circumstances. Further, since late 2015, beIN has been making the same

live soccer content shown on beIN Sports and beINE available *for free* on Verizon’s streaming service, go90,⁵ making beIN’s aggressive fee and distribution demands even more unreasonable.

10. Comcast was also aware of recent news reports detailing an ongoing criminal investigation into beIN’s acquisition and use of soccer rights.⁶ This created even more uncertainty regarding beIN’s business plans – especially given Comcast’s past experience with beIN’s affiliate, Al Jazeera America, which abruptly shut down in 2016.

Comcast’s Initial Counterproposal

11. On December 13, 2017, Comcast sent beIN an initial counterproposal (the “December Offer”) that was informed by its viewership analyses and reasonable assessment of the beIN networks’ value. The counterproposal offered [] []. It also kept the [] [] in the existing Agreement, and provided for [] [] to be discussed. In addition, Comcast offered to [] [], since Spanish-speaking customers are much more likely to purchase the H tier than the SEP. And the counterproposal included a [] [] once the deal’s core economics were settled.⁷

⁵ In a later discussion, beIN [] []. See Brayford Decl. ¶ 32. This content is still available on the go90 service. Just *last week*, go90 promoted and exhibited an El Clásico match – beIN’s most highly rated soccer match of the year. See Ex. 5 (screenshots of beIN content on go90).

⁶ For a compilation of representative news articles about these issues, see Ex. 6.

⁷ Like [] [], Comcast’s initial counterproposal did not address increased HD carriage, leaving this issue for the continuing renewal negotiations.

Further Deliberations and Negotiations

12. As part of these renewal efforts, the Content Acquisition team commissioned an updated viewership analysis from EBI in January 2018 (the “2018 Viewership Analysis”). It showed that, if Comcast dropped both beIN networks rather than accepting beIN’s proposed [[]] million average annual fees, Comcast would still end up saving approximately {{ }} million annually even under the most conservative scenario. Based on {{

}}, the 2018 Viewership Analysis projected an average annual savings for Comcast of approximately {{ }} million from not carrying the beIN networks.

13. On January 25, 2018, Mr. Brayford and Ms. Fisher met with Mr. Meyeringh and Mr. Tolle to walk through Comcast’s December Offer. During the meeting, beIN seemed to accept the unrealistic economics of its April Proposal. Mr. Tolle verbally asked Comcast to consider a renewal offer of [[

]]. beIN agreed to send a written counterproposal addressing these and other material terms.

14. In light of this discussion, Comcast was disappointed by the counterproposal that it received from beIN on February 2, 2018 (the “February 2 Proposal”). beIN still demanded a more than [[

]]. The February 2 Proposal also demanded not only carriage of [[

]], but also

carriage of []

]].

15. Other aspects of the February 2 Proposal were either silent or went backwards from beIN's April 2017 offer. beIN again refused to []

]]. beIN also demanded several new terms, including []

]],

which Comcast viewed as a stalking horse for even higher fees and broader carriage than what beIN was already seeking.

16. On February 7, 2018, Mr. Brayford held a call with Mr. Meyeringh and Mr. Tolle to discuss the February 2 Proposal. During the call, Comcast expressed its disappointment that the February 2 Proposal went backwards from the terms beIN proposed in the January 25 meeting, and beIN was unable or unwilling to clarify several of its new demands. On February 13, 2018, before Comcast could even respond to the February 2 Proposal, Comcast received beIN's notice of intent to file a program carriage complaint.

17. On March 1, 2018, Justin Smith, Senior Vice President of Content Acquisition, Mr. Brayford, and Ms. Fisher met with Mr. Meyeringh and Mr. Tolle of beIN at Comcast's Philadelphia offices in an attempt to advance the renewal discussions. Antonio Briceño, beIN's Deputy Managing Director, U.S. & Canada, also participated (albeit later in the meeting). Mr. Tolle began by claiming that []

]]. beIN stated that it had

[[

]]. Yet, beIN still offered no rationale for why its aggressive renewal demands made any business sense for Comcast. Comcast also pointed out that the February 2 Proposal, like beIN's prior proposals, failed to indicate [[

]]. Notably, Mr. Tolle acknowledged that [[

]]. At the end of the meeting, beIN committed to providing a revised proposal to address Comcast's questions.

18. On March 7, 2018, beIN sent a revised proposal (the "March 7 Proposal"). It maintained the [[], fee increases, and broader carriage demands from the February 2 Proposal, but again went backwards by [[

]]. Worse, as to [[

]], beIN clarified that [[

]]. beIN also reserved the right to [[

]]. And, in its cover e-mail, beIN proposed, for the first time, [[

]] – which Comcast viewed as likely to dilute the value of beIN's existing networks and occupy additional bandwidth.

19. On March 12, 2018, Mr. Smith, Ms. Fisher, and Mr. Brayford held a call with Messrs. Briceño, Meyeringh, and Tolle to discuss beIN's March 7 Proposal. On the call, Comcast explained its concerns with the March 7 Proposal, and raised a number of questions about beIN's [[] and other components of the March 7 Proposal. Mr. Tolle

noted that it could take weeks to work through these issues. At the close of a follow-up call, held on March 13, 2018, beIN informed Comcast that it intended to file a program carriage complaint.

20. Comcast received beIN's program carriage complaint on March 15, 2018.

IV. BEIN HAS FAILED TO SHOW THAT ITS NETWORKS ARE SIMILARLY SITUATED TO NBCSN OR UNIVERSO

21. The essential showing that a program carriage complainant must make in a purely circumstantial case is that the networks at issue are "similarly situated."⁸ beIN's Complaint rests almost entirely on the claim that NBCSN, a general sports network, and Universo, a Spanish-language general entertainment network, are similarly situated to beIN's niche soccer networks because each exhibit some soccer programming.⁹ That comparison is legally and factually insufficient. The Commission has consistently construed the similarly situated standard to require a comparison of the programming on vendors' *networks as a whole*. Simply showing an overlap of a small subset of programming, or even that two networks are of the same broad genre, is insufficient. In the Commission's words, "a complainant is unlikely to establish a *prima facie* case of discrimination . . . by demonstrating that the defendant MVPD carries an affiliated music channel targeted to younger viewers but has declined to carry an unaffiliated music channel targeted to older viewers with lower ratings and a higher license fee."¹⁰ Instead, the Commission examines a combination of factors in assessing claims of similarity, including

⁸ See *Revisions of the Commission's Program Carriage Rules; Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage*, Second Report and Order in MB Docket No. 07-42 and Notice of Proposed Rulemaking in MB Docket No. 11-131, 26 FCC Rcd. 11494 ¶ 14 (2011) ("2011 Program Carriage Order"); see also generally 47 U.S.C. § 536(a)(3); 47 C.F.R. § 76.1301(c); *Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution and Carriage*, Second Report and Order, 9 FCC Rcd. 2642 ¶ 35 (1993) ("1993 Program Carriage Order"); Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, §§ 2(b)(1)-(2), 106 Stat. 1460, 1463 ("1992 Cable Act").

⁹ See Compl. ¶¶ 4-5, 56-60, 62-65.

¹⁰ 2011 Program Carriage Order ¶ 14.

“genre, ratings, license fee, target audience, target advertisers, target programming, and other factors,”¹¹ and “no single factor is necessarily dispositive.”¹²

22. The Commission took this broad, multi-factor approach in the *WealthTV* and *GSN* cases.¹³ Each of those cases involved general entertainment networks and even involved some overlap in genres of programming on the networks at issue. But the Commission found the differences in the networks’ overall programming and other factors to be dispositive that the networks at issue were not similarly situated.¹⁴ An examination of these objective factors here likewise demonstrates clear and dispositive differences between the beIN networks and NBCSN and Universo.¹⁵

¹¹ See 47 C.F.R. § 76.1302(d)(3)(iii)(B)(2)(i); *Game Show Network, LLC v. Cablevision Systems Corp.*, Memorandum Opinion and Order, 32 FCC Rcd. 6160 ¶ 43 (2017) (“*GSN Order*”).

¹² *2011 Program Carriage Order* ¶ 14.

¹³ For example, in the *WealthTV Order*, the Commission focused on the comparison between two networks – WealthTV and MOJO – and upheld the ALJ’s determination that WealthTV’s expert’s analysis of only selective programming on these networks was not as credible as the defendant MVPDs’ expert’s analysis of the programming on both networks as a whole. *Herring Broadcasting, Inc. d/b/a WealthTV v. Time Warner Cable, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd. 8971 ¶¶ 23-24 (2011) (“*WealthTV Order*”); see also *id.* ¶¶ 22, 25 (referring to comparisons of “the two networks” as part of the similarly situated analysis), *aff’d by Herring Broad., Inc. v. FCC*, 515 F. App’x 655, 656-57 (9th Cir. 2013); *GSN Order* ¶¶ 48-50, 62 (finding, based on assessment of the overall programming carried on each network as a whole and the “enormous overall differences in programming,” that “GSN is not similarly situated to WE tv or Wedding Central”) (emphasis added); *Time Warner Cable Inc. v. FCC*, 729 F.3d 137, 157 (2d Cir. 2013) (“In determining whether two networks are similarly situated, the FCC acknowledges that it examines the content of the networks’ programming . . .”) (emphasis added); *id.* at 158-59 (“The program carriage regime . . . prohibits MVPDs from discriminating against unaffiliated networks similarly situated to the MVPDs’ affiliated networks.”) (emphasis added).

¹⁴ See *WealthTV Order* ¶¶ 22-26; *GSN Order* ¶¶ 48-51.

¹⁵ See Lerner Decl. ¶ 8 (“The beIN networks differ from NBCSN and Universo with respect to fundamental economic characteristics.”); see also *id.* ¶ 51 (“The lack of significant substitution between the networks indicates that Comcast has no incentive to disadvantage the beIN networks.”); Litman Decl. ¶ 10 (“Numerous objective marketplace metrics, including overall content, viewership, advertising interest, and carriage by other distributors, demonstrate that the beIN networks are not similarly situated to NBCSN or Universo.”).

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

23. Both beIN Sports and beINE are essentially single-sport, niche networks that appeal to a specific and limited group of viewers in the United States.¹⁶ In its promotional materials, beIN emphasizes that “soccer dominates our networks.”¹⁷ beIN describes itself as 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.”¹⁸ And the “Description of the Service” in the parties’ Agreement states []

]]¹⁹

Mr. Litman further explains that “[t]he vast majority of the audience [beIN] attracts watches its soccer programming, and the audience for its other programming is limited.”²⁰

24. beIN cannot plausibly compare its niche, single-sport networks to NBCSN or Universo; neither is a single-sport network, let alone a niche European soccer network. NBCSN is a general multi-sport network.²¹ NBCSN’s programming strategy is built on delivering a

¹⁶ See Brayford Decl. ¶¶ 5-6, 19; Smith Decl. ¶¶ 6, 10, 15.

¹⁷ beIN Sizzle Reel, YouTube (Feb. 1, 2016), <https://www.youtube.com/watch?v=Vv4LCwt5vcc> (“beIN Sizzle Reel”) (also noting on screen that “61% of total programming across both [beIN] networks are live soccer matches”).

¹⁸ Compl. ¶ 21.

¹⁹ See Compl. Ex. 4, 2012 beIN-Comcast Term Sheet § 4 (emphasis added) (“Term Sheet”); see also Litman Decl. ¶¶ 15, 21-22 (noting that []

])). The “Description of Service” provision is a core element of an affiliation agreement, as beIN’s sister network, Al Jazeera America, knows from its litigation with DirecTV over its attempt to evade the service definition. See, e.g., Peter Litman, *DirecTV’s Complaint Against Al Jazeera America Is Made Public*, Nov. 10, 2014, <http://www.peterlitman.com/2014/11/directvs-complaint-against-al-jazeera.html>.

²⁰ Litman Decl. ¶ 20.

²¹ NBCSN’s Service Description in its affiliation agreement with Comcast {

diverse range of marquee sports programming to round out its programming calendar throughout the course of the year: NHL (including the Stanley Cup Playoffs) and NASCAR/motor sports, in particular, as well as flagship events like the Olympics and Tour de France and original sports-related programming that covers a number of different sports.²² It also features a range of college sports, rugby, boxing, and horse racing.²³ In the aggregate, this mix of sports content is designed for – and has – broad appeal to a wide range of sports fans.²⁴

25. Although English Premier League soccer is a component of NBCSN’s programming, it is only one piece of NBCSN’s larger sports programming strategy. NBCSN devotes three times the amount of programming time to NASCAR/auto-racing and NHL, in the aggregate, than it does to the English Premier League.²⁵ In fact, NBCSN has made clear in its marketing and other public statements that it is emphatically *not* a soccer network. For example, in a recent MarketWatch interview with Jon Miller, President of NBC Sports and NBCSN, “Miller was quick to point out NBC Sports are not evangelists on behalf of the ‘beautiful

}} See Smith Decl. ¶ 20

n.1.

²² See NBCUniversal, Businesses, NBCSN, <http://www.nbcuniversal.com/business/nbc-sports-network-nbcnsn> (last visited May 12, 2018) (NBCSN is “the home of the Summer and Winter Olympics, National Hockey League (NHL), Premier League, Formula One, IndyCar (NBCSN), Tour de France, Premier Boxing Champions and beginning in 2015, NASCAR. . . . In addition, NBCSN features college football, college basketball, college hockey, cycling, outdoor programming, horse racing surrounding the Triple Crown and Breeders’ Cup, *Fight Night* boxing, Ironman, the Dew Tour and USA Sevens Rugby. NBCSN is also home to original programs such as *Costas Tonight*, *NFL Turning Point*, *Pro Football Talk*, *The Dan Patrick Show*, *NBCSN Sunday Sports Report*, and *NASCAR America*.”); see also Comcast Spotlight, NBCSN One Sheet, <https://comcastspotlight.com/sites/default/files/NBCSN%20Network%20One%20Sheet.pdf> (last visited May 12, 2018) (“NBCSN One Sheet,” included as Exhibit 7); Litman Decl. ¶¶ 10, 15, 19-20.

²³ See NBCUniversal, Businesses, NBCSN, <http://www.nbcuniversal.com/business/nbc-sports-network-nbcnsn> (last visited May 12, 2018).

²⁴ See NBCSN One Sheet, Ex. 7; see also Litman Decl. ¶¶ 10, 15, 19; Lerner Decl. ¶ 16.

²⁵ See Lerner Decl. ¶ 17, tbl. 1.

game’. . . . ‘We don’t want to be the network of soccer,’ Miller said. We want to be the network of the Premier League. There’s a big difference.’”²⁶

26. The differences between Universo and beIN are likewise pronounced. As beIN concedes,²⁷ Universo is not a sports network; it is a “modern general entertainment cable channel for Latinos.”²⁸ Universo prides itself on delivering Spanish-language “authentic lifestyle entertainment” for Latinos in the United States, with a “dynamic mix of reality and scripted series, music programming, sporting events, novelas, and movies on every platform.”²⁹ While its programming includes a mix of “top sports franchises” like NASCAR, NFL, the Olympics, and FIFA World Cup, it focuses on “edgy, emotional programming” and consists primarily of reality TV series and scripted programming, which also provides a broad VOD library for MVPDs to make available to their Spanish-language customers.³⁰

²⁶ Tom Teodorczuk, *How NBC is monetizing \$1 billion Premier League Soccer investment*, MarketWatch, Dec. 19, 2017, <https://www.marketwatch.com/story/how-nbc-sports-is-monetizing-its-1-billion-premier-league-soccer-investment-2017-12-14>; see also Litman Decl. ¶¶ 26-27 (explaining that NBCSN also distinguishes itself in terms of investment in production and marketing of English Premier League as well as its other sports properties). The fact that beIN may have also bid on the U.S. rights for English Premier League along with NBCSN and Fox in 2015 is inconsequential, given that NBCSN has no intention of becoming a soccer network like beIN.

²⁷ See Compl. ¶ 30 (acknowledging that Universo’s programming consists mostly of scripted and reality series and music programming as well as sports).

²⁸ Universo, <http://www.nbcuniversal.com/business/NBCUniverso> (last visited May 12, 2018); see also Lerner Decl. ¶¶ 18-19. In its Affiliation Agreement with Comcast, Universo states that its service {}

}} See Smith Decl. ¶ 20 n.2.

²⁹ Comcast Spotlight, Universo, <https://comcastspotlight.com/offers/overview/nbc-universo> (last visited May 12, 2018); see also Lerner Decl. ¶¶ 18-19, fig. 1; Litman Decl. ¶¶ 10, 46.

³⁰ See Universo, <http://www.nbcuniversal.com/business/NBCUniverso> (last visited May 12, 2018). Universo top-performing programs include, for example, hit celeb-reality series like “*The Riveras*,” “*Larrymania*,” and “*El Vato*,” as well as gritty dramas like “*The Walking Dead en Español*.” Press Release, NBCUniversal, *NBC Universo Wraps Up January as the Fastest Growing Spanish Language Entertainment Cable Network in Primetime* (Feb. 1, 2017), <http://www.nbcuniversal.com/press-release/nbc-universo-wraps-january-fastest-growing-spanish-language-entertainment-cable>. And Universo is continuing to add to its stable of general entertainment Spanish-language programming with shows like “*Universo VICE*” and “*Sons of Anarchy*” in Spanish. Press Release, NBCUniversal, “*Universo Vice*” a Weekly Show Produced by Vice Media for the U.S. Hispanic Market Premieres on Universo Next Sunday, August 21st at 8PM/7C (Aug. 14, 2017), <http://www.nbcuniversal.com/press-release/%E2%80%9Cuniverso-vice%E2%80%9D-weekly-show-produced-vice-media-us-hispanic-market->

27. beIN’s only “evidence” of similarity is based on the fact that NBCSN features English Premier League soccer programming, Universo features a slightly broader mix of soccer programming (including World Cup matches), and the beIN networks feature (almost exclusively) continental European soccer programming.³¹ But the Commission has previously rejected attempts to demonstrate similarity based on a review of selective programming, and without “undertaking a systemic review of the programming” across the networks.³² And, as Dr. Lerner explains, such an approach makes no sense as a matter of economics and is misleading.³³ Although NBCSN and Universo air some soccer programming, that presents only a small fraction of each network’s overall programming mix. A modest overlap in content does not make two cable networks similarly situated, as the Commission has previously found.³⁴

28. In fact, there are “enormous overall differences in the programming” shown on beIN, beINE, NBCSN, and Universo.³⁵ Based on a comprehensive review of publicly available TV programming guide data that categorizes, by genre, the programs aired on the networks in 2017, Dr. Lerner found that soccer programming accounted for 55.1 and 72.3 percent of all

premieres-0; Jacobson Adam, *NBC Universo Rides with ‘Sons of Anarchy’*, Multichannel News, Dec. 7, 2016, <https://www.multichannel.com/news/nbc-universo-rides-sons-anarchy-409453>.

³¹ See Compl. ¶¶ 60-65.

³² See *Herring Broadcasting, Inc. d/b/a WealthTV v. Time Warner Cable, Inc.*, Recommended Decision of Chief Administrative Law Judge Richard L. Sippel, 24 FCC Rcd. 12967 ¶ 25 (2009) (“*WealthTV Recommended Decision*”), *aff’d* by *WealthTV Order*.

³³ Lerner Decl. ¶ 11 (“[T]he fundamental economics of (and value from) distributing [two] networks may differ considerably, despite the limited amount of overlap in the content carried. Distribution decisions by MVPDs and other distributors are made with respect to the overall bundle of programming content offered by the network, not with respect to specific programming. Thus, a ‘similarly situated’ standard applied to specific programming offered by the networks would be uninformative and misleading.”).

³⁴ See, e.g., *GSN Order* ¶ 50 (comparing overall tallies of programming genres on each network and finding that a “mere handful of ‘relationship-themed’ shows that aired on [the complainant’s network] are far too little to overcome the enormous *overall* differences in programming between” the complainant’s network and the defendant’s affiliated networks) (emphasis added); see also *Wealth TV Order* ¶¶ 22-26.

³⁵ See *GSN Order* ¶ 50.

programming minutes on beIN Sports and beINE, respectively. In contrast, less than 10 percent of NBCSN's programming minutes consisted of soccer programming during the same time period. And as the chart below demonstrates, there is minimum overlap in other types of sports programming (e.g., hockey, auto-racing, tennis, motorcycle racing) on the networks. As for Universo, less than 6 percent of its programming minutes during the same period consisted of soccer programming. And while the vast majority of Universo's programming minutes (88.2 percent) were comprised of *non*-sports programming, such programming accounted for only 14.1 percent of beINE's (nearly all of which appear to be paid programming and infomercials).³⁶

³⁶ *GSN Order* ¶ 50; *see also* Lerner Decl. ¶ 14 (“The beIN networks differ significantly from both NBCSN and Universo in their programming content.”). Dr. Lerner further explains that the “significant divergence between the networks in terms of their focus on soccer is also evident when analyzing viewership patterns [S]occer-related programming made up [] percent of beIN Sports’ viewership, but only [] percent of NBCSN’s viewership. Similarly, soccer-related programming made up [] percent of the viewership of beIN Sports en Español, but only [] percent of Universo’s viewership.” *Id.* ¶ 23.

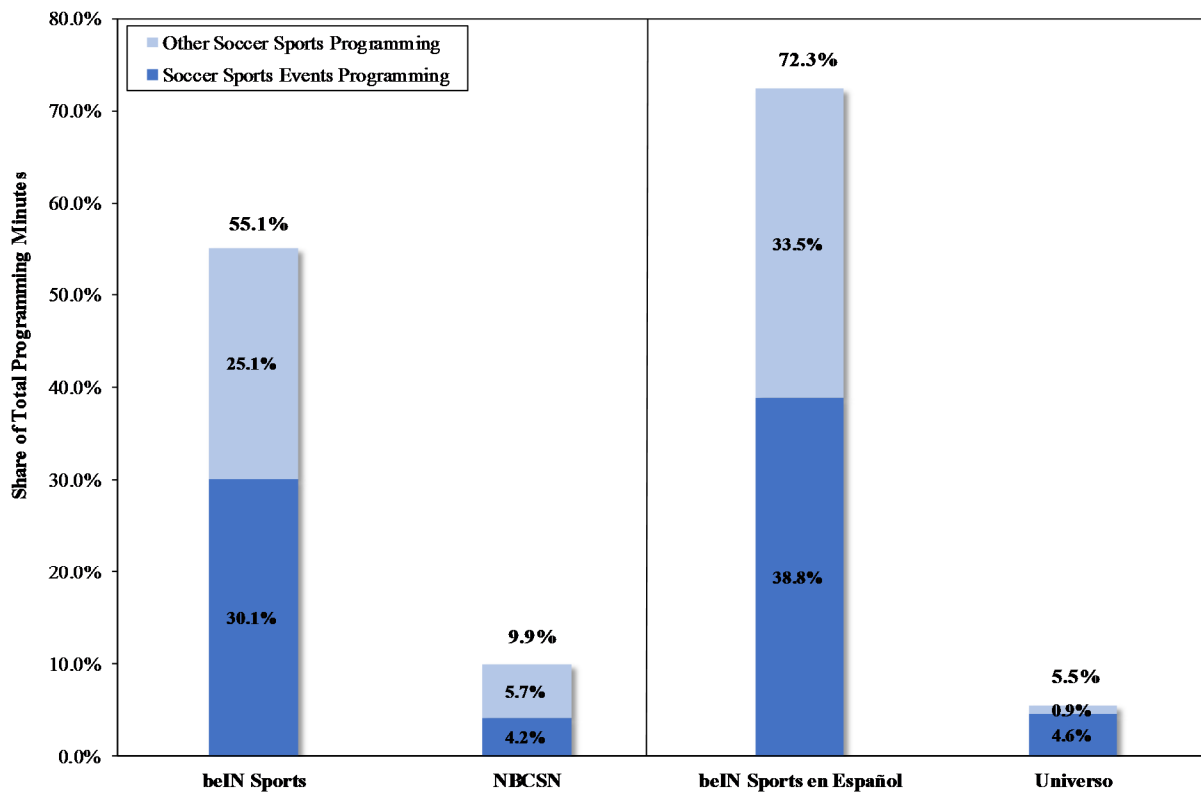
Share of Programming Minutes by Genre/Sub-Genre (2017)³⁷

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

Source: Gracenote program scheduling data.

³⁷ This table shows all sports programming with greater than 5 percent of programming minutes for any of the four networks. Sports Programming includes Sports Events, Sports Non-Events, and Sports Talk. The “Auto” category includes the sub-genres “auto” and “auto racing.” “Other” sports programming for NBCSN includes bicycle racing, outdoor sports, card games, poker, rugby, curling, fishing, skiing, basketball, track and field, and horse racing, which together account for approximately 20 percent of programming minutes. Over 30 additional sports comprise the rest of the sports programming for NBCSN. See Lerner Decl. tbl. 1 & n.20.

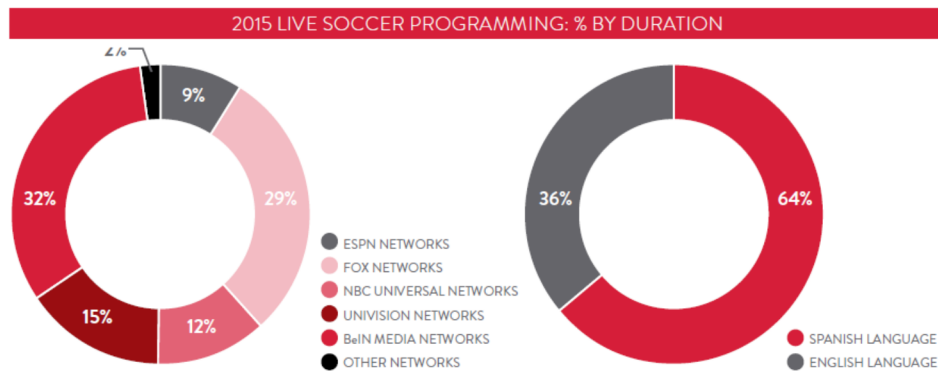
Soccer Programming Minutes as a Share of Total Programming Minutes (2017)



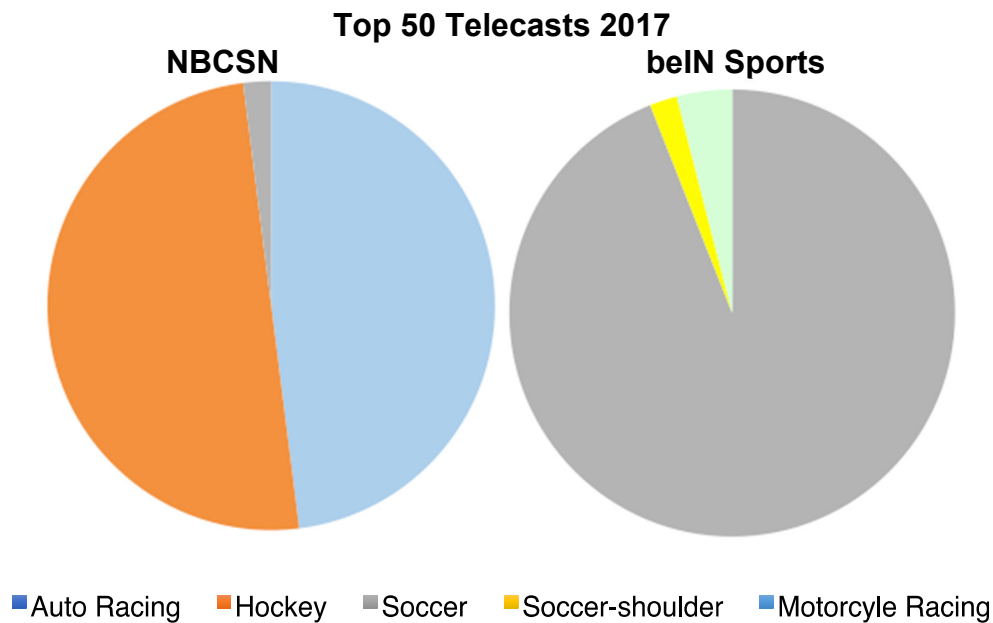
Source: Gracenote program scheduling data.

29. Similarly, in 2015, beIN carried 32 percent of live soccer programming in the United States (based on duration), whereas all NBCUniversal networks *combined* carried only 12 percent (making NBCSN’s and Universo’s respective share even smaller):³⁸

³⁸ Nielsen, 2015 Year in Sports Media Report at 19. Likewise, beIN highlighted on its website that it “[a]ired more live soccer in 2015 than any other network in the U.S.” beIN Sports, <http://adsales.beinsports.tv/> (last visited Apr. 30, 2018). Recent portions of beIN’s website no longer appear to be active. Screenshots of these webpages are included as Ex. 8.



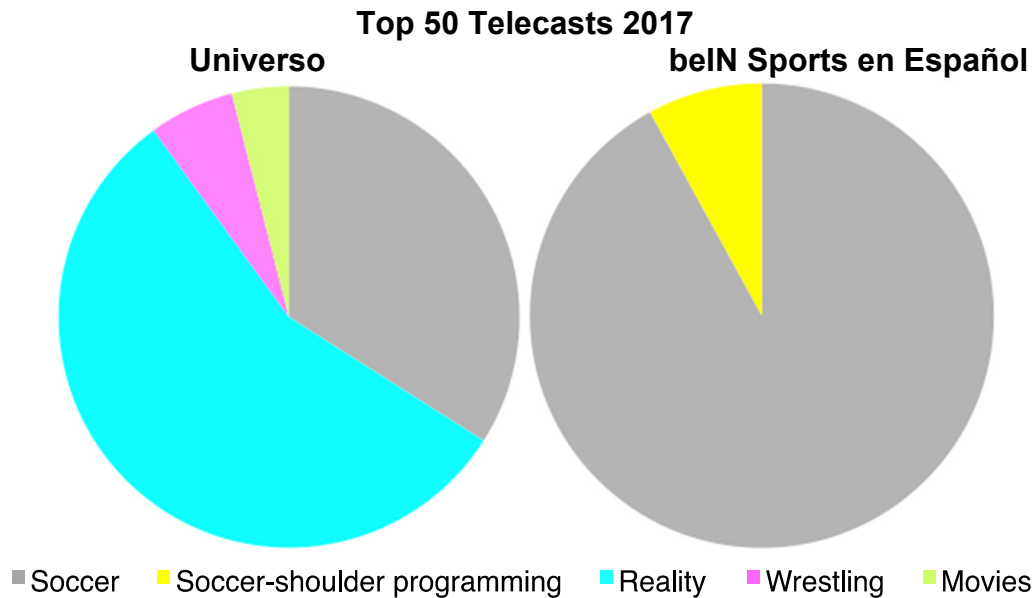
30. Focusing in on the top-rated programs on the networks, Mr. Litman found that nearly *all* of the top-rated programs on the beIN networks were soccer matches or soccer-related programs.³⁹ In contrast, soccer accounted for only *one* of the top programs on NBCSN (the rest were hockey and auto-racing).⁴⁰ For Universo, more than half of the top-rated programs were reality shows (and soccer represented only about a third of the top programs).⁴¹



³⁹ See Litman Decl. ¶ 18.

⁴⁰ See *id.*

⁴¹ See *id.* ¶ 50.



31. beIN’s own data – which focuses solely on live programming – show that beIN Sports and beINE air more than *four* times the amount of live soccer than do NBCSN and Universo.⁴² beIN estimates that NBCSN aired about [] live soccer games in 2017 and Universo about [] – figures that are dwarfed by the approximately [] and [] live soccer games aired by beIN Sports and beINE, respectively, applying beIN’s same methodology and data.⁴³ These data further underscore that the beIN Sports and NBCUniversal networks exhibit “fundamentally distinct programming.”⁴⁴

B. The beIN Networks Target and Attract a Different Audience Than NBCSN and Universo

32. beIN likewise fails to provide any credible evidence that its networks materially compete with NBCSN or Universo for viewers. The Complaint does not adduce any evidence of

⁴² See Compl. ¶¶ 62-64. In 2017, [] percent and [] percent of beIN Sports and beINE’s total minutes, respectively, were live soccer programming, as compared to [] percent of NBCSN’s total minutes and [] percent of Universo’s. Moreover, with respect to Universo, only a small fraction of its programming minutes ([] percent) consists of sports programming at all. See *id.*; see also Lerner Decl. ¶ 18, tbl. 1; Litman Decl. ¶ 23.

⁴³ See Compl. ¶¶ 62-63.

⁴⁴ Lerner Decl. ¶ 24.

similarity in the target or actual audiences among the networks, based on standard demographic metrics like gender, age, household income, and ethnicity that the Commission routinely examines to compare network audience profiles in program carriage proceedings (and that the industry uses to analyze a network's audience). Instead, beIN theorizes that "soccer fans" alone are the relevant target audience for beIN, NBCSN, and Universo for purposes of the similarly situated analysis.⁴⁵ But the relevant demographic data of the networks again reveal clear differences between their target and actual audiences across numerous metrics, and confirm that the "viewer audiences for the beIN networks are largely distinct from the viewer audiences of both NBCSN and Universo."⁴⁶ The Commission found that these same differences *disproved* alleged network similarity, and were thus dispositive in prior program carriage cases.

33. beIN Sports vs. NBCSN. beIN Sports targets a "young, bilingual, and affluent audience."⁴⁷ On its website, beIN has claimed that it "overindexes" in reaching millennial viewers and has the youngest median age (37) of any sports network.⁴⁸ Sixty-seven percent of beIN's audience is less than 55 years old.⁴⁹ It also "delivered a higher median household income than [the] English cable sports network average," with the highest percentage of upscale viewers

⁴⁵ See Compl. ¶ 66. The fact that selective news articles on soccer programming in the United States list beIN together with NBCSN and Universo is not evidence that the networks "target the same demographic," i.e., soccer fans. See Compl. ¶ 74. And while beIN would have the Commission believe that Comcast's own advertisements promoting beIN together with, and apart from, NBCSN and Universo are "smoking gun" evidence that Comcast believes these networks target the same viewers, see *id.* ¶ 71 & Ex. 11, these ads are simply proof of Comcast's compliance ||, see Term Sheet § 10.

⁴⁶ Lerner Decl. ¶ 38.

⁴⁷ Ex. 8; see also beIN Sizzle Reel ("We are leaders in reaching young Hispanic bilinguals in their language of choice.").

⁴⁸ See Ex. 8.

⁴⁹ Comcast Spotlight, beIN Sports One Sheet, <https://www.comcastspotlight.com/sites/default/files/beIN%20Sports%20Network%20One%20Sheet.pdf> (last visited May 12, 2018) ("beIN Sports One Sheet," included as Ex. 9).

(44 percent).⁵⁰ More generally, over 60 percent of beIN viewers have a household income of \$75K or more, with over 40 percent having a household income of \$100K or more.⁵¹ By contrast, almost half of NBCSN viewers (47 percent) are over 55, and a smaller percentage (44 percent) have a household income of \$75K or more.⁵² In both the *WealthTV* and *GSN* cases, the Commission concluded that similar differences in audience age and household income or affluence were clear evidence that the networks at issue did not target or attract the same audiences.⁵³ In addition, Nielsen data confirm that beIN Sports' audience has a substantial Hispanic component, especially relative to NBCSN – [] percent of beIN Sports households have a Hispanic head of household versus just [] percent of NBCSN viewing households.⁵⁴

34. A closer examination of audience demographics, taking into account NBCSN's flagship sports programming, reveals even sharper differences. beIN Sports attracts many more diverse and bilingual viewers as compared to the viewers of NASCAR and NHL, for example, on NBCSN. beIN's media kit highlights its focus on Latino viewers,⁵⁵ and its website

⁵⁰ See Ex. 8.

⁵¹ beIN Sports One Sheet, Ex. 9; see also Litman Decl. ¶ 42.

⁵² NBCSN One Sheet, Ex. 7; see also Litman Decl. ¶ 42; Lerner Decl. ¶ 38.

⁵³ See *WealthTV Order* ¶¶ 25-26 (noting that WealthTV targeted “the most affluent viewer, 25-60+” and MOJO targeted “younger adult males” and finding this to provide “substantial record evidence” to support the ALJ's determination that WealthTV and MOJO did not target similar audiences); *GSN Order* ¶¶ 55-57 (finding that there were “stark differences in the actual audiences of GSN and We tv” based on a close examination of the median viewer age of each network).

⁵⁴ See Litman Decl. ¶ 42; Lerner Decl. ¶ 38.

⁵⁵ beIN Sports Media Kit, <http://www.ethnicchannels.com/images/channeldetail/beinsports/BEIN-SPORTS-MEDIA-KIT.pdf> (included as Ex. 10).

emphasizes its multicultural viewers, particularly those of Hispanic descent.⁵⁶ In contrast, NASCAR and NHL audiences are predominantly Caucasian (94 and 92 percent, respectively).⁵⁷

35. beINE vs. Universo. While the vast majority of beINE’s audience is male ([] percent), Universo draws a balanced male/female audience, with [] percent female viewership.⁵⁸ This alone is a dispositive difference, as the Commission similarly found in both *WealthTV* and *GSN*.⁵⁹ And while beINE generally draws relatively more affluent audiences,⁶⁰ the median household income of Universo viewers is about \$37K,⁶¹ and over 75 percent have a household income of less than 75K.⁶² Both these factors further demonstrate that beINE and Universo do not target or attract similar audiences.⁶³

36. Beyond these fundamental differences between the networks, “soccer fans” are not a homogenous audience, as beIN erroneously suggests.⁶⁴ Most soccer fans are unlikely to

⁵⁶ See Ex. 8.

⁵⁷ Derek Thompson, *Which Sports Have the Whitest/Richest/ Oldest Fans*, The Atlantic, Feb. 10, 2014, <https://www.theatlantic.com/business/archive/2014/02/which-sports-have-the-whitest-richest-oldest-fans/283626/>. According to another source, only about 9 percent of NASCAR fans are Hispanic. See NASCAR Fan Base Demographics, <http://www.brentsherman.com/PDFS/NASCAR.pdf>.

⁵⁸ See Litman Decl. ¶ 57.

⁵⁹ See *supra* note 13.

⁶⁰ beIN also previously noted on its website that beINE’s audience “is 15 percent more upscale than the [Spanish Language] cable average.” Ex. 8.

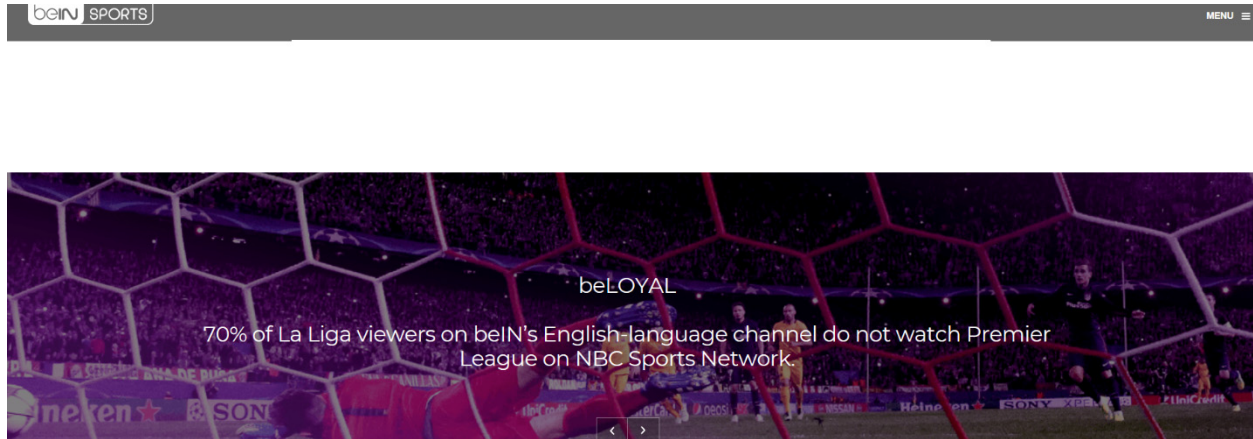
⁶¹ Altice Media Solutions, NBC Universo, <http://www.alticemediasolutions.com/networks/nbc-universo> (last visited May 12, 2018).

⁶² See Comcast Spotlight, Universo One Sheet, <https://www.comcastspotlight.com/sites/default/files/NBC%20Universo%20Network%20One%20Sheet.pdf> (last visited May. 12, 2018) (included as Ex. 11) (showing that only 15.7 percent of Universo viewers have a household income of 100K+ and only 8.4 percent have a household income of \$75K-\$99,999K); see also Litman Decl. ¶ 57 (finding that other Nielsen data likewise show that only [] percent of Universo’s viewers have a household income over \$75K).

⁶³ See Litman Decl. ¶¶ 57-58.

⁶⁴ See Compl. ¶ 66.

view the various international soccer leagues as substitutes for one another.⁶⁵ In its own promotional materials pre-dating this litigation, beIN trumpeted the fact that “70% of *La Liga* viewers on beIN’s English-language channel *do not watch* Premier League on NBC Sports Network.”⁶⁶



37. Dr. Lerner further explains that “the limited degree of viewer audience overlap between the beIN networks and both NBCSN and Universo . . . shows that the networks primarily reach distinct sets of viewers, and further suggests that viewers overall do not perceive the two networks as close economic substitutes.”⁶⁷ Notably, in the second quarter of 2017, only [] percent of NBCSN viewers also viewed beIN Sports, and only [] percent viewed beINE. Likewise, only [] percent of Universo viewers also watched beIN Sports. While [] percent of Universo viewers watched beINE, the network only ranked [] in viewer

⁶⁵ See Lerner Decl. ¶ 45 (“Soccer fans tend to be interested in specific leagues, teams, and/or matches; they do not generally find the matches of different leagues to be substitutes for each other.”). The lack of overlap between beIN Sports soccer viewers and NBCSN soccer viewers, which beIN elsewhere candidly admits, is not surprising. A recent study by sports economists at the University of Tübingen found that five of the top 20 most popular soccer clubs among American fans are from the English Premier League, which tends to be the most popular league overall among the United States audiences. Georgios Nalbantis & Tim Pawlowski, *The Demand for International Football Telecasts in the United States* 14, 81 (2016); see also Litman Decl. ¶ 24.

⁶⁶ See Ex. 8 (emphasis added).

⁶⁷ Lerner Decl. ¶ 40.

overlap with Universo, behind [] other Spanish-language networks.⁶⁸ The fact that other networks, most of which are not sports networks, have higher overlap, suggests that beIN is not a close substitute to Universo compared to other networks.⁶⁹ Thus, “beIN provides no sound economic evidence that the beIN networks compete with NBCSN and Universo for viewers.”⁷⁰

C. The beIN Networks’ Ratings and License Fees Are Not Similar to NBCSN’s and Universo’s

38. beIN also relies on cherry-picked and obscure Nielsen ratings data in an attempt to draw comparisons between its networks and NBCSN and Universo.⁷¹ Dr. Lerner and Mr. Litman both explain that beIN’s highly selective ratings data are questionable at best, and paint a distorted picture of beIN’s viewership. In fact, the Nielsen data analyzed by Dr. Lerner and Mr. Litman reveal little similarity in ratings among the beIN networks and NBCSN and Universo.⁷²

39. NBCSN has a substantially broader viewership base than beIN Sports, drawing significantly larger average audience sizes.⁷³ NBCSN also outperforms beIN Sports across a number of standard Nielsen ratings metrics. Dr. Lerner further observes that the average viewing audience ratings for beIN Sports in 2017 was [] percent, whereas NBCSN’s was more

⁶⁸ Lerner Decl. ¶¶ 41-42.

⁶⁹ *Id.* ¶ 42.

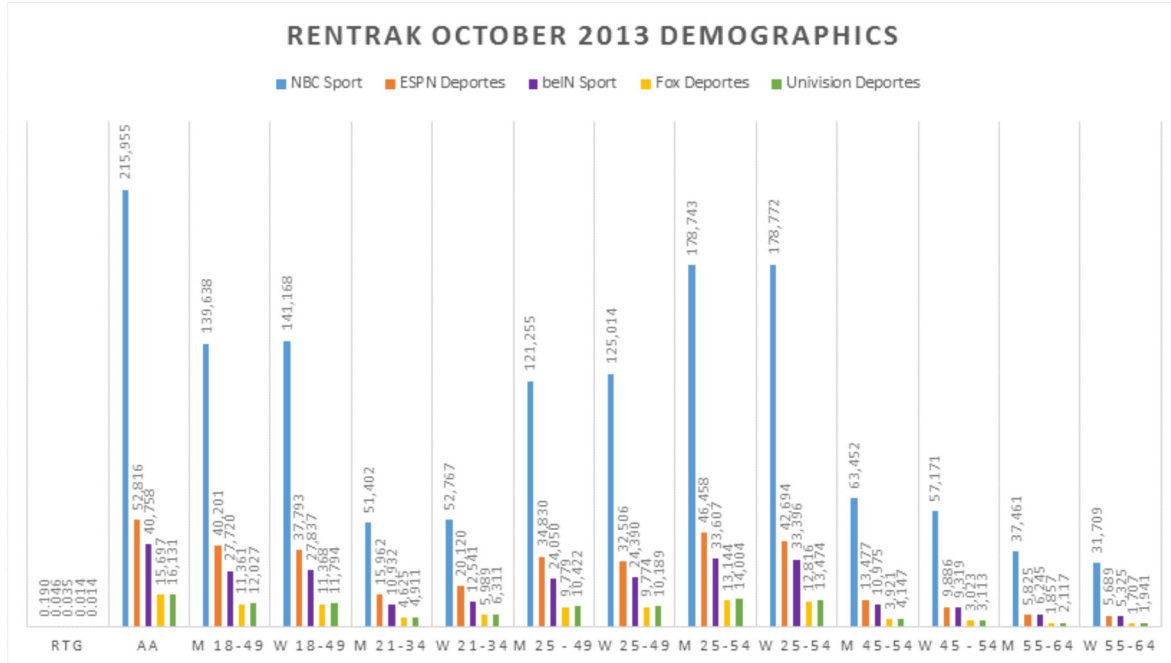
⁷⁰ *Id.* ¶ 36.

⁷¹ *See* Compl. ¶¶ 67-70; *see also* Brayford Decl. ¶ 15.

⁷² Dr. Lerner also explains that “similar ratings for two networks would not in any way imply that the networks compete in a significant way for viewers or advertisers.” Lerner Decl. ¶ 43.

⁷³ *See* Litman Decl. ¶ 32.

than 10 times higher.⁷⁴ One of beIN's own media kits highlights the stark differences between NBCSN's and beIN's ratings across every major audience segment.⁷⁵



40. As Mr. Litman explains, beIN's selective focus on other ratings metrics like

II

]]. Rather, it highlights that the beIN

networks have greater appeal to a small, passionate niche audience rather than a mass audience.⁷⁸

⁷⁴ See Lerner Decl. ¶ 27.

⁷⁵ See Ex. 10.

⁷⁶ See Litman Decl. ¶¶ 35, 36, 55.

⁷⁷ See *id.* ¶ 36.

⁷⁸ *Id.*

41. Dr. Lerner also observes that there is little significance to the higher ratings beIN can show when it focuses solely on coverage area of its networks.⁷⁹ The households that subscribe to the specialty sports and Spanish language packages on which the beIN networks are typically carried (and that are captured by coverage area ratings) have disproportionately large numbers of sports fans and Latinos that are more likely to watch the beIN networks than would the overall population, so it is unsurprising that beIN's coverage area ratings are higher.⁸⁰ In other words, "[t]he current distribution of the beIN networks is targeted at the viewer populations that are more likely to view them."⁸¹ NBCSN and Universo, however, are distributed to a broader population of households because of their broader and more diverse array of programming. Thus, Dr. Lerner notes that "beIN's claims based on coverage ratings essentially compare viewership in a vastly different population of viewers."⁸² As Mr. Litman similarly observes, "beIN's ratings analysis based on coverage area ratings is not methodologically sound. . . . It is a mathematical certainty that beIN would not rate as highly if it were in a universe that had proportionately fewer Latinos and sports fans."⁸³ Dr. Lerner further explains that "there is no plausible basis for [beIN's] assumption" that, "based on coverage ratings . . . distributing beIN Sports and beIN Sports en Español to a broader population of households would result in

⁷⁹ As Dr. Lerner notes, Nielsen Media specifically warns against relying on a comparison of coverage area ratings between networks. *See* Lerner Decl. ¶ 26.

⁸⁰ *See* Litman Decl. ¶¶ 39-41.

⁸¹ Lerner Decl. ¶ 31.

⁸² *Id.* ¶ 29.

⁸³ Litman Decl. ¶ 40.

beIN Sports and beIN Sports en Español attracting the same percentage of viewers as under the current distribution of the networks.”⁸⁴

42. Likewise, beIN’s reference to the ratings of a small handful of individual, high-profile games – out of the *thousands* of hours of programming over several years – is not only irrelevant but misleading and not representative of the overall viewership of its networks.⁸⁵ This is akin to claiming that the ratings during one Super Bowl, for example, are representative of a network’s viewership. Indeed, as Mr. Litman explains, the viewership of these events is substantially outside the norm of beIN’s average viewership, by several multiples, and well below the norm of the viewership for NBCSN’s high-profile sporting events.⁸⁶

43. beIN’s scattershot citation of other ratings data points likewise fails to provide any relevant evidence of similarity.⁸⁷ Rather, its selective focus on rankings among []

[] only underscores beIN’s own efforts to target higher-income millennials with its niche soccer programming. As shown above, that is a very different target audience than viewers of NBCSN and Universo.

44. Finally, beIN does not even attempt to meet the Commission’s expectation that a complainant address comparative license fees as part of its similarly situated evidence. Given NBCSN’s greater overall value in the marketplace, it is not surprising that NBCSN commands significantly higher license fees (an average of \$[] [] per subscriber per month, according to

⁸⁴ Lerner Decl. ¶ 31; *see also* Litman Decl. ¶ 41 (“beIN’s analysis extrapolates its ratings from its current ‘target-rich’ universe to the larger mass-market universe of all cable television households.”).

⁸⁵ *See* Compl. ¶¶ 8, 70.

⁸⁶ *See* Litman Decl. ¶¶ 33, 37-38.

⁸⁷ *See* Compl. ¶ 69. beIN touts that it relies on this highly selective ratings data to benchmark itself against NBCSN and Universo (among many other networks) in its own pitch presentations to other distributors. *See id.* But beIN’s own marketing documents do not establish that these distributors actually view beIN as a “substitute for, and directly competitive with” NBCSN (or Universo). In fact, as shown below, they do not.

Kagan data) compared to \$[[] and \$[[] per average subscriber per month for beIN Sports and beINE, respectively (again, according to Kagan).⁸⁸ Further, NBCSN and Universo have a per-subscriber fee structure like other established networks.⁸⁹ In contrast, beIN's [[] structure is not typical for cable networks; it is generally used by unproven networks.

D. The beIN Networks Do Not Compete Directly and Materially with NBCSN or Universo for Advertisers

45. Similarly, beIN has failed to present any credible evidence that its networks compete directly and materially with NBCSN or Universo for advertisers.⁹⁰ In fact, as in the *GSN* case, “the very substantial differences in programming and demographics” among these networks makes “it unlikely that advertisers would regard [them] as substitutes.”⁹¹

46. beIN points to only [[] common advertisers it shares with NBCSN and Universo – [[]. But the mere existence of common advertisers on beIN Sports, beINE, NBCSN, and Universo does not establish competition between the networks for advertising dollars. Even in the case of *GSN*,

⁸⁸ See NBCSN (US) Network Profile, SNL Kagan, <https://www.snl.com/web/client?auth=inherit#tvNetwork/networkProfile?ID=315>; beIN Sports (US) Network Profile, SNL Kagan, <https://www.snl.com/web/client?auth=inherit#tvNetwork/networkProfile?ID=661>; beIN Sports en Espanol (US) Network Profile, SNL Kagan, <https://www.snl.com/web/client?auth=inherit#tvNetwork/networkProfile?ID=711>; see also Litman Decl. ¶ 31. In fact, the Kagan data {{ }}. Mr. Litman further notes that another clear distinction between beIN Sports and NBCSN is their relative programming budgets. Based on Kagan data, NBCSN is projected to spend more than ten times the amount on programming as beIN Sports. See Litman Decl. ¶ 27.

⁸⁹ Mr. Litman further explains that it is unsurprising that, according to Kagan data, Universo has lower license fees than beINE given the differences in programming between the networks. Sports networks like beINE tend to have higher license fees than certain general entertainment networks, particularly those that target female audiences. See Litman Decl. ¶ 57. Moreover, Comcast, in fact, {{ }} – hardly evidence of affiliation-based discrimination.

⁹⁰ See Compl. ¶¶ 81-83.

⁹¹ *GSN Order* ¶ 59.

where there was a significantly greater degree of advertiser overlap, the Commission explained that the fact that “some of the same companies advertised on both GSN and WE tv . . . standing alone does not mean that the companies viewed the channels as substitutes.”⁹² Indeed, Dr. Lerner explains that “overlaps do not imply substitutability (or even similarity) between networks. . . . [O]ne can actually draw the opposite conclusion – that the advertiser does not need to *choose* between the networks but instead chooses to advertise on both networks. In fact, overlaps may indicate that two networks are complementary from the perspective of advertisers.”⁹³

47. beIN’s reliance on claimed advertising overlap is even weaker here. [] [] are all major advertisers that purchase ads on a wide range of networks.⁹⁴ Indeed, based on Advertising Age’s latest Leading National Advertisers report, each of these [] [] advertisers cited by beIN was among the 50 largest in the United States in 2016, spending a combined [] [] billion in measured media advertising (including television, print, and online media) and an estimated total of [] [] billion on advertising overall.⁹⁵ Mr. Litman notes that, if *only* these [] [] advertisers provided *all* of the

⁹² *Id.* ¶ 60 (noting that GSN presented evidence that 90 percent of WE tv’s top 40 advertisers also advertised on GSN and that 93 percent of GSN’s top 40 advertisers also advertised on WE tv); *see also WealthTV Recommended Decision* ¶ 20 n.72 (noting that evidence that MOJO and WealthTV had dealings with two of same advertisers “does not establish that two networks generally solicited or contracted with the same advertisers”).

⁹³ Lerner Decl. ¶ 47 (emphasis in original).

⁹⁴ *See* Litman Decl. ¶¶ 43-45.

⁹⁵ *See* AdvertisingAge, 200 Leading National Advertisers 2017: Fact Pack, at 6-7 (June 26, 2017), http://gaia.adage.com/images/bin/pdf/LNA_Fact_Pack_2017online.pdf []

advertising on the beIN networks, this would account for only a tiny fraction of their media spending (one-half of one percent).⁹⁶ Given the ubiquity of TV ads by these companies, there is bound to be *some* overlap between the beIN networks and NBCSN and Universo – just as there is overlap with numerous other cable networks. Dr. Lerner found that these companies generally advertised across approximately 60 to 90 different networks.⁹⁷ As the Commission explained in *GSN*, “many of the companies that advertised on both networks are large conglomerates that advertise their products across most or all of the national cable networks and whose sheer advertising volume places them among the top advertisers across a wide range of channels, so simple measurements of advertiser overlap may not be particularly meaningful or reliable.”⁹⁸ That is plainly the case here as well.

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

48. The lack of similarity between the beIN networks and NBCSN and Universo is reinforced by the objective marketplace evidence of how other MVPDs treat the networks. “Evidence that unaffiliated MVPDs carry them markedly differently provides a strong indication that the MVPDs themselves do not view the networks as being ‘similarly situated’” – i.e.,

]]; *see also* Litman Decl. ¶ 44.

⁹⁶ See Litman Decl. ¶ 44.

⁹⁷ Lerner Decl. ¶ 49, tbl. 2.

⁹⁸ *GSN Order* ¶ 60. [

competitive substitutes – and (as discussed below in Section V.B) also negates any claim of affiliation-based discrimination.⁹⁹

49. Nearly all other major MVPDs generally carry the beIN networks on upper-level or add-on tiers, just like Comcast does, as shown in the chart below.¹⁰⁰ beIN itself described this overall pattern of carriage for beIN Sports to the Commission, stating that “[m]ajor Pay-TV companies tend to make beIN’s English-language network available only as part of a sports package, which usually is distributed to about 20 percent of the MVPD’s total subscribership.”¹⁰¹ In addition, apart from fuboTV, the only other established linear OVD that carries beIN is Sling TV – and it does so in packages that include its World Sports Extra and Best of Spanish TV offerings (each for \$10).¹⁰² All of the other significant linear OVDs – DirecTV Now, Sony PlayStation Vue, Hulu Live, and YouTube Live – do not carry beIN *at all*. And, like Comcast, other MVPDs distribute NBCSN and Universo more broadly than the beIN networks.¹⁰³ Moreover, NBCSN and Universo have each been broadly carried on Comcast’s systems for many years, long before beIN even existed.¹⁰⁴

50. As Chairman Pai observed in the *Tennis Channel Order*, it was a mistake to overlook that “Comcast’s treatment of Tennis Channel was within the industry mainstream.”¹⁰⁵

⁹⁹ Lerner Decl. ¶ 9; *see also* Litman Decl. ¶¶ 28-30, 52-53, 78-97.

¹⁰⁰ *See* Litman Decl. ¶¶ 78-97.

¹⁰¹ Comments of beIN Sports, LLC, MB Docket No. 16-41, at 8 (Jan. 26, 2017).

¹⁰² *See* Litman Decl. ¶¶ 94-95.

¹⁰³ *See id.* ¶¶ 28-30, 52-53, 78-92.

¹⁰⁴ *See* Smith Decl. ¶ 20.

¹⁰⁵ *Tennis Channel, Inc., Complainant v. Comcast Cable Communications, L.L.C., Defendant*, Joint Dissenting Statement of Commissioners Ajit Pai and Robert M. McDowell, 27 FCC Rcd. 8508, 8551 (2012) (“*Tennis Channel Order Joint Dissenting Statement*”). In this analysis, Commissioners Pai and McDowell excluded DirecTV and Dish Network, which had ownership interests in the Tennis Channel. There is no need to exclude any distributor here, making the marketplace distribution evidence even more powerful.

He stressed that “*every* major MVPD in the United States distributed both Golf Channel and Versus to more subscribers than Tennis Channel. Or, to put it another way, not a single major MVPD found Tennis Channel to be ‘similarly situated’ to Golf Channel and Versus when making decisions.”¹⁰⁶ Chairman Pai found this to be “powerful evidence” that Comcast had not discriminated on the basis of affiliation. *This same evidence is even more powerful in this case.*¹⁰⁷

¹⁰⁶ *Id.* (emphasis in original).

¹⁰⁷ More detailed versions of the following chart are included as Ex. 12.

Carriage of NBCSN, Universo, beIN Sports, and beINE by Top 15 MVPDs

	MVPD		Tier of Carriage																
			beIN Sports/beINE					NBCSN					Universo						
			Broad	Mid-level	Upper/Premium	Spanish Tier	Sports Tier	Broad	Mid-level	Upper/Premium	Spanish Tier	Sports Tier	Broad	Mid-level	Upper/Premium	Spanish Tier	Sports Tier	Other Specialty Tier	
1	AT&T	DirecTV			✓ *	✓	✓ *	✓	✓	✓	✓			✓	✓	✓	✓		
		U-verse			✓	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓		
2	Comcast			✓ *#	✓ *#	✓ **	✓	✓	✓	✓				✓ ^	✓	✓	✓		
3	Charter				✓	✓		✓	✓	✓					✓	✓	✓		
4	DISH Network				✓	✓	✓	✓	✓	✓						✓	✓		
5	Verizon		✓ *	✓	✓	✓ **	✓	✓	✓	✓	✓				✓	✓	✓		
6	Cox				✓	✓	✓	✓	n/a	✓						✓ ^	✓		✓ ^
7	Altice USA	Optimum			✓	✓ **	✓	✓	✓	✓				✓ ^	✓	✓	✓		
		Suddenlink	NOT CARRIED					✓	✓	✓					✓ #	✓ #	✓ #		
8	Frontier	FiOS	✓ *#	✓ *#	✓ *#	✓ **#	✓ #	✓	✓	✓		✓ ^			✓	✓	✓		
		Vantage			✓ #	✓ #	✓ #	✓	✓	✓				✓	✓	✓	✓ #		
9	Mediacom					✓ ^	✓	✓						✓ #			✓ #		✓ #
10	TPG Capital	RCN			✓ *	✓ */**		✓	n/a	✓						✓	✓ ^		
		Grande	NOT CARRIED					✓	✓	✓						✓		✓	
		Wave	NOT CARRIED					✓						✓ ^			✓ ^	✓ ^	
11	WOW!		NOT CARRIED					✓	✓						✓ #				
12	Cable One		NOT CARRIED					✓						✓ ^			✓		
13	CenturyLink (Prism)			✓ *	✓ *	✓ **	✓ *	✓	✓	✓				✓	✓	✓			
14	Liberty Puerto Rico		✓ **	✓			✓		✓			✓		✓			✓		✓
15	Atlantic Broadband				✓ #	✓ **#		✓	n/a	✓						✓	✓ #		

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

* beIN Sports only

** beIN Sports en Español only

Carried only in select market(s)

^ Carriage tier varies by market

51. Dr. Lerner further confirms, based on empirical data, that Comcast's distribution of the beIN networks is consistent with the rest of the industry.¹⁰⁸ Other MVPDs, on average, distribute the beIN networks to a much smaller percentage of subscribers than the percentage of their subscribers to which they distribute NBCSN and Universo (and well below the distribution that beIN demands from Comcast). The penetration of beIN Sports and beINE by other MVPDs is [] and [] percent, respectively. In contrast, other MVPDs carry NBCSN to more than three times beIN Sports' share – to [] percent – and Universo to more than double beINE's – [] percent.¹⁰⁹

Carriage of the Networks by Other MVPDs (2017)

[]

]]

¹⁰⁸ Lerner Decl. ¶¶ 32-34, 69.

¹⁰⁹ *Id.* ¶ 32.

Carriage of the beIN Networks by Comcast and Other MVPDs (2017)

[[

52. In contrast to Comcast’s detailed analysis, beIN’s own supposed evidence of broad distribution among other MVPDs – a chart of unsourced “estimated” penetration data buried at the end of its Complaint – is highly misleading.¹¹⁰ beIN’s “estimated” numbers simply do not add up.¹¹¹ For example, beIN appears to be overstating its carriage by [[]]

¹¹⁰ See Compl. ¶ 102; *see also* Litman Decl. ¶¶ 82-97.

¹¹¹ It is unclear why beIN provides only “estimated” penetration data when such information is generally readily available to video programming vendors. Notably, neither of beIN’s declarants endorses or makes references to beIN’s “estimated” distribution chart, which is unsurprising given the unsubstantiated and likely inaccurate figures.

Comcast, resulting in misleading “estimates” of its “access to tiers with greater penetration” on select MVPDs.¹¹²

53. Even more telling is the distribution data that beIN *omits*. beIN’s omission of the largest MVPD, AT&T/DirecTV, as well as other prominent MVPDs like Dish, Altice, Cox, Mediacom, and RCN/Wave/Grande, is glaring and can most likely be explained by the fact that all of these MVPDs distribute beIN *only on upper-level or specialty tiers like Comcast*.¹¹³ beIN similarly includes penetration for the linear OTT services fuboTV and Sling TV ||

|| and CenturyLink’s now-defunct OTT service, but omits DirecTV Now, YouTube TV, Hulu Live, and Sony PlayStation Vue for the simple reason that *none of these OTT distributors carry beIN at all*.¹¹⁴

Online Video Provider	2017 Subs (MM)	beIN Penetration		beIN Subs (MM)	
Sling TV	2.30	||	||	||	||
DirecTV Now	1.20	0%		-	
PlayStation Vue	0.60	0%		-	
Hulu with Live TV	0.45	0%		-	
YouTube TV	0.30	0%		-	
fuboTV	0.15	||	||	||	||
Philo	0.05	0%		-	
Subtotal	5.05	||	||	||	||
Other	0.25				
TOTAL	5.30				

¹¹² At one point, beIN asserts that Comcast affords “access” to ||

||. *See* Compl. ¶ 50. But beIN’s “estimated” penetration calculation for Comcast in the chart is only || || percent (or only || || million unique Comcast customers that receive at least one beIN channel). *Id.* ¶ 102. In contrast, the estimated penetration percentages for other MVPDs, like || ||, appear to be based on double-counting, i.e., non-unique customers, or are otherwise inflated. *See* Litman Decl. ¶¶ 82-97. As detailed above, || || distributes beIN almost exclusively on upper-level tiers and certain Latino packages, so the notion that || || receive beIN is implausible and should be disregarded.

¹¹³ *See* Lerner Decl. ¶¶ 68-76; *see also* Ex. 12.

¹¹⁴ *See* Litman Decl. ¶¶ 94-95.

54. With respect to Verizon, beIN's relatively broad carriage on FiOS is clearly the exception to the rule.¹¹⁵ In a highly unusual move for a sports network, beIN launched on Verizon's go90 for no charge to consumers.¹¹⁶ beIN's expanded carriage on FiOS in 2015 was apparently directly connected to this go90 deal.¹¹⁷ In addition, Verizon is an outlier in how it pays for and packages networks, including through its "viewership-based" business model (which it said it began implementing the same month that it launched beIN) and other content distribution and payment models.¹¹⁸ All of the foregoing suggests that the Commission should give little weight to this outlier. In all events, Verizon FiOS's carriage of beIN as compared to

¹¹⁵ See Compl. ¶ 102; see also Litman Decl. ¶¶ 88-91.

¹¹⁶ See Brayford Decl. ¶¶ 23, 32; Smith Decl. ¶ 16.

¹¹⁷ See Gibbons Kent, *beIN Sports Launches on Verizon's go90*, Multichannel News, Oct. 28, 2015, <http://www.multichannel.com/news/telco-tv/bein-sports-launches-verizons-go90/394886> (beIN's representative explained: "this represents the highest level of national penetration it has obtained with any platform to date: the English- and Spanish-language versions of the service will reach the majority of 5.8 million FiOS TV customers, it said."). Prior to launching go90, Verizon contemplated another OTT linear TV service based on the Intel OnCue platform that Verizon acquired in 2014. See Press Release, Verizon, *Verizon to Purchase Intel Media Assets* (Jan. 21, 2014), <http://www.verizon.com/about/news/verizon-purchase-intel-media-assets> (expressing plans to further disrupt the status quo with an "over the top" offering). Verizon abandoned those plans for go90. Phil Goldstein, *Verizon's go90 Video Service Grew Out of Intel's OnCue Platform – and Won't Highlight Verizon Brand*, Sept. 15, 2015, <https://www.fiercewireless.com/wireless/verizon-s-go90-video-service-grew-out-intel-s-uncue-platform-and-won-t-highlight-verizon>; see also Litman Decl. ¶ 89.

¹¹⁸ See, e.g., Press Release, Verizon, *beIN Sport Launches on Verizon FiOS TV* (Mar. 19, 2013), <http://www.verizon.com/about/news/release-bein-sport-launches-verizon-fios-tv>; *Verizon Proposes Paying Cable Networks Based on Viewership*, Fierce Cable, Mar. 18, 2013, <https://www.fiercecable.com/cable/verizon-proposes-paying-cable-networks-based-viewership>; Don Reisinger, *Verizon Looks to Turn TV Fee Rules on Their Head*, CNET, Mar. 18, 2013, <https://www.cnet.com/news/verizon-looks-to-turn-tv-fee-rules-on-their-head/>; Press Release, Verizon, *Why Paying for What you Watch May Stabilize Content Costs* (Mar. 25, 2013), <http://www.verizon.com/about/news/why-paying-what-you-watch-may-stabilize-content-costs/> ("Our conceptual pricing model is based on actual viewership of any channel, rather than the use of Nielsen ratings as is the case today."); see also Mike Snider, *ESPN Sues Verizon Over New Stripped-Down 'Custom TV' Plan*, USA Today, Apr. 27, 2015, <https://www.usatoday.com/story/tech/2015/04/27/espn-sues-verizon-over-bundle/26455305/> (illustrating programmers' objection to Verizon's unconventional business model); Meg James, *Fox, NBC Join ESPN Protest Over Verizon's 'Skinny' Bundle*, L.A. Times, Apr. 21, 2015, <http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-fox-nbc-espn-protest-verizons-skinny-bundle-20150421-story.html> (same).

NBCSN and Universo is still consistent with the overall marketplace pattern – as Mr. Litman notes, FiOS distributes NBCSN to a higher penetration of its customers than it does beIN.¹¹⁹

55. Similarly, while beIN suggests that broader distribution by a smaller, regional MVPD, Liberty of Puerto Rico, is representative,¹²⁰ Liberty Cable of Puerto Rico serves a population that is virtually all Spanish-speaking – which is not representative of any Comcast market, much less Comcast’s footprint as a whole. And, as shown in the table below, most other smaller, regional MVPDs do not carry beIN at all. By contrast, nearly *all* (42 out of 43) such MVPDs carry NBCSN and nearly half (19) carry Universo. In sum, beIN offers no reasonable evidence that “the beIN networks have similar fundamental economic characteristics as NBCSN and Universo, such that MVPDs unaffiliated with these networks would be expected to carry them similarly.”¹²¹ There is no credible basis for beIN to claim that most MVPDs view beIN Sports and NBCSN as close substitutes.

¹¹⁹ Litman Decl. ¶¶ 78, 81.

¹²⁰ See Compl. ¶¶ 13, 102.

¹²¹ Lerner Decl. ¶ 12.

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

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

Carriage data based on review of public MVPD channel lineup(s) for each MVPD. MVPDs listed in order by number of subscribers.

V. COMCAST’S EVIDENCE OF LEGITIMATE, NON-DISCRIMINATORY DECISION-MAKING NEGATES BEIN’S CLAIM OF AFFILIATION-BASED DISCRIMINATION

56. Even where a complainant satisfies the similarly situated standard, which beIN has not done here, a claim of affiliation-based discrimination is negated where there is substantial evidence that an MVPD has acted based on its reasonable business judgment.¹²² When an MVPD has provided “legitimate and non-discriminatory business reasons” for its decision-making,¹²³ it is the complainant’s burden to show that there are “substantial and material questions of fact as to whether the defendant MVPD has engaged in conduct that violates the program carriage rules” – otherwise, the Bureau may conclude that no further proceedings are necessary and that “the complaint can be resolved on the merits based on the pleadings.”¹²⁴ Beyond failing to make out a prima facie case, the Complaint fails this test too.

57. beIN claims that a desire to favor two affiliated networks, NBCSN and Universo, is the “only rational explanation” for Comcast’s December Offer to beIN.¹²⁵ That bare assertion falls far short of the Commission’s requirement that a complainant demonstrate that its

¹²² See 2011 Program Carriage Order ¶ 16; *Comcast Cable Commc’ns, LLC v. FCC*, 717 F.3d 982, 985 (D.C. Cir. 2013) (“*Tennis Channel Decision*”) (“There is . . . no dispute that the statute prohibits only discrimination *based on* affiliation. Thus, if the MVPD treats vendors differently based on a reasonable business purpose . . . , there is no violation.”) (emphasis in original); see also *GSN Order* ¶ 78 (“[B]ecause an MVPD can take an adverse carriage action as long as it is not based on affiliation or non-affiliation, a video programming vendor must counter an MVPD’s properly supported defense that it has treated vendors differently based on a reasonable business purpose.”).

¹²³ 2011 Program Carriage Order ¶ 17. The Commission has found that legitimate business reasons for a carriage decision include the cost of carriage, a lack of subscriber demand and interest, unfavorable terms and conditions of carriage, the carriage decisions of other cable operators, and bandwidth constraints. See, e.g., *GSN Order* ¶¶ 67-72 (finding that cost-savings were a legitimate business justification); *WealthTV Order* ¶¶ 27-32 (upholding ALJ’s finding that lack of subscriber interest and demand, minimal carriage on other MVPDs, and low “brand recognition” were legitimate business considerations); *TCR Sports Broadcasting Holding L.L.P. d/b/a Mid-Atlantic Sports Network v. Time Warner Cable Inc.*, Memorandum Opinion and Order, 25 FCC Rcd. 18099 ¶¶ 13-20 (2010) (holding that subscriber demand, costs of carriage, bandwidth constraints, and carriage decisions of other cable operators are legitimate reasons to deny carriage).

¹²⁴ 2011 Program Carriage Order ¶ 17.

¹²⁵ See Compl. ¶ 100; see also *id.* ¶¶ 48-49.

unaffiliated status “actually motivated” the MVPD’s conduct,¹²⁶ and is refuted by the fact (as shown above) that virtually all other major MVPDs have made the same carriage choices for the beIN networks, NBCSN, and Universo. That “powerful evidence” alone negates beIN’s rote claim of affiliation-based discrimination and warrants dismissal of the Complaint.

58. Other evidence firmly demonstrates that Comcast’s December Offer was based on legitimate, non-discriminatory commercial considerations as part of the parties’ renewal negotiations. Based on a “straight up financial analysis,”¹²⁷ Comcast concluded that it would not derive any economic benefit – and would instead *lose money* – if it were to accept beIN’s unreasonable demands for substantial fee increases and expanded distribution or anything close to them. Under the D.C. Circuit’s *Tennis Channel* precedent, the complainant’s burden includes the obligation to establish that the increased payment and expanded carriage it has demanded would yield a “net benefit” to the MVPD and, therefore, that the MVPD’s business justification is simply a pretext for discriminatory intent.¹²⁸ A failure to meet that burden, as beIN does here, is fatal to the case. beIN theoretically “could counter this . . . by presenting evidence that [Comcast’s] underlying financial calculation was wrong or other evidence that [Comcast’s] defense was mere pretext, and thus financial considerations were not the actual reason for [Comcast’s] decision,”¹²⁹ – but beIN does not even attempt to do this in its Complaint (notwithstanding that Comcast clearly articulated this and other shortcomings in its prior

¹²⁶ *WealthTV Recommended Decision* ¶ 63.

¹²⁷ *Tennis Channel Decision*, 717 F.3d at 984.

¹²⁸ *Id.* at 985.

¹²⁹ *GSN Order* ¶ 79 (citing *Tennis Channel Decision*, 717 F.3d at 985-87).

discussions with beIN and in its response to beIN’s pre-filing notice).¹³⁰ Rather, as was the case in *Tennis Channel*, “[i]n contrast with the detailed, concrete explanation of Comcast’s additional costs under the proposed tier change, [beIN] showed no corresponding benefits that would accrue to Comcast by accepting the change” to support its claim of affiliation-based discrimination.¹³¹ beIN’s inability to point to any concrete economic benefit to Comcast for accepting beIN’s terms – much less any that would outweigh the enormous additional costs – fully refutes the notion that Comcast discriminated against beIN on the basis of affiliation.

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

59. beIN tries to paint its renewal proposals to Comcast as so attractive – a “free lunch” – that Comcast could not reasonably refuse.¹³² But it is not true that Comcast would incur “no cost” or no [] to melt beIN’s niche soccer networks to a highly penetrated tier, as beIN requested.¹³³ Comcast legitimately concluded that beIN’s April Proposal and subsequent proposals were a bad deal for Comcast and did not make business sense given the limited value of the beIN networks to Comcast customers.

60. As summarized in the chart below, at each turn of the parties’ negotiations, beIN insisted on unrealistic terms that were out of step with the marketplace and bore no relationship to the actual value of the beIN networks to Comcast and its customers. Further, beIN could not

¹³⁰ See Letter from Francis M. Buono, SVP, Legal Regulatory Affairs and Senior Deputy General Counsel, Comcast Corporation, to Pantelis Michalopoulos, Steptoe & Johnson LLP, Counsel for beIN Sports, LLC (Feb. 23, 2018), attached as Compl. Ex. 3.

¹³¹ *GSN Order* ¶ 79; see also *id.* ¶¶ 81-82 (applying the D.C. Circuit *Tennis Channel* precedent and finding that GSN had not provided the type of evidence establishing the net benefit to Cablevision of carrying GSN as requested that would satisfy the *Tennis Channel* standard, and had “not established that Cablevision’s decision to distribute it on the premium sports tier was anything but a reasonable business decision”).

¹³² See Compl. ¶¶ 48-49.

¹³³ See *id.* ¶¶ 11, 14-15, 31, 100, 104.

even provide ||

||.¹³⁴ Mr. Litman

confirms that “beIN’s renewal offers to Comcast were exorbitant, lacked any coherent or compelling factual support, and were wildly unrealistic in today’s highly competitive marketplace,” and observes that “Comcast’s initial counter-offer was reasonable and consistent with beIN’s . . . treatment by other distributors in the marketplace.”¹³⁵

||

||

61. Despite the unrealistic nature of beIN’s April Proposal, Comcast engaged in a considered and objective evaluation of the value of the beIN networks to Comcast customers and

¹³⁴ See Brayford Decl. ¶¶ 13-14, 22, 32, 34, 38-39, 41; Smith Decl. ¶¶ 15-16, 23, 26.

¹³⁵ Litman Decl. ¶¶ 12-13.

the economics of beIN's proposal in order to formulate a reasonable counterproposal. This included the substantive viewership analyses described above, which showed that Comcast was already likely overpaying for the network under the current Agreement and would lose [] annually if it acceded to beIN's proposed terms.¹³⁶

62. Nor was there any business justification for Comcast to accept beIN's demands for expanded distribution by [].¹³⁷ As a general matter, observes Mr. Litman, beIN's requests for broader distribution failed to account for today's marketplace realities.¹³⁸ With the growth of and competitive pressure from OVDs, "[t]he priority for most MVPDs today is to provide more value via an improved user experience, rather than a greater quantity of programming at higher subscriber costs."¹³⁹ "MVPDs . . . have in recent years shifted from a strategy of adding channels to broadly penetrated packages in favor of other enhancements to the packages, like better navigation and on-demand and out-of-home access to content, to provide more value to their customers from the channels that they already

¹³⁶ Specifically, as detailed above, even under extremely conservative calculations, Comcast would *save* a minimum of approximately {} million annually by simply dropping the beIN networks rather than accepting beIN's demand for [] million in average annual fees. When these analyses were compared to Comcast's experience with actual network drops, Comcast projected an average annual savings of approximately {} million if Comcast were to drop beIN entirely. Even taking into account beIN's lower February 2 Proposal, the 2018 Viewership Analysis indicated that these costs would still be roughly {} million higher than the maximum projected revenue losses over the same {} period. *See* discussion *supra* Section III; *see also* Brayford Decl. ¶¶ 30-31; Smith Decl. ¶ 22. These analyses confirmed the reasonableness of Comcast approach in its December Offer and subsequent negotiations.

¹³⁷ Contrary to beIN's claims, Comcast's offer would not []

.[]]. *See* Brayford Decl. ¶ 27.

¹³⁸ *See* Litman Decl. ¶¶ 60, 73-74, 98-113, 124.

¹³⁹ *Id.* ¶ 101.

carry and pay for.”¹⁴⁰ Indeed, Comcast has been adding value to customers by deepening their engagement with existing packages through additional offerings (e.g., VOD, DVR, TV Everywhere apps) rather than by moving networks onto broader carriage tiers at increased costs. Like other MVPDs, Comcast is under greater competitive pressure to slim down the number of channels available in broadly penetrated packages.¹⁴¹

63. In addition, as Dr. Lerner and Mr. Litman confirm, given the more limited appeal of these niche soccer networks, it made good business sense for Comcast to continue to make beIN’s networks available in specialty packages – as virtually all other major MVPDs do – particularly when the beIN networks are available to customers on various OTT services, such as fuboTV, Sling TV (including through the Sling TV app on Comcast’s X1 platform), iGol (for only \$10/month), and Verizon’s go90 service (free of charge).¹⁴² This approach allows Comcast to make the networks available to the limited subset of customers that want them, while managing costs and without passing them on to all other customers.¹⁴³ According to Dr. Lerner, “Comcast’s decision to carry the beIN networks in specialty tiers is economically rational given the niche nature and limited viewer appeal of the beIN networks.”¹⁴⁴ Thus, for Spanish-speaking

¹⁴⁰ *Id.* ¶ 110. Dr. Lerner likewise observes that the “competition from OVDs has created pressure to reduce the number of networks on broadly penetrated packages, especially niche networks that appeal to a small share of subscribers.” Lerner Decl. ¶ 60.

¹⁴¹ *See* Smith Decl. ¶ 8; *see also* Litman Decl. ¶¶ 98-105.

¹⁴² *See* Litman Decl. ¶¶ 97, 106-117; *see also id.* ¶ 73 (noting that “there is almost nothing to suggest that beIN Sports had much value to the mass-market audience”); Rebecca Simpson, *Sling TV’s International Programming Now Available on X1*, Comcast (Apr. 5, 2018), <https://corporate.comcast.com/stories/sling-tvs-international-programming-now-available-on-x1>; iGol, Channel Line-Up, <https://www.igol.tv/>; Christopher Harris, *New Soccer Streaming Service iGol Debuts in United States*, World Soccer Talk, Feb. 14, 2018, <http://worldsoccertalk.com/2018/02/14/new-soccer-streaming-service-igol-debuts-united-states/>

¹⁴³ *See GSN Order* ¶ 70 (noting that Cablevision could have dropped GSN altogether, “but chose to place it on the premium sports tier so any subscribers who really wanted to watch it could do so”).

¹⁴⁴ Lerner Decl. ¶ 56; *see also id.* ¶ 59 (“It is generally economically rational to distribute programming with broad appeal on highly penetrated packages, consistent with demand for the programming from a large percentage of subscribers, and to distribute networks with niche programming on less penetrated specialty tiers. MVPDs can

soccer fans, Comcast makes available beINE on the H tier generally alongside ESPN Deportes, Fox Deportes, and Univision Deportes – all of which feature soccer programming on par, in terms of value proposition, with beINE’s soccer programming.¹⁴⁵ In contrast, Comcast more broadly carries unaffiliated networks like ESPN, ESPN2, and FS1 that also feature soccer programming as part of a broad mix of marquee sports programming.¹⁴⁶

64. Moreover, beIN II

II.¹⁴⁷

65. In its Complaint, beIN contends that any “meaningful loss of subscriber fees for the [SEP]” is “implausible” because most subscribers purchasing Comcast’s SEP and H Tier solely to watch beIN have already left and replaced their subscription with fuboTV.¹⁴⁸ But this argument does nothing to help beIN’s cause. To the contrary, it only confirms the reasonableness of Comcast’s position. If beIN is already providing less of a benefit to Comcast’s SEP or H Tier – since fans of this niche soccer programming can supposedly obtain it for less

offer such specialty tiers to subscribers for a fee, thus allowing the limited share of subscribers that value the niche content to view their desired programming.”).

¹⁴⁵ Smith Decl. ¶ 9.

¹⁴⁶ See Lerner Decl. ¶ 61 n.70 (noting Comcast’s distribution of other unaffiliated networks with soccer programming); Smith Decl. ¶¶ 9, 21 (same).

¹⁴⁷ See Brayford Decl. ¶¶ 37, 41; *see also* Litman Decl. ¶ 73. Dr. Lerner explains that “[c]arrying niche programming on specialty tiers also is economically rational because many of those subscribers may highly value the niche programming and thus may be willing to pay an additional fee for those tiers (e.g., \$9.95 for the Sports and Entertainment package or a promotional rate of \$4.99).” Lerner Decl. ¶ 61.

¹⁴⁸ See Compl. ¶¶ 12, 101.

money elsewhere – *it certainly would not provide a benefit in the form of attracting or retaining customers to Comcast’s [REDACTED] tier, where beIN now demands carriage.*¹⁴⁹

B. Comcast’s Carriage of the beIN Networks Is Consistent with Virtually All Other MVPDs’ Carriage of These Networks

66. The reasonableness of Comcast’s business judgment is confirmed by independent determinations from other MVPDs. As detailed above, Comcast’s carriage of beIN on its SEP and H tiers is consistent with how most other MVPDs distribute the beIN networks, to the extent they carry beIN at all.¹⁵⁰ This refutes beIN’s claims that Comcast’s distribution of beIN is intended to confer some competitive advantage or other benefit to NBCSN or Universo.¹⁵¹ And, as Dr. Lerner finds, “carriage by other MVPDs of the beIN networks ([REDACTED] percent and [REDACTED] percent for beIN Sports and beIN Sports en Español, respectively) is much lower than the carriage that beIN has demanded from Comcast ([REDACTED] percent according to beIN’s initial demand). There is no marketplace basis for such a demand, or for beIN’s claim that Comcast would distribute the beIN networks to such a share of subscribers but-for its affiliation with NBCSN and Universo.”¹⁵²

67. In its Complaint, beIN relies on the self-serving suggestion that it is “optimistic” that other distributors will agree with beIN’s aggressive demands in future negotiations.¹⁵³ But it is hard to see how this argument could show that Comcast’s current position is out of step with

¹⁴⁹ See Smith Decl. ¶ 24.

¹⁵⁰ See Lerner Decl. ¶ 68 (“The conclusion that Comcast’s carriage of the beIN networks in the Sports and Entertainment and Latino packages is consistent with sound business judgment independent of network affiliation is corroborated by the fact that unaffiliated MVPDs generally distribute the beIN networks similarly.”); Litman Decl. ¶ 78 (“Comcast’s treatment of beIN Sports is well within the industry mainstream.”); *see also* Ex. 12.

¹⁵¹ See Compl. ¶ 85. As noted, the fact that Comcast { [REDACTED] } only further undermines beIN’s claim.

¹⁵² Lerner Decl. ¶ 70.

¹⁵³ See Compl. ¶¶ 14, 103.

today’s marketplace.¹⁵⁴ In all events, it is not credible. Like Comcast, none of these other major distributors has seen fit to increase distribution of beIN under beIN’s “free lunch” theory.¹⁵⁵ And Sony PlayStation Vue dropped both beIN channels (beIN Sports and beINE) on June 8, 2017. As beIN stated at the time: “We made every possible effort to reach a deal with Sony since we believe the top sports leagues, games, insights and analysis should be made available to the largest possible audience of fans. Regrettably, *Sony has decided that our value proposition is not enough for their viewers.*”¹⁵⁶

68. As Chairman Pai explained in dissenting from the *Tennis Channel Order*, while paying higher license fees and expanding distribution may suit a network’s business objectives, Comcast is not “obligated to be the first mover and provide the network with the revenue and publicity that it needs in order to become attractive to other MVPDs. . . . Comcast’s obligation under our rules is to provide unaffiliated networks with non-discriminatory – *not preferential* – treatment.”¹⁵⁷

69. In short, this “powerful,” objective marketplace evidence fully – and independently – refutes beIN’s allegation of affiliation-based discrimination. As Dr. Lerner concludes, “[t]he fact that unaffiliated MVPDs distribute the beIN networks similarly

¹⁵⁴ See Lerner Decl. ¶¶ 68-70.

¹⁵⁵ See Litman Decl. ¶ 112.

¹⁵⁶ Eric Anthony, *PlayStation Vue Announces It Is Dropping BeIN Sports*, Streaming Observer, June 7, 2017, <https://www.streamingobserver.com/playstation-vue-announces-dropping-bein-sports/> (emphasis added).

¹⁵⁷ *Tennis Channel Order Joint Dissenting Statement*, 27 FCC Rcd. at 8553 (emphasis added). As Commissioner O’Rielly observed in approving the *GSN Order*, “it appears that Cablevision made a decision based on its business interests regarding carriage and not one intended to discriminate against GSN.” *GSN Order*, 32 FCC Rcd. at 6191 (Statement of Commissioner Michael O’Rielly).

demonstrates that Comcast’s carriage is consistent with sound business judgment independent of network affiliation.”¹⁵⁸

C. beIN Has Failed To Demonstrate That Its Proposed Terms of Carriage Would Provide Comcast with a “Net Benefit”

70. A claim of affiliation-based discrimination also requires evidence that “broader carriage would have yielded net benefits to Comcast.”¹⁵⁹ That burden is particularly heavy, and the bar high, when the defendant MVPD has shown, as Comcast has here, a real financial assessment, unrelated to affiliation, that justifies its business position.¹⁶⁰

71. beIN fails to make this essential showing, in any way. It certainly does not and cannot show that all the careful analysis by Comcast was “pretext,” as precedent requires.¹⁶¹ And its “evidence” of the alleged benefits to Comcast does not come close to meeting this burden: It consists of nothing more than bare assertions that beIN’s excessive renewal demands will increase Comcast’s ability to attract and retain more video subscribers at lower price points – evidence that is not only wrong but that does nothing to undermine the detailed, fact-based analysis done by Comcast.¹⁶²

72. As Mr. Litman and Dr. Lerner explain, there is no credible basis for beIN’s theory that increased distribution would attract more subscribers.¹⁶³ And beIN itself has conceded that

¹⁵⁸ Lerner Decl. ¶ 68.

¹⁵⁹ *Tennis Channel, Inc., Complainant v. Comcast Cable Communications, L.L.C., Defendant*, Order, 30 FCC Rcd. 849 ¶ 7 (2015) (denying Tennis Channel’s complaint).

¹⁶⁰ See *Tennis Channel Decision*, 717 F.3d at 985 (“In contrast with the detailed, concrete explanation of Comcast’s additional costs under the proposed tier change, Tennis showed no corresponding benefits that would accrue to Comcast by its accepting the change.”).

¹⁶¹ *Id.* at 987.

¹⁶² See Compl. ¶¶ 15, 104.

¹⁶³ See Litman Decl. ¶¶ 106-119; Lerner Decl. ¶ 63.

it is unlikely Comcast customers would be willing to pay for a Comcast service solely to watch beIN – indeed, as noted above, according to beIN, all of Comcast’s customers who subscribed to the SEP or H Tier just to watch beIN’s networks already have switched to fuboTV.¹⁶⁴ As Dr. Lerner notes, “[i]f there is insufficient demand for the beIN networks in the specialty tiers, there surely is insufficient demand in more broadly penetrated tiers.”¹⁶⁵

73. beIN’s additional claim that greater advertising revenues for beIN would help “hold down the fees” it charges Comcast is equally baseless.¹⁶⁶ As a preliminary matter, Comcast is left to guess precisely what fees beIN would “hold down” for Comcast. To the extent beIN is referring to license fees, this claimed benefit is nonsensical since beIN is instead demanding significant fee *increases*.¹⁶⁷ If beIN is instead claiming that broader distribution would yield Comcast more advertising revenues, this “benefit” would be marginal at best since beIN would not provide any material incremental value to Comcast’s local ad inventory.¹⁶⁸

74. Nor would Comcast stand to benefit from beIN’s more recent offer [[]].¹⁶⁹ If anything, this new proposal is even more problematic to Comcast from a business standpoint, since it would enable beIN to dilute the value of its existing networks [[]]¹⁷⁰ and consume additional valuable bandwidth on Comcast’s cable plant.¹⁷¹

¹⁶⁴ See Compl. ¶¶ 12, 101; see also discussion *supra* ¶ 65; Smith Decl. ¶ 27.

¹⁶⁵ Lerner Decl. ¶ 64.

¹⁶⁶ See Compl. ¶ 104.

¹⁶⁷ See Brayford Decl. ¶ 40.

¹⁶⁸ See *id.*

¹⁶⁹ See Compl. ¶¶ 14, 55; Compl. Ex. 8, Briceño Decl. ¶ 13.

¹⁷⁰ See Brayford Decl. ¶¶ 39, 41; see also Smith Decl. ¶¶ 26-27.

¹⁷¹ See Brayford Decl. ¶ 39.

75. In sum, beIN’s vague and unsupported claimed “benefits” fall far short of negating Comcast’s objective assessment – based on multifaceted cost-benefit analyses informed by Comcast’s real-world carriage experience, current marketplace dynamics, and its own conservative viewership analyses – that paying beIN significantly higher fees and substantially increasing its distribution would not be in Comcast’s economic best interest. Indeed, Comcast’s “detailed, concrete” analysis is precisely the type of reasonable business evaluation the *Tennis Channel* court and the Commission in *GSN* have found to be good-faith financial considerations.¹⁷² beIN cannot, and does not, remotely begin to show that this is anything other than a business dispute in which Comcast is exercising its reasonable business judgment – one that beIN may not like, but that is a rational response to objective marketplace evidence. Comcast is permitted – and, under the First Amendment, must be permitted – broad discretion in designing its programming offerings without undue government involvement.

D. beIN’s Claims Regarding HD Carriage and Authentication Are Premature and Without Merit

76. beIN’s related allegations concerning the authentication of its beIN Connect app and HD carriage demands are premature, overstated, and entirely speculative.¹⁷³ Expanded HD carriage and authentication are terms that are typically negotiated as part of a comprehensive carriage arrangement based on the value proposition of the programming and the puts and takes of the larger deal.¹⁷⁴ Indeed, while it is not clear that HD carriage of beIN’s networks provided value to Comcast or that it was worth the dedication of resources, Comcast has been willing to consider it in certain circumstances. Although not required by the terms of the Agreement,

¹⁷² See *Tennis Channel Decision*, 717 F.3d at 985; *GSN Order* ¶¶ 63-66.

¹⁷³ See Compl. ¶¶ 3, 10, 89, 92, 106.

¹⁷⁴ See Brayford Decl. ¶ 29.

Comcast made the decision to roll out beIN in HD in eight major markets in the West and Central divisions in 2016.¹⁷⁵ ¶

¶, Comcast also began negotiations with beIN regarding authentication of Comcast customers on beIN Connect.¹⁷⁶

VI. BEIN HAS NOT SHOWN THAT IT HAS BEEN UNREASONABLY RESTRAINED IN ITS ABILITY TO COMPETE FAIRLY

77. As part of its *prima facie* case, beIN also must demonstrate that Comcast’s conduct has the effect of unreasonably restraining beIN’s ability to compete fairly.¹⁷⁷ This element requires that the Commission “demand[] proof of the significant or material detrimental effect implicit in the term ‘unreasonable restraint.’”¹⁷⁸ Allowing allegations of “*any* detrimental effect on an unaffiliated network as sufficient to prove a *prima facie* violation” would “effectively nullify the unreasonable restraint requirement of § 616(a)(3),” and likewise raise serious First Amendment concerns.¹⁷⁹

78. Nor can a *prima facie* showing be predicated, as beIN attempts to claim, on a theory of *anticipatory* unreasonable restraint when no final offer for a carriage renewal was ever

¹⁷⁵ Brayford Decl. ¶ 10.

¹⁷⁶ *Id.* Specifically, Comcast sent beIN Comcast’s authentication terms and conditions in December 2016, and beIN responded with a mark-up in March 2017. *Id.*

¹⁷⁷ *2011 Program Carriage Order* ¶ 15; 47 C.F.R. § 76.1302(d)(3)(iii)(A).

¹⁷⁸ *Time Warner Cable Inc.*, 729 F.3d at 166 (referring specifically to the *prima facie* stage of a program carriage complaint proceeding, as those were the rules that were being challenged).

¹⁷⁹ *Id.* (emphasis in original); see also *WealthTV Recommended Decision* ¶ 73 (holding that WealthTV could not satisfy its burden to establish that MVPD defendants’ “conduct unreasonably restrain[ed] its ability to compete fairly merely by showing that the defendants’ individual carriage decisions affected its competitive position in the marketplace” and finding that the defendants decided not to carry WealthTV “on the basis of reasonable and legitimate business reasons that were within the bounds of fair competition”) (internal quotation marks and citation omitted); *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 636 (1994) (holding that Comcast and other MVPDs “engage in and transmit speech, and . . . are entitled to the protection of the speech and press provisions of the First Amendment”).

formed.¹⁸⁰ Such a result would contravene Congress’s instruction that the program carriage regime must “rely on the marketplace to the greatest extent feasible” and not impede “legitimate, aggressive negotiations” that are the hallmark of a competitive marketplace.¹⁸¹ It would also open the door to similar misuse of the program carriage regime by others, in the hopes that the Commission will put its thumb on their side of the scale, which would have a chilling effect on MVPDs’ editorial discretion and business judgment.

79. beIN repeatedly claims that any further negotiations would be “fruitless,”¹⁸² but that is because beIN deemed them to be so. Notably, beIN does not claim that there was any refusal to deal or any coercion or threats – the indicia of what the Commission in its original rulemaking posited might be actionable conduct giving rise to a program carriage claim.¹⁸³ This illustrates further why the Commission should decline beIN’s invitation to intercede in this early-stage negotiation as a matter of exercising its program carriage authority, as that would set a precedent that parties should file complaints early and often if they want to gain perceived negotiation leverage rather than persist in the hard work of reaching agreement across the

¹⁸⁰ beIN may argue that this would effectively require a complainant to accept the harm of a “discriminatory” offer and only then file a complaint. To be sure, the program carriage rules allow a party to file a claim within one year of signing a contract that it believes violates the rules. Although those rules also contemplate a complaint being filed based on a discriminatory offer, the party filing such a complaint still bears the burden of proving that the offer itself has the effect of unreasonably restraining the complainant’s ability to compete fairly. The “offer” prong of the rules only appears in the statute of limitations provision. See 47 C.F.R. § 76.1302(h). An “offer” as a triggering event may well make more sense for a violation of the other two types of prohibited conduct in the statute and the rules – namely, a demand for exclusivity and a demand for equity in exchange for carriage (both of which are more likely to be apparent in the offer itself) – than it does for the much more subjective, context-specific discrimination prong. In all events, Comcast is not suggesting that an offer could not serve as a legitimate triggering event for a discrimination claim under certain circumstances, but rather that beIN has not made that showing in *these* circumstances, where the “offer” in question is an initial counterproposal *made nearly eight months before the existing Agreement expires*.

¹⁸¹ See 1993 Program Carriage Order ¶¶ 14, 15 (internal quotation marks and citation omitted); see also 1992 Cable Act.

¹⁸² Compl. ¶¶ 10, 54.

¹⁸³ See 1993 Program Carriage Order ¶¶ 9-14.

bargaining table. These highly unusual circumstances alone justify the Complaint's dismissal as a matter of law.¹⁸⁴

80. Perhaps due to the weakness of its novel theory, beIN seeks to sidestep this element altogether by claiming it is entitled to the program carriage condition adopted by the Commission in the *Comcast-NBCUniversal Order*.¹⁸⁵ But that condition expired on January 20, 2018.¹⁸⁶ The Commission has consistently stated that party-initiated program access and carriage remedies, including complaint-based and arbitration remedies, must be formally *invoked or initiated prior to* the condition's expiration.¹⁸⁷ beIN did not provide the requisite pre-filing notice for its program carriage complaint until February 13, 2018, and filed its Complaint on

¹⁸⁴ For this reason, the Commission may also independently dismiss beIN's Complaint as frivolous. See *1993 Program Carriage Order* ¶¶ 35-36 (setting out the Commission's frivolous complaint standard); *Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution and Carriage*, Memorandum Opinion and Order, 9 FCC Rcd. 4415 ¶ 33 (1994) (noting that the Commission "intend[s] to strictly enforce this prohibition against frivolous complaints"); 47 C.F.R. § 76.6(c).

¹⁸⁵ See Compl. ¶¶ 2, 18, 34, 42-45.

¹⁸⁶ See *Applications of Comcast Corp., General Electric Co. and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses*, Memorandum Opinion and Order, 26 FCC Rcd. 4238, App. A §§ III.4, XX (2011) ("*Comcast-NBCUniversal Order*").

¹⁸⁷ Specifically, in 2009, when the Commission relieved News Corp. of its program access arbitration condition under the *News Corp.-Hughes Order* following its split from DirecTV in 2008 (which were not set to expire until 2010), the Commission expressly stated that the arbitration condition would continue to apply to "arbitrations in which a formal demand or notice for arbitration has been provided up to and including the date we release this Order." *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee*, Memorandum Opinion and Order, 24 FCC Rcd. 8674 ¶ 16 (2009) ("*News Corp.-Hughes Order*"). The Commission further noted that it was including the period between when the divestiture occurred and its order "to preserve a remedy that was assumed to be available, based on the *News Corp.-Hughes* and *Liberty-DIRECTV* orders, until it expired or was removed." *Id.* ¶ 17. Unlike the *News Corp.-Hughes* case, however, the Comcast-NBCUniversal Conditions expired after their full term, with full notice to all parties, so no additional window was needed for complaints or arbitrations to be filed. See *Comcast-NBCUniversal Order*, App. A § XX. Similarly, in response to a petition filed by Comcast in 2007 to suspend the *Adelphia Order* program carriage arbitration condition, which had been misused by The America Channel ("TAC"), the Commission suspended the condition but specifically noted that "those disputes in which the condition or arbitration has already been invoked" could proceed. See *Comcast Corporation Petition for Declaratory Ruling that The America Channel is not a Regional Sports Network*, Order, 22 FCC Rcd. 17938 ¶ 24 (2007). The Commission went on to note that "our suspension of the program carriage condition does not affect the current arbitration process between TAC and Comcast or the ongoing program carriage arbitration between MASN and Time Warner." *Id.* ¶ 24 n.66.

March 15, 2018. Accordingly, and as Comcast also made clear in its response to beIN’s pre-filing notice, beIN cannot now invoke this condition.¹⁸⁸

81. At bottom, beIN’s claim of unreasonable restraint is based on nothing more than Comcast’s (a) unwillingness simply to accept the excessive renewal demands that beIN proposed and (b) attempt to move the negotiations toward a more reasonable and realistic outcome. For example, beIN notes that Comcast’s December initial counterproposal offered ||

||. beIN theorizes that this shows

||

||¹⁸⁹ beIN

goes on to allege that it would receive ||

||.¹⁹⁰ In fact, Comcast’s proposed monthly fee had nothing to do with any change in distribution obligations, but rather was a reasonable opening offer based on its analysis of the viewership data, the economics of beIN’s proposals, and an attempt to reset the parties’ negotiations on a more realistic course.

82. beIN further asserts that ||

¹⁸⁸ Nor is there any excuse for beIN’s failure to file its Complaint (or even to tender a pre-filing notice) prior to the Conditions’ expiration. The gravamen of beIN’s Complaint is – indisputably – the initial “Comcast Offer” dated December 13, 2017. Having chosen to pursue litigation as part of its renewal strategy, beIN had *more than five weeks* following this offer to invoke the program carriage provision before the Conditions expired on January 20, 2018. As set forth in more detail above, nothing occurred between December 13, 2017 and January 20, 2018 that prevented beIN from tendering its pre-filing notice, and beIN does not claim otherwise. Nor could beIN credibly claim that sending its notice earlier might have ended negotiations; in fact, as beIN acknowledged, Comcast continued discussions with beIN for at least another month after receiving beIN’s February 13 pre-filing notice. *See* Compl. Ex. 3. For this reason alone, beIN’s argument that a failure to accept its contorted view of the Conditions’ expiration would provide Comcast a “get out of jail free card” until January 19, 2019 is meritless. *See* Compl. ¶¶ 42-44.

¹⁸⁹ Compl. ¶ 96. As noted above, Comcast {{ }}

¹⁹⁰ *Id.*

But this is nonsensical, since beIN is the party that has consistently proposed a [] during the parties' negotiations (and to other MVPDs as well).¹⁹² beIN cannot establish unreasonable restraint by citing to terms it offered to Comcast.¹⁹³

83. beIN also argues that, if it accepted Comcast's December Offer, beIN's ability to compete against NBCSN and Universo for advertisers would be unreasonably restrained because beIN lacks the reach to attract key, shared advertisers.¹⁹⁴ As shown above, however, while a handful of the nation's largest advertisers overlap the networks, beIN offers no evidence (and there is no reason to expect) that these advertisers would shift their advertising spending from NBCSN or Universo even if beIN were more broadly distributed. As Dr. Lerner observes, "there is no basis to conclude that lack of scale has impeded beIN's ability to attract advertisers, or that having broader distribution through Comcast would enhance beIN's ability to do so."¹⁹⁵

84. The notion that beIN – which is already carried by several other MVPDs and OVDs, large and small – could show unreasonable restraint in today's highly competitive video marketplace is equally implausible. Five years ago, Judge Kavanaugh of the D.C. Circuit observed that "[i]n today's highly competitive market neither Comcast nor any other video programming distributor possesses market power in the national video programming distribution

¹⁹¹ *Id.* ¶ 96.

¹⁹² *See, e.g.*, Compl. Ex. 10 (beIN's renewal presentation to Dish).

¹⁹³ Moreover, at a time when MVPDs are generally losing subscribers, a []

II.

¹⁹⁴ *See* Compl. ¶¶ 17, 96, 99.

¹⁹⁵ *See* Lerner Decl. ¶ 93; *see also id.* ¶ 63 ("beIN provides no evidence that the beIN networks would appeal to a material number of subscribers on more highly penetrated tiers.").

market.”¹⁹⁶ The number of competitive distribution options for programmers like beIN has grown significantly since that finding, giving it even greater force today. This includes the OVDs that provide beIN distribution options that were unimaginable years ago when the program carriage regime was adopted. “[T]he FCC cannot continue to implement a regulatory model premised on a 1990s snapshot of the cable market.”¹⁹⁷

85. In fact, the vast majority of Comcast customers *have no less than five other competitive pay-TV choices to watch beIN’s niche soccer programming*. These include not only traditional MVPDs like AT&T/DirecTV, CenturyLink Prism, Dish, and Verizon, but, as noted, also linear OVDs like Sling TV, fuboTV, and iGol (which currently appears to be comprised primarily of beIN content).¹⁹⁸ Indeed, a Comcast subscriber dissatisfied with Comcast’s carriage of beIN can access beIN’s niche soccer content without switching either her broadband or even her MVPD service. Instead of paying for SEP or the H tier through Comcast, a Comcast video customer may pay \$10 and get both beIN networks via Sling TV (including now integrated via the same X1 box), via iGol, or simply for free on go90.¹⁹⁹

86. It thus defies reality to suggest that Comcast could be a gatekeeper limiting beIN’s exposure to willing subscribers and viewers.²⁰⁰ beIN essentially concedes this point in

¹⁹⁶ See *Tennis Channel Decision*, 717 F.3d at 994 (Kavanaugh, J., concurring).

¹⁹⁷ *Id.*

¹⁹⁸ See Lerner Decl. ¶ 88; Litman Decl. ¶ 97.

¹⁹⁹ See Litman Decl. ¶ 97; Lerner Decl. ¶ 88.

²⁰⁰ Indeed, the Second Circuit made clear that, given the First Amendment implications, the element of “unreasonable restraint” at the prima facie stage effectively requires the complainant to demonstrate market power by the defendant MVPD. See *Time Warner Cable Inc.*, 729 F.3d at 164-65 (stating its expectation that “the FCC will consider market power in evaluating the vast majority of future § 616(a)(3) complaints”); see also *Tennis Channel Decision*, 717 F.3d at 990, 995 (Kavanaugh, J., concurring). Absent evidence of market power, applying the program carriage rules to Comcast and “interfer[ing] with Comcast’s editorial discretion cannot stand.” *Id.*

the Complaint, where its claims of significant switching between Comcast and fuboTV to obtain beIN's programming – if they are to be believed – simply confirm this marketplace reality.²⁰¹

87. Finally, it is beIN's own distribution strategies and failures to convince other distributors to broadly distribute or carry its service that ultimately account for beIN not achieving the fuller distribution and revenues that it seeks. As noted above, beIN lacks carriage on multiple MVPDs and linear OVDs, and beIN for several years has permitted its programming to be available *for free* to anyone through Verizon's go90 service.²⁰² It is likely, ||

|| that other distributors have taken into account this free exhibition in assessing the value of the beIN networks to their subscribers.²⁰³

88. beIN's Complaint fails to establish any unreasonable restraint that could possibly justify any additional burdensome and unnecessary proceedings, for Comcast or the Commission.

VII. RESPONSE TO NUMBERED PARAGRAPHS

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

²⁰¹ *See* Compl. ¶¶ 14, 101-103.

²⁰² *See* Brayford Decl. ¶¶ 20, 23, 32; *see also* Litman Decl. ¶ 89.

²⁰³ Indeed, as Mr. Litman suggests, it may well be the case that beIN has the wrong business model altogether. At a time of intense intermodal competition among distributors and the need for diligent belt-tightening by MVPDs, niche programming like beIN's, which appeals only to a small group of customers, may well be more suited to a direct-to-consumer over-the-top offering. iGol is essentially that newer business model, as it consists largely of beIN's programming. *See* Litman Decl. ¶¶ 97, 122.

each numbered paragraph of the Complaint with the following correspondingly numbered paragraphs.

1. Comcast denies it has violated Section 616, or any other section, of the Communications Act of 1934 or of the Commission's regulations.
2. Comcast denies that the program carriage condition set forth in the Commission's *Comcast-NBCUniversal Order* applies to beIN's Complaint, as that condition expired on January 20, 2018. beIN did not provide the requisite pre-filing notice for the Complaint until February 13, 2018, and filed its Complaint on March 15, 2018. In any event, Comcast denies that it violated the program carriage condition.
3. Regarding the first sentence, Comcast admits that it submitted a preliminary counterproposal to beIN on December 13, 2017 (the "December Offer"), but denies beIN's characterization of the December Offer and states that it was grounded in the existing Affiliation Agreement between Comcast and beIN, and responded to the core economic terms beIN had proposed in its April 11, 2017 renewal pitch to Comcast (more than 15 months before the existing agreement was set to expire). Comcast denies the remainder of this paragraph.
4. Comcast denies the first four sentences of paragraph 4. With respect to the final sentence, Comcast admits that NBCSN is a general sports network with a broad range of sports content, but denies that it or Universo, a Spanish-language general entertainment network, which airs a mix of reality and scripted series, music programming, sporting events, and movies, is similarly situated to beIN's niche soccer networks.
5. With respect to the first sentence of paragraph 5, Comcast states that any Commission decisions speak for themselves (and to the extent the Complaint is referring to the *NFL Network* case, this was a Media Bureau initial designation order). Comcast denies the

second and third sentences of paragraph 5. With respect to the fourth sentence, Comcast admits that all four enumerated networks show some live soccer programming but states that NBCSN and Universo show a limited amount of soccer programming as compared to the beIN networks, and neither of these networks is similarly situated to beIN's networks.

6. Comcast denies paragraph 6.

7. Comcast denies paragraph 7 and states that beIN's highly selective ratings data are misleading and do not demonstrate similarity in ratings between the beIN networks, on the one hand, and NBCSN and Universo, on the other.

8. Comcast denies paragraph 8 and states that the ratings data cited by beIN are misleading and not representative of the overall viewership of its networks.

9. Comcast denies paragraph 9.

10. Comcast denies paragraph 10, except to state that Comcast's December Offer speaks for itself.

11. The first sentence of paragraph 11 contains legal conclusions for which no response is required, and Comcast states that the Commission's program carriage rules speak for themselves. Comcast denies the premise of and remaining statements in paragraph 11 and notes that Comcast would incur [] in annual additional costs without any corresponding net benefit were it to accept beIN's April Proposal.

12. Comcast denies the premise of Paragraph 12. Comcast notes that beIN's contention that beIN no longer has value on the SEP because fuboTV also carries beIN is inconsistent with what beIN []. Nonetheless, Comcast generally agrees with beIN that it does not have a lot of value, even on the SEP (and, to a lesser extent, the H tier).

13. Comcast denies the first sentence of paragraph 13. With respect to the second and third sentences, Comcast admits that CenturyLink Prism, fuboTV, Liberty Puerto Rico, and Verizon carry beIN on broadly penetrated tiers, as does Frontier, but only in select markets within its footprint. However, Comcast notes that nearly all other major MVPDs generally carry the beIN networks on upper-level or add-on tiers with lower penetration, like Comcast, and over 40 MVPDs and most virtual MVPDs do not carry beIN at all. Comcast states that its carriage of the beIN networks is firmly within the industry mainstream.

14. Comcast lacks sufficient information to confirm or deny the first two sentences of paragraph 14 but notes that Sony's PlayStation Vue, a leading player in the "OTT phenomenon," dropped beIN in June 2017. Comcast denies the final sentence of this paragraph and notes that || || would be more likely to dilute the value of beIN's existing networks and consume additional valuable bandwidth on Comcast's system.

15. Comcast denies paragraph 15 for the reasons set forth in paragraph 40 of Andrew Brayford's declaration.

16. Comcast denies paragraph 16.

17. Comcast denies paragraph 17.

18. Comcast denies the allegations in paragraph 18 and denies that beIN's premature and meritless claims are entitled to any relief.

19. Comcast denies paragraph 19.

20. Paragraph 20 contains legal conclusions to which no response is required.

21. Comcast admits that beIN has exhibited European soccer from beIN's launch through the present, but Comcast lacks sufficient information to admit or deny the remainder of paragraph 21 and states that, during renewal negotiations, beIN was ||

II.

22. Comcast admits to paragraph 22 but notes that beIN's networks, to date, are dominated by continental European soccer and soccer-related programming, which is the main driver of value for beIN's networks II

II.

23. Comcast lacks sufficient information to admit or deny paragraph 23.

24. Comcast lacks sufficient information to admit or deny paragraph 24, except Comcast admits that it was the first cable operator to launch beIN in the United States in 2012.

25. Comcast denies the first sentence of paragraph 25. Comcast states that the data cited in paragraph 25 speaks for itself. However, as explained in Section IV.C of the Answer and in Mr. Litman's declaration, beIN's reliance on II II data is not meaningful.

26. Comcast admits to paragraph 26.

27. Comcast admits to paragraph 27 and states that the Communications Act, the Commission's program carriage rules, and the *Comcast-NBCUniversal Order* (which does not apply to this case) speak for themselves.

28. Comcast admits to paragraph 28, but notes that the network's name is "Universo," not "NBC Universo."

29. Comcast admits to paragraph 29, except to clarify that "NBC Sports" is the larger division that manages the sports programming for multiple NBCUniversal properties, including NBCSN. Comcast states that, to the extent paragraph 29 is meant to describe NBCSN (rather than the NBC Sports group, which is not a network), it includes incomplete and inaccurate

information, and fails to list other highly valued programming, such as NASCAR, IndyCar, and Tour de France. With respect to the last sentence, Comcast states that it has a long history of broadly distributing NBCSN (and its predecessors Outdoor Life Network and Versus) and its carriage of NBCSN on Digital Starter (“DS”) is a result of its reasonable business judgment and editorial discretion and is comparable to the carriage of NBCSN by virtually all other large MVPDs, as set forth in Exhibit 12.

30. Except for the third sentence, which Comcast denies, Comcast admits to paragraph 30 but, with respect to the fourth sentence, notes the network’s official name is “Universo.” Regarding the last sentence, Comcast states that it has a long history of broadly distributing Universo (and its predecessor mun2) and its current carriage of Universo is a result of its reasonable business judgment and editorial discretion and is comparable to the carriage of Universo by many of the largest MVPDs, as set forth in Exhibit 12.

31. Comcast denies paragraph 31 except to admit that it has been the subject of program carriage complaints. Comcast states that the list of program carriage complaints filed against Comcast provided in beIN’s Exhibit 1 is incomplete and misleading, as shown in Comcast’s annotations to the same in Exhibit 13.

32. Comcast admits to paragraph 32.

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

34. Comcast disputes that the Commission has jurisdiction to adjudicate this matter under the expired *Comcast-NBCUniversal Order* Conditions, as discussed above.

35. Comcast admits to paragraph 35.

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

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

38. Comcast states that the order cited in paragraph 38 speaks for itself. Comcast notes that the Commission also stated, in the same order, that “[i]n implementing the provisions of Section 616, we believe that our regulations must . . . preserve[] the ability of affected parties to engage in legitimate, aggressive negotiations.”²⁰⁴

39. Comcast states that authority cited in paragraph 39 speaks for itself.

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

41. Regarding the first two sentences of paragraph 41, Comcast states that the Commission’s rules speak for themselves. Comcast denies the last sentence of paragraph 41.

42. Comcast denies the premise of paragraph 42 and the characterizations of the *Comcast-NBCUniversal Order*, which speaks for itself, and notes again that the Conditions expired nearly a month prior to beIN sending Comcast a pre-filing notice.

43. Comcast states that the *Comcast-NBCUniversal Order* speaks for itself and the Conditions expired on January 20, 2018, before beIN even sent its pre-filing notice and before it filed the Complaint.

44. Comcast denies paragraph 44.

45. Comcast denies the premise of paragraph 45, as the expired *Comcast-NBCUniversal Order* is inapplicable to the present Complaint.

²⁰⁴ 1993 Program Carriage Order ¶ 14.

46. Comcast denies the premise of and statements in the first sentence of paragraph 46, with the exception of the date contained therein. Comcast lacks sufficient information to confirm or deny the second and third sentences regarding the hopes or motivations underpinning beIN's 2012 Agreement with Comcast, but states that Comcast's packaging of beIN is a product of its reasonable business judgment and reflects the fact that beIN's niche soccer networks appeal to a small fraction of Comcast's customers and are well-suited to specialty tiers.

47. Comcast admits to paragraph 47 and notes that the Agreement speaks for itself.

48. Comcast lacks sufficient information to confirm or deny the first sentence of paragraph 48 regarding beIN's motivation for the terms of its 2012 Agreement with Comcast. Comcast admits to the second sentence. Comcast lacks sufficient information to admit or deny the third sentence but denies that a brand-new, niche programmer like beIN ||

||. Comcast denies the fourth sentence. Comcast lacks sufficient information to confirm or deny the statements regarding beIN's hopes for the 2012 Agreement in the fifth sentence but denies that beIN's "free lunch" had any added value on more broadly distributed tiers. Comcast denies the sixth and seventh sentences.

49. Comcast lacks sufficient information to confirm or deny the first sentence of paragraph 49. Comcast denies the second sentence. Comcast admits to the remaining sentences in paragraph 49 but states that the English Premier League is only one piece of NBCSN's larger sports programming strategy and broader content offerings, as discussed in Section I.A of the Answer.

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

51. Comcast admits to paragraph 51.

52. Comcast denies the first and second sentences of paragraph 52, except Comcast admits that it submitted an initial counterproposal to beIN on December 13, 2017. Comcast lacks sufficient knowledge to confirm or deny the third sentence. Comcast admits to the fourth, fifth, and sixth sentences but states that the December Offer []

]].

Regarding the seventh sentence, Comcast admits to the figure in that sentence []

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

]].

53. With respect to the first sentence of paragraph 53, Comcast denies that its December Offer failed to reflect the value of beIN's programming, particularly given that, at the time Comcast made the December Offer, beIN had not []

]]. Comcast admits that beIN responded with a counterproposal on February 2, 2017, but notes it did so after an in-person meeting with Comcast on January 25, 2018, during which beIN verbally proffered a different proposal. Comcast lacks sufficient information to admit or deny whether beIN was “disheartened” with Comcast’s December Offer but states that *Comcast* was disappointed by beIN’s February 2 Proposal, which proposed higher fees and broader carriage terms than beIN’s January 25, 2018 verbal offer, among other issues. Comcast admits to the second, third, and fourth sentences of paragraph 53, except to state that the February 2 Proposal also included several other new terms not mentioned in paragraph 53, in addition to [

]].

54. Comcast denies the first sentence of paragraph 54. Comcast denies the second sentence, except to admit that it met with beIN on January 25. Comcast admits to the third sentence. Comcast denies the fourth sentence. Comcast admits to the fifth sentence. Comcast denies the sixth sentence. Comcast admits to the remaining sentences in paragraph 54.

55. Comcast admits that beIN sent an e-mail to Comcast on March 11, 2018 but denies that this e-mail clarified beIN’s claimed value proposition. Comcast denies the remainder of paragraph 55, except to admit that Comcast and beIN held a call on March 13, 2018. Comcast notes that beIN does not reference its revised March 7 Proposal (included as Attachment C to Mr. Brayford’s declaration), which purported to clarify the vague terms and calculations contained in beIN’s February 2 Proposal. Comcast was in the process of reviewing and considering the revised March 7 Proposal when it received the instant Complaint.

56. Comcast denies the first sentence of paragraph 56. With respect to the second sentence, Comcast states that any Commission decision speaks for itself.

57. Comcast notes that the cited *NFL* decision was an initial Media Bureau decision, which speaks for itself, and further notes that the current Media Bureau, in another recent program carriage case, disavowed another aspect of that same *NFL* initial order.²⁰⁵

58. Comcast denies paragraph 58, except to state that the cited *Tennis Channel* decision speaks for itself, and was vacated and remanded by the D.C. Circuit and later dismissed by the Commission.

59. Comcast denies paragraph 59.

60. Comcast denies the first two sentences of paragraph 60 and clarifies that, while NBCSN and Universo air some soccer programming, primarily (and, in the case of NBCSN, exclusively) from the English Premier League, NBCSN is a general sports network and Universo is a general entertainment network; “substantial” and “extensive” soccer coverage is a description that applies only to beIN, whose networks are dominated by soccer programming. Comcast lacks sufficient information to admit or deny the third sentence in paragraph 60, because beIN failed to name the “many cases” where programs covering different sports were found to be similarly situated, and, in any event, Comcast states that the Commission’s orders speak for themselves. Comcast admits to the fourth sentence and states that NBCSN and Universo each air soccer programming as one component of a broad portfolio of general sports programming, in the case of NBCSN, and general entertainment programming, in the case of Universo. Comcast denies the fifth sentence. As for the remaining statements, Comcast admits that beIN and Universo aired two of the same soccer matches in different languages over the last

²⁰⁵ See *Word Network Operating Company d/b/a The Word Network v. Comcast Corp. and Comcast Cable Commc’ns, LLC*, Memorandum Opinion and Order, 32 FCC Rcd. 7704 ¶ 35 (2017).

two years but states that beIN's attempt to draw comparisons between the two networks based on this limited overlap in programming is unavailing.

61. Comcast denies paragraph 61, except to state that the cited correspondence and Commission order speak for themselves.

62. Comcast denies the premise and characterizations of paragraph 62 and points out that, assuming the veracity and relevance of the stated data, the beIN networks each aired well over four times the amount of live soccer that NBCSN aired. As Comcast explains in Section IV.A of its Answer, and as Dr. Lerner and Mr. Litman explain in their reports, a systematic analysis of overall programming shown on beIN Sports, beINE, NBCSN, and Universo, based on an objective, third-party data source, demonstrates the fundamental differences between the beIN networks, on the one hand, and NBCSN and Universo, on the other.

63. Comcast denies the premise and characterizations in paragraph 63, and points out that, assuming the veracity and relevance of the stated data, the beIN networks each aired roughly five times the amount of live soccer that Universo aired.

64. Comcast denies the premise of paragraph 64, and notes that soccer makes up a small fraction of the programming on Universo, as Dr. Lerner explains in his report.

65. Comcast denies paragraph 65.

66. Comcast denies paragraph 66.

67. Comcast denies paragraph 67, except to admit that Comcast cited "substantial and material differences between each of these networks and beIN's cable networks" in its response to beIN's pre-filing notice.

68. Comcast denies paragraph 68 and specifically denies the relevance or credibility of any conclusions derived from beIN's "appropriate further adjustment," for which beIN provides no methodology or calculations.

69. Comcast denies paragraph 69, except to note that the cited data speaks for itself.

70. Comcast denies paragraph 70, except to note that the cited data speaks for itself.

71. Comcast denies the first sentence of paragraph 71. Comcast admits to the remaining sentences, except to deny the final clause of the last sentence, and states that the materials cited therein are evidence of Comcast's good-faith fulfillment of []

II.

72. Comcast denies the first sentence of paragraph 72. Comcast denies the second sentence of that paragraph, except to admit that Universo acquired the 2017 CONCACAF game rights. Comcast lacks sufficient information to confirm or deny the statements and vague allegations made by beIN in the final two sentences of the paragraph but states that Universo had the exclusive Spanish-language rights to the programming.

73. Comcast denies the premise of paragraph 73 and states that the fact that beIN bid on the U.S. rights for English Premier League along with NBCSN and Fox in 2015 is inconsequential given NBCSN's overall programming strategy, line-up, and viewing audience, and that NBCSN has no intention or desire to be a niche soccer network. Furthermore, Comcast states that the cited order speaks for itself.

74. Comcast denies the first two sentences of paragraph 74. Comcast denies the premise of the third sentence and states that the referenced articles speak for themselves.

75. Comcast denies the premise of paragraph 75 and is unable to confirm or deny the statements made in the materials beIN provided to other distributors.

76. Comcast denies paragraph 76 and is unable to confirm or deny the statements made in the materials beIN provided to other distributors.

77. Comcast denies paragraph 77.

78. Comcast denies paragraph 78, except to note that the cited data speaks for itself.

79. Comcast lacks sufficient information to confirm or deny paragraph 79, which, if true, provides evidence that beIN has not been unreasonably restrained in the marketplace. However, Comcast denies beIN's claim that beIN has been "handicapped by poor distribution by Comcast," and notes that Comcast's carriage of beIN is well within the industry mainstream.

80. Comcast denies the premise of paragraph 80 and notes that such data is not borne out by viewership data from Comcast customers.

81. Comcast denies paragraph 81, except to note that the cited overlap in advertisers is not evidence of material or direct competition for advertisers between networks.

82. Comcast denies paragraph 82.

83. Comcast denies the premise of paragraph 83 and notes that beIN's claim that the four largest advertisers for the September 6, 2016 match "bought time on both telecasts" undermines beIN's assertion that advertisers substitute one network for the other.

84. Comcast denies the first sentence of paragraph 84. Comcast admits to the remaining sentences but states that a few cherry-picked examples of non-soccer sports programming do not support the conclusion that beIN's networks are similarly situated to NBCSN and Universo and reiterates that beIN Sports and beINE are niche soccer networks that predominantly feature continental European soccer programming.

85. Comcast denies paragraph 85.

86. Comcast denies paragraph 86.

87. Comcast denies the first and second sentences of paragraph 87 and states that its SEP and H tiers generally “bolt on” to lower tiers. Comcast admits to the third sentence.

88. Comcast denies the first sentence of paragraph 88 and states that ||

||. Comcast denies the second sentence and states that,

||

||. Comcast denies the third and fourth sentences.

Comcast admits to the fifth sentence but clarifies that the H tier generally bolts on to other tiers, including the Limited Basic offering. Comcast denies the premise of and the first half of the sixth sentence, except it admits to the remaining part of the statement regarding Universo’s distribution. Comcast states that the table included at the end of paragraph 88 omits its Limited Basic offering, which is one of the packages to which the H Tier generally may be added.

89. Comcast denies the premise of paragraph 89 and states that any HD carriage decisions are made based on its reasonable business judgment in light of the bandwidth constraints in any particular market and other associated costs of HD carriage, as well as the overall demand for the network.

90. Comcast denies the premise of paragraph 90. Comcast lacks sufficient information to admit or deny other MVPDs’ business rationales for carrying certain programming in HD, but reiterates that Comcast’s carriage decisions with respect to beIN are a

product of its reasonable business judgment and reflect the limited demand for beIN among Comcast customers.

91. Comcast lacks sufficient information to admit or deny the blanket statements in paragraph 91 but states that it repeatedly demonstrated its willingness to come to mutually agreeable terms surrounding authentication with beIN.

92. Comcast denies paragraph 92.

93. Comcast denies the first sentence of paragraph 93. Comcast lacks sufficient information to confirm or deny the remaining statements in paragraph 93.

94. Comcast admits to the first sentence of paragraph 94 but states that the monthly fee Comcast currently pays beIN is approximately [] and denies the remainder of that paragraph.

95. Comcast denies the premise of paragraph 95. Comcast notes that it was beIN that proposed [], and reiterates that Comcast's proposed fees were firmly grounded in the viewership analysis and reflected outstanding questions about the value proposition of beIN's programming.

96. Comcast denies the first and second sentences of paragraph 96 and states that beIN's own promotional materials pre-dating this litigation state that "70% of La Liga viewers on beIN's English-language channel *do not watch* Premier League on NBC Sports Network."²⁰⁶ Regarding the third sentence, Comcast admits that it offered []

²⁰⁶ See Ex. 8 (emphasis added).

]]. Comcast denies the premise of the remaining statements in this paragraph and states that the fee Comcast is willing to pay beIN is not [[but a function of its value proposition, which, based on the viewership analysis and outstanding questions about the value proposition of beIN's programming, Comcast reasonably determined was far below beIN's own assessment. Comcast reiterates that it was beIN that proposed [[]].

97. Comcast denies the premise of paragraph 97 and incorporates its response to paragraphs 81-83.

98. Comcast denies paragraph 98 and incorporates its response to paragraph 82.

99. Comcast denies paragraph 99.

100. The first sentence of paragraph 100 contains legal conclusions to which no response is required. Comcast denies the second and third sentences. Regarding the fourth sentence, Comcast incorporates its response to paragraph 11 and notes that beIN's April Proposal demanded exorbitant fee and carriage increases and [[

]].

101. Comcast denies the premise of paragraph 101 and incorporates its response to Paragraph 12. Comcast notes that beIN is currently available for \$10/month on both Sling TV and iGol, which belies beIN's claim that Comcast offers beIN at a "comparatively high price" on SEP and the H tier.

102. In response to paragraph 102, Comcast incorporates its response to paragraph 13 and notes that the chart Comcast provides in Exhibit 12 and the declarations of Dr. Lerner and Mr. Litman provide an accurate and comprehensive representation of beIN's distribution.

103. In response to paragraph 103, Comcast incorporates its response to paragraph 14.

104. Comcast denies paragraph 104 and incorporates its response to paragraph 15.

Comcast notes that the detailed viewership analyses Comcast commissioned strongly support Comcast's conclusion that beIN's demands for broad distribution and higher fees were inconsistent with beIN's commercial value.

105. Comcast denies paragraph 105 and incorporates its response to paragraph 16.

106. With respect to the first half of the first sentence of paragraph 106, Comcast denies that it is the only distributor not to authenticate beIN's subscribers and states that Comcast was in the process of discussing authentication terms with beIN, but these negotiations stalled when they were subsumed by the larger renewal negotiations beIN initiated. Comcast lacks sufficient information to confirm or deny the second half of the first sentence or the second sentence.

107. In response to paragraph 107, Comcast incorporates its responses to paragraphs 1 through 106.

108. Comcast denies paragraph 108.

109. In response to paragraph 109, Comcast incorporates its responses to paragraphs 1 through 108.

110. Comcast denies paragraph 110.

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

VIII. CONCLUSION

As demonstrated above, there is no basis in fact or law for the Complaint. Allowing this matter to proceed would not only squarely contradict well-established Commission and judicial precedent, but also would undermine the clear congressional preference for commercial negotiations, open the door to misuse of the program carriage regime for perceived negotiating advantages, and improperly interfere with Comcast's reasonable business judgment and constitutionally protected editorial discretion.

The Complaint should be denied and dismissed.

Respectfully submitted,



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May 14, 2018

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

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

DECLARATION OF FRANCIS M. BUONO

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

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

Dated: Washington, DC
May 11, 2018



Francis M. Buono

EXHIBIT 1

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

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

DECLARATION OF ANDREW BRAYFORD

1. My name is Andrew Brayford. I am Vice President of Content Acquisition for Comcast Cable (“Comcast”). My business address is One Comcast Center, Philadelphia, Pennsylvania 19103.

2. I have worked in my current role at Comcast since 2013. In my position at Comcast, my responsibilities include negotiating and administering certain of Comcast’s carriage agreements.

3. I was involved in managing Comcast’s relationship with beIN Sports (“beIN”) beginning in 2014 and have led Comcast’s negotiations with beIN regarding renewal of its current carriage agreement. I was also involved in negotiations and other efforts surrounding authentication of Comcast subscribers on beIN’s app, which began in 2016. Working with the Content Acquisition group and other senior executives, I prepared and delivered Comcast’s December 13, 2017 renewal proposal (“December Offer”) to beIN. The December Offer was an

early-stage counterproposal to beIN's initial offer, which was tendered more than fifteen months prior to expiration of beIN's existing agreement ("April Proposal"). beIN's April Proposal sought, among other things, a [] increase in fees, a [] increase in distribution, and [] the existing contract term, while leaving open fundamental questions affecting the value of the network, including on the most basic issue of [] [].

4. I have reviewed beIN's program carriage complaint, including the declaration of Mr. Antonio Briceño, beIN's Deputy Managing Director, US & Canada, alleging that Comcast's December Offer discriminated against beIN in favor of NBC Sports Network ("NBCSN") and Universo. This allegation is false. Comcast's affiliation with NBCSN and Universo did not influence the December Offer or subsequent negotiations with beIN. Rather, the December Offer was based on our analysis of Comcast customers' limited demand for beIN, the fees and other costs associated with carrying beIN, and the overall value proposition of beIN programming. Each of these legitimate business reasons is an essential part of Comcast's editorial discretion in deciding whether to carry any affiliated or unaffiliated network.

beIN Agreement and Carriage

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

6. Comcast was the first cable operator in the United States to carry beIN and remains among beIN's largest distributors. Comcast launched beIN on its systems pursuant to an August 15, 2012 affiliation agreement ("Agreement"). The Agreement granted Comcast the

right to distribute two linear channels: an English channel (“beIN Sports”) and a Spanish channel with secondary audio in English (beIN Sports en Español, or “beINE”), and []

[] Because beIN Sports and beINE are essentially single-sport niche channels, []

[].

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

[].

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

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

[]. The Agreement expires on July 31, 2018.

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

[]. We also began conversations with beIN regarding authentication of Comcast customers on beIN Connect (i.e., enabling Comcast customers to access content on the beIN Connect app using their Comcast log-in credentials). I sent beIN Comcast’s standard authentication terms and conditions in December 2016. beIN responded with a mark-up of the terms and conditions in March 2017 and an additional mark-up in May 2017, and discussions continued over the next few months but then were subsumed by the larger renewal negotiations that beIN initiated.

Initial Renewal Negotiations

11. At beIN’s request, the parties began negotiating a renewal agreement in April 2017, more than fifteen months prior to expiration of the current agreement. It is highly unusual for renewal negotiations to begin at such an early stage; in my experience, discussions regarding

carriage renewal negotiations usually begin three or four months prior to termination of an agreement. Nevertheless, I agreed to meet with Roy Meyeringh and Ken Tolle of beIN on April 11, 2017 at Comcast's Philadelphia offices to begin discussions. Samantha Fisher, Assistant General Counsel for Comcast's Content Acquisition team, was also present.

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

[REDACTED]. And beIN proposed [REDACTED]

[REDACTED].

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

¹ Under the April Proposal, it was unclear whether Comcast would still [REDACTED]

as it did in the original August 2012 agreement. beIN was unable to provide a concrete response to this fundamental question.

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

]]. Details such as these are a necessary factor in determining the value of any sports network, and [] in the 2012 Agreement was one of the reasons Comcast agreed to launch it in the first place.

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

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

Comcast's Deliberations

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

}}.

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

}}.

18. In this case, our preliminary viewership analyses showed that, even at the current fees under the existing Agreement, Comcast is *likely already losing money* from carriage of the beIN networks relative to the cost of not carrying them. After factoring in the [] fee increases that beIN requested for renewal, the projected lost revenue from dropping beIN entirely was { [] } of the [] in average annual costs – [] [] – that Comcast and its subscribers would incur under beIN’s April Proposal []

[]. { []

}}.

19. In addition, the preliminary viewership analyses also confirmed beIN’s limited appeal and viewership among Comcast customers. I determined that, in all likelihood, those

customers who want to watch programming on beIN Sports and beINE already subscribe to the SEP and H tiers, so broader distribution does not result in a material increase in viewership. Collectively, these analyses pointed to the clear conclusion that there was no compelling case for Comcast to expand distribution under the existing Agreement, much less for the significant rate increases and broader distribution that beIN was requesting.

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

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

22. Beyond these factors, there were other fundamental issues about beIN's renewal proposal that were unresolved and could significantly affect the value proposition of the networks. For example, beIN had not []

]].

23. Compounding this uncertainty was the ongoing issue of the availability of beIN's programming *for free* on Verizon's streaming service, go90. The previous year, my team had discovered that beIN appeared to be offering the same live soccer content on beIN Sports and

beIN on go90 *at no charge to consumers*. In fact, we discovered that beIN provides go90 with soccer content in the early morning hours, whereas beIN shows only paid programming (i.e., infomercials) during this same time period on Comcast's linear feeds. We questioned beIN about the impact of this arrangement on the value of the linear networks. ||

||.

24. Finally, as I considered beIN's renewal proposal, my concerns were exacerbated by the emergence of news reports detailing serious allegations and an ongoing criminal investigation over the company's acquisition and use of soccer rights. Such reports are an independent reason why I believed that Comcast should exercise caution before deciding to renew or expand its carriage of beIN. Comcast has already had a mixed experience with beIN's affiliated network, Al Jazeera America, which abruptly shut down after Comcast carried it for more than two years.

Comcast's Initial Counterproposal

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

26. First, we proposed to continue the ||

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

|| in the existing Agreement, and included language indicating that the ||

||. The December Offer was also meant to send a signal that beIN's extremely aggressive April Proposal was not anywhere close to reasonable starting point for productive negotiations.

27. Second, the counterproposal offered ||

||, since Spanish-speaking customers are much more likely to purchase the H tier than the SEP. The packaging proposal was consistent with our data from the preliminary viewership analyses and aligned with Comcast's general business interest in packaging niche programming with a small number of passionate viewers on specialty tiers in order to provide better choices to our customers and

manage the cost of the most popular tiers. More generally, these proposed terms were consistent with beIN's carriage by other distributors.

28. Third, we proposed a []

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

29. Finally, the counterproposal included []

]], once the economics of the renewal were settled.

[]

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

Further Deliberations and Negotiations

30. My team continued to actively consider beIN's value to Comcast customers over the following weeks and commissioned an additional, updated viewership analysis from EBI in January 2018 ("2018 Viewership Analysis"). The 2018 Viewership Analysis examined {{

}}. The 2018 Viewership Analysis showed that if we no longer carried both beIN Sports and beINE, Comcast could, under a worst case scenario, lose roughly {{ }} customers and around {{ }} million in associated annual revenue. To put that in perspective, {{

}}. Put in dollar terms, Comcast would – under extremely conservative calculations – be *saving* more than approximately {{ }} million annually *at minimum* by simply dropping the beIN networks rather than accepting beIN's proposed [[]] million average annual fees.

31. Further, {{ }} the 2018 Viewership Analysis projected a maximum churn of roughly {{ }} customers – corresponding to around {{ }} in potential lost revenue (and therefore an average annual savings of over {{

}} million) if Comcast were to drop the beIN networks – {{ }} Comcast customers who currently subscribe to a package that includes the beIN networks leaving Comcast. (Note that these figures, which appear in Attachment B of this declaration, have been conservatively adjusted upwards from the figures that appear in

Attachment A of this declaration, which, due to issues with data collection in the normal course, do not capture the entire universe of customers who receive beIN.)

32. On January 25, 2018, Samantha Fisher and I met with Mr. Meyeringh and Mr. Tolle to walk through Comcast's December Offer. beIN was very focused on obtaining distribution and wanted carriage on Comcast's [] tier. We explained that beIN's viewership did not present a business justification for increased distribution. We reiterated our concerns that beIN still could not []

[], which further undermined its requests for significantly increased distribution and fees. We also reiterated that the linear feeds for both beIN Sports and beINE were available to customers for free via go90, and we again explained why this free offering undercuts the value of the networks to Comcast and its subscribers. []

[]. To date, however, the content remains available at no charge on go90. beIN seemed to accept the unrealistic economics of its April Proposal by making a verbal offer that was more in line with our expectations for the negotiation. Specifically, Mr. Tolle asked us to consider a verbal offer of []

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

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

beIN and now demanded a monthly fee of [] []
 – much higher than what beIN had indicated in our January 25 meeting and a rate that would be
 among the highest annual escalators in the industry.² This constituted a more than [] [] percent
 increase from the existing rate [] []
 in the first year alone, and a cost of roughly [] [] million in the that year, rising to [] []
 million by 2024, for a total cost of [] [] million over the proposed [] []
 []. Based on our 2018 Viewership Analysis,
 beIN’s higher costs would be roughly { [] [] }
 higher than the *maximum* projected losses from not carrying the networks over the same [] []
 [] period.

34. Other aspects of the February 2 Proposal were either silent on or actually went
backwards from other material terms from beIN’s April Proposal. The February 2 Proposal also
 demanded not only carriage of beIN Sports on [] [] (effectively upping its April Proposal for
 [] [] percent (or [] [] million) subscribers to approximately [] [] million subscribers), but
 also carriage of beINE [] []

² The February 2 Proposal [] []

]].

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

]], which seemed designed to trigger even higher rates and greater distribution obligations for the beIN networks. When pressed, beIN was unable to identify how this new language would impact beIN's carriage fees, nor was it clear how beIN intended for Comcast to comply with these half-baked terms from an operational standpoint. Since the promising close of our January 25 meeting, it became apparent to me that beIN's approach to the renewal negotiations had taken an adversarial and non-productive turn.

36. On February 13, 2018, before we had a chance to respond either orally or in writing to beIN's February 2 Proposal, I was informed by our legal regulatory team that beIN had sent Comcast a notice of intent to file a program carriage complaint. I was disappointed that beIN had chosen to pursue a path of litigation, particularly at such a premature juncture. Although I remained open to engaging in further renewal negotiations with beIN, I was

unwilling to allow the threat of litigation to pressure my team into agreeing to terms that were not commensurate with the value of the network and not good for our customers.

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

[] – presumably to align the Media Bureau's action on its complaint with the Agreement's expiration on July 31. []

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

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

[] In short, beIN's proposed "benefits" to Comcast never went beyond bare assertions that were easily disprovable.

38. We also noted that the February 2 Proposal failed to clarify []

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

39. On March 7, 2018, beIN sent us a revised proposal (“March 7 Proposal”).³ The proposal []

³ Included as Attachment C to this declaration.

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

40. I understand that beIN has alleged that carriage on a lower tier will benefit Comcast by helping Comcast to attract and retain subscribers at lower price points and enabling beIN to attract greater advertising revenue that will allow beIN to "hold down the fees" it charges to Comcast.⁴ These claims reiterate certain arguments that Mr. Meyeringh made for the first time in a March 11 email, clearly in anticipation of litigation, which were memorialized a few days later in a March 13 letter from beIN's litigation counsel. But the notion that broader carriage of beIN would help Comcast attract and retain customers at lower price points simply does not hold water. In addition, accepting beIN's proposed fees and distributing beIN Sports on a more highly-penetrated tier would increase the price of that tier for *all* subscribers, the vast majority of whom have no interest in viewing beIN. And even setting aside beIN's proposed fee increases, [[

⁴ See Compl. ¶¶ 15, 104.

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

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

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

42. We received beIN's program carriage complaint on March 15, 2018.

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

Dated: Philadelphia, Pennsylvania

May 11, 2018



Andrew Brayford

ATTACHMENT A

**HIGHLY CONFIDENTIAL
DOCUMENT WITHHELD**

ATTACHMENT B

**HIGHLY CONFIDENTIAL
DOCUMENT WITHHELD**

ATTACHMENT C

**CONFIDENTIAL DOCUMENT
WITHHELD**

EXHIBIT 2

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

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

DECLARATION OF JUSTIN SMITH

1. My name is Justin Smith. My business address is One Comcast Center, Philadelphia, Pennsylvania 19103.

2. I am Senior Vice President, Content Acquisition of Comcast Cable. I have held this position since August 2014. In this role, I am responsible for overseeing the negotiation and execution of a portfolio of carriage agreements and carriage renewal deals.

3. Since joining Comcast in 2006, I have also served as Senior Vice President and General Counsel, Comcast Programming Group, and Vice President, Senior Deputy General Counsel and Chief Joint Venture Compliance Officer. As Chief Joint Venture Compliance Officer, I was responsible for overseeing Comcast's compliance with governmental and third-party conditions and commitments arising from the Comcast-NBCUniversal joint venture transaction. I also was involved in administering the conditions relating to programming diversity and independent programming.

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

Background

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

6. Although I was not directly involved in the negotiations of the 2012 Comcast-beIN affiliation agreement, I understand that this decision was not made lightly, primarily

because []

]]. Comcast

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

7. Since 2012, cable operators such as Comcast have been under ever-increasing cost pressure as content acquisition costs have skyrocketed. Post-2012, Comcast's programming costs have increased by 54 percent (approximately *eight* times the rate of inflation over the same period). At the same time, Comcast faces intense competition for video subscribers from other cable operators and MVPDs, including telco and DBS providers, as well as overbuilders such as RCN and WOW!, and an ever-increasing number of online video services, which now provide both linear and on-demand programming to viewers over the Internet. The most significant of these linear online video services are Sony PlayStation Vue, Sling TV, DirecTV Now, YouTube TV, and Hulu Live, which are exerting competitive pressure on our cable service, including through low promotional rates and initial free periods. Cable operators such as Comcast are also capacity-constrained: there are many more cable and broadcast programmers seeking carriage on our cable systems than our bandwidth allows, particularly as more capacity is used for high-speed Internet service. In this highly competitive environment, Comcast must focus intensely on making sure our content acquisition costs are commensurate with the value we provide to our customers, including expanding and enriching their access to content on personal and mobile devices in the home and on the go. The balance between consumer demand, content, and costs is

at the core of Comcast's editorial discretion to determine which networks to carry and how broadly to distribute them.

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

9. For passionate soccer fans in particular, Comcast makes a rich array of soccer programming available to our customers. This includes programming from several unaffiliated

networks that Comcast distributes both broadly (e.g., ESPN, ESPN2, and FS1 on Digital Starter) and on specialty tiers (e.g., ESPN Deportes, Fox Deportes, and Univision Deportes, which are generally offered through the Xfinity Latino package). These networks feature programming from leagues – including MLS, the German Bundesliga, and the Mexican Liga MX, among others – that are on par, in terms of value proposition, with the leagues beIN features.

beIN Renewal Negotiations

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

[[

]], much greater distribution [[

]], [[the contract term [[and other terms that were completely unrealistic in today's highly competitive video marketplace. At the same time, beIN's presentation [[

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

11. I worked with Mr. Brayford and the Content Acquisition team to craft a counteroffer to the April Proposal that was more reasonable and realistic for Comcast and its customers. But these early negotiations would prove to be quixotic: despite several rounds of

correspondence and meetings, beIN still could not answer basic questions to support its renewal demands, much less provide a framework for a mutually-acceptable set of renewal terms.

Licensing Fees

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

}}.

13. In the case of beIN, the conclusions were striking. First, the data showed that the projected lost revenue from dropping beIN was {{ }} of the {{ }} million average annual costs {{

}}

under beIN's April Proposal. The data also revealed that even at the current {{ }} under our existing agreement, which amounts to approximately {{ }} million in annual costs – i.e.,

{{ }} – Comcast is likely *losing* money by carrying the beIN networks relative to the cost of not carrying them at all. In other words, the analyses showed that it would be a better business decision for Comcast to drop the beIN networks than to continue to carry them even at the current price Comcast pays.

14. Second, the viewership analyses showed that {{

}}. This further confirmed that

beIN's request for distribution to an additional approximately {{ }} million Comcast subscribers was not justified by marketplace demand and wholly unrealistic.

Content/Value Questions

15. I also observed that beIN's proposed {{ }} monthly fee increase – a dramatic step-up, even compared to large broadcast groups, let alone a niche cable network – was not accompanied by {{

]].

16. The lack of certainty []

[] was especially troubling to Comcast in light of other factors. There have been multiple news reports detailing serious allegations and an ongoing criminal investigation over beIN's acquisition and use of soccer rights. In addition, my team and I were in ongoing discussions with beIN over our discovery that it has been making the *same* soccer content from the linear feeds for both beIN Sports and beINE available *at no charge* via Verizon's over-the-top mobile service, go90. This arrangement plainly devalues the network to Comcast and its customers, and further undermines any justification for beIN's proposed []

[] fee increases. I concluded that beIN's renewal requests were entirely unrealistic for a network that []

]].

Comcast's Initial Counterproposal

17. Despite these outstanding fundamental issues, beIN continued to press for an accelerated negotiating timeline and to receive a counterproposal from Comcast. In order to

accommodate these requests, my team provided a counterproposal to beIN on December 13, 2017 (the “December Offer”).

18. I understand beIN has alleged that the December Offer discriminated against beIN in favor of NBC Sports Network (“NBCSN”) and Universo. This allegation is false. Comcast’s affiliation with these networks did not influence our December Offer and subsequent negotiations with beIN.

19. Rather, the December Offer was formulated based on our analyses of Comcast customers’ limited demand for beIN, the fees and other costs associated with carrying beIN, and the overall value proposition of beIN programming []

[]. Based on these business considerations, the December Offer: (1) aimed to maintain the structure of Comcast’s existing agreement with beIN while []

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

[], consistent with the results of the viewership analyses and Comcast’s interest in maintaining flexibility in the highly competitive video marketplace. The December Offer also called for further discussion [] [], with the assumption that finalization of these terms would occur following agreement on the fundamental economic terms).

20. beIN’s attempt to allege program carriage discrimination based on our December Offer, by comparing itself to NBCSN and Universo, is as unrealistic from a marketplace perspective as the other aspects of its renewal demands. Numerous, objective marketplace

factors demonstrate that NBCSN and Universo are not comparable networks to the beIN networks. Among other factors:

- Both NBCSN and Universo have a long history of broad distribution by Comcast as well as by nearly all other distributors because of their value proposition in the marketplace.
- NBCSN is a general interest sports programmer, and, above all, is the primary national telecaster of the National Hockey League, including the Stanley Cup Playoffs.¹ That reason alone justifies broad carriage by Comcast, given that our footprint includes the lion's share of the biggest hockey markets in the country (e.g., Boston, Chicago, Denver, Detroit, Minneapolis/St. Paul, Nashville, New Jersey, Philadelphia, Pittsburgh, San Francisco Bay Area, Washington, DC).
- Universo is a "modern general entertainment cable channel for Latinos"² that features a variety of scripted series, reality series, movies, and music programming, with live sports being only a small fraction of its content. Universo targets a young Hispanic audience, and its viewership is balanced between males and females. Universo's content portfolio offers a robust VOD library, a feature that has limited relevance for live sporting events but significant appeal to viewers of general entertainment programming.

¹ NBCSN's Service Description in its affiliation agreement with Comcast {

}}

² Universo, <http://www.nbcuniversal.com/business/NBCUniversal> (last visited May 7, 2018). Universo's affiliation agreement with Comcast provides that the network {{

}}

Subsequent Deliberations and Negotiations

21. My team continued to assess beIN's viewership and value to Comcast customers over the following weeks and commissioned additional, updated viewership analyses in January 2018 ("2018 Viewership Analysis"). This Viewership Analysis confirmed our initial impressions, again showing that, even under the most conservative scenario, Comcast would be saving approximately {{ }} million annually – i.e., {{ }} – by simply dropping beIN rather than accepting beIN's proposed [[]] million average annual fees. As noted above, passionate soccer fans who are Comcast subscribers have a vast amount of soccer programming to choose from, which we make available in various packages and tiers, and so we saw no need to overpay just to keep beIN on our systems.

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

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

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

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

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

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

]]. We again expressed concern about the unrealistic nature of beIN's demands, including the continued lack of certainty []

[] and the effect of broader distribution of beIN on our SEP and H tiers, and we

asked a number of questions about []

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

25. In addition, Mr. Tolle []

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

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

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

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

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

II.

beIN also acknowledged that it could take weeks to discuss outstanding issues. To date, Comcast has no more clarity on II

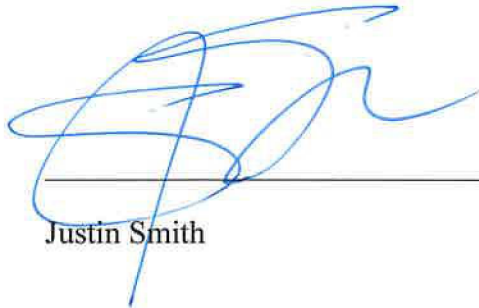
II.

28. We conducted a follow-up call the next day, March 13, 2018, to continue the walk-through of beIN's proposal. beIN closed that call by informing us it intended to file a program carriage complaint, which it then did on March 15, 2018.

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

Dated: Philadelphia, Pennsylvania

May 11, 2018



Justin Smith

EXHIBIT 3

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

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

DECLARATION OF ANDRES V. LERNER, PH.D.

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I. Introduction

A. Qualifications

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

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

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

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

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

B. Summary of claims

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

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

C. Assignment

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

¹ Complaint, ¶ 10.

² Complaint, ¶ 4.

³ Complaint, ¶ 3.

⁴ Complaint, ¶ 3.

⁵ Complaint, ¶¶ 96-99.

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

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

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

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

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

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

⁹ Complaint, ¶ 3.

¹⁰ Complaint, ¶ 3.

D. Summary of conclusions

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

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

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

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

- i. The video distribution marketplace is highly competitive. Subscribers today have a multitude of options for receiving video programming, including cable, DBS, overbuilders, and increasingly OVD services. The significant growth of “virtual MVPDs” in recent years, which offer subscription video services that deliver packages comprised of channels showing “linear” (i.e., scheduled) programming much like “traditional” MVPDs, has given programmers such as beIN additional options through which to distribute their programming.
- ii. beIN offers no evidence to support its assertion that the challenged conduct unreasonably restrained the ability of the beIN networks to compete fairly for viewers or advertisers.

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

A. The “similarly situated” standard from an economics perspective

9. I understand that demonstrating that Comcast has engaged in discriminatory conduct against the beIN networks requires beIN to establish that the beIN networks are “similarly situated” to NBCSN and Universo. From an economics perspective, the “similarly situated” criterion has two primary components. The first component is whether the networks have similar fundamental economic characteristics—in terms of the content offered, the nature and breadth of consumer appeal, and the value of the programming to subscribers and MVPDs—such that MVPDs unaffiliated with the networks would be expected to carry the networks similarly. Important to this component is whether marketplace evidence shows that unaffiliated MVPDs do,

in fact, carry the networks similarly in terms of the type of packages on which the networks are offered and the overall penetration of the networks. Evidence that unaffiliated MVPDs carry them markedly differently provides a strong indication that the MVPDs themselves do not view the networks as being “similarly situated.”

10. The second component of the “similarly situated” prong is whether the networks compete in a significant way for viewers and advertisers. If there is not significant substitution by viewers and advertisers between the networks, and therefore no significant competition, the vertically-integrated MVPD would have no incentive to engage in discrimination against the unaffiliated network. As a matter of economics, both components—(1) whether the networks have similar fundamental economic characteristics and (2) whether the networks compete in a significant way for viewers and advertisers—are necessary for two networks to be “similarly situated.”

11. beIN claims that the relevant test is not whether the *networks* are “similarly situated.”¹¹ Rather, beIN states that “the relevant question . . . is whether a vendor’s *programming* is similarly situated to *programming* offered by an MVPD-affiliated vendor.”¹² The claim that the “similarly situated” standard applies to specific programming rather than the overall networks makes no sense as a matter of economics. What determines whether MVPDs unaffiliated with the networks would carry the networks similarly is not a comparison of specific programming, but the overall programming offered by the networks as well as the nature and breadth of demand by subscribers for the overall networks. Take, for example, a broad-interest network that carries a

¹¹ Complaint, ¶ 4.

¹² Complaint, ¶ 4.

small amount of programming of a particular genre or subgenre (e.g., sports, game shows, documentaries). Another may be a niche network that carries only that type of programming. There is no economic basis to expect that unaffiliated MVPDs would carry these networks similarly, based solely on the fact that there is some overlap in the type of programming offered. Rather, the fundamental economics of (and value from) distributing these networks may differ considerably, despite the limited amount of overlap in the content carried. Distribution decisions by MVPDs and other distributors are made with respect to the overall bundle of programming content offered by the network, not with respect to specific programming. Thus, a “similarly situated” standard applied to specific programming offered by the networks would be uninformative and misleading.

12. As I discuss further below, beIN offers no reasonable evidence that the beIN networks have similar fundamental economic characteristics as NBCSN and Universo, such that MVPDs unaffiliated with these networks would be expected to carry them similarly. Nor does beIN make any attempt to show that MVPDs other than Comcast do tend to carry the beIN networks and either NBCSN or Universo in a similar manner. In fact, the available evidence indicates just the opposite—that other MVPDs tend to distribute NBCSN and Universo much more broadly than the beIN networks. beIN also offers no credible economic evidence of competition between the beIN networks and either NBCSN or Universo. Marketplace evidence again indicates the opposite.

B. The beIN networks differ from NBCSN and Universo with respect to fundamental economic characteristics

13. beIN claims that the “sports programming of beIN is similarly situated to the sports programming provided by two programming vendors affiliated with Comcast, [NBCSN] and NBC

Universo.”¹³ beIN focuses on the fact that all four networks carry sports programming, and international soccer programming in particular, stating that the “programming belongs not only to the same genre—sports—but much of it also belongs to the same subgenre—soccer.”¹⁴ beIN further states that “[a]ll four networks provide extensive coverage of soccer games featuring major European leagues and high profile international tournaments.”¹⁵

14. As I explain in this section, beIN’s claim that the beIN networks are “similarly situated” to NBCSN and Universo because they are sports networks that carry international soccer programming is wholly deficient and misleading. The beIN networks differ significantly from both NBCSN and Universo in their programming content, and in the nature and breadth of viewership and demand for their networks. The beIN networks are niche networks dedicated to international (primarily continental European) soccer leagues, while NBCSN is a multi-sports network that has broad viewer appeal, and Universo is not even a sports network.

1. The beIN networks offer niche content focused on international soccer, whereas NBCSN and Universo offer a wide variety of programming, a small share of which is soccer

15. The beIN networks: The beIN networks are niche networks dedicated to international soccer and, more specifically, European soccer leagues. As beIN describes in its Complaint, “beIN is a sports programming network that primarily distributes top-flight European soccer, including games of the Spanish La Liga, French Ligue 1 and Italian Serie A as well as FIFA World Cup Qualifiers.”¹⁶ The beIN networks are essentially single-sport networks, with

¹³ Complaint, ¶ 4.

¹⁴ Complaint, ¶ 5.

¹⁵ Complaint, ¶ 60.

¹⁶ Complaint, ¶ 21.

soccer making up a very large share of programming. As Table 1 below shows, in 2017, soccer programming accounted for 55.1 percent and 72.3 percent of all programming minutes on beIN Sports and beIN Sports en Español, respectively.^{17, 18} For beIN Sports en Español, no other sport made up a substantial share of programming, while for beIN Sports, only tennis makes up more than 10 percent (12.5 percent of programming minutes). Neither beIN Sports nor beIN Sports en Español carried a material amount of non-sports programming.¹⁹

¹⁷ Source: Gracenote program scheduling data. Data is collected by Gracenote, a third-party company owned by Nielsen that provides programming schedules and content for each network, including the program title and the duration of the television program. Gracenote includes a genre and sub-genre categorization for each program. The genres in the above analysis are based on the categorization assigned by Gracenote. For programming content where Gracenote did not include a classification, which made up a small share of programming, the television programming was manually categorized where possible. Total program duration on each network is used to calculate the share of programming minutes on each network during 2017. Sports Programming includes Sports Events, Sports Non-Events, and Sports Talk. The “Auto” category includes the sub-genres “auto” and “auto racing.”

¹⁸ Similarly, in the first two months of 2018, soccer programming accounted for 57.6 percent and 75.5 percent of all programming minutes on beIN Sports and beIN Sports en Español, respectively.

¹⁹ As I discuss below, of the small share of non-sports programming carried by beIN Sports and beIN Sports en Español, essentially all is categorized as “shopping” and “consumer,” which is generally paid programming and infomercials that likely fill in available slots with low viewership.

Table 1: Share of Programming Minutes by Genre/Sub-Genre (2017)²⁰

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

Source: Gracenote program scheduling data.

16. NBCSN: In contrast to the beIN networks, NBCSN is a multi-sport, general interest network. NBCSN carries a wide variety of sports content, including the National Hockey League

²⁰ Table 1 shows all sports programming with greater than 5 percent of programming minutes for any of the four networks. “Other” sports programming for NBCSN includes bicycle racing, outdoor sports, card games, poker, rugby, curling, fishing, skiing, basketball, track and field, and horse racing, which together account for approximately 20 percent of programming minutes. Over 30 additional sports comprise the rest of the sports programming for NBCSN.

(NHL), Winter and Summer Olympic games, motor sports (e.g., NASCAR), rugby, cycling (e.g., the Tour de France), skiing, curling, horse racing, boxing, college football, and other college sports. Due to the variety and nature of the programming, NBCSN has broad viewer appeal. Sports content carried by NBCSN such as Olympics telecasts, NHL game telecasts, and NASCAR race telecasts enjoy broad appeal among U.S. viewers. For example, a single NASCAR Cup Series race telecast in 2017 attracted more than [] million viewers on NBCSN.²¹ In contrast, content carried by the beIN networks has much more narrow appeal—the single telecast that attracted the largest audience on the beIN Sports in 2017 was a Spanish League (La Liga) match with an audience of about [] viewers.²² Even with respect to soccer, I understand that the English Premier League soccer matches carried by NBCSN have the broadest appeal to U.S. viewers among all the European soccer leagues matches.²³

17. beIN acknowledges that NBCSN offers a wide variety of sports programming, describing the network as a “national sports cable network that carries basketball, professional and college American football, soccer, hockey, motor sports, and golf among many other sports events.”²⁴ Despite this recognition, beIN claims that its networks are “similarly situated” to NBCSN because they both carry international soccer games. However, soccer programming accounts for a relatively small share of content carried by NBCSN. As Table 1 above indicates, soccer accounted for less than 10 percent of programming minutes on NBCSN (compared to 55.1

²¹ Source: Nielsen ratings data. Nielsen ratings based on the persons 2+, total day, live + 3 day linear/VOD viewership.

²² Source: Nielsen ratings data. Nielsen ratings based on the persons 2+, total day, live + 3 day linear/VOD viewership.

²³ See, e.g., Georgios Nalbantis and Tim Pawlowski. (2016) “The Demand for International Football Telecasts in the United States.”

²⁴ Complaint, ¶ 29.

percent and 72.3 percent for beIN Sports and beIN Sports en Español, respectively). Auto racing (including NASCAR) made up a much greater share of programming minutes (21.3 percent) than did soccer programming. NBCSN carries many other sports, including hockey, bicycle racing, outdoor sports, card games, poker, rugby, curling, fishing, skiing, basketball, track and field, horse racing, and over 30 additional sports. These other sports made up over 50 percent of NBCSN's programming minutes.

18. Universe: Universe is not a sports programming network, but rather a network that carries diverse programming that appeals to Spanish-language audiences. Soccer accounted for a small share of programming on Universe, in contrast to the beIN networks. As Table 1 above indicates, soccer programming accounted for only 5.5 percent of all programming minutes in 2017.²⁵

19. Universe features a wide array of *non-sports* programming, including scripted series, reality series, documentaries, movies, and music programming. Non-sports content accounted for the vast majority of Universe's programming. As illustrated in Figure 1 below, various non-sports programming genres made up the vast majority (88.2 percent) of Universe's programming, including reality, documentary, game shows, entertainment, drama, and other content.²⁶

20. In contrast, only 14.1 percent of the programming on beIN Sports en Español was non-sports programming.²⁷ beIN Sports en Español carries none of the non-sports genres that

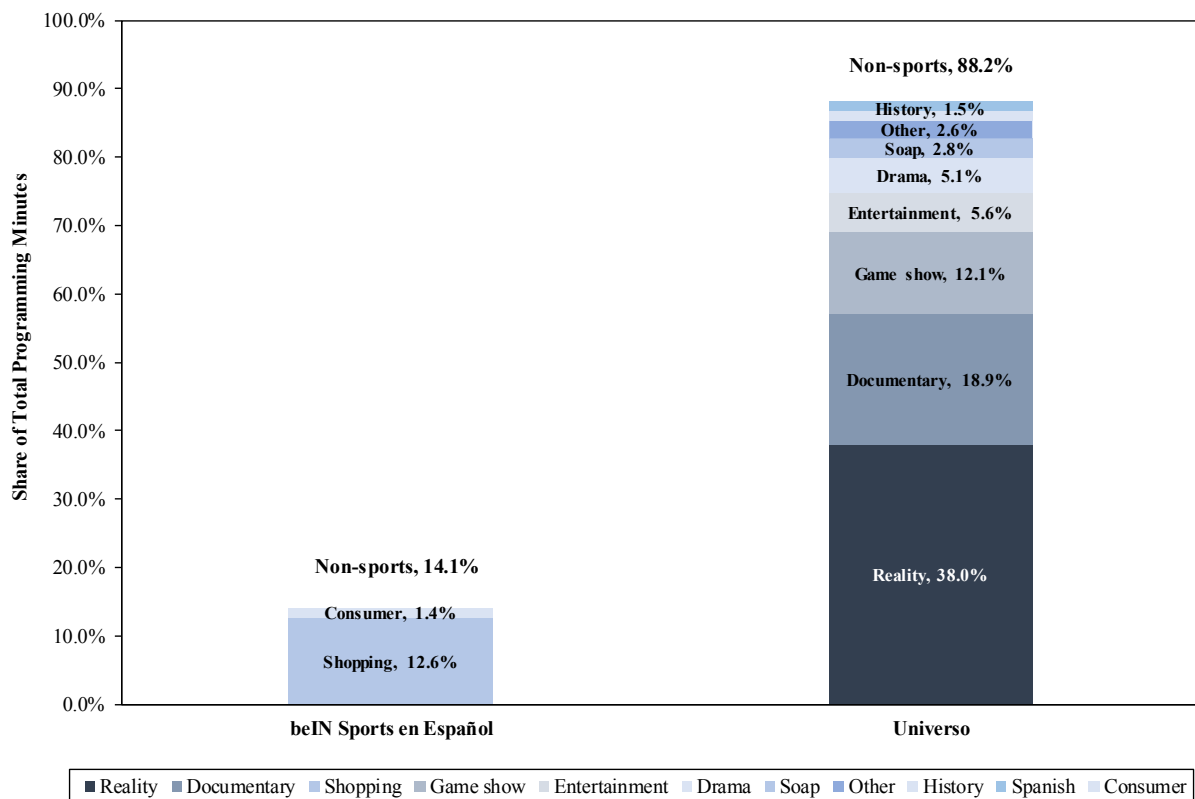
²⁵ In the first two months of 2018, soccer programming accounted for an even lower share—4.4 percent—of Universe programming minutes.

²⁶ In the first two months of 2018, these non-sports genres accounted for 89.1 percent of Universe's programming.

²⁷ In the first two months of 2018, non-sports programming accounted for 17.2 percent of the programming carried by beIN Sports en Español.

make up the vast majority of Universo’s programming—for instance, beIN Sports en Español did not carry any reality series, documentaries, and game shows, which alone account for roughly 70 percent of the content carried by Universo. Indeed, of the small share of non-sports programming carried by beIN Sports en Español, essentially all is categorized as “shopping” and “consumer,” which is generally paid programming and infomercials (e.g., “3 in 1 Tool-Best lawn tool ever!”) that likely fill in available slots with low viewership. This evidence of the lack of any material overlap in the type of programming carried by the networks clearly shows that Universo and beIN Sports en Español are not “similarly situated.”

Figure 1: Non-Sports Programming on beIN Sports en Español Versus Universo (2017)



Source: Gracenote program scheduling data.

21. beIN recognizes that Universo is not a sports network, in contrast to both beIN Sports and beIN Sports en Español. For instance, beIN states that “beIN is a sports network, and

so is [NBCSN]; as for NBC Universo, its programming consists mostly of sports, scripted and reality series, and music programming, with an increasing emphasis on soccer.”²⁸ beIN nevertheless claims that its networks are similarly situated to Universo because “Universo has been increasing its live soccer content.”²⁹ However, despite modest increases, soccer programming still makes up a very small share of programming for Universo, as described above.

22. In sum, as shown in Figure 2 below, soccer-related content accounts for the vast majority of programming on beIN Sports and beIN Sports en Español (55.1 percent and 72.3 percent, respectively), but only a small share of total programming on NBCSN and Universo (9.9 percent and 5.5 percent, respectively).³⁰

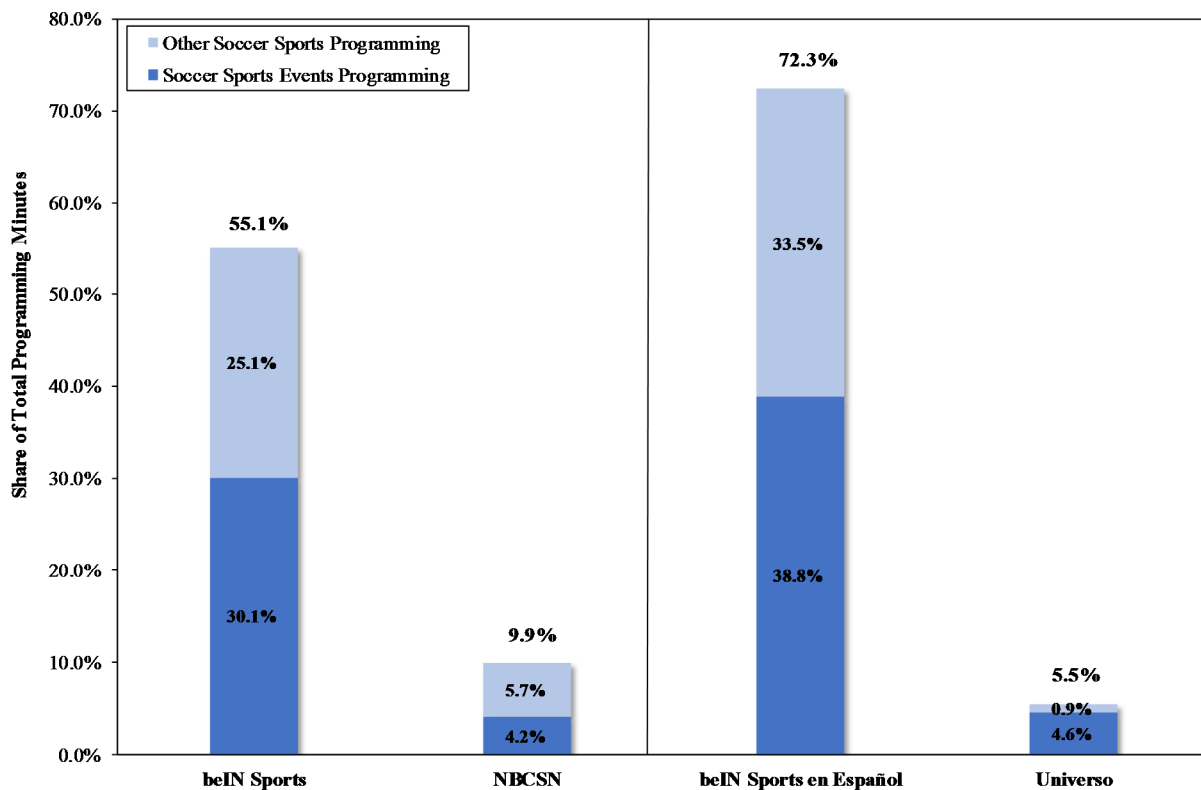
²⁸ Complaint, ¶ 4.

²⁹ Complaint, ¶ 30. See also Complaint, ¶ 63: ||

||

³⁰ Source: Gracenote program scheduling data. Soccer Sports Programming includes Sports Events, Sports Non-Events, and Sports Talk programming.

Figure 2: Soccer Programming Minutes as a Share of Total Programming Minutes (2017)



Source: Gracenote program scheduling data.

23. The significant divergence between the networks in terms of their focus on soccer is also evident when analyzing viewership of the networks. For instance, NBCSN viewers watch soccer programming far less than beIN Sports viewers. As Figure 3 shows, soccer-related programming made up [] percent of beIN Sports' viewership, but only [] percent of NBCSN's viewership.³¹ Similarly, soccer-related programming made up [] percent of the viewership of beIN Sports en Español, but only [] percent of Universo viewership.

³¹ Source: Nielsen ratings data. Viewership calculated as the number of telecasts of each program, times the average viewership of the program. Soccer-related programming includes soccer-related sports events, sports commentary, and sports anthology programming based on program types classified by Nielsen. Nielsen ratings based on the persons 2+, total day, live + 3 day linear/VOD viewership.

Figure 3: Soccer Programming Viewership by Network (2017)

[[

]]

24. This conclusion regarding the fundamentally distinct programming of the beIN networks and NBCSN and Universo is reinforced by the estimates beIN provides in its Complaint. beIN focuses on live soccer programming, rather than all soccer programming. But even accepting that live programming is the appropriate measure, beIN's estimates show that [[

]].³² And, these

estimates understate the divergence between the beIN networks and NBCSN and Universo in the

³² Complaint, ¶ 63.

type of programming carried because most of the other programming carried by beIN Sports and beIN Sports en Español also is soccer-related, as discussed above.

25. Despite the significant focus of the beIN networks on international soccer programming, and the diverse content offered on both NBCSN and Universo, beIN claims that these networks are similarly situated because they all carry some amount of international soccer programming. Such a claim makes no economic sense. According to beIN’s argument, any network carrying international soccer programming would be “similarly situated” to the beIN networks, irrespective of the share of programming made up by soccer programming, the nature of other content carried by the networks, or the viewership profile of the networks (e.g., the target demographics and/or breadth of appeal). All of these factors, and not just some modest overlap in programming, must be considered in determining whether networks are “similarly situated.”

2. The beIN networks appeal to a relatively narrow viewer audience, whereas NBCSN and Universo offer content with broader appeal

26. Due to the fundamentally distinct nature of the programming carried by the beIN networks compared to NBCSN and Universo, the nature and breadth of demand for the networks also varies considerably.

27. The beIN networks appeal to a small share of subscribers, as reflected in the ratings data for the networks. The average viewing audience ratings for beIN Sports in 2017 was [] percent.³³ In contrast, the average viewing audience for NBCSN was [] percent, more than

³³ Source: Nielsen ratings data. Nielsen ratings based on the persons 2+, total day, live + SD linear/VOD viewership.

10 times higher.³⁴ These ratings data confirm that NBCSN appeals to a much wider audience than the niche soccer programming offered by beIN Sports.³⁵ While there is some interest among U.S. viewers in telecasts of European soccer leagues matches, that interest is confined to a relatively narrow subset of viewers.

28. Despite these fundamental differences in the viewership profiles between the beIN networks and NBCSN and Universo, beIN claims that the networks have “comparable ratings.” Specifically, beIN claims that ||

||³⁶ However, beIN’s claim is based on a flawed comparison of ratings. beIN compares ratings between the beIN networks and NBCSN/Universo using *coverage area* Nielsen ratings.³⁷ Coverage area ratings measure network viewership based on the universe of viewers or households that actually receive the network.³⁸ Comparing the viewership of networks based on coverage area ratings is inappropriate and misleading.³⁹ In fact, Nielsen Media (the source of the ratings data) has a specific warning precisely against this type of comparison:

³⁴ Source: Nielsen ratings data. Nielsen ratings data based on persons 2+, total day, live + SD linear/VOD viewership.

³⁵ This significant disparity in the average viewing audience between NBCSN and beIN Sports cannot be due to the difference in penetration between the networks. Similar disparity in average viewer audience between the NBCSN and beIN Sports exists when one excludes Comcast.

³⁶ Complaint, ¶ 7. See also, Complaint, ¶ 67.

³⁷ Complaint, ¶ 7.

³⁸ See Nielsen Media Glossary, <http://www.nielsenmedia.com/glossary/>, accessed on May 10, 2018.

³⁹ In addition, beIN discusses viewership for six soccer match telecasts: ||

] Complaint, ¶ 8. These

The Coverage Area Rating for one cable network cannot be compared to another cable network's coverage area rating or a broadcast network rating. Only total U.S. Ratings or audience projections (estimated number of households or persons) can be compared between/among networks.⁴⁰

29. The beIN networks are distributed by Comcast and other MVPDs to a narrower population of subscribers—those who purchase the Sports and Entertainment and Latino packages—who are more likely to watch the beIN networks than the overall population of viewers. In contrast, NBCSN and Universo are distributed to a larger population of households (both by Comcast and other MVPDs, as discussed below) because they have a broader array of programming to attract a broader range of viewers. Thus, beIN's claims based on coverage ratings essentially compare viewership in a vastly different population of viewers.

30. To see the problem with coverage area comparison across networks, consider the total day Nielsen ratings for the persons 2+ demographic for viewership in 2017. For this viewership period and viewer demographic, the coverage area ratings were [] percent for beIN Sports and [] percent for NBCSN.⁴¹ However, the average number of viewers (persons 2+ demographic) during the period were about [] for beIN and [] for NBCSN. These numbers show that NBCSN on average had about 12 times as many viewers as beIN Sports. Such disparity in viewership hardly qualifies as having “comparable ratings.”

31. The implicit assumption in beIN's “comparable ratings” claim based on coverage ratings is that distributing beIN Sports and beIN Sports en Español to a broader population of

comparisons appear to have been cherry-picked and thus do not provide a relevant basis for comparison of viewership across networks.

⁴⁰ See Nielsen Media Glossary, <http://www.nielsenmedia.com/glossary/>, accessed on May 10, 2018.

⁴¹ Source: Nielsen ratings data. Nielsen ratings data based on persons 2+, total day, live + SD linear/VOD viewership.

households would result in beIN Sports and beIN Sports en Español attracting the same percentage of viewers as under the current distribution of the networks. But there is no plausible basis for this assumption. The current distribution of the beIN networks is targeted at the viewer populations that are more likely to view them. For example, Comcast distributes beIN Sports en Español on the H tier (Latino Package), which is more likely to have soccer fans than the overall population. It is implausible that distributing beIN Sports en Español on more highly penetrated tiers would attract the *same* percentage of viewers as the network does on the Latino Package.

3. The fact that unaffiliated MVPDs carry the beIN networks very differently than NBCSN and Universo demonstrates that they are not “similarly situated”

32. Consistent with the fact that the beIN networks are fundamentally different in terms of their content and the viewership profile from NBCSN and Universo, MVPDs unaffiliated with these networks carry them very differently. Figure 4 below shows the carriage of the four networks by MVPDs other than Comcast.⁴² As the figure indicates, MVPDs other than Comcast, on average, carry NBCSN and Universo to a much higher percentage of their subscribers compared to the beIN networks. In particular, the penetration of beIN Sports by other MVPDs is || || percent; in contrast, other MVPDs distribute NBCSN to more than three times that share—to || || percent

⁴² Source: Kagan, U.S. Multichannel Industry Benchmark; Kagan, Operating Metrics; Kagan, TV Network Summary; Comcast internal subscriber counts; Jeff Baumgartner, *Virtual MVPDs Ended 2017 with 5.3M Subs: Study*, Multichannel News, February 12, 2018. Subscribers to the beIN networks, NBCSN, and Universo on other MVPDs are calculated by subtracting (1) network subscribers on Comcast from (2) total network subscribers. Similarly, total subscribers of other MVPDs are calculated by subtracting (1) Comcast subscribers from (2) total MVPD subscribers, which include both traditional MVPD and virtual MVPD subscribers. Comcast subscribers for each network are based on December 2017 counts; total traditional MVPD subscribers are based on 2017; virtual MVPD subscribers are based on year-end 2017.

of subscribers. Similarly, the penetration of beIN Sports en Español by other MVPDs is [] percent; in contrast, other MVPDs distribute Universo to [] percent of subscribers.⁴³

Figure 4: Carriage of the Networks by Other MVPDs (2017)

[]

33. This evidence suggests that unaffiliated MVPDs find it optimal to distribute NBCSN and Universo much more broadly than the beIN networks. The differences in how unaffiliated MVPDs carry the networks indicate that MVPDs do not view the beIN networks as being “similarly situated” to NBCSN and Universo.

⁴³ Based on Kagan data and Comcast internal subscriber counts. According to Nielsen data, the penetration of the beIN networks by other MVPDs is even lower: [] percent for beIN Sports and [] percent for beIN Sports en Español. According to the Nielsen data, the penetration of NBCSN is [] percent and the penetration of Universo is [] percent. Source: Nielsen ratings data. Nielsen ratings on persons 2+, total day, live + SD linear/VOD viewership.

34. The evidence also shows that Comcast’s carriage of the beIN networks is comparable to that of other MVPDs on average, as shown in Figure 5 below.⁴⁴ Comcast carries the beIN networks to [] [] percent of its subscribers, based on its commitment to [] [] million subscribers. Data from Kagan indicates that other MVPDs distribute beIN Sports and beIN Sports en Español to [] [] and [] [] percent of subscribers, respectively.⁴⁵ This shows that other MVPDs likewise find it optimal to distribute beIN’s niche soccer programming less broadly, to more select audiences, and reinforces the fact that the beIN networks are not “similarly situated” to NBCSN and Universo. Importantly, beIN’s demand that Comcast distribute the beIN networks to at least [] [] percent of subscribers is wholly at odds with the marketplace evidence that other MVPDs, on average, distribute the beIN networks to a much lower share of subscribers.⁴⁶

⁴⁴ Source: Kagan, U.S. Multichannel Industry Benchmark; Kagan, Operating Metrics; Kagan, TV Network Summary; Comcast internal subscriber counts; Brayford Declaration, ¶ 20; Jeff Baumgartner, *Virtual MVPDs Ended 2017 with 5.3M Subs: Study*, Multichannel News, February 12, 2018. The network coverage share for the beIN networks on Comcast is based on Comcast’s [] [] million subscriber commitment. beIN’s demand from Comcast is based on the initial demand for distribution to [] [] percent of Comcast subscribers and the subsequent demand for carriage on Comcast’s [] [] tier, which is distributed to approximately [] [] million subscribers. Subscribers to the beIN networks on other MVPDs are calculated by subtracting (1) network subscribers on Comcast from (2) total network subscribers. Similarly, total subscribers of other MVPDs are calculated by subtracting (1) Comcast subscribers from (2) total MVPD subscribers, which include both traditional MVPD and virtual MVPD subscribers. Comcast subscribers for each network are based on December 2017 counts; total traditional MVPD subscribers are based on 2017; virtual MVPD subscribers are based on year-end 2017.

⁴⁵ The combined coverage of beIN Sports and beIN Sports en Español by other MVPDs is not available from public sources.

⁴⁶ Complaint, ¶ 51. beIN subsequently demanded that Comcast carry beIN Sports even more broadly—on Comcast’s [] [] tier, which is distributed to approximately [] [] million subscribers (over [] [] percent of subscribers), and that Comcast distribute beIN Sports en Español on [] []

[] beIN Sports Renewal Proposal, February 2, 2018; Brayford Declaration, ¶ 34.

Figure 5: Carriage of the beIN Networks by Comcast and Other MVPDs (2017)
||

||

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

35. As I discuss above, the second component of the “similarly situated” standard from an economic perspective is whether the networks compete in a significant way for viewers or advertisers. If the networks do not compete in a significant way, Comcast would have no incentive to discriminate against the beIN networks.

1. beIN provides no reliable evidence of competition for viewers

36. beIN provides no sound economic evidence that the beIN networks compete with NBCSN and Universo for viewers.

37. Programming content: beIN claims that the networks compete for viewers because they have the “same target programming (primarily soccer, as well as other sports common to the three, such as college basketball, motor sports, rugby, boxing and mixed martial arts); and comparable ratings.”⁴⁷ However, the fact that there is some overlap in the type of programming offered does not indicate the existence of material competition. Superficial similarity along some dimensions of network attributes, including limited overlap in the type of content, is not evidence of substitution. The significant differences between the programming carried by the beIN networks and the programming carried by NBCSN and Universo suggest that most viewers are unlikely to view these networks as close substitutes and, therefore, indicate an absence of significant competition between the beIN networks and either NBCSN or Universo.

38. Target audience: beIN also claims that “the programming of the four networks has the same target audience (sports fans in general, soccer fans in particular).”⁴⁸ However, beIN offers no evidence in support of this claim. On the contrary, the claim is inconsistent with the fact that viewer audiences for the beIN networks are largely distinct from the viewer audiences of both NBCSN and Universo. For instance, compared to NBCSN, a much larger share of the audience of the beIN networks is Latino. In particular, [] percent of beIN Sports viewership and [] percent of beIN Sports en Español viewership is Latino; in contrast, only [] percent

⁴⁷ Complaint, ¶ 6.

⁴⁸ Complaint, ¶ 6.

of NBCSN viewership is Latino (based on Hispanic head of household).⁴⁹ The beIN networks also appeal to younger households living in more urban counties compared to NBCSN.⁵⁰

39. Viewer demographics for Universo also differ substantially from those of the beIN networks. Although about half of Universo's viewership is female ([] percent), the viewership of the beIN networks skews heavily male, with only [] percent female viewers for beIN Sports en Español and [] percent for beIN Sports.⁵¹

40. Audience overlap: The lack of substitution between the networks also is indicated by the limited degree of viewer audience overlap between the beIN networks and both NBCSN and Universo. A small viewer audience overlap shows that the networks primarily reach distinct sets of viewers, and further suggests that viewers overall do not perceive the two networks as close economic substitutes. For starters, the limited degree of viewer audience overlap between the beIN networks and NBCSN is apparent from beIN's own marketing information—according to beIN, “70% of La Liga viewers on beIN's English-language channel do not watch Premier League on NBC Sports Network.”⁵²

41. Analysis of Nielsen audience duplication data likewise shows that there is limited viewer audience overlap between the beIN networks and either NBCSN or Universo. For instance, only [] percent of NBCSN viewers also viewed beIN Sports, and only [] percent of

⁴⁹ Source: Nielsen ratings data. Nielsen ratings based on total day, live + 3 day linear/VOD viewership.

⁵⁰ Source: Nielsen ratings data. Nielsen ratings based on total day, live + 3 day linear/VOD viewership. Persons 55 or older accounted for [] percent of viewership on NBCSN, but only [] percent of viewership on beIN Sports and [] percent of viewership on beIN Sports en Español. Households that reside in A-counties (more urban counties) accounted for [] percent of viewership on NBCSN, but [] percent of viewership on beIN Sports and [] percent of viewership on beIN Sports en Español.

⁵¹ Source: Nielsen ratings data. Nielsen ratings based on total day, live + 3 day linear/VOD viewership.

⁵² See beIN website, <http://adsalesus.beinsports.com/research>, accessed on April 26, 2018.

NBCSN viewers also viewed beIN Sports en Español.⁵³ The lack of material viewer overlap between NBCSN and the beIN networks shows that the beIN networks are not materially substitutable from the perspective of NBCSN viewers, which indicates that Comcast lacks economic incentives to discriminate against the beIN networks in favor of NBCSN.

42. Similarly, only [] percent of Universo viewers also viewed beIN Sports.⁵⁴ While [] percent of Universo viewers watched beIN Sports en Español, the network ranks [] in terms of viewer overlap with Universo, behind [] other Spanish-language networks, including [].⁵⁵

The fact that various other networks—most of which are not sports networks—have a higher audience overlap with Universo suggests that beIN Sports en Español is not a close substitute to Universo compared to other networks.

43. Ratings: beIN also claims that similar ratings for the beIN networks and NBCSN and NBC Universal indicate substitution between them.⁵⁶ However, the beIN networks have much lower ratings than NBCSN, as I discuss above. Moreover, similar ratings for two networks would not in any way imply that the networks compete in a significant way for viewers or advertisers. For example, just because the Food Network and Disney Junior have similar ratings does not mean that the networks compete significantly for viewers.

⁵³ Source: Nielsen audience duplication data. Viewership is defined as having viewed a network for at least six minutes in the quarter. Nielsen audience data for Q2 2017, persons 2+ demographic, total day, live + 3 day linear/VOD viewership. Based on primary duplication.

⁵⁴ Source: Nielsen audience duplication data; Nielsen audience data for Q2 2017, persons 2+ demographic, total day, live + 3 day linear/VOD viewership. Based on primary duplication.

⁵⁵ Non-Spanish-language networks that rank ahead of beIN Sports en Español include FoxD, Nick, Toon, and Disney XD.

⁵⁶ Complaint, ¶¶ 67-69.

44. Soccer programming: beIN also incorrectly focuses on substitutability by viewers between the soccer programming on the beIN networks and the soccer programming on NBCSN and Universo. For instance, beIN states that “beIN’s soccer programming in particular, and sports programming in general, is a direct substitute for NBC’s soccer and sports programming, both for viewers and for many advertisers.”⁵⁷ However, the focus on potential substitution of soccer programming by viewers is misleading, since soccer makes up a small share of programming on both NBCSN and Universo.

45. Moreover, even if one incorrectly focuses narrowly on soccer, the soccer programming carried by NBCSN and Universo is unlikely to be a close substitute to the soccer programming carried by the beIN networks, and beIN does not provide any evidence that they are close substitutes. NBCSN carries live telecasts of the Premier League, which is an English soccer league. In contrast, beIN Sports and beIN Sports en Español mainly carry telecasts of the Spanish, Italian, and French soccer leagues. Soccer fans tend to be interested in specific leagues, teams, and/or matches; they do not generally find the matches of different leagues to be substitutes for each other, as beIN’s own marketing makes clear.⁵⁸

46. beIN’s expert witness, Mr. Eric Sahl, similarly focuses on soccer programming, claiming that viewers substitute between the beIN networks and NBCSN and Universo because

for even the most avid soccer fans, there is a finite amount of time in the day and the week and therefore a finite amount of soccer programming such fans can and will consume. Many soccer fans consistently make choices between watching one

⁵⁷ Complaint, ¶ 17.

⁵⁸ *Supra* note 52.

or another soccer game... The need for many soccer fans to make that choice is heightened by the fact that soccer games are heavily concentrated on the weekend.⁵⁹

However, Mr. Sahl's reasoning is circular, since it assumes that subscribers that watch soccer matches on the beIN networks also are interested in soccer matches on NBCSN and Universo. He provides no evidence to support this assumption, which is contradicted by beIN's own analysis that 70 percent of its viewers do not watch Premier League soccer matches on NBCSN.⁶⁰

2. beIN provides no reliable evidence of competition for advertisers

47. beIN also provides no sound economic evidence that the beIN networks compete with NBCSN and Universo for advertisers. beIN claims that advertiser overlaps between the beIN networks and NBCSN/Universo are indicative of substitution by advertisers. In particular, beIN states that the beIN networks "share[] several key advertisers with NBC Sports and NBC Universo. In fact, all of beIN's largest advertisers, [REDACTED], also purchase advertising on NBC Sports and NBC Universo."⁶¹ This claim is economically flawed. Advertiser overlaps do not imply substitutability (or even similarity) between networks. Just because an advertiser chooses to advertise on two networks does not mean that it views the networks as substitutes, or that the networks are competing to sell spots to the same advertiser. Advertiser overlaps do not indicate that advertisers shift marketing dollars between two networks in response to changes in the relative advertising rates and/or value. In fact, one can actually draw the opposite conclusion—that the advertiser does not need to *choose* between the networks but

⁵⁹ Sahl Declaration, ¶ 17.

⁶⁰ *Supra* note 52.

⁶¹ Complaint, ¶ 81. See also Briceño Declaration, ¶ 31.

instead chooses to advertise on both networks. Advertiser overlaps in fact may indicate that two networks are complementary, rather than substitutable, from the perspective of advertisers.

48. beIN’s suggested approach incorrectly would imply that many networks—even those that are clearly distinct—are “similarly situated.” For instance, beIN lists [] as a company that advertises on both the beIN networks and both NBCSN and Universo.⁶² However, [] advertises on virtually every cable network including CNN, Fox News, and National Geographic Channel. These networks clearly are not “similarly situated” to the beIN networks and to NBCSN and Universo, despite the fact that [] advertises on all these networks.

49. More generally, the largest advertisers on the beIN networks generally advertise across approximately 60 to 90 networks, as shown in Table 2 below. Thus, the logic in the beIN Sports Complaint would suggest that the beIN networks and all of these are “similarly situated,” which demonstrates that overlaps by large national advertisers are a meaningless indicator of substitutability between networks, and uninformative to the question of whether the networks are “similarly situated.”

⁶² Complaint, ¶ 81.

Table 2: Advertiser Spend on National Ad-Supported Cable Networks (2017)

||

50. beIN also claims that “advertisers constantly move business between the beIN properties, on the one hand, and the NBC Sports and NBC Universo properties, on the other.”⁶³ However, beIN provides no evidence to support this claim. It also provides no evidence that any competition from the beIN networks for advertisers is more significant than the competition that NBCSN and Universo face from numerous other sports and non-sports networks. In fact, beIN cites the declaration of Mr. Sahl, stating that “[i]n Mr. Sahl’s experience, advertising time on virtually every sports programming is a substitute for time on any different sports programming in the eyes of many advertisers.”⁶⁴ Mr. Sahl’s opinion is fundamentally at odds with beIN’s claim that the beIN networks are “similarly situated” to NBCSN due to advertiser substitution, because it would imply that competition from the beIN networks is not unique, since NBCSN faces competition for advertisers from a myriad of other sports networks.

51. The absence of evidence of substitutability between the beIN networks and both NBCSN/Universo from the perspective of viewers and advertisers indicates that the beIN networks

⁶³ Complaint, ¶ 81.

⁶⁴ Complaint, ¶ 81.

and NBCSN/Universe do not compete materially, and therefore are not “similarly situated” from an economics perspective. The lack of significant substitution between the networks indicates that Comcast has no incentive to disadvantage the beIN networks in order to favor NBCSN and Universe. Consistent with this conclusion, as I discuss in Section III below, the economic evidence indicates that Comcast’s carriage decisions with respect to the beIN networks are consistent with rational business conduct absent any affiliation considerations.

III. There Is No Economic Evidence That Comcast Discriminates Against the beIN Networks on the Basis of Affiliation

A. The “discrimination” standard from an economics perspective

52. I understand that another prong of the test of whether Comcast has engaged in discriminatory conduct against the beIN networks requires beIN to show that Comcast has “discriminat[ed] in video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors.”⁶⁵ beIN claims that the “Comcast Offer discriminates against the programming of beIN and in favor of NBC Sports’ and NBC Universe’s similarly situated sports programming.”⁶⁶

53. From an economics perspective, discrimination implies favoring an affiliated network versus a comparable or “similarly situated” unaffiliated network. The fact that the beIN networks are not “similarly situated” to either NBCSN or Universe means that decisions with respect to carriage of the beIN networks cannot constitute discrimination. Nevertheless, for purposes of this section I explain that, even if the networks were deemed to be “similarly situated,” Comcast’s conduct does not amount to discrimination.

⁶⁵ 47 C.F.R. § 76.1301(c).

⁶⁶ Complaint, ¶ 10.

54. Differential carriage of two networks can amount to discriminatory conduct only if the differential treatment is driven by network affiliation considerations—i.e., incentives to steer viewers away from the unaffiliated networks and towards the affiliated network—rather than rational business judgment. If, on the other hand, carriage decisions can be explained on the basis of rational business judgment independent of any network affiliation, it cannot be concluded that differential treatment of the networks amounts to discrimination.

55. Thus, in order to assess from an economics perspective the question of whether Comcast has discriminated against beIN on the basis of affiliation, I analyze whether Comcast's conduct with respect to carriage of the beIN networks is consistent with rational business judgment absent any consideration of network affiliation; or, alternatively, whether Comcast's decisions can only be explained by Comcast's affiliation with NBCSN and Universo. As I discuss in this section, Comcast's proposal to carry the beIN networks in specialty tiers is economically rational given the niche nature and limited viewer appeal of the beIN networks. The license fee offered by Comcast also is economically rational given the limited value of the beIN networks to Comcast subscribers.

B. Comcast's proposed carriage of the beIN networks is consistent with sound business judgment independent of any consideration of network affiliation

1. Comcast's decision to carry the beIN networks in specialty tiers is economically rational given the niche nature and limited viewer appeal of the beIN networks

56. beIN provides no evidence that Comcast has discriminated against the beIN networks on the basis of affiliation. Rather, it merely asserts that because Comcast has proposed to carry the beIN networks in packages with lower penetration than NBCSN and Universo, such conduct amounts to discrimination. In particular, beIN states:

Comcast would place beIN soccer programming in packages that command much lower subscriber penetration than the tiers in which Comcast places its affiliated

soccer programming—[]

[], compared to the Starter tier for NBC Sports and the Preferred tier for NBC Universo (in some areas, Comcast places NBC Universo in its Starter tier too).⁶⁷

Moreover, beIN claims that according to Comcast’s offer, “Comcast would []

[]⁶⁸ beIN’s claims, however, are deficient as a matter of economics because they fail to show that Comcast’s carriage decisions were driven by its affiliation with NBCSN and Universo, rather than reflecting other business considerations. Differential carriage of the networks does not show *discriminatory* treatment.

57. Network carriage decisions by MVPDs consider a multitude of factors, including the price of carriage, the appeal of the network’s programming, the value of network carriage to subscribers, network ratings, the likelihood that subscribers would switch MVPDs to view the network, and subscribers’ price sensitivity (demand elasticity) with respect to the network programming. Thus, whether it is reasonable for Comcast to carry the beIN networks on less penetrated tiers or, alternatively, on more highly-penetrated tiers, depends on the nature of the programming content and nature, breadth, and intensity of demand for those networks, as well as other factors.

58. beIN claims that “Comcast’s discriminatory treatment can only be explained by Comcast’s desire to favor its affiliates over these affiliates’ competitor.”⁶⁹ However, beIN offers

⁶⁷ Complaint, ¶ 10. See also, Complaint, ¶ 87.

⁶⁸ Complaint, ¶ 10. See also, Complaint, ¶ 88.

⁶⁹ Complaint, ¶ 11. See also, Complaint, ¶ 100.

no evidence that, but-for Comcast's affiliation with the networks, Comcast would carry the beIN networks in the same way as it carries NBCSN and Universo. Nor does beIN offer any evidence that Comcast would obtain the same or greater value from carrying the beIN networks in the same way it carries NBCSN or Universo. Thus, beIN lacks any basis for its claim that carrying NBCSN and Universo on more highly penetrated packages than the beIN networks is discriminatory.

59. A key determinant of whether a network is distributed on highly penetrated tiers is the breadth of appeal of the network's programming. It is generally economically rational to distribute programming with broad appeal on highly penetrated packages, consistent with demand for the programming from a large percentage of subscribers, and to distribute networks with niche programming on less penetrated specialty tiers. MVPDs can offer such specialty tiers to subscribers for a fee, thus allowing the limited share of subscribers that value the niche content to view their desired programming.

60. In contrast, carrying niche programming on broadly penetrated tiers would spread the cost of the network to a wide population of subscribers, many of which would not be interested in the programming. Spreading the costs of niche programming viewed by a small share of subscribers to a broad population of subscribers can be inefficient, and would be at odds with current marketplace realities, such as the significant competitive pressures to reduce programming costs in light of increased competition from OVDs. This competition from OVDs has created pressure to reduce the number of networks on broadly penetrated packages, especially niche networks that appeal to a small share of subscribers.

61. Carrying niche programming on specialty tiers also is economically rational because many of those subscribers may highly value the niche programming and thus may be willing to pay an additional fee for those tiers (e.g., \$9.95 for the Sports and Entertainment

package, or a promotional rate of \$4.99). In contrast, networks with broader appeal enhance the value of broadly penetrated tiers for many subscribers. And, if such networks were carried in specialty tiers for an additional fee, it is likely that a substantial share of potential viewers would be unwilling to pay such a fee. Thus, carrying a network with broad appeal on widely-penetrated tiers and niche programming on specialty tiers with lower penetration makes economic sense, and is consistent with fundamental economics of distribution in the MVPD industry.⁷⁰

62. Because the beIN networks offer niche programming that appeals to a small share of subscribers, it is economically rational to distribute those networks on specialty tiers, such as

[[]]. These packages are available for purchase by subscribers interested in the programming carried by the beIN networks, as well as other programming carried in those packages.

63. beIN claims that “Comcast ignores the benefit that will accrue to it, at no additional cost, if it agrees to distribute beIN in greater penetration tiers: Comcast will attract and retain subscribers at lower price points and accordingly attract and retain more video subscribers, which is a critical metric for MVPD valuation.”⁷¹ However, beIN provides no evidence that the beIN networks would appeal to a material number of subscribers on more highly penetrated tiers. Because of the relatively limited interest in these niche soccer networks among Comcast’s customers, it makes economic sense for Comcast to continue to make beIN’s programming

⁷⁰ This fact is borne out by the wide array of other soccer programming to which Comcast customers have access from other cable networks. For example, ESPN, ESPN2, and FS1 carry select soccer programming (including programming from MLS, the German Bundesliga, and the Mexican Liga MX) as part of a general mix of sports programming with broader viewership appeal, much like NBCSN. And ESPN, ESPN2, and FS1 are typically distributed on widely-penetrated tiers like NBCSN. In contrast, ESPN Deportes, Univision Deportes, and Fox Deportes are Spanish-language networks and, like beIN Sports en Español, are generally carried on Comcast's H tier. See Smith Declaration, ¶ 9.

⁷¹ Complaint, ¶ 15.

available in specialty tiers, in a similar way as virtually all other major MVPDs carry the programming.

64. beIN also seems to argue that it is not economically rational for Comcast to carry the beIN networks on the [REDACTED] [REDACTED] packages because “it is unlikely that many subscribers pay Comcast [sic] the Sports and Entertainment or Latino packages solely or primarily in order to watch beIN, since they can pay less elsewhere.”⁷² beIN’s suggestion that there is little, if any, demand by subscribers to obtain the beIN networks in Comcast’s Sports and Entertainment and Latino packages because subscribers can “pay less elsewhere” is fundamentally at odds with its claim that it would be beneficial for Comcast to expand the distribution of the networks to more widely-penetrated packages. If there is insufficient demand for the beIN networks in the specialty tiers, there surely is insufficient demand in more broadly penetrated tiers.

65. beIN also seems to claim that it is economically irrational (other than resulting from its affiliation with NBCSN and Universo) for Comcast to not carry beIN in more broadly penetrated tiers because beIN offered Comcast a [REDACTED] [REDACTED] for carriage of beIN Sports and beIN Sports en Español.⁷³ Therefore, according to beIN, there would be no [REDACTED] [REDACTED] of offering the beIN programming to more Comcast subscribers. In particular, beIN states that

⁷² Complaint, ¶ 12. Specifically, beIN claims that subscribers interested in viewing the beIN networks could purchase fuboTV for “as low as \$19.99 during the first month, and \$44.99 thereafter” rather than spend \$9.95 per month for the Sports and Entertainment package.

⁷³ Complaint, ¶¶ 48-49, 51.

||

||⁷⁴ beIN's argument is incorrect and misleading.

66. First, despite the || || in beIN's offer, beIN demanded much higher license fees than in the prior contract, and that ||

||⁷⁵ beIN's initial April 2017 proposal included a monthly fee of || ||.⁷⁶

A ||

||. beIN demanded much higher fees for the increased penetration, || ||.

67. Second, beIN's offer contained ambiguous || || provisions which could have provided beIN with even higher fees for distributing the beIN networks in more highly penetrated tiers. In particular, these ||

|| the terms of beIN's proposal may have required Comcast to pay higher fees to distribute the beIN networks in higher-

⁷⁴ Complaint, ¶ 11; see also, Complaint, ¶ 100.

⁷⁵ Complaint, ¶ 51.

⁷⁶ The proposed fee was an increase of || || percent from the current agreement || ||. Brayford Declaration, ¶ 12.

⁷⁷ beIN Sports Renewal Proposal, February 2, 2018 at 3.

penetrated packages. Distributing the beIN networks in more highly penetrated tiers would be contrary to Comcast’s economic interests given these higher fees and the limited demand for the networks.

2. The fact that unaffiliated MVPDs distribute the beIN networks similarly demonstrates that Comcast’s carriage is consistent with sound business judgment independent of network affiliation

68. The conclusion that Comcast’s carriage of the beIN networks in the Sports and Entertainment and Latino packages is consistent with sound business judgment independent of network affiliation is corroborated by the fact that unaffiliated MVPDs generally distribute the beIN networks similarly. In particular, major MVPDs carry the beIN networks on “upper-level” premium and specialty tiers (such as a sports or Latino tier). For example:

- DirecTV only carries beIN Sports on its highest tier, the Premier tier,⁷⁸ and as an add on through the Sports Pack.⁷⁹ It carries beIN Sports en Español only as part of its “Paquetes en Español” including Optimo Mas, Mas Ultra, Mas Latino, and Lo Maximo.⁸⁰
- AT&T carries beIN Sports and beIN Sports en Español on its highest tier—the U450—and on its add-on Sports Package. The beIN networks also are available as

⁷⁸ DirecTV website, https://www.directv.com/cms2/support/channel_lineups/DTV_Channel_Lineup_Summer_2017.pdf, accessed on May 10, 2018.

⁷⁹ DirecTV website, https://www.directv.com/sports/sports_pack, accessed on May 10, 2018.

⁸⁰ DirecTV website, <https://www.att.com/directv/spanish-packages.html>, accessed on May 10, 2018; DirecTV also carries beIN Sports on the highest Spanish-language package Lo Maximo, which carries 350+ channels; see DirecTV website, <http://www.directv.com/DTVAPP/compare/printablePackageChannels.jsp?packageId=960022&skuId=sku930028>, accessed on May 10, 2018.

part of the “Latino” packages, which include U200 Latino, U300 Latino, and U450 Latino, and AT&T’s Paquete Español.⁸¹

- DISH only offers the beIN networks on its highest tiers, America’s Top 250 and America’s Everything Pack,⁸² its Latino packages,⁸³ and through its multi-sports package⁸⁴ and the Latino Bonus Pack.⁸⁵
- Charter also only offers the beIN networks on its highest tier, Spectrum Gold,⁸⁶ through its Latino package, Mi Plan,⁸⁷ and through the add-on package Latino View.⁸⁸
- Many MVPDs do not carry the beIN networks at all, despite not being affiliated with networks that carry sports or soccer content.⁸⁹

69. As I have previously shown in Figure 5, Comcast’s carriage of the beIN networks is comparable to how the networks are carried in the marketplace by other traditional and virtual MVPDs. Comcast carries the beIN networks to [] percent of its subscribers, based on its commitment to [] million subscribers, while other MVPDs distribute beIN Sports and beIN

⁸¹ AT&T website, <https://www.att.com/ecms/dam/att/consumer/support/landingpage/userguides/pdf/u-verse-channel-directory.pdf>, accessed on May 10, 2018.

⁸² DISH website, America’s Top 250, <https://www.dish.com/programming/channels/>, accessed on May 10, 2018); see DISH website, America’s Everything Pack, <https://www.mydish.com/upgrades/english-packages/americas-everything-pack>, accessed on May 10, 2018.

⁸³ DISH website, <https://www.dish.com/programming/channels/>, accessed on May 10, 2018.

⁸⁴ DISH website, <https://www.mydish.com/upgrades/multisport>, accessed on May 10, 2018.

⁸⁵ DISH website, <https://www.mydish.com/upgrades/latino/latino-bonus>, accessed on May 10, 2018.

⁸⁶ Charter website, <https://www.spectrum.com/browse/content/new-channel-lineup>, accessed on May 10, 2018.

⁸⁷ Charter website, <https://www.spectrum.com/latino-plans.html>, accessed on May 10, 2018.

⁸⁸ Charter website, <https://www.spectrum.com/latino-view.html>, accessed on May 10, 2018.

⁸⁹ These include, among others, Wow!, Cable One, Armstrong Cable Services, Service Electric Cable TV, Cincinnati Bell, Blue Ridge Communication, GCI Liberty, Buckeye Broadband, and TDS.

Sports en Español to [] and [] percent of subscribers, respectively, according to Kagan data. Comcast’s carriage of the beIN networks under Comcast’s proposed contract renewal terms would have been similar to Comcast’s current carriage of the network, and therefore would offer similar carriage as offered by other MVPDs.

70. Notably, the carriage by other MVPDs of the beIN networks ([] percent and [] percent for beIN Sports and beIN Sports en Español, respectively) is much lower than the carriage that beIN has demanded from Comcast ([] percent according to beIN’s initial demand).⁹⁰ There is no marketplace basis for such a demand, or for beIN’s claim that Comcast would distribute the beIN networks to such a share of subscribers but-for its affiliation with NBCSN and Universo.

71. beIN claims that several MVPDs carry the beIN networks more broadly than does Comcast, stating that “[a]s many as seven distributors—Charter, CenturyLink, Frontier, fuboTV, Liberty Puerto Rico, Prism and Verizon—give beIN access to tiers with greater penetration than the packages to which Comcast has cosigned beIN. Of them, Verizon gives beIN access to the vast majority of its subscriber base, with the sole exception of the FiOS skinny bundle.”⁹¹ However, beIN’s claim is based on cherry-picked evidence, and is misleading. beIN ignores carriage by MVPDs that carry the beIN networks at low penetration levels, or do not carry the networks at all.

⁹⁰ Complaint, ¶ 51.

⁹¹ Complaint, ¶ 13. The Complaint shows the following penetrations for beIN: Liberty Puerto Rico [] percent; Verizon [] percent; Frontier [] percent; CenturyLink [] percent; Charter [] percent. Complaint, ¶ 102.

72. Moreover, the MVPDs that beIN focuses on are not adequate benchmarks for how Comcast would distribute the beIN networks but-for its affiliation with NBCSN and Universo. According to beIN, the MVPD that distributes the beIN networks to the [] of subscribers is Liberty Puerto Rico ([] percent). However, Liberty Puerto Rico operates in a geographic area (Puerto Rico) that has a very high share of Latinos (98 percent according to some estimates),⁹² and therefore does not serve as an adequate benchmark. As discussed, a very large share of the viewership of the beIN networks is Latino.⁹³ With respect to Verizon, beIN's relatively broad carriage on FiOS is clearly the exception to the rule. Moreover, beIN has made its niche soccer programming available on Verizon's go90 for no charge to consumers, which undercuts beIN's demands for higher license fees from Comcast.⁹⁴ Because beIN's expanded carriage on FiOS in 2015 was apparently directly connected to this go90 deal, Verizon is not an appropriate benchmark.⁹⁵

73. According to beIN, [] and [] distribute the beIN networks to [] percent and [] percent of subscribers, respectively.⁹⁶ However, given that [] carries the beIN networks on its highest tier, beIN's estimate of carriage by []

⁹² U.S. Census Bureau, *Population Estimates for Puerto Rico*, available at <https://www.census.gov/quickfacts/PR>, accessed May 10, 2018.

⁹³ *Supra* note 44.

⁹⁴ See Brayford Declaration, ¶¶ 23, 32; Smith Declaration, ¶ 16.

⁹⁵ Gibbons Kent, *beIN Sports Launches on Verizon's go90*, Multichannel News, Oct. 28, 2015, available at <http://www.multichannel.com/news/telco-tv/bein-sports-launches-verizons-go90/394886>, accessed on May 10, 2018; Press Release, Verizon, *beIN Sport Launches on Verizon FiOS TV*, March 19, 2013, available at <http://www.verizon.com/about/news/release-bein-sport-launches-verizon-fios-tv>, accessed on May 10, 2018.

⁹⁶ Complaint, ¶ 102.

appears to be overstated.⁹⁷ Moreover, even assuming the accuracy of beIN's estimates, the estimates would imply that these cherry-picked MVPDs distribute the beIN networks to a much lower share of subscribers than beIN has demanded from Comcast (to at least [] percent of subscribers).

74. beIN also claims that the beIN networks are carried by OVDs, including fuboTV and Sling TV.⁹⁸ However, many OVDs also do not carry the beIN networks at all, including Sony PlayStation Vue, DIRECTV Now, YouTube TV, and Hulu Live. Sony PlayStation Vue dropped beIN from its service in June 2017.⁹⁹ And, according to the Complaint, Sling TV carries beIN to [] percent of its subscribers, nowhere near the [] percent or higher penetration that beIN has demanded from Comcast.¹⁰⁰

75. beIN seems to concede that many MVPDs carry the beIN networks to a similar or smaller percentage of subscribers compared to Comcast.¹⁰¹ However, it attempts to dismiss this evidence by claiming that "beIN is . . . optimistic" that these MVPDs will carry the beIN networks more broadly because beIN Sports' agreements with these MVPDs "predate the OTT phenomenon

⁹⁷ Kagan Media Census data indicates that penetration of the beIN networks on [] was around [] percent in Q4 2017. As discussed above, [] only offers the beIN networks on its highest tier, the []

[]. These penetration estimates reported by Kagan would suggest that the penetration of the beIN networks are well below the estimated penetration of [] percent that beIN reports in its Complaint. Kagan Media Census data; Complaint, ¶ 102.

⁹⁸ Complaint, ¶ 102.

⁹⁹ Eric Anthony, *PlayStation Vue Announces It Is Dropping BeIN Sports*, Streaming Observer, June 7, 2017, <https://www.streamingobserver.com/playstation-vue-announces-dropping-bein-sports/>, accessed on May 10, 2018.

¹⁰⁰ Complaint, ¶ 102.

¹⁰¹ Complaint, ¶ 103.

and FuboTV's wide carriage of beIN."¹⁰² beIN's attempt to dismiss the low penetration carriage of the beIN networks by major MVPDs is unavailing.

76. beIN's optimism is speculative and misguided. For starters, fuboTV has relatively few subscribers (only about 100,000 as of the end of 2017),¹⁰³ which makes the claim that carriage by fuboTV would have a significant impact on carriage of the beIN networks by MVPDs tenuous, at best. Moreover, Sony PlayStation Vue dropped both beIN channels (beIN Sports and beIN Sports en Español) on June 8, 2017, which is inconsistent with beIN's claim that marketplace trends are leading to greater carriage of the beIN networks by OVDs and virtual MVPDs.¹⁰⁴

C. The license fee offered by Comcast is economically rational given the limited value of the beIN networks to subscribers

77. beIN also alleges that Comcast has engaged in discriminatory conduct by offering beIN contract renewal terms that are less favorable than those given to NBCSN and Universo.¹⁰⁵ Specifically, beIN states that "beIN also believes that the Comcast Offer is discriminatory for another reason, too [sic]—the license fees contained therein are lower than the price Comcast pays to its affiliates for similarly situated programming."¹⁰⁶

¹⁰² Complaint, ¶ 14. See also, Complaint, ¶ 103: "As to other distributors, beIN's agreements with them predate the OTT phenomenon and FuboTV's wide carriage of beIN."

¹⁰³ PR Newswire, *FuboTV Passes 100K Subscribers*, Oct. 10, 2017, available at <https://www.prnewswire.com/news-releases/fubotv-passes-100k-subscribers-300533748.html>, accessed on May 10, 2018.

¹⁰⁴ As beIN stated at the time: "We made every possible effort to reach a deal with Sony since we believe the top sports leagues, games, insights and analysis should be made available to the largest possible audience of fans. Regrettably, Sony has decided that our value proposition is not enough for their viewers." Eric Anthony, *PlayStation Vue Announces It Is Dropping BeIN Sports*, Streaming Observer, June 7, 2017, <https://www.streamingobserver.com/playstation-vue-announces-dropping-bein-sports/>.

¹⁰⁵ Complaint, ¶ 3.

¹⁰⁶ Complaint, ¶ 3.

78. However, there is no economic basis, and beIN does not provide any, that a license fee for the beIN networks that is lower than the license fee that Comcast pays for NBCSN and Universo would be discriminatory. beIN provides no evidence that the value of the beIN networks is the same or similar to the value of NBCSN and Universo. As discussed, NBCSN appeals to a broader set of subscribers, as reflected by the much higher ratings of the networks. beIN’s claims are also fundamentally at odds with the fact that the networks have very different programming budgets—NBCSN is projected to spend over [] million on programming in 2018, more than ten times as much as beIN Sports ([] million).¹⁰⁷ Given these vastly different programming costs between the networks, there is no economic basis for beIN’s claim that a license fee for beIN Sports that is lower than the license fee for NBCSN would be discriminatory. Moreover, the availability of beIN programming on OVDs such as fuboTV also may have decreased the value of carrying the beIN networks. In fact, beIN’s soccer programming also is available on Verizon’s free streaming service, go90, which dilutes the value of the beIN networks to MVPDs.

79. beIN’s own allegations suggest that the value of beIN to Comcast is likely very limited. For instance, beIN states that “very few if any of the subscribers paying an extra \$4.99 for the Sports and Entertainment package or \$9.99 for the Latino package . . . do so solely or primarily in order to watch beIN.”¹⁰⁸ beIN further explains that “FuboTV offers beIN within its most penetrated package alongside 70 other channels for as low as \$19.99 during the first month, and \$44.99 thereafter . . . As a direct consequence of Comcast’s pricing, it is unlikely that many

¹⁰⁷ Source: Kagan TV Network Summary reports.

¹⁰⁸ Complaint, ¶ 12.

subscribers pay Comcast [for] the Sports and Entertainment or Latino packages solely or primarily in order to watch beIN, since they can pay less elsewhere.”¹⁰⁹ beIN’s claims suggest that there is little value to Comcast of carrying the beIN networks, whether carried in the Sports and Entertainment or Latino packages, or in more broadly penetrated tiers. If there is little subscriber demand for the beIN networks in the specialty tiers, there surely is little demand in more broadly penetrated tiers.

80. Comcast’s ordinary course of business analyses show that its current carriage of the beIN networks likely results in operating losses relative to the cost of not carrying the networks and generates relatively little value for Comcast.¹¹⁰ Comcast estimated that the lost revenue from dropping beIN entirely was {{ }} of the [[]] million in average annual costs that Comcast would incur under beIN’s April 2017 proposal based on the proposed monthly fee increase [[]].¹¹¹ After beIN later modified its new fee demands in February 2018, Comcast’s viewership analyses indicated that the additional costs to Comcast would be approximately {{ }} million higher than the *maximum* projected losses from not carrying beIN over the proposed [[]] term of the renewal.¹¹² When adjusted {{ }}

¹⁰⁹ Complaint, ¶ 12.

¹¹⁰ See Brayford Declaration, ¶ 18; Smith Declaration, ¶¶ 19, 21.

¹¹¹ \$[[]] million based on the annual cost of the monthly flat fee [[]]. See Brayford Declaration, ¶ 18.

¹¹² \${{ }} million = \$[[]] million - (\${{ }} million projected yearly loss from drop * 6 years)), where the \$[[]] million is based on the annualized \$[[]] million revised proposed monthly fee from the February 2, 2018 proposal including [[]]. See Brayford Declaration, ¶ 33.

}}.¹¹³ Based on these analyses, Comcast determined that even under the most conservative calculations, the carriage price sought by beIN Sports for the beIN networks far exceeded the most conservative benefit to Comcast of carrying the networks. None of these analyses considered any effect of the carriage of the beIN networks on NBCSN and Universo.¹¹⁴

81. Moreover, despite beIN's demands for much higher license fees and penetration, I understand that beIN could not [[

]].

82. In short, the business factors underlying Comcast's offer to beIN reflect legitimate and sound economic considerations and are consistent with how other distributors in the industry have carried the beIN networks. This evidence undermines beIN's claims of affiliation-based discrimination.

¹¹³ {{ }} million = [[]] million - \${{ }} million. See Brayford Declaration, ¶ 31.

¹¹⁴ See Brayford Declaration, ¶¶ 4, 16-19, 30-31.

¹¹⁵ See Brayford Declaration, ¶¶ 34, 38-39, 41.

IV. Comcast’s Alleged Discriminatory Conduct Did Not “Unreasonably Restrain” the Ability of the beIN Networks to “Compete Fairly”

A. The “unreasonable restraint” standard from an economics perspective

83. I understand that another prong of the test of whether Comcast engaged in discriminatory conduct under Section 616 of the Communications Act of 1934 requires beIN to show that Comcast’s conduct “unreasonably restrain[ed] the ability of an unaffiliated video programming vendor to compete fairly.”¹¹⁶ From an economics perspective, this criterion is a test of whether the challenged conduct inhibited the beIN networks from being able to compete effectively.

84. beIN claims that the challenged conduct unreasonably restrained the ability of the beIN networks to compete for viewers and advertisers.¹¹⁷ However, beIN offers no evidence to support its assertion.

B. Comcast’s initial counterproposal is not an economically valid basis for beIN’s unreasonable restraint claims

85. beIN’s unreasonable restraint claims are based on the initial counterproposal that Comcast made to beIN in December 2017.¹¹⁸ However, a contract offer is not a carriage decision, a carriage agreement, or even a refusal to enter into an agreement. Parties typically make offers and counter-offers as part of renewal negotiations for virtually any kind of programming. I also understand that the Commission’s program carriage rules are intended to rely on such marketplace

¹¹⁶ 47 C.F.R. § 76.1301(c).

¹¹⁷ Complaint, ¶ 96.

¹¹⁸ Complaint, ¶ 3.

negotiations “to the greatest extent possible,” and are not intended to impede “legitimate, aggressive negotiations.”¹¹⁹

86. From an economic perspective, it is unreasonable to expect that Comcast would simply accept an initial proposal for a carriage renewal without making a counterproposal, as virtually all parties do in such circumstances. That is particularly true in this case, where beIN’s initial offer contained significant fee increases and distribution demands that were inconsistent with the limited appeal of its niche soccer programming to Comcast subscribers. Comcast’s initial counterproposal was part of normal marketplace negotiations; it is not a valid basis for beIN’s claim that Comcast unreasonably restrained beIN.

C. beIN fails to show that the challenged conduct had a material effect on the ability of the beIN networks to compete effectively for viewers

87. Even putting aside the lack of any final offer for renewal of the carriage agreement, beIN’s unreasonable restraint claims have no basis in fact. beIN states that it has achieved success in a relatively short time since its launch. The beIN networks were launched in 2012 with Comcast being one of the earliest distributors to carry the networks.¹²⁰ beIN claims that in the six years since its launch, the beIN networks achieved “explosive growth” with beIN having ||

|| and beIN Sports en Español having ||¹²¹

Notwithstanding the fact that beIN’s viewership estimates may be overstated,¹²² the growth of the beIN networks since their launch is inconsistent with beIN’s claim that the challenged conduct

¹¹⁹ 1993 Program Carriage Order, ¶¶ 14, 15; Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, §§ 2(b)(1)-(2), 106 Stat. 1460, 1463.

¹²⁰ Complaint, ¶ 24.

¹²¹ Complaint, ¶¶ 25, 79.

¹²² *Supra* note 97.

inhibited its ability to compete. There is no evidence that the challenged conduct had any material effect in restraining the growth of the beIN networks.

88. beIN’s claim that Comcast unreasonably restrained the ability of the beIN networks to compete also is at odds with the multitude of options for distributing video programming. The video distribution marketplace is highly competitive. Subscribers today have a multitude of options for receiving video programming. These options include cable, DBS, overbuilders, and increasingly virtual MVPDs.¹²³ And, programmers such as beIN have many options for reaching subscribers who are interested in receiving their programming. For example, subscribers residing in Comcast’s service territory may view the beIN networks via Comcast, as well as through other providers, including Verizon, Dish, DirecTV, overbuilders (such as RCN), and virtual MVPDs, including Sling TV (accessible through Comcast’s X1 platform). In fact, beIN explains that viewers in Comcast’s service territory have low-cost options for receiving the beIN networks, including from fuboTV and iGol.¹²⁴

89. The significant growth of these and other virtual MVPDs (including DirecTV Now, Sling TV, Sony PlayStation Vue, YouTube TV, Hulu Live TV) has given programmers such as beIN additional channels through which to distribute their programming. DirecTV Now reached

¹²³ According to the FCC, “most consumers have access to three MVPDs (two DBS MVPDs and a cable MVPD), [and] some consumers also have access to a telephone MVPD, for a total of four MVPDs.” FCC, *18th Annual Video Competition Report*, Jan. 17, 2017 at 3.

¹²⁴ The Complaint claims that “FuboTV offers beIN within its most penetrated package alongside 70 other channels for as low as \$19.99 during the first month, and \$44.99 thereafter.” Complaint, ¶ 101. The content carried by the beIN networks is also available from iGol, which is a video streaming provider that shows soccer match telecasts from various TV networks for \$9.99 per month. See iGol website, <https://www.igol.tv/>, accessed on May 10, 2018.

1.2 million subscribers by the end of 2017, a little over a year since its launch.¹²⁵ Similarly, by the end of 2017, Sling TV had 2.21 million subscribers, Sony PlayStation Vue had 445,000 subscribers, YouTube TV had over 300,000 subscribers, and Hulu Live TV had about 450,000 subscribers.¹²⁶ As I discuss above, several of these major virtual MVPDs do not carry beIN, including DirecTV Now, Sony PlayStation Vue, Hulu Live, and YouTube TV. The challenged conduct by Comcast does not preclude beIN from obtaining carriage with these virtual MVPDs.

90. The challenged conduct also does not preclude beIN from gaining subscribers outside of Comcast's service territory. Comcast serves approximately [] [] percent of U.S. paid TV subscribers.¹²⁷ And, [] [] of Comcast's subscribers are at issue in this case.¹²⁸ beIN can increase viewership by offering quality programming with broad appeal and/or by charging low prices for carriage.

91. Thus, the challenged conduct does not preclude beIN from competing for the vast majority of video subscribers in the U.S.

¹²⁵ Todd Spangler, *Amid Satellite TV Drop, DirecTV Now Streaming Service Hits 1.2 Million Subscribers*, Variety, Jan. 31, 2018, available at <http://variety.com/2018/digital/news/directv-now-subscribers-att-q4-2017-1202683048/>, accessed on May 10, 2018.

¹²⁶ Sarah Perez, *Sling TV now has 2.2M subscribers, making it the largest internet-based live TV service*, TechCrunch, Feb. 21, 2018, available at <https://techcrunch.com/2018/02/21/sling-tv-now-has-2-2m-subscribers-making-it-the-largest-internet-based-live-tv-service/>, accessed on May 10, 2018.

¹²⁷ Source: Kagan, U.S. Multichannel Industry Benchmark; Kagan, Comcast Cable Operating Metrics profile; Jeff Baumgartner, *Virtual MVPDs Ended 2017 with 5.3M Subs: Study*, Multichannel News, February 12, 2018. Includes both traditional MVPD and virtual MVPD subscribers.

¹²⁸ beIN seeks carriage to an additional [] [] million Comcast subscribers (approximately [] [] percent of U.S. paid TV subscribers).

D. beIN fails to show that the challenged conduct had a material effect on the ability of the beIN networks to compete effectively for advertisers

92. beIN also provides no reasonable evidence that it would be unable to compete effectively for advertisers without broader distribution by Comcast. The sole basis offered by beIN is the testimony of Mr. Sahl, who claims that “Comcast’s offer would negatively affect beIN’s ability to attract advertising, as advertisers will gravitate toward programmers that are on higher-penetrated tiers and have larger potential audiences.”¹²⁹ It is unclear what Mr. Sahl means by “gravitate toward programmers that are on higher-penetrated tiers.” Clearly, networks distributed on lower-penetrated tiers (including the beIN networks) can and do attract advertisers. In fact, beIN acknowledges that major advertisers on NBCSN and Universo also advertise on the beIN networks.¹³⁰ The beIN networks sell advertising spots and earn advertising revenue, despite not being carried widely by many MVPDs. Mr. Sahl does not quantify the effect of “Comcast’s offer” on the beIN networks’ ability to attract advertising; nor does he provide any factual support for the assertion that “Comcast’s offer would negatively affect beIN’s ability to attract advertising.”¹³¹ Overall, Mr. Sahl’s testimony provides no credible basis for the assertion that the challenged conduct restrained the beIN networks’ ability to compete for advertisers.

93. More generally, there is no basis to conclude that lack of scale has impeded beIN’s ability to attract advertisers, or that having broader distribution through Comcast would enhance beIN’s ability to do so.

¹²⁹ Sahl Declaration, ¶ 26.

¹³⁰ Complaint, ¶ 81; Briceño Declaration, ¶ 31.

¹³¹ Sahl Declaration, ¶ 26.

V. Conclusions

94. The economic evidence is wholly at odds with all three criteria for discriminatory conduct under Section 616 of the Communications Act of 1934: (1) that the beIN networks are “similarly situated” to NBCSN and Universo, (2) that Comcast discriminated against the beIN networks in favor of NBCSN and Universo, and (3) that the challenged conduct “unreasonably restrained” the ability of the beIN networks to compete.

95. beIN Sports and beIN Sports en Español are fundamentally different networks, as a matter of economics, from NBCSN and Universo. The beIN networks offer niche programming focused on international soccer, while NBCSN and Universo offer a wide variety of programming, of which only a small fraction is soccer. Universo is not a sports network at all, but features a wide array of Spanish-language non-sports programming. Consistent with the programming they offer, the nature and breadth of viewership of the networks also differs markedly—for instance, the average viewing audience of NBCSN is over 10 times that of beIN Sports.¹³² The distinct nature of the programming and viewership of the networks is recognized in the marketplace, with other MVPDs distributing NBCSN and Universo much more broadly than they do the beIN networks.

96. There also is no economic evidence that Comcast discriminated against the beIN networks in favor of NBCSN and Universo. Comcast’s carriage of the beIN networks is consistent with sound business judgment independent of any consideration of network affiliation. Comcast’s decision to carry the beIN networks in specialty tiers is economically rational given their niche nature and limited viewer appeal, as evidenced by the fact that unaffiliated MVPDs also distribute

¹³² *Supra* note 34.

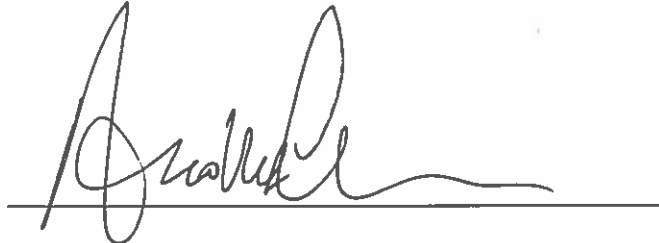
the beIN networks in specialty tiers, and to a similar percentage of subscribers as Comcast. In fact, many traditional MVPDs and virtual MVPDs do not carry the beIN networks *at all*, but do carry NBCSN and Universo.

97. beIN also fails to show that the challenged conduct unreasonably restrained the ability of the beIN networks to compete fairly. In today's highly competitive video distribution marketplace, programmers such as beIN have many options through which to distribute their programming.

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

Dated: Los Angeles, California

May 14, 2018

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

Andres V. Lerner, Ph.D.

Appendix A

Andres V. Lerner
Executive Vice President

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Executive Vice President, Compass Lexecon, Los Angeles, California, April 2013 to present.

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Senior Economist, Economic Analysis LLC, Los Angeles, California, June 2001 to June 2003.

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Who's Who Legal and Global Competition Review, *Who's Who Legal: Competition – Future Leaders 2017*, economist aged 45 and under.

Global Competition Review, *The International Who's Who of Competition Economists* (2013, 2014, 2015, 2016, 2017, 2018).

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(November 1999 to October 2000)

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Superior Court of New Jersey, Case No. 8886-96.
(September 1999 to January 2000)

EXHIBIT 4

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

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

DECLARATION OF PETER LITMAN

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I. INTRODUCTION

1. My name is Peter Litman. I am a media consultant who frequently works in the cable programming business. The majority of my practice is advising cable programming services on how to negotiate their distribution agreements with multichannel video programming distributors (“MVPDs”) and advising MVPDs on how to secure the programming for their systems. Additionally, I have worked extensively on business planning for new distribution opportunities that have arisen for cable programming companies, such as the creation of new cable channels, video-on-demand (“VOD”), high definition (“HD”) television, and Internet distribution.

2. I have been retained by counsel for Comcast Corporation (“Comcast”) to assess the merits of the beIN Sports, LLC (“beIN”) claim in its Program Carriage Complaint (the “Complaint”) filed on March 15, 2018. beIN asserts that Comcast discriminates against beIN by carrying the beIN networks, beIN Sports and beIN en Español, as part of Comcast’s sports and Hispanic tiers while distributing affiliated networks, NBC Sports Network (“NBCSN”) and Universo, on more highly penetrated tiers and paying them higher per subscriber fees. I have reviewed the Complaint, declaration, and exhibits, as well as the information that I requested.

II. QUALIFICATIONS

3. I graduated from Brown University with a Bachelor’s degree in applied mathematics. I earned my Master of Management degree (equivalent to an MBA) from the Kellogg School of Management at Northwestern University.

4. I have worked in the media industry for thirty years, the entirety of my professional career. I have extensive experience in the program carriage marketplace, where MVPDs negotiate with video programmers for carriage of their content. In addition to my work in multichannel television, I have also worked in broadcast television, radio, and digital media. I have very broad experience on both the content and distribution sides of multiple media. My first professional exposure to the cable television business was in 1990 when I worked for NBC Cable, which then had a single wholly owned cable network, CNBC. My first professional role with a cable television distributor was with Continental Cablevision in 1993; at the time it was the third-largest MVPD in the United States, as well as the owner of stakes in a number of cable television networks including Turner Broadcasting (CNN, TNT, TBS, Cartoon Network), Golf Channel, Food Network, E!, and the forerunners of the networks now known as NBCSN and Fox Sports 1. Since 1998, I have acted as an independent consultant and have worked for both major cable programmers and distributors, including a leading cable operator and a competitive MVPD. I worked extensively on a very successful channel development, Lifetime Movies, which was a thinly distributed channel available in 2 million households at the time that I began my work, and is now available in over 70 million households. My curriculum vitae is attached to this report.

5. Additionally, my experience in other media, notably radio, has given me experience with the rapid changes in the media industry in which the new competitive issues and concerns have changed the business dynamics for incumbents. In radio, the two largest companies in the industry, iHeart and Cumulus, are both in bankruptcy, in part because they underestimated the impact of Internet distribution of music programming on radio for listeners and the switch from brick-and-mortar retail to e-commerce for radio's advertisers.

6. Previously, I have been retained as an expert in matters concerning the cable programming industry. I have no financial interest in the outcome of this case.

III. SCOPE OF ASSIGNMENT

7. I have been asked by counsel for Comcast to offer my independent, expert view, based on the Complaint, the declaration of beIN's industry expert Eric Sahl, and available, objective data, as to the following claims:

- a) Whether the beIN networks – beIN Sports, and beIN Sports en Español – are similarly situated to Comcast-affiliated networks, NBCSN and Universo;
- b) Whether Comcast's behavior with respect to beIN's networks is driven by an effort to favor its affiliated programming; and
- c) Whether Comcast's behavior unreasonably restrains beIN's ability to compete fairly in the marketplace for video programming.

8. I performed my analysis using a variety of data sources, consistent with how I would prepare for a renewal of an affiliation agreement if I were advising a cable network or MVPD. Among these data sources are ratings and programming information available in the television trade and popular press, channel lineups and packaging information from systems owned by other MVPDs, Nielsen ratings data, cable programming industry data available from Kagan Research ("Kagan," a unit of S&P Global) about other networks and MVPDs, and any proprietary data available from my client. I generally focus on data from the most recently completed year, in this case 2017.

9. I have personally performed all of this work. The materials I relied upon in preparing this written testimony are cited herein.

IV. SUMMARY OF CONCLUSIONS

10. ***Numerous objective marketplace metrics, including overall content, viewership, advertising interest, and carriage by other distributors, demonstrate that the beIN networks are not similarly situated to NBCSN or Universo.*** It is my professional opinion that the beIN networks (beIN Sports and beIN Sports en Español) and the NBCUniversal networks (NBCSN and Universo) are not similarly situated under an objective, industry-standard comparison. Both beIN Sports and beIN Sports en Español are niche soccer networks that focus primarily on European soccer leagues and attract a modest audience

by national cable standards, and thus have more limited distribution by major MVPDs. In contrast, NBCSN is a well-distributed, broad-appeal cable sports network with the kind of high-profile live sports event programming covered extensively in the sports media, and Universo is a Spanish-language general entertainment network.

11. ***Comcast's negotiating positions were based on sound business reasons.*** beIN has claimed that Comcast's carriage decisions and negotiations for beIN are substantially motivated by an effort to protect NBCSN and Universo. I do not believe that is true. Comcast's renewal proposal and general approach in its relationship with beIN is much more simply and compellingly understood as the result of Comcast's executives exercising their reasonable business judgment of how to serve Comcast's customers in today's competitive marketplace.

12. ***beIN's renewal offers to Comcast were exorbitant, lacked any coherent or compelling factual support, and were wildly unrealistic in today's highly competitive marketplace.*** Comcast has distributed the beIN networks since their launch in 2012. The current agreement between the parties, [REDACTED], expires on July 31, 2018. In April 2017, beIN made an early and very aggressive proposal to renew its affiliation agreement with Comcast. Despite the limited viewership of its two networks, beIN proposed to Comcast that it pay substantially more in license fees. Notwithstanding that few cable networks are being added to highly penetrated tiers by MVPDs today, beIN also proposed that Comcast move the networks from their existing sports and Latino tiers (referred to as the Sports and Entertainment Package ("SEP") and H Tier, respectively) to highly penetrated mass-market packages. Simultaneous with these asks for more money and more distribution, beIN proposed [REDACTED]

[REDACTED]. I find this proposal to be surprising. Usually requests for higher fees and more distribution would be combined with [REDACTED]

[REDACTED]. Furthermore, the offer seems tone-deaf to MVPDs' general business needs and strategy. In the current highly competitive environment, smaller, niche networks are more likely to be pruned from high penetration packages than added.

13. ***Comcast's initial counter-offer was reasonable and consistent with beIN's carriage treatment by other distributors in the marketplace.*** Comcast countered with a proposal that was in line with the terms of the existing affiliation agreement and commensurate with the value that it assessed for the services. Comcast's proposed distribution terms are consistent with how virtually every other major MVPD carries the beIN networks. The [REDACTED] that Comcast proposed should be seen as a strong signal that beIN's initial proposal was far too aggressive. Comcast's proposal was reasonable, based on substantial data and analysis and legitimate commercial considerations, and in line with the marketplace.

14. Before the parties had the opportunity to fully negotiate through their differences, beIN lodged this Program Carriage Complaint, presumably to improve its bargaining position and support its aggressive ask. In my opinion, beIN's positions are poorly supported and unreasonable in the current cable programming and distribution

environment. To the extent beIN is limited in its success as a network, those limitations appear to be primarily the result of its own failures to recognize and adapt to the changing multichannel environment in which it is operating.

V. THE BEIN NETWORKS ARE NOT SIMILARLY SITUATED TO NBCSN OR UNIVERSO

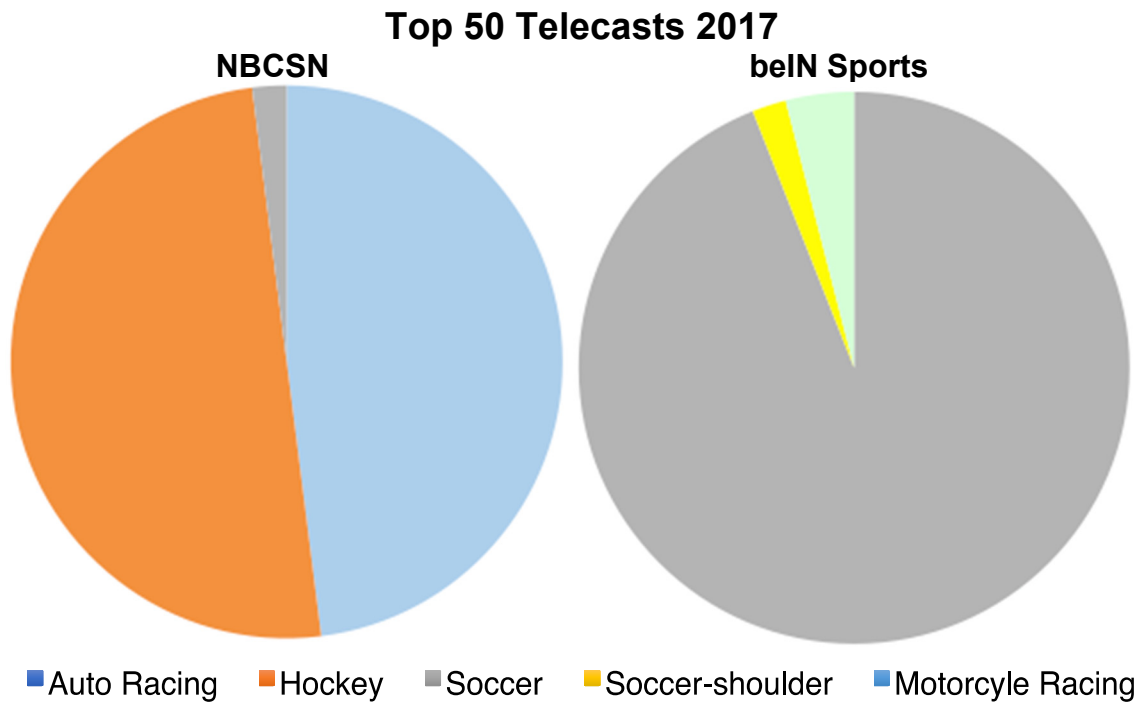
A. beIN Sports Is Not Similarly Situated To NBCSN

Programming Analysis

15. While both NBCSN and beIN Sports air sports programming and broadcast in the English language, the similarities do not go far beyond that. NBCSN is a general sports network, featuring high profile programming year-round in multiple sports. beIN Sports is essentially a single-sport, niche programming network. The vast majority of the audience it attracts watches its soccer programming, and the audience for its other programming is limited.

16. Because a television network has 168 hours per week to program, inevitably much of the programming even on the top sports networks like ESPN is filler – replays, highlight shows, sports talk and the like. The primary value that MVPDs see in sports networks is in their highest profile or “marquee” programming – that is programming that they promote in their subscriber acquisition campaigns, and that their local ad sales operations highlight to potential advertisers.

17. In terms of their marquee programming, NBCSN and beIN Sports are starkly different. The following charts show the top 50 most viewed telecasts of more than 60 minutes in duration on the two networks during 2017.



18. Of NBCSN’s top 50 most-viewed telecasts for 2017, only one is a soccer match, 24 are auto races, and 25 are NHL games. The 50 telecasts ranged in audience size from [] viewers to [] viewers. In aggregate, these 50 telecasts represented [] minutes of programming, just under three hours per week. Of beIN Sports’ top 50 most-viewed telecasts, which ranged in audience size from [] to [] viewers, 47 are soccer matches, two are motorcycle races, and one was a 65-minute wrap-up show that ran on the same day as a World Cup qualifying soccer match. In aggregate, these 50 telecasts represented [] minutes of programming, almost exactly two hours per week. The most-viewed telecast on beIN Sports had a smaller audience than 238 telecasts on NBCSN.¹

19. This mix of top shows reflects NBCSN’s strategy to program big sports properties that appeal to a range of different and substantial demographic groups in order to reach a broad range of sports fans throughout the year, including casual fans. The two most popular sports on NBCSN are auto racing, which generally does very well in the South and in rural areas, and hockey, which performs well in urban and suburban areas in the North. NBCSN has high-profile programming throughout the year. This includes, for example, the Olympics in even years (in February for winter; August for summer) –

¹ The complete list of these programs is included in the Appendix as Exhibits 1 and 2. No soccer matches were more than 2.5 hours long; a large number of auto races and hockey games were longer than that.

NBCSN programs more hours of the Olympics than any other network. It also includes the *Tour de France* in July² and major college sports, especially football in the Fall.³

20. Although it is true that English Premier League soccer is an important piece of NBCSN's programming mix, it was not the appeal of soccer in general, but rather the potential of this league as a source for sports storytelling over many months of the year, that NBCUniversal found attractive when it added the programming to the NBCSN schedule. As NBC Sports President Jon Miller noted in a recent interview: "We don't want to be the network of soccer. We want to be the network of the Premier League. There's a big difference. We feel the Premier League stands above every other soccer league out there including the domestic league here."⁴

21. beIN Sports, in contrast, is the network of soccer. []

]].

22. Similarly, beIN's presentation to []

]].⁶ All of Comcast's marketing of the beIN networks focused on the soccer offerings.⁷ beIN's marketing also emphasizes this niche soccer focus: "Fans choose beIN SPORTS because, unlike other networks, we cover soccer, football, fútbol, calcio. No matter how you call it, we got it. Every single day."⁸

23. By beIN's analysis, in 2017, sports minutes programming comprised [] % of beIN Sports schedule and [] % of NBCSN's. However, only [] % of NBCSN's

² In 2017, NBCSN aired 16 *Tour de France* telecasts watched by more than [] people. The highest rated telecast, at 8AM on July 9, 2017, had an average audience of [] viewers. This was the 258th most viewed program on NBCSN that year; only one telecast on beIN Sports in all of 2017 exceeded an audience of this size. Data from Nielsen NPOWER Live+3 Days (+75 Hours), 1/1/2017-12/31/2017, Persons 2+.

³ Jon Miller interview, April 11, 2018.

⁴ <https://www.marketwatch.com/story/how-nbc-sports-is-monetizing-its-1-billion-premier-league-soccer-investment-2017-12-14>.

⁵ Complaint Exhibit 4, pp. 3-7.

⁶ beIN Sports presentation []
excluding appendix.

[] – Complaint Exhibit 10,

⁷ Brayford Declaration ¶ 5.

⁸ <http://adsalesus.beinsports.com/about-us/>.

programming was live soccer, while []% of beIN Sports' programming was live soccer, more than four times as much.

24. To be sure, quality professional international soccer from one league has some similarity to quality professional international soccer from another league, but the audience appeal of the leagues is very different. The English Premier League is the soccer league with the most interest from U.S. viewers. According to a 2016 study of 6,500 U.S. soccer fans from Universitaet Tübingen, the greatest interest was in the English Premier League, followed by the UEFA Champions League, and American Major League Soccer. beIN's top programming, *La Liga* (Spain), was fourth, *Serie A* (Italy) sixth, and *Ligue 1* (France) seventh.⁹ This same study found that "the Spanish-speaking population occupies a disproportionately important position among soccer fans," consistent with Comcast's experience.

25. Likewise, all professional soccer is clearly not of the same value to MVPDs or networks. After GolTV lost the rights to *La Liga*, the top professional league in Spain, when it was outbid by beIN, Comcast dropped the network, despite GolTV's continued carriage of the professional soccer leagues of Portugal and Venezuela.¹⁰ []

[]¹¹ One observer echoed that point: "The big three of ESPN, Fox Sports and NBCSN seem happy to leave the likes of *La Liga*, *Serie A* and *Ligue 1* with beIN Sports while battling each other for the major properties."¹²

26. Beyond the intrinsic audience appeal of the soccer matches, the quality of soccer programming on a network is seen in its production values, reporting, and storytelling. On these elements, NBCSN is far above beIN. The prior rights holders of the English Premier League used it as filler programming, running the international TV feeds of the host country. In contrast, NBC Sports uses its own talent to improve the storytelling around the matches for the American audience, and they actually call the games live from the stadium.¹³ NBC's production of English Premier League games was described as "simply the best coverage any network has of any sports league,"¹⁴ and NBC Sports' marketing of the English Premier League was so notable that it was the subject of an

⁹ <https://www.sciencedaily.com/releases/2017/01/170117083030.htm>.

¹⁰ <https://www.businesswire.com/news/home/20160210006102/en/GolTV-Acquires-Rights-Venezuela%E2%80%99s-Division-Soccer-League>.

¹¹ Jon Miller interview, April 11, 2018.

¹² <https://www.forbes.com/sites/bobbymcmahon/2015/10/18/the-last-decade-has-brought-major-changes-to-soccer-tv-in-us/#4032c2c5583f>.

¹³ Jon Miller interview, April 11, 2018.

¹⁴ <http://awfulannouncing.com/2015/nbc-and-the-english-premier-league-will-continue-the-best-marriage-in-sports-media.html>.

article in *Sports Illustrated*, the top U.S. magazine devoted to sports.¹⁵ In contrast, beIN's play-by-play talent calls the games from a studio in Miami over a TV feed.¹⁶

27. Finally, one of the clearest distinctions between NBCSN and beIN Sports is the size of their programming budgets. The cost of programming rights is a major point used by sports networks to justify the cost of their services and the cost of acquiring rights is well covered in the cable industry trade press. NBCSN is projected to spend [] million on programming in 2018; this amount is more than ten times that of beIN Sports' [] million.¹⁷ There is an enormous amount of sports programming that could be televised in the U.S. What differentiates sports programming television networks is the interest of the potential audience in the programming, and fees for sports rights usually track the level of interest.

Distribution Analysis

28. NBCSN and beIN Sports are also not similarly situated in the MVPD distribution marketplace. According to Nielsen, in February 2018, NBCSN reached [] U.S. households, while beIN Sports reached only [], 74% fewer. []

]

¹⁵ <https://www.si.com/extra-mustard/2013/08/10/english-premier-league-soccer-nbc-ad-new-york-neighborhoods>; <http://abcas3.auditedmedia.com/ecirc/magtitlesearch.asp>.

¹⁶ <http://awfulannouncing.com/soccer/peek-inside-ray-hudsons-magisterial-world.html>; <https://vimeo.com/219690195> (beIN sizzle reel for 2017 showing play-by-play calls in front of TV monitors).

¹⁷ Kagan Network Comparison Reports for NBCSN and beIN Sports.

29. NBCSN is widely distributed by all major MVPDs. beIN Sports is widely distributed by only one – Verizon. Among the top 50 MVPDs in the continental U.S., 38 do not distribute beIN Sports at all. The networks also differ dramatically in how they are packaged by MVPDs. MVPD carriage of some basic cable networks is simple; they are carried to the vast majority of the video customers on the system.¹⁸ Describing the carriage for a network like beIN Sports is more complex – it may be carried in a few different packages – a sports tier, a Latino tier, a more expensive package with premium services. To distill the analysis of MVPD packaging, I have categorized carriage into four main groups:

- a) Broad distribution – The network is included in one or more packages so that around 80% or more of a system’s basic subscribers receive it. beIN Sports on Verizon FiOS would qualify for this group.
- b) Mid-level distribution – At a higher retail price than broad carriage, but included in packaging so that more than approximately 50% of a system’s basic subscribers receive it. beIN Sports carriage on CenturyLink’s Prism TV and on Comcast’s Digital Preferred in certain markets are in this group.
- c) Specialty/Lower distribution carriage – The network is in a sports tier and/or a Spanish tier and/or in one or more higher-priced packages. Note that in areas with a large concentration of Latinos, if beIN Sports is in a Spanish tier, this combination might have substantial penetration.
- d) None/No carriage – Systems where the network is not offered at all.

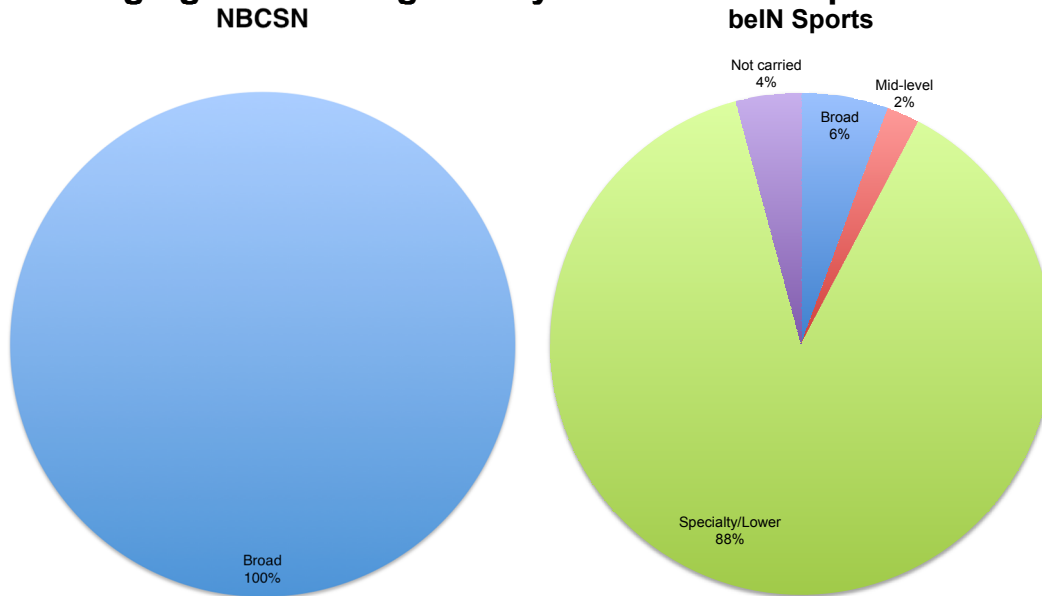
30. The chart below summarizes the packaging of NBCSN and beIN Sports on the systems of the top 50 MVPDs in the continental U.S.¹⁹ Based on data from SNL Kagan, NBCSN is carried by every one of the top 50 MVPDs, and all of them distribute the network in packaging that reaches approximately 80% of their basic subscribers – i.e., Broad distribution. In contrast, beIN Sports is available to the vast majority (88%) of the basic subscribers only in Specialty/Lower distribution packaging.²⁰

¹⁸ This excludes the Basic Service Tier, consisting primarily of local broadcast stations.

¹⁹ The data used to create this chart are included in the Appendix as Exhibit 3.

²⁰ Notably, there are almost as many basic subscribers on systems that do not carry beIN Sports at all as there are in systems that carry it in Broad distribution packages.

Packaging and Carriage on Systems of the Top 50 MVPDs



31. Moreover, the license fees paid by MVPDs for beIN Sports are not substantially similar to those of NBCSN. According to Kagan estimates, in 2017 NBCSN's average license fee per subscriber per month was \$[REDACTED]; beIN Sports was 62% lower at \$[REDACTED].²¹

Ratings Analysis

32. Under any reasonable and customary ratings analysis, beIN's ratings are not substantially similar to those of NBCSN. In 2017, beIN Sports had an average audience size across all of its rated hours of only [REDACTED] people. NBCSN had an average audience of [REDACTED] people – *over 12 times the size of beIN's*.²² Even on a coverage area basis (which, as discussed below, is not a meaningful metric in this situation), ignoring the much greater universe of people who receive NBCSN, NBCSN's ratings are over three times higher than beIN Sports' with a [REDACTED] rating versus beIN Sports'

²¹ Kagan Network Profiles for beIN Sports and NBCSN.

²² Data source: Nielsen NPOWER report Live+3 Days (+75 Hours), 1/1/2017-12/31/2017, Live+SD, Persons 2+, MC US AA Proj (000). Assuming a zero audience for the [REDACTED] non-Nielsen-rated minutes, beIN Sports average audience would be [REDACTED]. Note that among Nielsen-rated telecasts for beIN Sports in 2017, over one-quarter of its telecast schedule, [REDACTED] minutes, had an audience that rounded to zero.

[[]]. beIN Sports had the smallest average audience of any English-language U.S. national sports network in 2017.²³
[[]]

²³ Data source: Nielsen NPOWER report Live+3 Days (+75 Hours), 1/1/2017-12/31/2017, Live+SD, Persons 2+, MC US AA Proj, MC Cvg AA%. Note: ESPN's average audience was [[]] persons. Note that, while the other networks in this table are rated on every minute of the year – including all of the low-viewership overnight hours – beIN Sports' average excluded [[]]% of the annual minutes. Were they included, beIN Sports' average audience would very likely be even smaller.

33. Additionally, even ignoring NBCSN's much larger universe of households, the top event telecasts on NBCSN rate more highly than the top ones on beIN Sports and the fall-off from the very top is not as dramatic for NBCSN. The most viewed telecast on NBCSN in 2017 (a NASCAR race on July 30) had a [] people rating in NBCSN's coverage universe and the 10th most highly viewed, another NASCAR race, has a [] rating, only 24% lower than its top telecast. The most viewed program on beIN Sports in 2017, a *La Liga* match known as El Clásico on April 23, had a [] rating in beIN Sports' much smaller coverage universe and the 10th most highly viewed, another *La Liga* match, had a [] rating, 67% lower than its top telecast – a much sharper drop-off.²⁴

34. NBCSN has a much broader base of viewership than does beIN Sports. This difference is clearly seen in their reach, which represents the number of households that receive the network and that watch it for at least six minutes during the month. During 2017, []% of people in households that receive NBCSN watched for at least six minutes, which translates to [] million people. For beIN Sports, the comparable figure was only []% or [] million people.²⁵ Looked at from another

²⁴ Data source: Nielsen NPOWER report Live+3 Days (+75 Hours), 1/1/2017-12/31/2017, Persons 2+.

²⁵ Data source: Nielsen NPOWER report Live+3 Days (+75 Hours), 1/1/2017-12/31/2017, Persons 2+, AA Reach with a Qualified Audience of 6 minutes.

perspective, []% of the people who currently receive beIN Sports do not watch the network even a modest amount.

35. beIN's discussion of the ratings of both of its networks is misleading. In fact, beIN includes additional ratings analyses that actually demonstrate how *dissimilar* the beIN and NBCU networks are.²⁶

36. []

[].

37. Ratings of Individual Games. In another attempt to demonstrate its alleged ratings similarity, beIN also provides an analysis consisting of references to individual games rather than broad measures of the appeal of the network. Specifically, beIN references the ratings of []

[]²⁸ Mr. Briceño notes that, in 2015, []

[]. However, to cherry-pick the single highest profile event on beIN's schedule and then compare it to another soccer match that happened to be on NBCSN at around the same time is not a reasonable, much less generally accepted, approach. Notably, []

[]; it is hardly representative of the viewership of the channel.

²⁶ Complaint ¶¶ 69-70, pp. 32-34.

²⁷ Complaint ¶ 69, p. 32; Briceño Declaration ¶ 22.

²⁸ Complaint ¶¶ 8, 70, pp. 4, 33.

²⁹ Briceño Declaration ¶ 23.

³⁰ Exhibit 2.

38. On an apples-to-apples basis, the highest rated program during 2017 on NBCSN was a NASCAR race on July 30 that averaged [] million viewers.³¹ This event drew *seven* times the audience of the []. In the context of NBCSN's average viewership in 2017 of [], this represented 27 times NBCSN's average, making it less of an outlier than [].

39. Coverage Area Ratings. beIN also compares the ratings of beIN Sports and beIN Sports en Español to NBCSN and Universo within each network's coverage universe. In his declaration, Antonio Briceño, Deputy Managing Director of beIN Sports notes that []

[]³² That sounds similar, until one realizes that the [] network is NBCSN and the [] network is beIN Sports en Español. It is not reasonable to compare NBCSN to beIN Sports en Español, irrespective of their ratings – the networks are in different languages, and the overall Spanish-language audience in the U.S. is much smaller than the English-language audience. Similarly, it is unreasonable to compare the English-language beIN Sports ([]) to the Spanish-language Universo ([]). Co-mingling both beIN networks with both NBCUniversal networks confuses the comparisons. The only reasonable comparisons are between the networks that are in the same language.

40. Irrespective of the cross-language comparisons, beIN's ratings analysis based on coverage area ratings is not methodologically sound. The beIN networks' current MVPD carriage is overwhelmingly in tiers for a Hispanic audience and/or for the self-selecting sports fans. This is especially true for beIN Sports en Español. The households that subscribe to these packages (and hence receive the beIN networks) would logically have a disproportionately large number of Latinos and sports fans. Conversely, the households who do not subscribe to those packages would have to have a much lower proportion of Latinos and sports fans. It is a mathematical certainty that beIN would not rate as highly if it were in a universe that had proportionately fewer Latinos and sports fans.

41. beIN's analysis extrapolates its ratings from its current "target-rich" universe to the larger mass-market universe of all cable television households.³³ This approach is illogical, unreliable, and not accepted in the cable programming industry in this context. The implication is that the viewership of beIN Sports in its current universe would be similar if its universe were "full penetration of all possible pay tv households." There is no basis for such a conclusion.³⁴

³¹ Exhibit 1.

³² Briceño Declaration ¶ 20; Complaint ¶ 67, p. 31.

³³ Briceño Declaration ¶ 21 ("[T]he similarity in ratings becomes vast superiority in beIN's favor if an appropriate adjustment is made to account for beIN's lower penetration."); Complaint ¶ 68, p. 31.

³⁴ Coverage area ratings could be used to project viewing levels if a network had more distribution, but only if the households that do not currently receive the network are

Demographic Analysis

42. There are also substantial differences between beIN viewers and NBCSN viewers. beIN Sports' audience is much more Hispanic and much more likely to live in an A county (i.e., urban) than NBCSN's audience.³⁵ The beIN Sports audience is materially younger and more affluent than the audience for NBCSN.³⁶ Both networks, as is typical for sports networks, skew heavily male.

Market Segment	NBCSN	beIN Sports
Head of household is Hispanic	||	
Lives in an A County		
Gender – male		||
Audience under 55 years of age	53%	67%
Household income over \$75K	44%	61%

Advertising Analysis

43. beIN's claim that its "overlap" of advertisers indicates that beIN Sports and NBCSN are substantially similar is not credible.³⁷ The overlap of the advertisers between NBCSN and Universo and the beIN networks is not unusual. The advertisers cited by beIN are mass-market advertisers – [

||.³⁸

These advertisers buy advertising on many television networks, including many networks with sports programming. For example, in 2017, [||

||.³⁹

44. Overall, among all U.S. advertisers, all of the advertisers cited by beIN were among the top 50 advertisers: [

equally likely to watch the network as the households that currently receive the network. That is certainly not the case here.

³⁵ Data source first three lines of the table: Nielsen, All Ad Insertable Networks 2017 – Demos and Market Breaks.

³⁶ Data source for the other lines of the table:

www.comcastspotlight.com/offerings/overview.

³⁷ Complaint ¶ 81, p. 38.

³⁸ Complaint ¶ 81, p. 38; Briceño Declaration ¶ 31.

³⁹ *Year in Sports Media Report U.S. 2017* by Nielsen Sports, pp. 32-33.

]].⁴⁰ In that year, across both beIN networks, Kagan estimated their total advertising billings at less than [] million.⁴¹ If these [] advertisers bought *all* of the advertising on the beIN networks, that would have accounted for a tiny amount of the advertisers' media spending – just one-half of one percent.

45. In short, under any reasonable analysis, beIN Sports is not similarly situated to NBCSN. beIN Sports is a soccer-focused service that does not have a broad range of high-profile events like NBCSN. NBCSN's top events are auto races and hockey games. NBCSN is a nearly fully-distributed cable sports service. beIN Sports is generally carried in specialty or low-penetrated packages, is almost never carried broadly, and on many systems is not carried at all. The viewership of beIN Sports is a tiny fraction of NBCSN's, and even when adjusted for its coverage area it is still a small fraction. beIN's claim that if it were available in more households it would be viewed proportionally more is illogical. The demographics of the networks are different and beIN's claims regarding the overlap of their advertisers are not meaningful.

B. beIN Sports en Español Is Not Similarly Situated To Universo

Programming Analysis

46. beIN Sports en Español's programming is not substantially similar to that of Universo. Both are Spanish-language networks. Universo is a general entertainment network with some high profile sports programming, almost exclusively on weekends. It is not a sports network, and its schedule on most days includes no sports programming at all. Universo's program schedule and mix of entertainment genres and sports is similar to a general entertainment network like TBS, and dissimilar to a dedicated sports network like ESPN. Reality programming and movies are Universo's two largest programming genres. Universo also programs a significant amount of professional wrestling, which, with its staged bouts, is not a sport covered by the sports media.

47. By beIN's own analysis of [] data, sports represented only []% of Universo's 2017 schedule, while sports programming represented []% of beIN Sports en Español programming and soccer programming represented []%.⁴² I also understand that Dr. Lerner's analysis demonstrates that soccer dominates beIN Sports en Español's programming time (72.3% of programming minutes in 2017), and makes up a small fraction of Universo's (5.5%).⁴³ beIN Sports en Español programs a large amount of soccer match replays, highlights, and soccer talk programming;⁴⁴ Universo programs essentially none, as its programming model is not limited to sports.

⁴⁰ 2017 Leading National Advertisers Fact Pack by Advertising Age, pp. 6-7.

⁴¹ Kagan Network Profile Report for beIN Sports ([] million gross advertising sales) and beIN Sports en Español ([] million).

⁴² Briceño Declaration, chart, p.7; Complaint ¶ 63, chart, p. 29.

⁴³ Lerner Declaration, Table 1.

⁴⁴ Collectively these are categorized as soccer "shoulder" programming.

48. This difference also is seen in the way that distributors that carry both networks describe the channels. Sling TV describes Universo as “Modern entertainment for Latinos, with a thrilling mix of premium sports, signature reality series, compelling dramas, blockbuster movies, music and must-see live events.”⁴⁵ In contrast, beIN Sports en Español is described as “Exclusive live coverage of the top international soccer leagues, including Spain’s *La Liga*, Italy’s *Serie A*, France’s *Ligue 1* and more. Welcome to the best place to watch Ronaldo, Messi, Neymar, and all the biggest stars in soccer.”⁴⁶

49. Universo and beIN en Español are also not similar in what they spend on programming. Universo’s programming expenses are double that of beIN Sports en Español. According to Kagan, in 2017, Universo’s programming expenditures were [[] million, while beIN Sports en Español’s were [[] million.⁴⁷

50. beIN Sports en Español’s most viewed programs do have some degree of overlap with Universo’s, but the differences are more striking than are the similarities, as evidenced in the charts below. As shown in the charts below, of beIN Sports en Español’s top 50 most viewed programs, all are soccer matches or post-match “shoulder” programming (similar to beIN’s English-language channel). Of Universo’s top 50 most viewed programs for 2017, only 17 were soccer matches. However, the other two-thirds included 28 episodes of reality shows, three wrestling programs, and two movies.⁴⁸

51. For this analysis, unlike the comparison between NBCSN and beIN Sports, I considered all telecasts, not only event-length (over one hour) telecasts. NBCSN and beIN Sports are both live sports networks; Universo clearly is not.⁴⁹

⁴⁵ <https://www.sling.com/c/channels/nbc-universo?classification=us>.

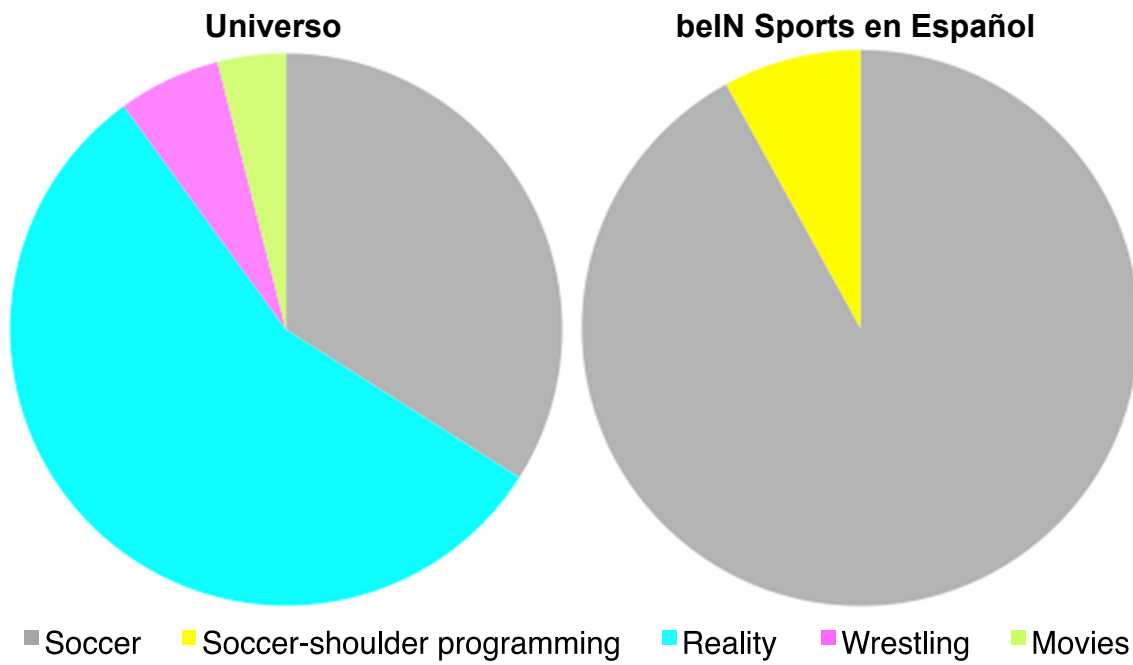
⁴⁶ <https://www.sling.com/c/channels/bein-sports-espanol?classification=international-sports>.

⁴⁷ Kagan Network Profile Reports for Universo and beIN Sports en Español.

⁴⁸ The complete list of the top 50 telecasts for each network is included in the Appendix as Exhibits 4 and 5.

⁴⁹ If restricted to telecasts longer than 60 minutes, as in the NBCSN-beIN Sports analysis above, beIN Sports en Español’s top 50 telecasts would have included 48 soccer matches and 2 soccer shoulder programs. Universo’s top 50 telecasts would have included an even mix of soccer and non-soccer programming – 25 soccer matches (all of the top 12), 15 wrestling telecasts, 8 movies, and 2 specials (music and occult). However, there were no high-rated reality telecasts more than 60 minutes in length, and this is one of the biggest programming genres for Universo. So a focus on longer telecasts is not representative here.

Top 50 Telecasts 2017



Distribution Analysis

52. In February 2018, Nielsen estimated that Universo reached over [] million households and beIN Sports en Español reached less than [] million, over 50% fewer. []

53. MVPDs distribute the beIN Sports en Español and Universo networks very differently. I understand from NBCUniversal that Universo is not carried in a sports package by any MVPD.⁵⁰ beIN Sports en Español, in contrast, is carried in sports packages, as well as in Spanish-language packages, by eight of the top 10 MVPDs. Like all major sports networks which focus on live sports, beIN Sports en Español does not provide a separate feed for cable operators in the Pacific Time Zone.⁵¹ By contrast, like most entertainment networks, Universo has a separate West Coast feed.

54. In addition, Universo has lower license fees than beIN Sports en Español. Kagan estimated beIN Sports en Español's average affiliate revenue per sub per month for 2017 at \$[[]]. Universo's was 20% lower at \$[[]].⁵² This is not necessarily surprising. Sports networks tend to have higher license fees than certain entertainment programming, particularly entertainment that has an audience that targets women.

Ratings Analysis

55. As previously explained, beIN's ratings analysis is misleading. Moreover, the patterns of viewership for Universo and beIN Sports en Español are substantially different. Universo's strength and focus is in prime time. In 2017, Universo had an average prime time audience of [[]] viewers, nearly double that of beIN Sports en Español's average audience of [[]] viewers.⁵³ Much of the viewing of beIN Sports en Español is during the daytime on weekends, and often Saturday morning, when it is Saturday afternoon in Europe, the time when professional soccer is traditionally scheduled for its home country's audience.

56. Universo has a much broader base of viewership than does beIN Sports en Español. This difference is seen in reach, which represents the number of people in households that receive the network and that watch it for at least six minutes. Given Universo's greater variety of programming, I would expect it would have greater reach than a niche sports service. During 2017, each month [[]]% of people in Universo households watched the network for at least six minutes, which represents [[]] million people.⁵⁴ For beIN Sports en Español, the comparable figures are [[]]% and [[]] million people or 37% fewer.⁵⁵ beIN Sports en Español audience is made of a small group of viewers who watch it frequently. In short, it is a classic niche service.

⁵⁰ Jon Miller interview, April 11, 2018.

⁵¹ Operators in the Central and Mountain Time zones typically distribute the East feed.

⁵² Kagan Network Profile Reports for Universo and beIN Sports en Español.

⁵³ <http://www.indiewire.com/2017/12/highest-network-ratings-2017-most-watched-hbo-cbs-espn-fx-msnbc-fox-news-1201911363/>.

⁵⁴ That many distributors package Universo in high penetration tiers, not solely in Latino tiers, lowers this reach penetration percentage, as the denominator (its universe of households) is much larger than that of beIN Sports en Español.

⁵⁵ Data source: Nielsen NPOWER report Live+3 Days (+75 Hours), 1/1/2017-12/31/2017, Persons 2+, AA Reach with a Qualified Audience of 6 Minutes.

Demographic Analysis

57. The audience for Universo is substantially different from that of beIN Sports en Español. Universo's audience is relatively balanced between men and women; beIN Sports en Español, like beIN Sports and NBCSN has a predominantly male audience.⁵⁶ The audience for Universo also is much less likely to live in an A county than the audience for beIN Sports en Español. For both services, the vast majority of the audience is in a household headed by someone of Hispanic origin. The beIN audience has a relatively larger percentage of households with income above \$75K.⁵⁷

Market Segment	Universo	beIN Sports en Español
Gender – female	||	
Lives in an A County		
Head of household is Hispanic		
Household income above \$75K		||

58. In short, under any reasonable analysis, beIN Sports en Español is not similarly situated to Universo. Universo is a general entertainment network. It shows all of the characteristics of a general entertainment network, none of which are true of beIN Sports en Español: its programming focus is prime time; its top programs are in a variety of genres; it has a broader reach; it has little gender skew; it is never distributed in a sports tier; and it provides distributors a separate West Coast feed. beIN Sports en Español, by contrast, is a Spanish-language soccer network. The points of similarity are that they are both Spanish-language services and a very small fraction of Universo's schedule is live soccer. That hardly makes the two networks similarly situated under any recognized industry metric.

VI. COMCAST'S RENEWAL OFFER TO BEIN WAS BASED ON REASONABLE BUSINESS CONSIDERATIONS, NOT AFFILIATION

A. Comcast's Renewal Offer to beIN Was Reasonable

59. beIN's approach to the Comcast renewal was and has been very aggressive from my perspective; it does not surprise me that this approach did not yield a resolution. The initial proposal was made at a meeting on April 11, 2017, over fifteen months prior to the current deal's expiration, ||

||.⁵⁸

60. In my experience, a renewal deal with such substantial additional costs would usually need to be accompanied by either a clear demonstration of benefit to the MVPD or that the service had a much greater value in the marketplace than the current terms reflect or both. beIN's proposal was even more aggressive in the context of Comcast's

⁵⁶ Data source: Nielsen, All Ad Insertable Networks 2017 – Demos and Market Breaks.

⁵⁷ Data source: Nielsen, All Ad Insertable Networks 2017 – Demos and Market Breaks.

⁵⁸ Brayford Declaration ¶¶ 11-12.

concerns, which were shared with beIN, about the *devaluation* of the beIN networks by beIN's decision to provide its programming on the free video service of the leading mobile telephone company.⁵⁹ ||

||.⁶⁰ These concerns should not be dismissed as the ordinary "jockeying for position" at the start of a negotiation. Cable subscriptions have been declining and, as a recent survey of consumers noted "subscribers perceive a widening value gap between what they expect and what pay TV providers actually deliver."⁶¹

61. Subsequent to the initial proposal, there were several more discussions between the parties. Comcast provided its first proposal on December 13, 2017. This is more than seven months prior to the current deal's expiration. Subsequently, beIN provided a new proposal on February 2, 2018 and then a revised proposal to clarify the February 2 proposal on March 7, 2018.

62. It is my view that Comcast's proposal to beIN dated December 13, 2017 is a reasonable offer for a renewal of the parties' affiliation agreement. In my opinion, Comcast's willingness to engage with such an aggressive proposal is gracious; many times a very early, very aggressive proposal will not get any counter-proposal from an MVPD, particularly so far in advance of the current agreement's expiration.

Length of Term

63. The || || proposed by Comcast tracked the structure of the current affiliation agreement.

Packaging of the beIN Networks

64. Comcast's proposed carriage commitment || || was generally in line with Comcast's historic carriage of beIN. It also was informed by Comcast's viewership analyses of the beIN networks, demonstrating that the network had limited appeal. As detailed further below, it was also consistent with the packaging of the beIN networks on AT&T/DirecTV, the largest MVPD, as well as most other MVPDs.⁶² The proposal also is consistent with Comcast's video programming strategy in general, as I had understood it prior to my involvement with this matter.

⁵⁹ Brayford Declaration ¶¶ 23, 32.

⁶⁰ Brayford Declaration ¶ 32.

⁶¹ <https://www2.deloitte.com/insights/us/en/industry/technology/digital-media-trends-consumption-habits-survey.html>.

⁶² Brayford Declaration ¶ 27.

License Fee Payments

65. Comcast's proposal for a [] was consistent with the viewership analyses Comcast had performed, showing that it is already likely losing money under the current agreement, and with the fact that []. It is also what I would expect for a proposal with a programmer with whom an MVPD intends to complete a deal, particularly one that has made an aggressive offer to start the discussions. Comcast's proposal was not labeled as a final offer and many details in the proposal were []

[]

66.

67.

68.

69. [] Indeed, it began its U.S. business by outbidding GolTV for its most valuable programming, *La Liga*. When GolTV lost *La Liga*, Comcast and DirecTV dropped the network altogether, despite the fact that it still had significant foreign professional soccer rights. []

⁶³ Section 4 of Comcast Proposal.

70.

I.

Management Uncertainty

71. For an MVPD, cable programming decisions are often long-term strategic choices. MVPDs tend to affiliate with networks for long periods of time, and they have rarely swapped networks in and out of core packages. Almost all of the most widely distributed and valuable programming networks have roots back at least fifteen years and are run by companies with their top management based in the U.S. and with the U.S. as their biggest market. For example, ESPN launched in 1979 and now reaches a Nielsen Universe of about [] million households. Fox Sports 1, launched in 1996 as Speedvision, now reaches approximately [] million households.

72. There are a number of elements of beIN's ownership and management that would create concern for a U.S.-based MVPD. beIN is as a foreign-owned programmer with a relatively short operating history in the U.S. Its CEO, Nasser Al-Kelaifi, is facing criminal proceedings in Switzerland over alleged bribery related to securing rights to soccer games and events.⁶⁷ beIN shares ownership with Al Jazeera, which folded its American channel a little over three years after it acquired most of its subscribers from an earlier news network. DirecTV sued Al Jazeera over violations of the terms of its affiliation agreement.⁶⁸ As one industry analyst noted in the wake of its demise, "Costly mistakes made at launch in 2013 were adding up fast while ratings were not growing fast enough. The channel's distributors were dissatisfied. And falling oil prices were testing the patience of Al Jazeera's parent, the oil-rich emirate of Qatar."⁶⁹ Comcast describes its

⁶⁴ Smith Declaration ¶ 23.

⁶⁵ Brayford Declaration ¶ 39; see also Brayford Declaration, Attachment C.

⁶⁶ Brayford Declaration ¶ 34.

⁶⁷ <http://www.cbc.ca/sports/soccer/fifa-world-cup-broadcasting-rights-bribery-1.4351606>.

⁶⁸ <https://www.hollywoodreporter.com/thr-esq/directv-al-jazeera-settle-75-820396>.

⁶⁹ <http://money.cnn.com/2016/01/22/media/al-jazeera-america-what-went-wrong/index.html>.

own experience with Al Jazeera as “mixed.”⁷⁰ Comcast has several reasonable causes for concern about entering into a much more extensive affiliation relationship with beIN.

73. To achieve a large increase in revenue and carriage, I would expect the programmer to be offering a clearly better value for the MVPD and/or a context in which the carriage that the MVPD is being asked to provide is consistent with what others have done and/or an alignment with the MVPD’s business needs. beIN’s offer does none of that. During the nearly six years of the parties’ current affiliation, beIN has programmed networks of some level of quality and consistency. However, there is almost nothing to suggest that beIN Sports had much value to the mass-market audience. In fact, Comcast notes that broader distribution could actually dilute the value of the SEP and H Tiers – a point that ||⁷¹

beIN’s Recent Proposal

74. beIN’s last proposal, dated March 7, 2018, in the context of its position in the marketplace, was still very aggressive and did not alleviate Comcast’s concerns. beIN still proposed considerably higher license fees than in the current agreement, considerably broader packaging than in the current agreement, and ||⁷². At the same time, beIN’s proposal continued to substantially reduce ||

||⁷³
In totality, beIN was asking for a lot more from Comcast for the networks and ||

B. Comcast Has Legitimate and Compelling Business Reasons for Its General Approach to beIN as a Programming Supplier

75. beIN asserts that Comcast’s behavior towards beIN was driven by a desire to support and protect NBCSN and Universo from competition from the beIN networks.⁷⁴ I see no basis whatsoever for that claim. To accept it, one would have to ignore the multitude of legitimate business reasons that Comcast has for its distribution choices for beIN done as part of its renewal negotiations.

⁷⁰ Brayford Declaration ¶ 24.

⁷¹ Brayford Declaration ¶¶ 21, 37, 41.

⁷² ||

].

⁷³ Brayford Declaration ¶¶ 30, 31, 34.

⁷⁴ Complaint ¶ 85, p. 40.

76. First, Comcast conducted a substantial, fact-based evaluation of the beIN networks and found that the business risk of not carrying the networks was substantially smaller than the price that beIN was requesting for their carriage. Second, virtually all of the other major MVPDs have made similar distribution choices with respect to the beIN networks. Finally, the MVPD marketplace has fundamentally changed in the past decade and, as a result, distributors, including Comcast, have necessarily changed their strategies, and Comcast's approach to beIN reflects these marketplace dynamics.

Comcast Conducted a Reasonable, Thorough Analysis About the Value of the beIN Networks to Inform its Actions

77. The Viewership Analysis prepared by Comcast's Enterprise Business Intelligence ("EBI") team in January 2018 attempts to value the networks provided by beIN and the impact Comcast might expect if they were removed from the channel lineup.⁷⁵ I found the analysis to be very thorough and reasonable. The value of the beIN networks that resulted from this financial analysis was less than its current cost to Comcast, and substantially less than what beIN was proposing in its || || renewal deal.⁷⁶ There is *no* element of the analysis that reflects concern for how Comcast's carriage of beIN's networks would benefit any other networks, much less NBCSN or Universo.⁷⁷

beIN's Carriage by Other MVPDs

78. Comcast's treatment of beIN Sports is well within the industry mainstream. Every major MVPD in the United States distributes NBCSN in more highly penetrated packages than they do beIN Sports. Or, to put it another way, not a single major MVPD found beIN Sports to be "similarly situated" to NBCSN when making carriage decisions.

⁷⁵ Brayford Declaration, Attachment A. The "EBI" is Comcast's in-house business analytics group that supports the content acquisition team.

⁷⁶ Other MVPDs might have different results and might find much more value in the beIN networks, even using the exact same model, especially if they are serving heavily Hispanic markets.

⁷⁷ The methodology the group used analyzed the churn of subscribers based on two standards. {{

}}. The approach is consistent with sound methodological practices. The data are objective and scaled appropriately to beIN. The results seem both reasonable and intuitive: {

}}.

79. For example, DirecTV distributes NBCSN in all but one of its base packages, but distributes beIN Sports only in its highest-level package.

Network	DirecTV English Packages ⁷⁸					
	Select	Entertainment	Choice	Xtra	Ultimate	Premier
NBCSN		✓	✓	✓	✓	✓
beIN Sports						✓

80. Dish Network distributes NBCSN in all of its packages, but distributes beIN Sports only in its highest-level package.

Network	Dish Network Packages ⁷⁹			
	AT120	AT120+	AT200	AT250
NBCSN	✓	✓	✓	✓
beIN Sports				✓

81. Verizon, which distributes beIN Sports significantly more broadly than any other major MVPD, as explained below, distributes NBCSN more widely than beIN Sports. beIN Sports is not included in any of its Custom TV genre packages.

Network	Verizon FiOS “Traditional” packages ⁸⁰		
	Preferred	Extreme	Ultimate
NBCSN	✓	✓	✓
beIN Sports	✓	✓	✓

Network	Verizon FiOS “Custom” packages ⁸¹							
	Kids & Pop	Action & Entertainment	Lifestyle & Reality	Infotainment & Drama	Sports & News	Home & Family	News & Variety	TV Mundo Total
NBCSN					✓	✓	✓	
beIN Sports								

82. The analysis of beIN’s distribution provided in Mr. Sahl’s declaration is flawed.⁸² It does not justify broader distribution by Comcast. The MVPDs that have provided beIN with high penetration distribution have been outliers in the MVPD business and are notable for their poor financial performance and innovative, but often unsuccessful,

⁷⁸ <https://www.directv.com/DTVAPP/pepod/configure.jsp?hd=true&packageId=960004&packageType=ENGLISH#package-section>.

⁷⁹ <https://www.dish.com/programming/channels/#>.

⁸⁰ <https://www.verizon.com/about/sites/default/files/Fios-TV-Channel-Lineup-May-2017.pdf>.

⁸¹ <https://www.verizon.com/about/sites/default/files/Fios-TV-Channel-Lineup-May-2017.pdf>.

⁸² Sahl Declaration ¶ 29, p. 16.

content licensing. The assertion that Comcast would benefit more by the inclusion of the beIN networks in packaging other than how it is currently offered is both unsupported and even contradicted by statements within Mr. Sahl's declaration.

83. Mr. Sahl claims that it is not true that other distributors carrying beIN do so "almost universally" on upper level tiers, and cites "seven distributors" who distribute beIN more favorably than Comcast ("tiers with greater penetration than the packages to which Comcast has consigned beIN").⁸³ This assertion loses most of its meaning when closely examined, as you will see in the following paragraphs. I do not have access to the precise penetration of the beIN networks on other distributors, but the packaging of the networks is publicly available.

84. The largest of the distributors cited is Charter. Charter had approximately 17 million basic subscribers at year-end 2017, and is the second largest cable distributor to Comcast. On its systems that have its nationally promoted packages, Charter distributes both beIN networks in its highest-level package "Spectrum Gold" and certain Latino packages. In contrast, it distributes NBCSN in its lowest level digital package "Spectrum Select" and Universo on its second level digital package "Spectrum Silver."

Network	Charter Spectrum Packages ⁸⁴		
	Select	Silver	Gold
NBCSN	✓	✓	✓
Universo		✓	✓
beIN Sports			✓
beIN Sports en Español			✓

85. Among beIN's list of seven distributors, CenturyLink II]. CenturyLink's OTT TV service referenced by beIN, known as "CenturyLink Stream," was launched in 2017, and never found much of a following before it was shut down in early 2018.⁸⁵ CenturyLink's Prism TV is a facilities-based service similar in technology to AT&T's U-Verse. It has been in operation for many years. However, it has been reported that CenturyLink has stopped offering its Prism TV video service to new customers, and the company has publicly stated that it does "not plan to expand [its]

⁸³ Sahl Declaration ¶ 29, p. 16; Complaint ¶¶ 13, 102, pp. 7, 47.

⁸⁴ Based on a review packaging for zip codes in legacy Charter systems (Milwaukee/Madison, WI (53051, 53119, 53717), East Los Angeles, CA (90032), San Bernadino, CA (92324, 91764), Fort Worth, TX (76017, 76063), Fairfield County, CT (06468, 06801) and St. Louis, MO (63101, 63005, 63040)); former Bright House Networks systems (Tampa/Lakeland, FL (33860 34442, 34601), Orlando, FL (32835, 32901, 32701), and Antelope Valley, CA (93501, 93536, 93560), and former Time Warner Cable systems (Charlotte, NC (28012, 28379, 28226), Cleveland, OH (44055, 44132), Dallas, TX (75150, 75287), and New York, NY (10025)).

⁸⁵ <https://www.multichannel.com/news/centurylink-pulling-plug-ott-tv-beta-service-418278>.

Prism TV service offering.”⁸⁶ This is hardly a relevant comparison to Comcast. I also note that CenturyLink’s Prism TV service also distributes NBCSN and Universo more favorably than the beIN networks. It carries NBCSN and Universo in all of its core packages, and beIN Sports only on its highest-level package.

Network	Prism TV Packages ⁸⁷		
	Essential	Complete	Preferred
NBCSN	✓	✓	✓
Universo	✓	✓	✓
beIN Sports			✓
beIN Sports en Español			

86. beIN also cites Liberty Puerto Rico,⁸⁸ which (though the largest operator in the territory) is not in the continental U.S. and serves a primarily Spanish-speaking market that is far more interested in soccer than typical markets in the continental U.S. It is not a comparable distributor to Comcast, which serves a primarily English-speaking market.

87. The other distributors on beIN’s list – Verizon, Frontier, and fuboTV – are worth discussing in some greater detail.⁸⁹

Verizon is a Poor Comparison MVPD for Comcast

88. Verizon is the fifth largest MVPD by basic video subscribers and the only major MVPD to carry beIN networks broadly. However, Verizon is significantly unlike Comcast in the way that it operates its MVPD business.

89. Verizon’s MVPD business is a relatively small part of the company as a whole – most of Verizon’s value is related to its mobile business, which represents 74% of the company’s 2017 revenues.⁹⁰ To benefit its substantial mobile phone business, it launched an advertiser-supported mobile video service called go90, for which it acquired a material amount of soccer programming from beIN to support. beIN has suggested publicly that the “added value” of this content from beIN was a *quid pro quo* for the broader carriage that beIN received on Verizon’s FiOS systems – both were announced at the same time, and a beIN representative noted: “this represents the highest level of national penetration it has obtained with any platform to date: the English- and Spanish-language versions of

⁸⁶ <https://www.fiercable.com/cable/centurylink-no-longer-working-to-expand-prism-tv-service>.

⁸⁷ <http://www.centurylink.com/prismtv/channelLineupTable.html?marketName=las-vegas-nevada> (confirmed that the same packaging is used in Denver and Phoenix).

⁸⁸ Complaint ¶¶ 13, 102, pp. 7, 47.

⁸⁹ Complaint ¶¶ 13, 102, pp. 7, 47.

⁹⁰ <http://www.verizon.com/about/investors/quarterly-reports/4q-2017-quarter-earnings-conference-call-webcast> (\$87.511 million out of \$118.191 million).

the service will reach the majority of 5.8 million FiOS TV customers.”⁹¹ Verizon’s decision to provide broad carriage to beIN, thus, appears to be related to its *non-MVPD* business objectives.

90. But, even as an MVPD, Verizon has made a number of business decisions that make it an unlikely model for others. Verizon has created or tried to create business arrangements outside of the norms for the cable programming business, which have confused customers and alienated important programming suppliers. Typically MVPDs have several core packages (variations on good/better/best) for the mass market (English language) and often one or two tiers targeted at Latinos. Verizon had that structure for many years before launching another packaging scheme, “Custom TV,” side by side with it. Many programmers believed that Custom TV was a violation of their affiliation agreement; Disney/ESPN filed a lawsuit against Verizon claiming breach of its contract.⁹²

91. Verizon touted this approach as consumer-friendly, but *Consumer Reports* found it confusing: “After sifting through all the new Verizon FiOS packages for TV, I’d hate to see what things would look like if the company were to try any harder to confuse customers.”⁹³ Verizon also publicly announced a viewership-based business model in 2013 (announced that same month as beIN launched) that does not appear to have gained any traction in the industry with any important programming supplier.⁹⁴ Verizon’s FiOS service has also had a difficult time in the marketplace, and it stopped the expansion of its FiOS systems in 2010.⁹⁵ Verizon divested over 1.2 million FiOS video subscribers to Frontier, which is now trying to sell the assets to relieve its own financial distress.⁹⁶

92. beIN cites Frontier as another distributor that has provided beIN with high penetration carriage.⁹⁷ I note that most of that carriage is on FiOS systems that Frontier acquired from Verizon. So it is likely that distribution of beIN in those systems is a function of inheriting Verizon’s distribution choices, not a choice made by Frontier.

fuboTV is a Not a Reasonable Comparison for Comcast

93. beIN’s argument that Comcast should look to fuboTV as its model is well off the mark. fuboTV carries both of the beIN networks to []% of its customers. At year-

⁹¹ <http://www.multichannel.com/news/telco-tv/bein-sports-launches-verizons-go90/394886>.

⁹² <https://www.multichannel.com/news/espn-sues-verizon-over-custom-tv-390115>.

⁹³ <https://www.fiercecable.com/cable/verizon-s-revamped-custom-tv-package-pricing-incredibly-confusing-consumer-reports-says>.

⁹⁴ <https://www.wsj.com/articles/SB10001424127887324392804578362943263175884>.

⁹⁵ http://usatoday30.usatoday.com/money/industries/telecom/2010-03-26-verizon-fios_N.htm.

⁹⁶ <https://www.bloomberg.com/news/articles/2018-02-02/frontier-is-said-to-consider-sale-of-ex-verizon-landline-assets>.

⁹⁷ Complaint ¶¶ 13, 102, pp. 7, 47.

end 2017, it had approximately 100,000 customers,⁹⁸ while Comcast had more than 22 million. fuboTV’s CEO described the service to the *Wall Street Journal* as a “niche product” with more than half of its subscribers Hispanic and 90% of them male.⁹⁹ fuboTV is also not a traditional facilities-based MVPD service but rather a pure OTT service.

94. Moreover, all other OVDs besides fuboTV, described as a “phenomenon” in the beIN Complaint,¹⁰⁰ in aggregate, do not widely distribute beIN’s networks.¹⁰¹

OVD	2017 Estimated Subs (MM)	beIN Penetration	beIN Subs (MM)
Sling TV	2.30	II II%	II II
DirecTV Now	1.20	0%	-
PlayStation Vue	0.60	0%	-
Hulu with Live TV	0.45	0%	-
YouTube TV	0.30	0%	-
fuboTV	0.15	II II%	II II
Philo	0.05	0%	-
Subtotal	5.05	II II%	II II
Other	0.25		
TOTAL	5.30		

95. Looking at the OVD marketplace as a whole provides support for the view that many distributors do not see the value in carrying the beIN networks. The largest linear OVD, Sling TV, carries the beIN networks II

II. The next four largest linear OVDs do not carry the beIN networks *at all*. Notably one of them, Sony PlayStation Vue, which had distributed the beIN networks, dropped them when the parties were unable to reach a renewal agreement, with beIN noting that Sony said it was “unable to come to an agreement on terms with the network” and that “Sony has decided that our value proposition is not enough for their viewers.”¹⁰²

96. Beyond this, long-established cable operators like Comcast have very different needs than new distributors. Legacy distributors primarily need to appeal to the mass audience that they already serve. New distributors might find their opportunity in appealing to niches that may very well be underserved by larger MVPDs.

⁹⁸ <https://www.broadcastingcable.com/news/fubotv-surpasses-100k-subs-169225>.

⁹⁹ <https://www.wsj.com/articles/fubotv-enters-the-big-leagues-1481727601>.

¹⁰⁰ Complaint ¶ 103, p. 47.

¹⁰¹ <https://www.multichannel.com/news/virtual-mvpds-ended-2017-53m-subs-study-418107>, beIN penetrations from the beIN Complaint.

¹⁰² <https://www.multichannel.com/news/playstation-vue-drops-bein-sports-413347>.

97. Each distributor looks at its target market and assembles its channel lineup accordingly. Indeed, some OVDs are focused very much on soccer. In addition to fuboTV, another linear OVD, iGol, distributes a subscription package focused entirely on live soccer networks, including several different feeds from beIN for only \$9.99 per month.¹⁰³ Meanwhile, Philo TV, another linear OVD, does not carry beIN at all, consistent with its strategy not to include sports as part of its offering. Sling TV, the top linear OVD, does not include local broadcast channels in its offering, a strategy almost unheard of in the pay TV marketplace prior to Sling's launch.

MVPD Needs Have Changed and Are Inconsistent with beIN's Proposal

98. If beIN is benchmarking itself against NBCSN, it is ignoring (among other things) how much the multichannel distribution world has changed over the last twenty years. NBCSN launched much earlier (in 1995 as Outdoor Life Network) in a very different cable programming environment. Over time, the network garnered broad distribution in the marketplace. After its first five years of operation, the network was distributed to only 26 million subscribers.¹⁰⁴ In that earlier time, MVPDs had compelling business reasons to add more channels to highly penetrated tiers. Cable customer counts were increasing and cable operators were under rate regulation, which allowed them to raise their retail pricing if they added channels to highly penetrated packages.¹⁰⁵ In addition, the then-newly launched DirecTV and Dish Network networks created competitive pressure to have more channels as they launched with bigger packages than most cable operators offered at the time. Almost all of the most widely distributed cable programming networks launched before 2007, when Netflix began its streaming network.

99. In the intervening years, with the growth of online video distribution and streaming options, cable operators have lost significant and accelerating numbers of video subscribers over the last 2 years.¹⁰⁶ The top six cable providers lost about 660,000 subscribers in 2017 (1.4% of their total), up from 275,000 in 2016 (0.6%).¹⁰⁷ In contrast, Netflix, the leading over-the-top subscription video provider, had 54.75 million U.S. subscribers at year-end 2017, a gain of 5.32 million (11% of its total) from 2016.¹⁰⁸

¹⁰³ www.igol.tv.

¹⁰⁴ Economics of Basic Cable Networks, 2017 Edition, p. 23.

¹⁰⁵ 47 C.F.R. § 76.922.

¹⁰⁶ In contrast, Netflix, the leading over-the-top subscription video provider, had 54.75 million U.S. subscribers at year-end 2017, a gain of 5.32 million (11% of its total) from year-end 2016. In 2016, it had a gain of 4.69 million (10%).

¹⁰⁷ <https://www.leichtmanresearch.com/major-pay-tv-providers-lost-about-1495000-subscribers-in-2017/>.

¹⁰⁸ This was on top of an increase of 4.69 million subscribers (10%) between 2015 and 2016. <https://www.statista.com/statistics/250937/quarterly-number-of-netflix-streaming-subscribers-in-the-us/>.

Linear OVDs (virtual MVPDs) had an estimated 5.3 million subscribers as of year-end 2017.¹⁰⁹

100. The strong growth of Netflix and other streaming video providers (e.g., Sling TV, DirecTV Now, YouTube TV) has had a major impact on cable operators' priorities. Foremost, MVPDs have responded by trying to improve their networks to provide elements offered by streaming video providers. All of these streaming services have modern interfaces, can be viewed on televisions as well as computers and mobile devices, and are available for consumers to use them both inside the home as well as outside the home.

101. The priority for most MVPDs today is to provide more value via an improved user experience, rather than a greater quantity of programming at higher subscriber costs. There are many free, quality programming networks available, but Comcast does not carry many of them because they would add more "clutter." Curating the networks it chooses for its packages is a primary function for an MVPD. The type of niche sports programming that beIN is selling, along with its demand for significantly greater, more expensive distribution as a linear channel, are simply not a good fit with Comcast's changing market needs or the needs of most major MVPDs.

102. Specifically, to improve the customer experience, Comcast has made investments in its user interface (X1) to make it easier for viewers to use the channels that they already have. Comcast and other cable operators have also invested in apps, including the Xfinity Stream app, which allow customers to access programming on a variety of devices, like smartphones, tablets, and computers, both inside and outside the home.

103. In general, cable operators now are rarely making significant additions of channels to highly penetrated packages, as beIN proposed and is asking the FCC to impose. That was the strategy of an earlier time when cable operators were increasing video penetration and could generate additional revenue and profits by charging more for highly penetrated video tiers with more channels. Now the cable video business is mature and facing substantial competition from services that are not offering traditional cable television service. In today's environment, cable operators generate higher returns and profits by investing in other product lines. That means that less incremental bandwidth devoted to the video business – for additional channels or high definition feeds. In addition, Comcast is under increasing competitive pressure to "*slim down* the number of total channels [it] make[s] available in broadly penetrated packages, especially those that do not garner significant customer passion or broad viewership."¹¹⁰

104. beIN seems to suggest that Comcast does not carry its networks in HD in order to disadvantage beIN,¹¹¹ rather than as a result of having to manage a scarce and valuable

¹⁰⁹ <https://www.multichannel.com/news/virtual-mvpds-ended-2017-53m-subs-study-418107>.

¹¹⁰ Smith Declaration ¶ 8 (emphasis in original).

¹¹¹ Complaint ¶ 89, p. 47; Briceño Declaration ¶ 37.

resource, i.e., bandwidth on its cable systems. Though not required under the current affiliation agreement, Comcast has voluntarily distributed beIN en Español in HD in eight markets.¹¹² I note that Comcast carries Universo's HD feed on systems serving fewer than 11% of its basic subscribers.

105. In this context, Comcast's desire in an affiliation agreement with beIN is, quite reasonably, to have the programming available on its system only for those customers that want it and are willing to pay for it. On its highly penetrated tiers that are received by the majority of their customers, lack of channels is not an MVPD's primary product issue to address and increasing the retail price of such tiers is not its primary profit growth opportunity. To the extent that a customer calls up to disconnect service, Comcast can provide a "bonus" of getting an additional tier for free to retain that specific customer. In both cases, it is not good business for Comcast to provide the programming at greater cost to a large number of customers who may not value it. beIN's desire for carriage in high-penetration packaging seems to make little sense for Comcast, and likely its other MVPD customers, as it is inconsistent with its strategy.

Comcast's Distribution of beIN Is Reasonable

106. In light of the competitive environment, distribution of beIN on the SEP and H Tier makes sound business sense for Comcast. An MVPD such as Comcast creates a number of programming packages to meet the different needs of customers for content and expense. Some programming has broad appeal and/or has been carried in a highly penetrated package on a cable system for decades.

107. According to Mr. Sahl, "beIN is wildly popular with soccer fans."¹¹³ However, he dismisses that this popularity is precisely why Comcast would include the network in the SEP. As beIN asserts, without any quantitative support, "it is implausible that assigning beIN to a greater penetration tier would entail any meaningful loss of subscriber fees for the Sports and Entertainment Package."¹¹⁴ It is counter-intuitive that the removal of networks "wildly popular" with the fans of any sport would not negatively impact Comcast's ability to sell the package that includes it. Conversely, if the network does not meaningfully help sell the package, as Mr. Sahl claims, then Comcast should not carry or pay for it *at all*. Indeed, a beIN representative, 11

11].¹¹⁵

¹¹² Brayford Declaration ¶ 10.

¹¹³ Sahl Declaration ¶ 28; Complaint ¶ 101, p. 46.

¹¹⁴ Sahl Declaration ¶ 28; Complaint ¶ 101, p. 46.

¹¹⁵ Brayford Declaration ¶¶ 37, 41.

108. In fact, a customer could buy Digital Starter and the Sports Entertainment Package for a total of \$59.98, far below the price of a Digital Preferred package, according to the pricing in beIN's own Complaint.¹¹⁶

109. Perhaps recognizing this weak argument, beIN added a footnoted caveat "[i]n any event, any small loss of subscriber fees would be substantially offset by added value to Comcast from the acquisition of new subscribers to the [redacted] [redacted]".¹¹⁷ This assertion lacks any supporting evidence or calculations and should be discounted.

110. beIN fails to recognize and acknowledge that MVPDs, as explained above, have in recent years shifted from a strategy of adding channels to broadly penetrated packages in favor of other enhancements to the packages, like better navigation and on-demand and out-of-home access to content, to provide more value to their customers from the channels that they already carry and pay for. Comcast content executives confirmed that relatively few networks have been added to high penetration tiers in recent years.¹¹⁸

111. For newer networks, like those from beIN, frequently the MVPD distribution opportunity is to be carried in an add-on package (e.g., Cox's Sports & Info Pak,¹¹⁹ or Altice Optimum's Sports & Entertainment Pak¹²⁰) or the highest-level package (as beIN is carried on DirecTV, Charter, Dish, AT&T U-Verse, and many other MVPDs).

112. It is my opinion that Comcast's business decisions in this case were reasonable and consistent with its business needs and other objective marketplace evidence. As detailed above, virtually all major and even small distributors have made similar carriage choices with respect to beIN Sports and beIN Sports en Español. If Comcast thought broader distribution of beIN would improve its business, it would have been amenable to moving the channel to a broader tier during the term of this agreement, as the [redacted] [redacted] provided Comcast that option. However, Comcast did not think it worthwhile [redacted] [redacted]. To the extent other distributors have the same fee structure as Comcast [redacted] [redacted], few have seen beIN's "free lunch" as appetizing.

113. That beIN positions its networks versus other sports networks does not mean that the public or distributors view them as comparable and worthy of similar distribution. As support for their similarity, beIN cites that *it compared itself* to NBCSN and Universo in [redacted] [redacted].¹²¹ However, it is not clear to me why it must follow that MVPDs saw the networks as comparable.¹²² beIN's comparisons are aspirational – naturally it wants to be considered similar to more established and trusted networks.

¹¹⁶ Complaint ¶ 88, p.41.

¹¹⁷ Complaint ¶ 101 n.115, p.46.

¹¹⁸ Justin Smith and Andrew Brayford interview, April 12, 2018.

¹¹⁹ <https://www.cox.com/residential/tv/sports-and-tv-packages.html>.

¹²⁰ <https://www.optimum.com/digital-cable-tv/sportspackages>.

¹²¹ Complaint, Exhibit 10.

¹²² Complaint ¶ 76, p. 36; Sahl Declaration ¶ 22.

While beIN solely controls its own marketing materials and can describe itself however it wishes, the marketplace evidence tells a far different story. In any event, [

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114. beIN's claim that Comcast would make significantly more local advertising sales revenue if beIN Sports were on a more highly penetrated tier is also questionable.¹²³ The local advertising sales market would not expand because of this additional supply of advertising inventory.¹²⁴ beIN is unlikely to provide any material incremental value to Comcast's local ad inventory. That may have once been true in the cable television business; a once-new channel like HGTV allowed local cable ad sales representatives to present an attractive new option to home improvement centers and related advertisers. That's much less the case now. And Mr. Sahl's experience with the less-desirable, non-geographically-targeted advertising sales inventory of his former employer, Dish Network, was very different from the local ad sales potential for a cable operator who has a large share of the local advertising markets in which it has systems.

115. Comcast's ability to decide and implement its best strategy for serving customers is the core part of running its business. It is essential that Comcast retain editorial discretion and be able to manage its costs to compete in this highly competitive environment.

VII. COMCAST'S CARRIAGE DECISIONS REGARDING BEIN DO NOT UNREASONABLY RESTRAIN BEIN'S BUSINESS OPPORTUNITIES

116. beIN can compete in the content marketplace without Comcast. beIN makes little effort in its Complaint to demonstrate that it has been unreasonably restrained from competing by Comcast's carriage decisions.¹²⁵ (This is not all that surprising since the parties never reached any endpoint in their renewal negotiations prior to beIN's filing of the Complaint.)

117. Simply put, the market opportunity for beIN on MVPDs is likely smaller and different than beIN wishes it to be. Certainly Comcast itself sees the market opportunity for smaller English-language networks to be challenging. Three of the networks with much larger prime time audiences than beIN Sports in 2016 were NBCUniversal's Esquire Network (with over ten times the prime time viewership of beIN Sports), Chiller

¹²³ Complaint ¶¶ 15, 104, pp. 8, 47.

¹²⁴ Brayford Declaration ¶ 40.

¹²⁵ Complaint ¶¶ 17, 96, pp. 8, 44.

(over four times the viewership) and Cloo (over three times the viewership).¹²⁶ NBCUniversal subsequently shut down all three television networks.¹²⁷

118. NBCUniversal has not been the only company to notice that the opportunity for smaller cable channels is much smaller than it once was. This change has taken place rapidly and has been well reported. Last year Dish's top content negotiator said "in 2014 it was 'unthinkable' to suggest to a big media company to 'pick your winners' and get rid of the teeny networks. Now 'it's almost accepted as inevitable.'"¹²⁸ beIN appears to be in a tough position in this environment. In a 2017 *Wall Street Journal* analysis of 100 cable channels, beIN Sports had the second worst cost relative to its viewership.¹²⁹ Another network focused on soccer, Fox Soccer Channel, shut down in 2013. In its place, Fox provided distributors FXX, an entertainment channel expansion of its popular FX network. FXX debuted with much higher ratings than Fox Soccer enjoyed.¹³⁰

119. These facts all suggest that beIN's programming does not have the sort of appeal that generates or would justify the significantly increased distribution that beIN has requested.

120. In addition to the potentially limited market opportunity for beIN on high penetration MVPD tiers, beIN has also made some business choices that likely have hampered its chances of success in the marketplace. []

[], The more recent sports networks that have achieved broader distribution are often owned by their rights holders – NFL Network, MLB Network, NBA TV, and NHL Network – who control long-term access to their content.

121. Additionally, it is unclear if beIN has done a good job with its affiliate marketing – there are [] and Xfinity (Comcast) presentations, for example. The presentation to Comcast was given []. beIN has also not completed an affiliation agreement with the National Cable Television Cooperative, which would give potential access to millions more customers on smaller cable providers.

¹²⁶ <http://www.indiewire.com/2016/12/cnn-fox-news-msnbc-nbc-ratings-2016-winners-losers-1201762864/>.

¹²⁷ <http://deadline.com/2017/11/chiller-shut-down-cable-channel-nbcuniversal-slasher-1202209932/>; <http://variety.com/2017/tv/news/esquire-network-1201962261/> (Esquire did continue as an online-only service).

¹²⁸ <https://www.wsj.com/articles/small-cable-channels-you-pay-forbut-dont-watchare-dying-1490111102>.

¹²⁹ <https://www.wsj.com/articles/small-cable-channels-you-pay-forbut-dont-watchare-dying-1490111102>.

¹³⁰ <https://www.hollywoodreporter.com/live-feed/tv-ratings-fxx-solid-start-619877>.

122. As the difficulties of other soccer-focused cable networks demonstrate, beIN's business model – distribution through MVPDs – may not be the right business model for niche content at this time. beIN might have been more successful taking its niche programming with a passionate fan base direct to the consumer on an over-the-top basis than via traditional cable operators that have less appetite for niche programming in high penetration tiers. This was precisely the strategy that World Wrestling Entertainment ("WWE") used to go to market. WWE had been approaching MVPDs with a 24/7 cable channel with its programming for several years, before it launched as an over-the-top monthly subscription service (the same business model as Netflix) in February 2014. Since then, WWE has been praised as "a media juggernaut." CNN noted that WWE's decision to distribute WWE Network itself "turned out to be at the front of a shift to direct-to-consumer content that's shaken up the industry."¹³¹ WWE's total revenue in 2014 was \$524 million; in 2017 it was \$801 million.¹³² While the network has only about 2 million subscribers, because of its much higher revenue per subscriber from the direct-to-consumer model, it has been a clear success.

VIII. CONCLUSION

123. In summary, I believe that the beIN networks are not similarly situated to either NBCSN or Universo. I base this assessment on objective industry data and my experience in the industry. Both beIN networks are niche soccer networks that attract a modest audience and have much more limited distribution among major MVPDs than NBCSN, a general sports network, and Universo, a Spanish-language general entertainment network.

124. I further find that Comcast's initial counterproposal to beIN was reasonable, based on substantial data and analysis, and legitimate commercial considerations. Comcast's proposal is also consistent with beIN's carriage treatment by other distributors in the marketplace. beIN's renewal offers to Comcast for higher fees, greater distribution, and [] did not align with the networks' value proposition for Comcast and were unrealistic in today's highly competitive marketplace. This disconnect between beIN's cost and value is particularly striking given beIN's lack of []

[] on the networks over the term of the proposed agreement. In my view, there is no evidence that Comcast's decisions regarding beIN were motivated by a desire to favor NBCSN or Universo.

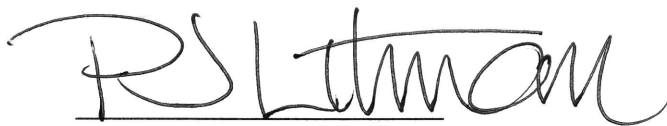
125. Finally, in my opinion, Comcast's initial counterproposal has not unreasonably restrained beIN's ability to compete fairly. In today's marketplace, the market opportunity for small niche cable networks is not what it was twenty years ago. Moreover, beIN's challenges are likely a product of *its own* business decisions, not Comcast's.

¹³¹ <http://money.cnn.com/2018/02/07/news/companies/wwe-vince-mcmahon-wrestling/index.html>.

¹³² <http://quotes.wsj.com/WWE/financials/annual/income-statement>.

I have prepared this declaration using facts of which I have personal knowledge or based on information provided to me. I declare under penalty of perjury that the foregoing is true and correct to the best of my current information, knowledge, and belief.

Executed on May 11, 2018

A handwritten signature in black ink, appearing to read "P. Litman". The signature is written in a cursive style with a horizontal line underneath the first part of the name.

Peter Litman

Appendix

Exhibit 1: Top 50 Telecasts (greater than 60 minutes in duration) on NBCSN 2017¹³³

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¹³³ Nielsen NPOWER report Live+3 Days (+75 Hours), 1/1/2017-12/31/2017, Persons 2+, Duration >60.

Exhibit 2: Top 50 Telecasts (greater than 60 minutes in duration) on beIN Sports 2017¹³⁴

II

II

¹³⁴ Nielsen NPOWER report Live+3 Days (+75 Hours), 1/1/2017-12/31/2017, Persons 2+, Duration > 60.

Exhibit 3: MVPD Carriage of NBCSN and beIN Sports; Basic Subscribers at year end 2017 from Kagan¹³⁵

II

II

¹³⁵ Frontier percentages are estimates based on relative subscriber counts at the time of the CA, FL, TX acquisition (1.197 million subscribers acquired in April 2016); 69.8% of the 1.628 million total reported by Frontier at end of June 2014.

Exhibit 4: Top 50 Telecasts on Universo 2017¹³⁶

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¹³⁶ Nielsen NPOWER report Live+3 Days (+75 Hours), 1/1/2017-12/31/2017, Persons 2+.

Exhibit 5: Top 50 Telecasts on beIN Sports en Español 2017¹³⁷

II

II

¹³⁷ Nielsen NPOWER report Live+3 Days (+75 Hours), 1/1/2017-12/31/2017, Persons 2+.

Peter Litman

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+1 212 666-0194 / peter@peterlitman.com

EXPERIENCE

1998-present

Independent Consultant

New York

- Advising an established sports programmer on distribution strategy and business development (e.g., TV Everywhere). Participating “at the table” in negotiations with distributors. Responsible for annual MFN compliance analysis.
- Advised a major broadcast programmer on its broadcast and cable distribution issues, including development of distribution analytics and analyzing its Most Favored Nation’s (MFN) compliance issues.
- Negotiated multiple retransmission consent agreements with major network affiliates for the 2012-2014 cycle for a new fiber-to-the-home multichannel television service.
- Advised an established DBS public interest programming service on its distribution opportunities including cable and over-the-top. Helped develop its Roku channel application.
- Successfully negotiated multiple retransmission consent agreements for a top-five cable operator for the 2009-2011 cycle. Analyzed and suggested strategy for operator’s premium TV business.
- Retained as an expert witness by a major sports programmer to assist in its litigation with another top-five cable operator.
- Provided advice on distribution strategy for a top-ten cable programmer for over eight years.
 - Developed rate cards and structured deals for a fully distributed basic cable network to drive its revenue growth and the distribution of its additional services. Analyzed deal terms and contract compliance.
 - Negotiated deals with both major DBS providers, most top ten cable operators and major telephone companies. As part of those deals, negotiated retransmission consent agreements on behalf of a top television station group with DBS and cable operators.
- Advised a major basic cable network for over five years.
 - Wrote the business plan for its online venture to secure multi-million dollar funding from the company’s ownership and negotiated deals to acquire two related web sites.
 - Helped to develop network’s free video-on-demand strategy for cable operators.

1994-1998

MediaOne/Continental Cablevision (now part of Comcast)

Boston

Director, Programming (1995-1998)

- Licensed cable and broadcast video content for US cable systems in lead and support roles.
- Assisted on the negotiation of an agreement to move NBC Sports Boston (then SportsChannel New England) to basic carriage and to acquire an option for 50% ownership of the service. Successfully led MediaOne’s financial preparation and advocacy in the subsequent appraisal hearing. Negotiated and assisted on partnership issues for content investments including E!, Food Network, NBCSN (then Outdoor Life) and Fox Sports 1 (then Speedvision).

Associate Director, Programming (1994-1995)

1989-1994

NBC

Manager, Financial Planning WMAQ-NBC5 (1991-1994)

Management Associate (1990-1991)

Financial Analyst WMAQ-NBC5 (1989-1990)

Chicago

New York

Chicago

EDUCATION

Northwestern University / Kellogg School Of Management

Evanston IL

1990 M.Mgmt. Marketing and Finance (Beta Gamma Sigma honor society)

Brown University

Providence

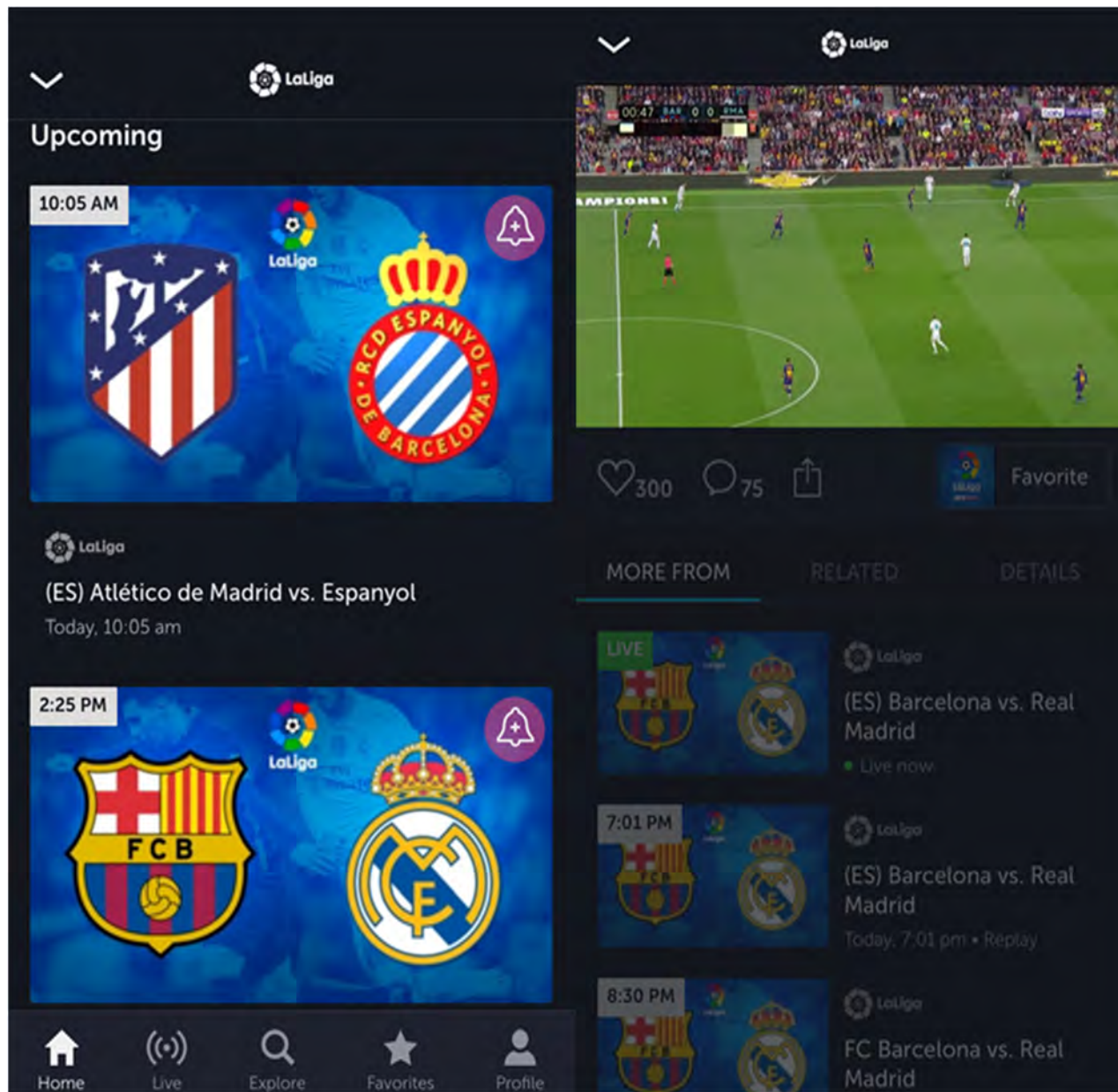
1985 A.B. Applied Mathematics (Phi Beta Kappa, Sigma Xi honor societies)

References available upon request

Apr 2018

EXHIBIT 5

Screenshots from go90 (May 6, 2018)



Screenshots from go90 (Oct. 5, 2017)

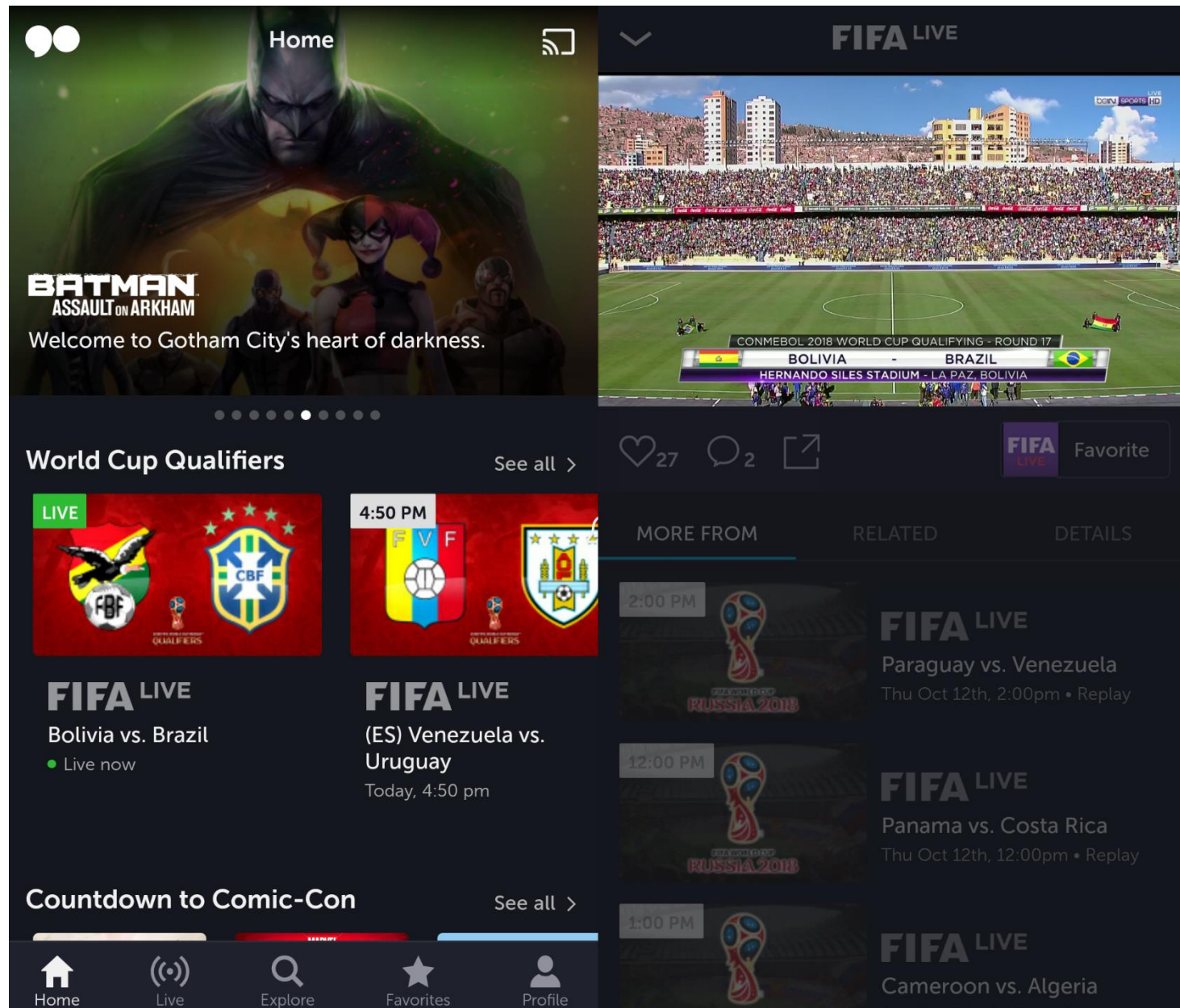


EXHIBIT 6

Compilation of Representative News Reports Regarding beIN Media Group

Tariq Panja, [*P.S.G.'s Nasser al-Khelaifi Accused of Bribing Ex-FIFA Chief Valcke*](#), N.Y. Times, Oct. 12, 2017.

“Nasser al-Khelaifi, a Qatari businessman who has become one of the most prominent figures in soccer, was accused by the Swiss authorities on Thursday of bribing the former FIFA general secretary Jérôme Valcke in return for lucrative World Cup soccer broadcast contracts.

‘It is suspected that Jérôme Valcke accepted undue advantages from a businessman in the sports rights sector in connection with the award of media rights for certain countries at the FIFA World Cups in 2018, 2022, 2026 and 2030 and from Nasser al-Khelaifi in connection with the award of media rights for certain countries at the FIFA World Cups in 2026 and 2030,’ the statement said.

BeIn, which has committed billions of dollars to acquiring sports rights in recent years, said it ‘refutes all accusations.’

‘The company will fully comply with authorities and is confident as to the future developments of the investigation,’ it said in a statement.

Switzerland’s attorney general is investigating at least 180 reports of suspected money laundering in connection with 25 continuing soccer-related investigations that have begun since the United States indictments became public.

Khelaifi becomes the first Qatari to face formal bribery allegations related to the tournament, and the Swiss attorney general’s statement is the first time details of beIN Group’s agreement to broadcast the 2026 and 2030 World Cups have been revealed. FIFA later on Thursday confirmed the contract. It announced in January 2011, about a month after Qatar was awarded 2022 hosting rights, that Al Jazeera Sport, the name beIN used previously, had been handed rights to broadcast that event and the 2018 World Cup in Russia across 23 territories and countries in the Middle East and North Africa.

Khelaifi, a close friend and occasional tennis partner of Qatar’s emir, Sheikh Tamim bin Hamad al-Thani, has grown in stature along with his country’s sporting ambitions. As chairman of the Paris St.-Germain soccer team, Khelaifi sent shock waves through the soccer industry over the summer by approving the signing of Brazil’s Neymar from Barcelona for 222 million euros (about \$263 million), a fee that shattered the record amount paid for a transfer.

P.S.G. followed that by agreeing to a fee of as much as 180 million euros (\$213 million) to secure the rights to Monaco’s teenage star Kylian Mbappe an amount that, like Neymar’s fee, was more than double the previous record.”

Associated Press, [*Italian Luxury Villa Seized in FIFA, World Cup Bribery Case*](#), USA Today, Oct. 13, 2017.

“A villa valued at seven million euros (\$8.3 million) on an Italian island was allegedly how a Qatari television executive bribed a top FIFA official.

Italian police said Friday they seized the luxury property in Sardinia they claim Nasser al-Khelaifi, who is also president of Paris Saint-Germain, made available to former FIFA secretary general Jerome Valcke.

Details of the alleged corruption were revealed one day after Swiss federal prosecutors oversaw evidence-gathering raids in four European countries for a widening investigation of FIFA and the 2018-2022 World Cup bidding contests won by Russia and Qatar.

Criminal proceedings have been opened against Al-Khelaifi and Valcke for suspected bribery and forgery linked to awarding broadcast rights for the next four World Cups.

Al-Khelaifi is also CEO of Qatar-owned BeIN Media Group, which has World Cup rights across the Middle East through 2030, including the 2022 tournament in Qatar.

Italy’s financial police said in a statement the villa in Porto Cervo is owned by an international real estate company, and eight people were questioned.

A police video showed a sequestration order on the villa’s fine wooden gate, palm trees in a well-kept garden, and a white house with a Spanish-style roof.

Investigators believe the property was for the use of Valcke, FIFA’s CEO-like secretary general from 2007 until being fired in January 2016 amid separate corruption claims.

Valcke was questioned Thursday in Switzerland, one day after he testified at the Court of Arbitration for Sport in Lausanne to challenge his 10-year ban by FIFA for financial misconduct.

Al-Khelaifi was not present Thursday when the Paris offices of BeIN were raided by French authorities joined by Swiss investigators.

BeIN said the group ‘refutes all accusations’ and that ‘the company will fully cooperate with the authorities and is confident as to the future developments of this investigation.’

Though PSG is not implicated in the case, FIFA’s ethics committee can impose an interim ban on the club president working in soccer while it investigates.

FIFA said Friday no formal investigation has yet been opened against Al-Khelaifi though ethics investigators are making preliminary inquiries.”

**Robert Briel, [*BeIN Media Group CEO Nasser al-Khelaïfi Investigated for Corruption*](#),
Broadband TV News, Oct. 16, 2017.**

“Nasser al-Khelaïfi, president of PSG and CEO of beIN Media Group, is being targeted by a corruption investigation by Swiss officials in connection with the distribution of the World Cup broadcasting rights.

‘This investigation is conducted on suspicion of private bribery, fraud, unfair management and forgery in securities,’ the Swiss court said in a statement.

To make things worse, the BeIN Media group did not cooperate with the investigation into the charges, by opposing the export of computer data during searches in the Parisian offices of the BeIn Sports channel, according the French national financial prosecutor’s office (PNF) on Saturday.

The prosecutor’s office must now make a request for international judicial assistance in Qatar to try to retrieve these data.”

Tariq Panja, [*Nasser Al-Khelaifi Discussed Buying Company Linked to Bribes*](#), N.Y. Times, Nov. 21, 2017.

“A prominent Qatari businessman involved in a major soccer corruption inquiry in Switzerland was in negotiations to buy a company whose owners were later accused of paying millions of dollars in bribes for rights to coveted TV contracts.

Nasser al-Khelaifi, president of the big-spending Paris St.-Germain soccer team, had been negotiating to buy a majority stake in the Argentina-based Full Play Group before the company and its founders were among those charged in the United States Department of Justice’s soccer corruption investigation.

In testimony at the trial of three former Latin American soccer officials, Santiago Peña, a former Full Play executive-turned state’s witness, said al-Khelaifi was involved in secret negotiations to acquire 51 percent of the sports marketing company. The talks were code-named ‘the New York project’ because the purchase under consideration was valued at \$212 million, a figure synonymous with the New York area code.

Al-Khelaifi is one of soccer’s most influential figures and a confidant of Qatar’s emir. He is chief executive of BeIN Sports, a state-backed sports network that has spent billions on sports rights since its start in 2012. A spokesman for BeIN confirmed the talks.

‘Qatar regularly look at investment with their funds,’ the spokesman said. ‘This investment was proposed and considered. After a review it was decided not to pursue it. This happens very often.’

Qatar Sports Investments, a sovereign wealth fund chaired by al-Khelaifi, had looked at assets including the Formula One motor racing series and David Beckham’s possible venture with Major League Soccer before deciding against those deals.

Peña, who kept a ledger of what bribes were paid to which soccer executives, described in court how he gave officials code names linked to car brands. During his testimony he revealed that two of the payments were labeled ‘Q2022’, a possible link to Qatar’s successful bid for the 2022 World Cup. Further details of those payments were not outlined.

Qatar’s bid team has for years denied accusations of wrongdoing. Another government witness, Alejandro Burzaco, the former chief executive of Torneos y Competencias, one of Full Play’s partners in the bribery scheme, testified earlier in the trial about possible bribes related to Qatar’s bid. He said last week that Julio Grondona, the head of Argentina’s soccer federation, and then the senior vice president of FIFA, had complained that the Qataris owed him millions for his vote.

Grondona confronted a Qatari delegation at a FIFA meeting in 2011. He started ‘insulting them and complaining,’ according to Burzaco, who has pleaded guilty in the case in which more than 40 individuals and companies have been charged. ‘And basically, Grondona told them, you either pay me \$80 million or you issue me a letter by print or by top authorities saying that you never pay me a bribe.’

Full Play's controlling principals, father and son Hugo and Mariano Jinkis, have evaded United States law enforcement by remaining in their native Argentina. They are accused of racketeering, wire fraud and money laundering conspiracy related to millions of dollars in payments to soccer officials in return for lucrative broadcast and marketing contracts.

Swiss prosecutors in October named al-Khelaifi a criminal suspect, accusing him of bribing the former FIFA secretary general Jérôme Valcke to secure World Cup 2026 and 2030 rights for BeIN Sports. Al-Khelaifi has denied the accusations and voluntarily met with the Swiss authorities.

Al-Khelaifi's negotiations with Full Play were cloaked in secrecy, according to Peña. He told the court that only he, Hugo and Mariano Jinkis and the Full Play accountant Sergio Rabinovich were aware of the talks. Peña testified that he deleted any emails that pertained to the sale to the Qatari businessman.

'I did it in order to protect the company,' Peña said.'

Noor Nanji, [*New Qatar World Cup Corruption Scandal over 'Secret \\$100m Deal between FIFA and beIN'*](#), **The National, Jan. 21, 2018.**

“Qatar has been hit with fresh allegations of corruption over its controversial 2022 World Cup bid, as a new book claims its state TV company beIN Sports agreed a secret \$100 million deal with Fifa if they won the vote.

The claims are made in a soon-to-be-released book, written by a whistleblower from inside Australia’s failed 2022 bid, Bonita Mersiades, who spent years investigating the case and interviewed former Fifa president Sepp Blatter as part of her research.

An advance summary of the book, released by *The Mail on Sunday*, also alleges that Mr. Blatter knew Qatar would win the vote, beating the US, which had been the favourite. So sure was he of the outcome that he phoned then-president Barack Obama days before the vote to tell him the US would lose, it is claimed.”

Agence France-Presse, [*Egypt Imposes Hefty Anti-Trust Fine on Qatar's beIN Sports, CEO*](#), Daily Mail, Jan. 30, 2018.

“An Egyptian court imposed a \$22 million fine Tuesday on Qatari-owned sports broadcaster BeIN Sports and its chief executive for violating anti-trust regulations.

The broadcaster and CEO Nasser Al-Khelaifi, who is also president of the Paris Saint-Germain football club, were fined 400 million Egyptian pounds by the Cairo Economic Court, the Egyptian Competition Authority said in a statement.

The decision came with ties between Egypt and Qatar deeply strained.

Saudi Arabia, Bahrain, the United Arab Emirates, Yemen and Egypt broke off diplomatic relations with Qatar in June, accusing it of supporting extremists and being too close to Iran. Qatar denies the allegations.

The court said BeIN had violated competition rules through its package deal system, which forces viewers to pay for events they may not be interested in. The specific events were not mentioned in the ruling.

BeIN representatives in Doha could not be reached for comment.

Egypt's anti-trust authority had in 2014 accused BeIN of violating rules by requiring viewers interested in football's World Cup to subscribe for at least a year and purchase a specific satellite receiver. An agreement was eventually reached.

The Confederation of African Football (CAF) in July suspended and fined the coach of Cairo club Al-Ahly, Hossam El Badry, after he boycotted a press conference over the presence of BeIN Sports.”

Agence France-Presse, [*Qatar's beIN 'Categorically Rejects' Egypt Court Fine*](#), Daily Mail, Mar. 15, 2018.

“Qatar's BeIN media on Thursday slammed an Egyptian court's decision to slap the sports broadcaster with another multimillion dollar fine, the second anti-trust case in a Cairo court this year.

‘BeIN categorically rejects the local Egyptian court's judgement and will pursue all available legal means to challenge it,’ a spokesperson for the media group told AFP.

‘The judgement is based on unfounded allegations by the Egyptian Competition Authority that have no basis in fact or law.’

The court in Cairo ordered a fine of 400 million Egyptian pounds (\$22.7 million/18.3 million euros) to be paid by BeIN on charges of forcing its Egyptian customers to replace existing satellite dishes with new ones in order to catch the channel's signal.

Monday's verdict marked the second such case against BeIN in Egypt since January, when it was hit with another fine.

BeIN has said it would fight the latest ruling, which comes at a politically charged time in relations between Qatar and Egypt.

Egypt, Saudi Arabia, Bahrain and the United Arab Emirates cut diplomatic and trade ties with Qatar in June, accusing Doha of supporting extremists and being too close to Iran. Qatar denies the allegations and accuses its rival of seeking regime change.

In 2014, Egypt's anti-trust authority accused BeIN of violating rules by requiring viewers interested in football's World Cup to subscribe for at least a year and purchase a specific satellite receiver.

The Confederation of African Football (CAF) in July suspended and fined the coach of Cairo club Al-Ahly, Hossam El Badry, after he boycotted a news conference over the presence of BeIN Sports.

BeIN is headed by Paris Saint-Germain president Nasser al-Khelaifi, a Qatari tycoon who is also entangled in a FIFA corruption investigation of alleged corruption in the sale of World Cup television rights.”

EXHIBIT 7

VIEWER
PROFILE



GENDER

Male:	73.0%
Female:	27.0%



HOUSEHOLD INCOME

\$100K+:	29.1%
\$75K - \$99,999:	14.8%
\$50K - \$74,999:	16.4%
\$30K - \$49,999:	23.6%



EDUCATION

Graduated College:	32.4%
Some College:	30.9%



HOME OWNERSHIP

Own Home:	71.1%
Rent:	26.2%



AGE

18 – 34:	24.2%
35 – 54:	29.2%
55+:	46.6%



PRESENCE OF CHILDREN

1+ Child in HH:	26.3%
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MARITAL STATUS

Single (Never Married):	27.1%
Married:	56.1%

Source: Nielsen Scarborough USA Plus-MRI/Mosaic, De15-Apr17, Adults 18+, Cable Networks Watched Past 7 Days: NBCSN (NBC Sports Network).

FEATURED
PROGRAMS

- Olympics
- NFL Turning Point
- NHL Games
- The Dan Patrick Show
- Tour de France
- NASCAR America
- Collegiate Games
- Premier League

Program list is a sample from the network. Shows may change or be cancelled without notice. Cancelled shows may still air in repeats.

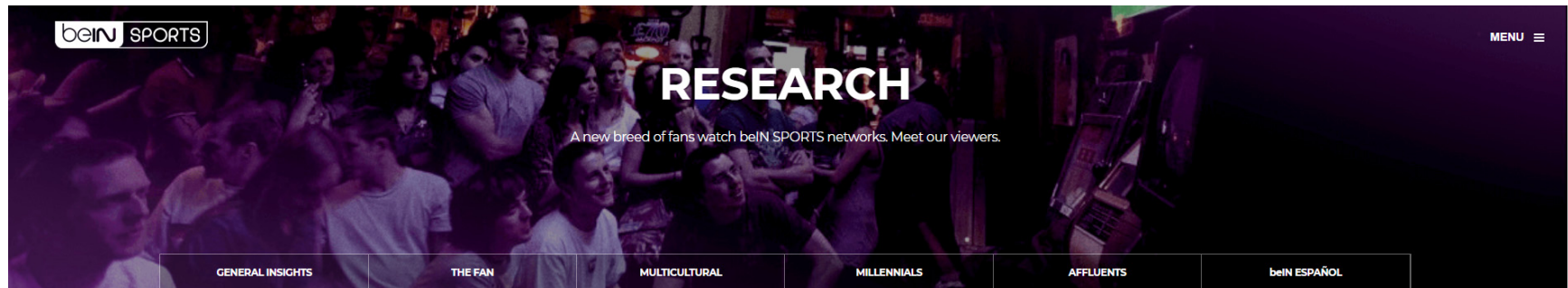
COMCAST
SPOTLIGHT™



NBC Sports Network, part of the NBC Sports Group, is dedicated to serving passionate sports fans. The network is the cable television home of the Summer and Winter Olympics, National Hockey League (NHL), Major League Soccer (MLS), IndyCar Series, Tour de France and the 34th America's Cup, the Premier League and Formula One.

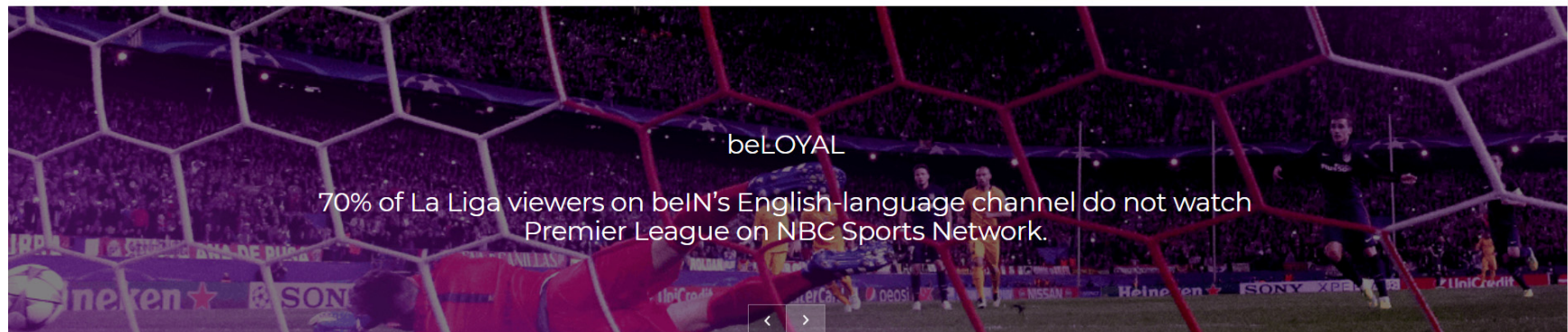
EXHIBIT 8

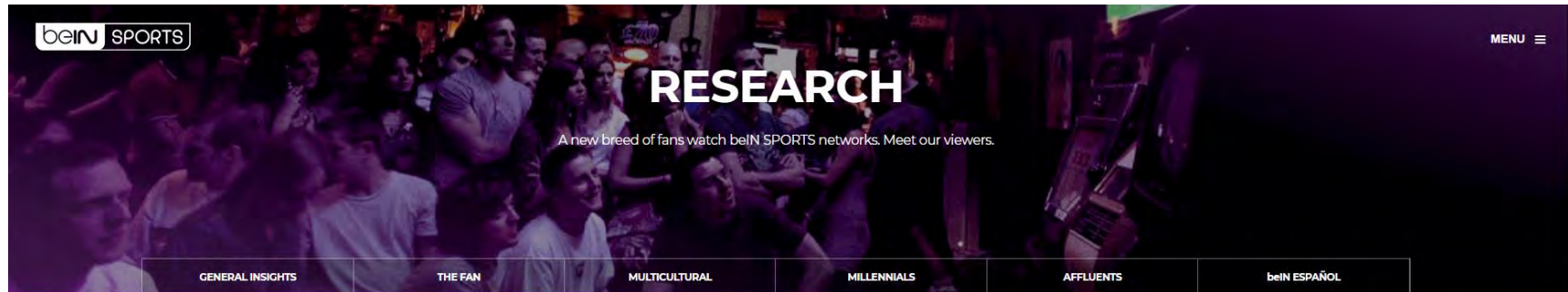
Screenshots from <http://adsalesus.beinsports.com/research/> (last visited Apr. 30, 2018)



GENERAL INSIGHTS

Over the past 5 years, soccer viewership in the U.S. has grown over 20%. And beIN SPORTS, home to every fan, is at the forefront of this growth.





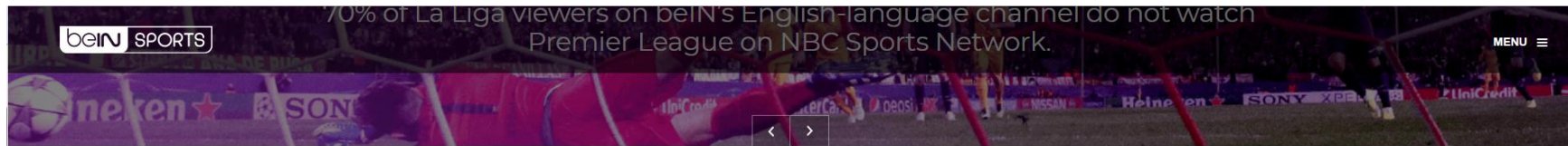
GENERAL INSIGHTS

Over the past 5 years, soccer viewership in the U.S. has grown over 20%. And beIN SPORTS, home to every fan, is at the forefront of this growth.

The screenshot shows the beUNIQUE section of the website, which features a background image of a soccer player in a white jersey. The heading "beUNIQUE" is displayed in white. Below the heading, two statistics are presented in white text:



- 77% of La Liga viewers on beIN's Spanish-language channel do not watch Major League Soccer on Fox Deportes or Univision Deportes.
- 81% of La Liga viewers on beIN's English language channel do not watch Major League Soccer on ESPN and 89% do not watch MLS on Fox Sports 1 or 2.

At the bottom, a small line of text reads: "Nielsen Live+SD, 2Q16 R&F Duplication report with a 6-min qualifier. P2+. Repeats excluded on programs." Below this text are two navigation arrows, a left-pointing chevron and a right-pointing chevron.

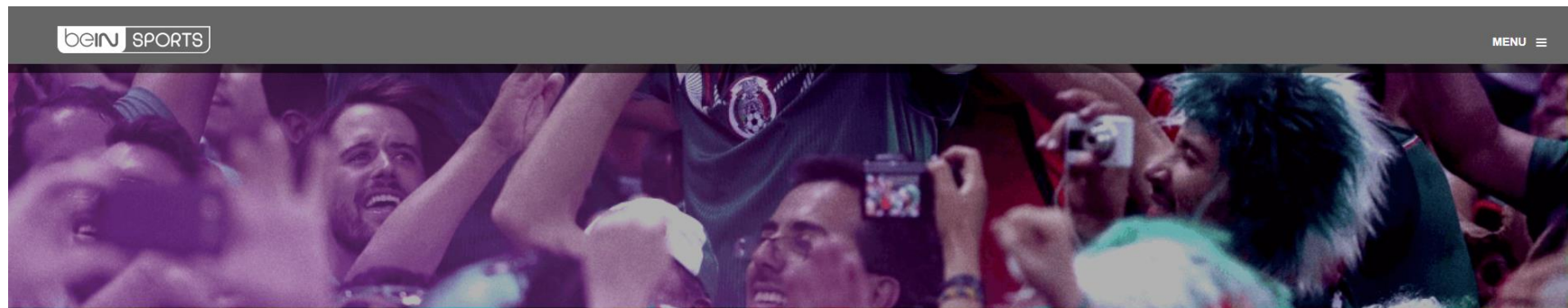


THE FAN

Fans first, everyone else second. Now more than ever, sports are captivating a new breed of TV viewer. Some have been around before, some are new and learning. All of their passion is contagious. beIN is home to every fan.

 72% of beIN viewers are heavy La Liga viewers on the ENGLISH channel	71% of ENGLISH channel viewing comes from repeat loyal viewers (high frequency and duration)	 85% of beIN viewers are heavy La Liga viewers on the SPANISH channel	83% of SPANISH channel viewing comes from repeat loyal viewers (high frequency and duration)
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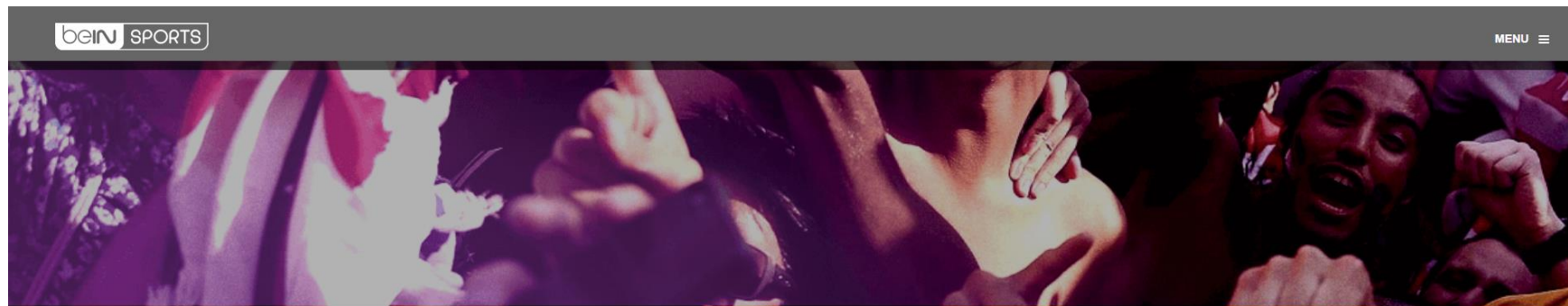


MULTICULTURAL

At beIN SPORTS, we are focused on reaching total market.

78% of beIN's English-language channel Hispanic audience and 71% of the Spanish one are bilingual.	68% of beIN's Spanish-language channel viewers are of Central/South American, Spanish, and Caribbean descent.	24% of beIN's English-language channel total viewers are of Mexican descent.
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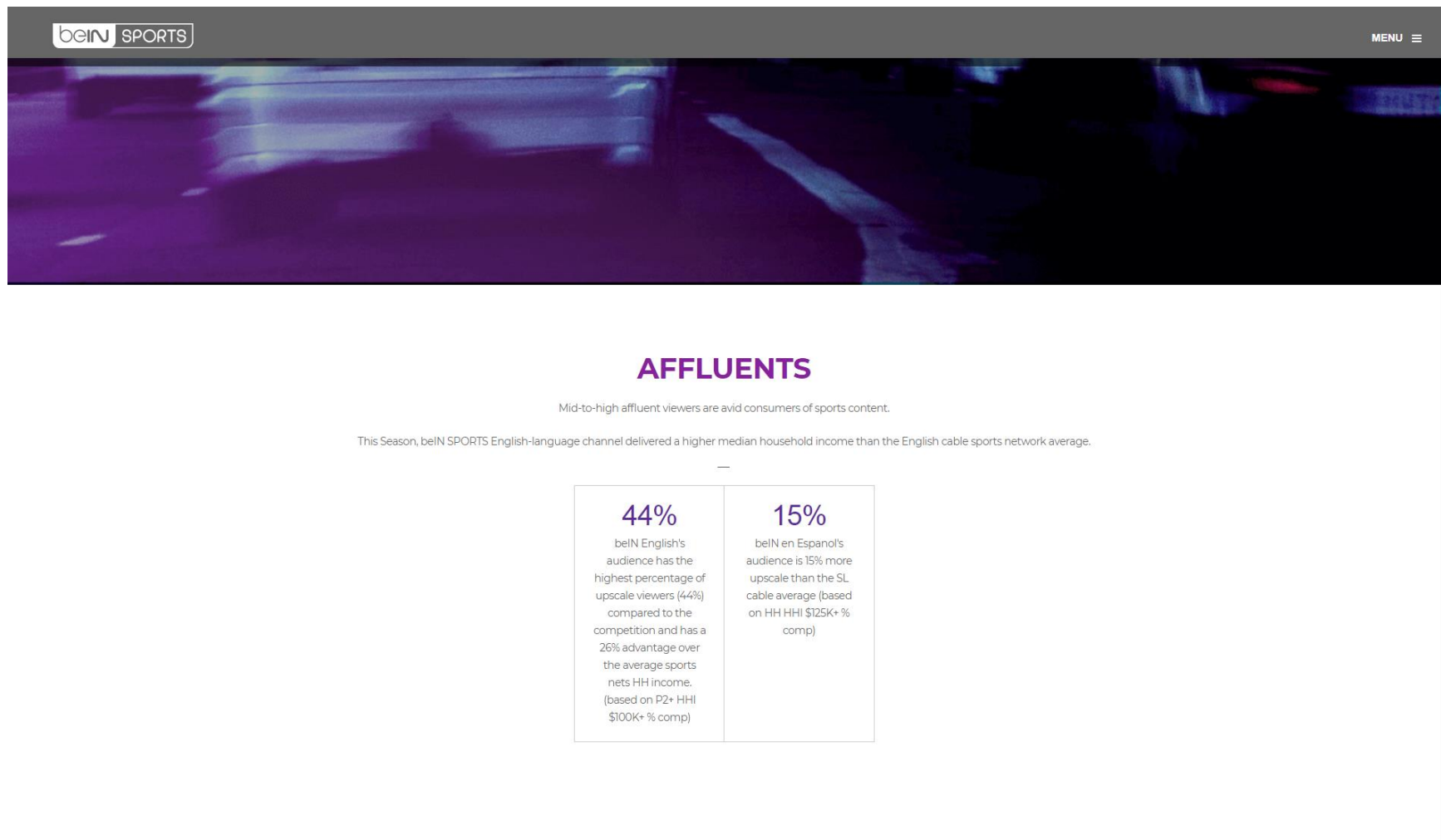





MILLENNIALS

Millenials are changing the future of sports and broadcast. The next generation has different habits, like mobile viewership and second screen use. And beIN overindexes in reaching these viewers.


60% More likely to delivery millennial males than the average cable sports network. With 27% of viewers A18-34 and 21% M18-34, beIN SPORTS English-language channel delivers the largest percentage of Millennial viewers, more than any other sports network for the 2015/16 Season.	27% With 27% of viewers A18-34 and 21% M18-34, beIN SPORTS English-language channel delivers the largest percentage of Millennial viewers, more than any other sports network for the 2015/16 Season.	At 37 We have the youngest median age of any Sports network – English Sports net average median age: 49.	37% of our site visitors are Millennials aged 18 to 34.	23 to 35 The median age of our digital users across all platforms.
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MENU

beIN ESPAÑOL

#1
beIN Sports en Español is the #1 Spanish language Cable network among Total viewers as well as various key demos including P18-34, P18-49, and P25-54.


During beIN Español's prime programming block, it boasts the longest average length of viewing and events tuned compared to all Spanish Language cable networks.

68%
Of beIN Español's viewers are of non-Mexican, Hispanic descent, compared to just 43% among Spanish language Cable Sports nets.

SCROLL TOP ↑

beIN OVERVIEW

beIN SPORTS is a global media network of sports channels, broadcasting the top content to viewers across the United States.

STAY INFORMED


send


LATEST TWEETS


@beINSPORTSUSA Unfortunately technical issues mean there will be no #FootballCrazy this week. In the meantime, you can feast your...
<https://t.co/Sf20WexZJ>


@beINSPORTSUSA Let the @SSalburyShow explain why we should believe that the @Raptors can get over their @cavs "problem." Or ca...
<https://t.co/fbzV095nV6>

@beINSPORTSUSA Zidane expects a "big performance" from visiting @FCBayernEN on Tuesday and says @realmadriden needs to counter w...
<https://t.co/XBRkGKJL>


View all

Follow


View all

Follow


LATEST YOUTUBE VIDEOS



The Locker Room: Iniesta to leave Barcelona
beIN SPORTS USA
2802 views




WTA | Porsche Tennis Grand Prix FINAL
beIN SPORTS USA
430 views







This is Paris: Misspelle's only 19!
beIN SPORTS USA
206 views

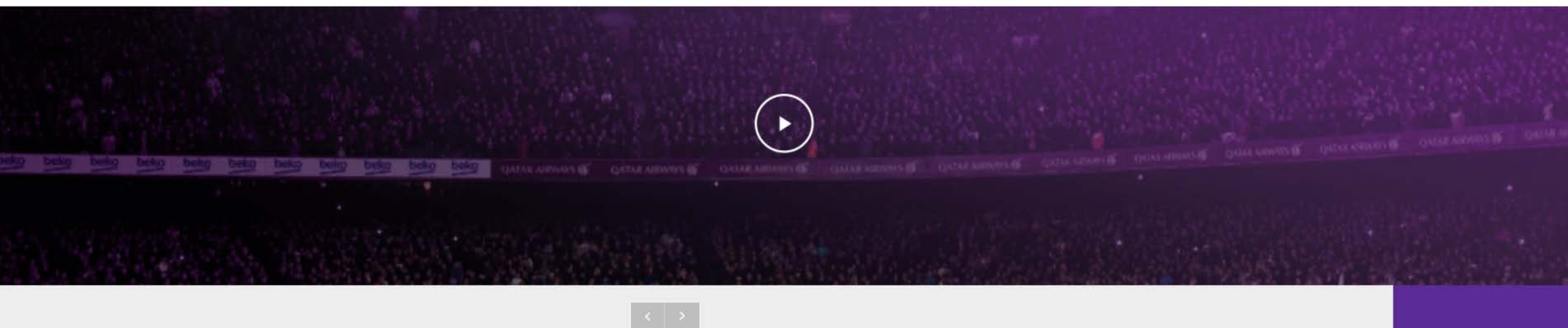
View all



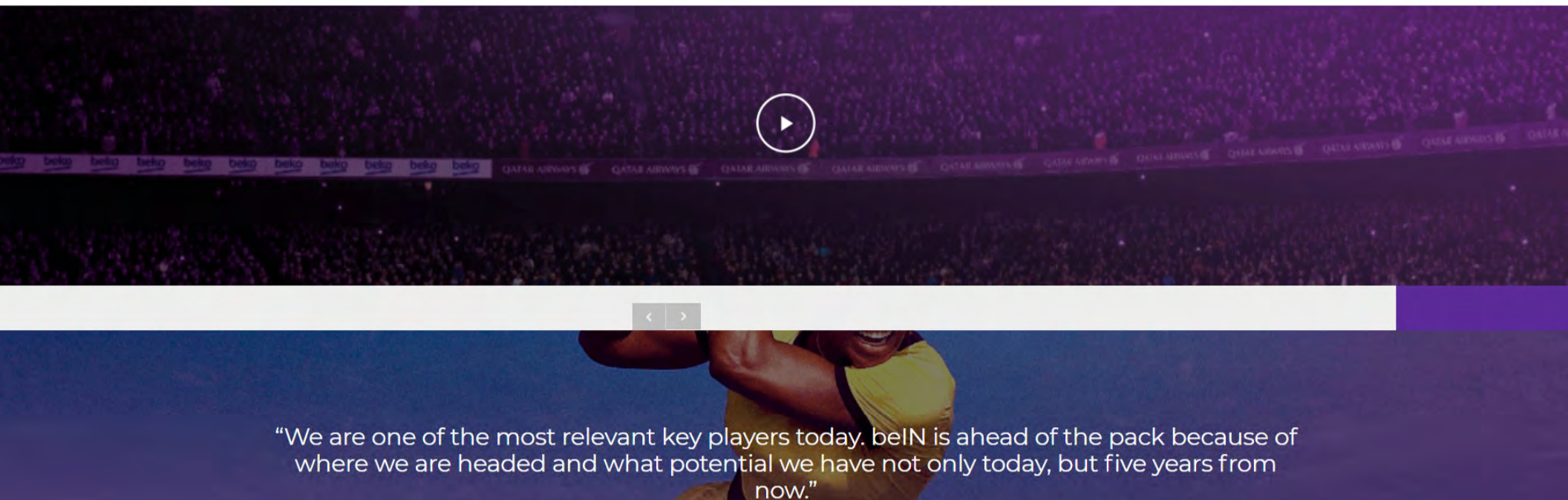
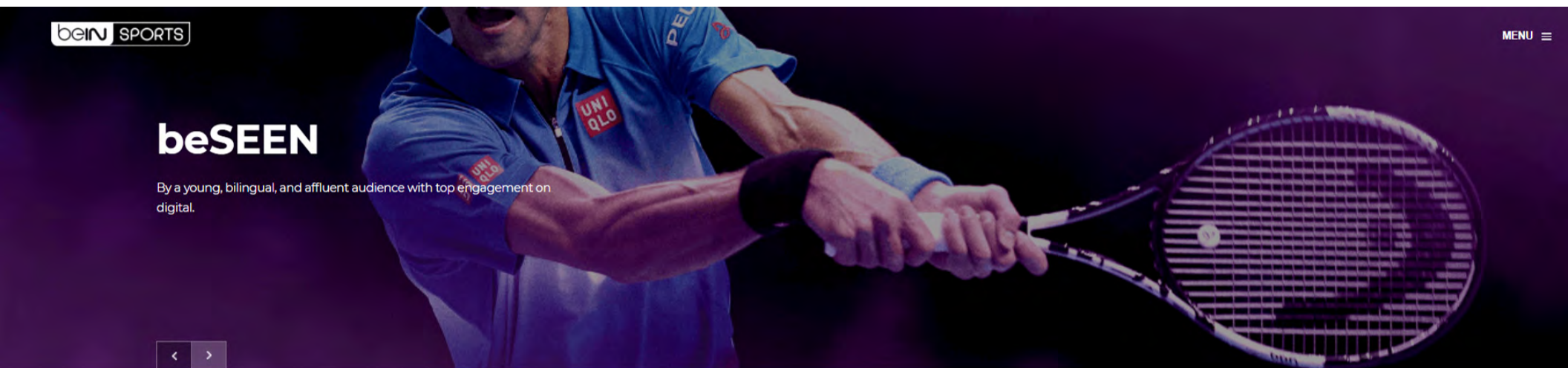
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Screenshots from <http://adsales.beinsports.tv/> (last visited Apr. 30, 2018)



"The appetite for world class soccer continues to grow and nothing demonstrates this better than the viewership numbers of El Clásico. The beIN SPORTS family of networks aims to give sports fans the best international sporting events available on television and our live streaming platform."



ABOUT US

beIN SPORTS is part of beIN MEDIA GROUP, a global leader in TV production, distribution, and media rights acquisition. We bring major international sporting events across multiple platforms to millions of viewers around the world.

OUR BRAND

OUR MISSION

OUR GLOBAL NETWORKS

OUR BRAND

beIN SPORTS is committed to creating the highest quality viewing experience for sports audiences. We provide our viewers with premium content and connect like-minded fans to the sports we all love.

bePASSIONATE

Fans choose beIN SPORTS because, unlike other networks, we cover soccer, football, fútbol, calcio. No matter how you call it, we got it. Every single day.



EXHIBIT 9

VIEWER PROFILE



GENDER

Male:	74%
Female:	26%



HOUSEHOLD INCOME

\$100K+:	44%
\$75K - \$99,999:	17%
\$50K - \$74,999:	19%
\$30K - \$49,999:	14%



EDUCATION

Graduated College:	31%
Some College:	62%



HOME OWNERSHIP

Own Home:	62%
Rent:	38%



AGE

18 – 34:	25%
35 – 54:	42%
55+:	34%



PRESENCE OF CHILDREN

1+ Child in HH:	39%
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Source: Nielsen Npower. Calendar Year 2017. Viewership Demographics by percentage of impressions on Network: beIN Sports

FEATURED PROGRAMS

- The Locker Room
- 90 in 30
- The Xtra
- The Express
- Football Countdowns
- La Liga News
- El Club
- beIN Legends

Program list is a sample from the network. Shows may change or be cancelled without notice. Cancelled shows may still air in repeats.

COMCAST
SPOTLIGHT



beIN Sports is America's International Sports Network. Exclusive live coverage of top international soccer leagues including La Liga, Series A, Ligue 1 and the Premier League. It's the only place to watch Messi, Ronaldo, Neymar and other world super stars year round. The action doesn't stop there, as beIN carries Rugby, Tennis, Boxing, MMA and several motor sports.

EXHIBIT 10



THE INTERNATIONAL SPORTS NETWORK

beIN SPORTS

MEDIA KIT



OUR POSITIONING

beIN SPORTS

THE NETWORK

beIN SPORT

- The new, **top quality**, international sports network.
- A **360** degree platform
- **2 independently programmed** HD linear feeds, English and Spanish
- Digital streaming portal named beIN SPORT PLAY
- **World's top** soccer leagues and tournaments
- Rugby, cycling, volleyball and motor sports and a variety of other **heart pounding** events.



beIN SPORTS

THE
NETWORK

INTERNATIONAL PRESENCE



beIN SPORT is a **global network** of sports channels jointly owned and operated by Al Jazeera Media Networks.

It currently operates **22 sports channels** in USA, Canada, France, Indonesia, Thailand and MENA. With correspondents filling live coverage and news reports from Spain, Italy, Mexico and Brazil covering the key properties.

ON AIR PERSONALITIES

BODO ILLGNER



Bodo is an insightful and connected analyst. In 1990, he played as a goalkeeper and helped his native West Germany win the World Cup against Argentina.

Former Real Madrid player. Born in Mexico. Won four consecutive Pichichi trophies, the only player in Spain's football history to achieve this.



HUGO SANCHEZ

RAY HUDSON



Ray Hudson's passion for the game is only exceeded by his entertaining and descriptive verbal gymnastics during telecasts.

Phil's work has been seen and heard on all of the major sports networks, championships and three World Cup finals.



PHIL SCHOEN

ON AIR PERSONALITIES

CARMEN BOQUIN

A popular sports TV personality in Latin America. Appearing on TV since the age of 14, Boquin was previously a TV presenter for Televisi3n Corporation, Honduras' largest network.

KAY MURRAY

For the past six years Murray served as the senior presenter for Real Madrid TV, covering one of the world's most legendary soccer clubs for its millions of international fans.

ANA COBOS

Spanish sports TV journalist. Prior to joining beIN SPORT, Cobos was a presenter for Castilla La Mancha Television in Spain where she hosted La Cancha, a sports commentary show.

TERRI LEIGH

Terri Leigh is co-host of The Express, a pre- and post-game show that provides up-to-date news and analysis on the biggest live soccer matches on the English-language beIN SPORT network.

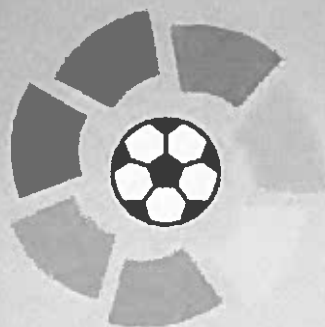




**SPORTING RIGHTS &
ORIGINAL PRODUCTIONS**

beIN SPORTS

| **PORTFOLIO**

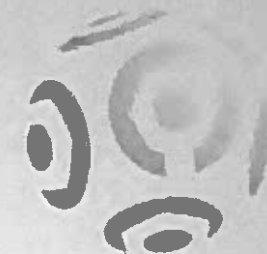


LIGA BBVA

**LA LIGA - SPAIN
TOP TIER LEAGUE**



**SERIE A - ITALY
TOP TIER LEAGUE**



LIGUE 1



**LIGUE 1 - FRANCE
TOP TIER LEAGUE**



**beIN SPORT
EXCLUSIVELY BROADCASTS
THREE OF THE TOP FIVE
SOCCER LEAGUES IN THE WORLD**



beIN SPORTS PORTFOLIO



SOCCER PORTFOLIO OF RIGHTS

320

LA LIGA

Former Real Madrid player.
Born in Mexico.



300

LIGUE 1



340

SERIE A



26

CAPITAL ONE CUP



60

COPA DEL REY



THE FOOTBALL LEAGUE
CHAMPIONSHIP



78

RUSSIAN PREMIER LEAGUE



BRAZIL GLOBAL TOUR



COPA DO BRAZIL



COPA ITALIA



PORTFOLIO OF RIGHTS

67

CYCLING

Giro D' Italia
Milan San Remo
Tour De Suisse



97

RUGBY

Autumn International
Six Nations Rugby
Aviva Premiership



51

HANDBALL

Velux: Men's Champions League
IHF World Championship
Handball Bundesliga



12

HORSE RACING

British Horse Races



TENNIS

ATP Qatar Exon Moblie
Qatar Total Open - Women



85

MOTORSPORTS

FIM SuperBikes World Championship
FIA GT Series
Blancpain Endurance Series



113

VOLLEYBALL

Serie A1 + Coppa Italia- Mens
CEV European Championships Men
CEV European Championships Women



JUDO

World Judo Tour



3

EQUESTRIAN

CHI Al Shaqab 2013
Super Saturday
Dubai World Cup



MASS PARTICIPATION

Ironman
Prague Half Marathon 2013
Prague Marathon 2013



PROGRAMMING GRID

SPORTS EN ESPAÑOL							
ET	SATURDAY	SUNDAY	MONDAYS	TUESDAYS	WEDNESDAYS	THURSDAYS	
6:00	La Liga Preview (REAR)	EXPRESS Soccer Match La Liga	The Express Xtra	OTHER SPORTS			
6:30	La Liga World (REAR)						
7:00	Serie A Preview (REAR)		SERIES & SPECIALS				
7:30							4:30
8:00	nPower Championship	SERIES & SPECIALS The Express Welcome	The Express Xtra				5:00
8:30							5:30
9:00							6:00
9:30	The Express Welcome	EXPRESS Soccer Match La Liga	EXPRESS Match Serie A	REAL MADRID TV	BARÇA TV	REAL MADRID TV	6:30
10:00							7:00
10:30	EXPRESS Soccer Match La Liga						7:30
11:00							8:00
11:30		EXPRESS Match (REAR) Serie A (Italian League)	EXPRESS Xtra (REAR) The Locker Room (REAR)	SERIES AND SPECIALS			
12:00							8:30
12:30	EXPRESS Soccer Match La Liga						9:00
13:00							9:30
13:30		EXPRESS Soccer Match Ligue 1					10:00
14:00							10:30
14:30	EXPRESS Soccer Match La Liga						11:00
15:00							11:30
15:30		EXPRESS Soccer Match La Liga					12:00
16:00							12:30
16:30	EXPRESS Soccer Match Ligue 1						1:00
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99:30							12:00
100:00							12:30



DISTRIBUTION AND TARGET AUDIENCE

bein SPORTS

OUR AUDIENCE

BY THE NUMBERS



beIN SPORTS

OUR
AUDIENCE

DISTRIBUTION PARTNERS



DIRECTV



DISH NETWORK



COMCAST



TIME WARNER CABLE



VERIZON FIOS



UVERSE



BRIGHT HOUSE NETWORKS



ATLANTIC BROADBAND



LIBERTY CABLE



ONE LINK



HOTWIRE



CLARO



ADVANCED CABLE
COMMUNICATIONS



SIRIUS XM



COX

beIN SPORTS

OUR
AUDIENCE

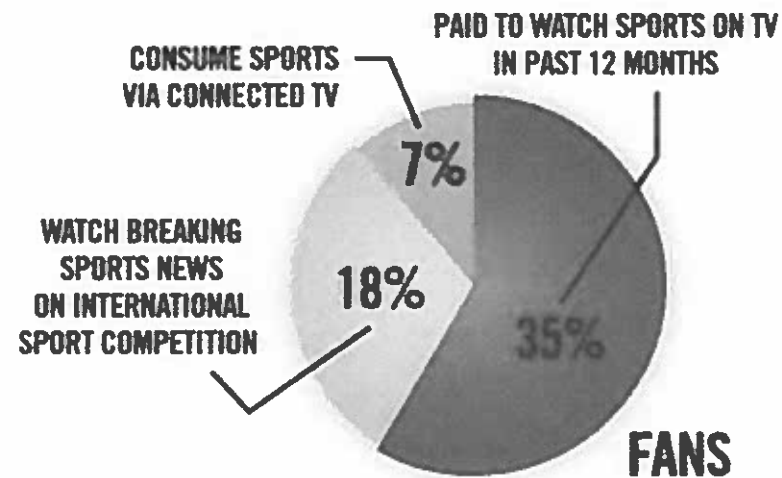
OUR AUDIENCE

170 MILLION
US SPORTS FANS

44%
OF FANS WATCH HD SPORTS

64%
OF FANS FOLLOW
SPORTS ONLINE

8.3 HOURS
TIME SPENT CONSUMING
SPORTS IN AN AVERAGE WEEK



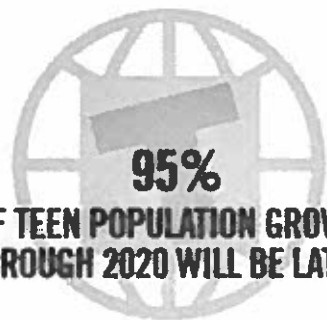
OUR AUDIENCE



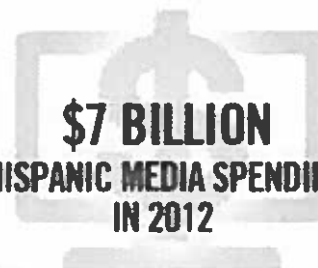
1 OUT OF 6
PEOPLE IN THE US ARE LATINO



1 OUT OF 4
PEOPLE BORN IN THE US ARE LATINO



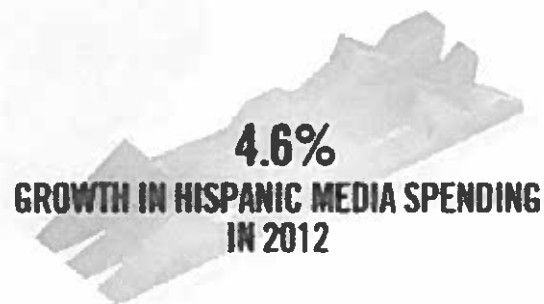
95%
OF TEEN POPULATION GROWTH
THROUGH 2020 WILL BE LATINO



\$7 BILLION
HISPANIC MEDIA SPENDING
IN 2012



THE US HISPANIC
CONSUMER ECONOMY IS THE
15TH LARGEST
IN THE WORLD



4.6%
GROWTH IN HISPANIC MEDIA SPENDING
IN 2012

OUR AUDIENCE

110K

USA vs Panama WCQ
10-15-13

reach an audience of **200K**
beating Univision Deportes
(Poland vs England WCQ), Fox
Deportes (La Ultima Palabra) &
NBCS (NHL Live)

229K

67

67

USA vs Panama WCQ
10-15-13

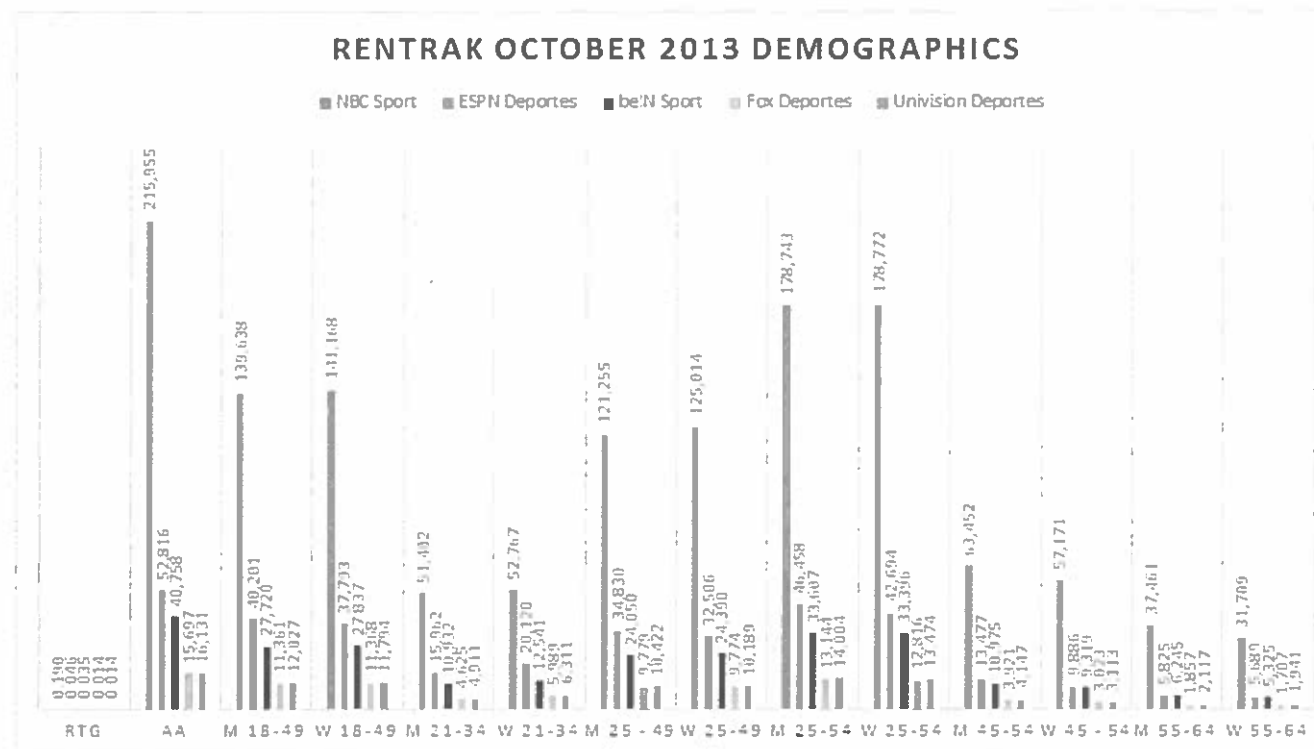
reach an audience of **200K**
beating Univision Deportes
(Poland vs England WCQ), Fox
Deportes (La Ultima Palabra) &
NBCS (NHL Live)

122K

USA vs Panama WCQ

reach an audience of **200K**
beating Univision Deportes
(Poland vs England WCQ), Fox
Deportes (La Ultima Palabra) &
NBCS (NHL Live)

OUR AUDIENCE



beIN SPORT outnumbered Fox Deportes & Univision Deportes in Male Audience 18-49 by twice the audience



**PREMIUM ACCESS &
BRANDED OPPORTUNITIES**

beIN SPORTS

OUR OFFERING

PREMIUM ACCESS



beIN SPORTS

OUR
AUDIENCE



THANK YOU !

EXHIBIT 11

VIEWER PROFILE



GENDER

Male:	46.6%
Female:	53.4%



HOUSEHOLD INCOME

\$100K+:	15.7%
\$75K - \$99,999:	8.4%
\$50K - \$74,999:	13.9%
\$30K - \$49,999:	31.5%



EDUCATION

Graduated College:	17.8%
Some College:	26.6%



HOME OWNERSHIP

Own Home:	48.9%
Rent:	48.1%



AGE

18 – 34:	27.3%
35 – 54:	34.6%
55+:	38.2%



PRESENCE OF CHILDREN

1+ Child in HH:	43.5%
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MARITAL STATUS

Single (Never Married):	28.7%
Married:	50.7%

Source: Nielsen Scarborough USA Plus-MRI/Mosaic, De15-Apr17, Adults 18+, Cable Networks Watched Past 7 Days: NBC Universo.

FEATURED PROGRAMS

- El Vato
- 12 Corazones
- WWE Raw
- Larrymania
- Premiere League
- I Love Jenni
- WWE Smackdown
- The Walking Dead
- Top Chef Mexico

Program list is a sample from the network. Shows may change or be cancelled without notice. Cancelled shows may still air in repeats.

COMCAST
SPOTLIGHT™




UNIVERSO

NBC UNIVERSO gives fans an exclusive
look into the thrilling new line-up of
adrenaline-filled sports, bold dramas, the
hottest music and new season of their
favorite shows.

EXHIBIT 12

Carriage of beIN Sports and beIN en Español by Top 15 MVPDs

	MVPD		Total Basic Subscribers	Tier of Carriage
1	AT&T	DirecTV	II	Premier (330+) (beIN Sports only) Sports Pack (beIN Sports only) Mas Latino (125+) (beINE only) Optimo Mas (205+) (beINE only) Mas Ultra (240+) (beINE only) Lo Maximo (350+)
		U-verse		U450 (550+) Sports Package Paquete Español U200 Latino (420+) U300 Latino (520+) U450 Latino (590+)
2	Comcast			Preferred (220+) (beIN Sports only) (select markets) Preferred Plus (230+) (beIN Sports only) (select markets) Premier (260+) (beIN Sports only) (select markets) Sports & Entertainment Package Basic Latino (130+) (beINE only) Economy Latino (150+) (beINE only) Economy Plus Latino (190+) (beINE only) Starter Latino (200+) (beINE only)
3	Charter			Gold (200+) Latino View Mi Plan Latino
4	DISH Network			America's Top 250 (290+) America's Everything (330+) Multi-Sport Pack Latino Bonus Pack DishLATINO Basico (55+) DishLATINO Clasico (180+) DishLATINO Plus (190+) DishLATINO Dos (225+) DishLATINO Max (270+)
5	Verizon			Preferred HD (240+) (beIN Sports only) Extreme HD (300+) Ultimate HD (380+) Global Sports Pack FiOS TV Mundo (245+) (beINE only) FiOS TV Mundo Total (245+) (beINE only)
6	Cox			Contour TV Ultimate (250+) Sports & Information Pak^ Sports Pack 2^ Latino Pak
7	Altice USA	Optimum		Optimum Gold (420+) Sports & Information Pak Optimum en Español (beINE only)
		Suddenlink		NOT CARRIED
8	Frontier	FiOS (Only CA, FL, & TX markets)		Preferred HD (240+) (beIN Sports only) Extreme HD (325+) (beIN Sports only) Ultimate HD (400+) (beIN Sports only) Sports Pass (beIN Sports only) Global Sports Pack FiOS TV Mundo (beINE only) FiOS TV Mundo Total (beINE only) Spanish Language (beINE only)
		Vantage (Only NY & CT markets)		Vantage TV Ultimate (300+) The Sports Package Paquete Español
9	Mediacom			Sports & Information Digital Pak Canales Latinos^

	MVPD		Total Basic Subscribers	Tier of Carriage
10	TPG Capital	RCN		Premiere (380+) (beIN Sports only) MiVision Plus (beIN Sports only/beINE only/both)
		Grande		NOT CARRIED
		Wave		NOT CARRIED
11	WOW!			NOT CARRIED
12	Cable One			NOT CARRIED
13	CenturyLink (Prism)			Prism Preferred (310+) (beIN Sports only) Prism Premium (340+) (beIN Sports only) Sports Plus (beIN Sports only) Paquete Latino (beINE only)
14	Liberty Puerto Rico			Español de Primera (75+) (beINE only) Ultimate (175+) Pick Sports
15	Atlantic Broadband (Only Miami Beach, FL; Cumberland, MD; Grasonville, MD; & Middletown, DE markets)		II	More TV (240+) Mundo Latino (beINE only) (Miami Beach only)

Subscriber data based on a review of publicly reported numbers through year-end 2017, unless otherwise indicated. Carriage data based on review of public MVPD channel-lineups from zip codes across at least 10 of the top markets by subscriber count for each MVPD (or complete set of markets where an MVPD operates in fewer than 10 markets). There may be some limited variation within certain markets. Carriage includes both beIN Sports and beIN Sports en Español ("beINE"), unless otherwise indicated.

* Kagan Estimate. See Top Cable MSOs 12/17 Q, SNL Kagan, <https://www.snl.com/web/client?auth=inherit#industry/topCableMSOs>.

** Data available through year-end 2016.

*** Data available through Q2 2017.

^ Carriage tier varies by market.

Carriage of NBCSN and Universo by Top 15 MVPDs

	MVPD		Tier of Carriage	
			NBCSN	Universo
1	AT&T	DirecTV	Entertainment (160+) Choice (185+) Xtra (235+) Ultimate (250+) Premier (330+) Optimo Mas (205+) Mas Ultra (240+) Lo Maximo (350+)	Xtra (235+) Ultimate (250+) Premier (330+) Mas Latino (125+) Optimo Mas (205+) Mas Ultra (240+) Lo Maximo (350+)
		U-verse	U200 (360+) U300 (470+) U450 (550+) U200 Latino (420+) U300 Latino (520+) U450 Latino (590+)	U200 (360+) U300 (470+) U450 (550+) Paquete Español U200 Latino (420+) U300 Latino (520+) U450 Latino (590+)
2	Comcast		Digital Starter (140+) Preferred (220+) Preferred Plus (230+) Premier (260+)	Digital Starter (140+)^ Preferred (220+) Preferred Plus (230+) Premier (260+) Basic Latino (130+) Economy Latino (150+) Economy Plus Latino (190+) Starter Latino (200+)
3	Charter		Spectrum Select (125+) Spectrum Silver (175+) Spectrum Gold (200+)	Spectrum Silver (175+) Spectrum Gold (200+) Latino View Mi Plan Latino
4	DISH Network		America's Top 120 (190) America's Top 120+ (190+) America's Top 200 (240+) America's Top 250 (290+) America's Everything (330+)	America's Top 250 (290+) America's Everything (330+) Latino Bonus Pack DishLATINO Clasico (180+) DishLATINO Plus (190+) DishLATINO Dos (225+) DishLATINO Max (270+)
5	Verizon		Custom TV – Sports & News (135+) Custom TV – News & Variety (135+) Custom TV – Home & Family (165+) Preferred HD (240+) Extreme HD (300+) Ultimate HD (380+) FiOS TV Mundo (245+) FiOS TV Mundo Total (245+)	Extreme HD (300+) Ultimate HD (380+) FiOS TV Mundo (245+) FiOS TV Mundo Total (245+)
6	Cox		Contour TV (140+) Contour TV Ultimate (250+)	Contour TV Ultimate (250+)^ Variety Pak^ Latino Pak
7	Altice USA	Optimum	Optimum Value (220+) Optimum Preferred (310+) Optimum Silver (375+) Optimum Gold (420+)	Optimum Value (220+)^ Optimum Preferred (310+) Optimum Silver (375+) Optimum Gold (420+) Optimum en Español
		Suddenlink	Expanded (90+) Select (315+) Premier (355+)	Select (315+)^# Premier (355+)^# Conexion Unica^#

	MVPD		Tier of Carriage	
			NBCSN	Universe
8	Frontier	FiOS	Preferred HD (240+) Extreme HD (325+) Ultimate HD (400+) Premium Sports Package^	Extreme HD (325+) Ultimate HD (400+) FiOS TV Mundo (CA, FL, & TX markets only) FiOS TV Mundo Total (CA, FL, & TX markets only) Spanish Language (CA, FL, & TX markets only) La Conexion (IN, OR, WA markets only)
		Vantage	Vantage TV Prime (200+) Vantage TV Extreme (250+) Vantage TV Ultimate (300+)	Vantage TV Prime (200+) Vantage TV Extreme (250+) Vantage TV Ultimate (300+) Paquete Español (NY & CT markets only)
9	Mediacom		Family TV (230+)	Family TV (230+) [#] Kids & Variety Digital Pak [#] Canales Latinos [#]
10	TPG Capital	RCN	Signature (280+) Premiere (380+)	Premiere (380+) MiVision Lite^ MiVision Plus^ MiMúsica^
		Grande	Get It All 50 (150+) Preferred TV (190+) Get It All 200 (220+) Premier TV (245+) Get It all 400 (350+)	Premier TV (245+) Get It All 400 (350+) Variety Pak
		Wave	Expanded Content (100+)	Expanded Content (100+)^ Digital Variety Tier^ Paquete en Español^
11	WOW!		Medium Cable (130+) Large Cable (275+)	Large Cable (275+) [#]
12	Cable One		Standard (100+)	Standard (100+)^ Hispanic Tier
13	CenturyLink (Prism)		Prism Essential (165+) Prism Complete (215+) Prism Preferred (310+) Prism Premium (340+)	Prism Essential (165+) Prism Complete (215+) Prism Preferred (310+) Prism Premium (340+)
14	Liberty Puerto Rico		Ultimate (175+) Pick Sports	Español de Primera (75+) Ultimate Spanish Tier Pick Action
15	Atlantic Broadband		Value Service (100+) Value Plus (100+) More TV (240+)	More TV (240+) (Miami Beach, FL only) Mundo Latino (Miami Beach, FL only) Canales Españoles (Plainfield & Waterford, CT only)

Carriage data based on review of public MVPD channel-lineups from zip codes across at least 10 of the top markets by subscriber count for each MVPD (or complete set of markets where an MVPD operates in fewer than 10 markets). There may be some limited variation within certain markets.

[#] Carried only in certain market(s)

^ Carriage tier varies by market

EXHIBIT 13

PROGRAM CARRIAGE COMPLAINTS FILED AGAINST COMCAST (with **COMCAST ANNOTATIONS)**

Date of Complaint	Complainant	Docket Number	Principal Issue(s)	Hearing Designation Order or Initial Decision	Disposition	Comments
6/14/2005	TCR Sports Broadcasting Holding, LLP	MB 06-148	Denial of Carriage; Demand for Financial Interest	21 FCC Rcd. 8989 (2006)	Settled	
4/21/2008	Herring Broadcasting, Inc. (WealthTV)	MB 08-214	Denial of Carriage; Demand for Financial Interest	23 FCC Rcd. 14787 (2008)	Commission dismissed on merits, 26 FCC Rcd. 8971 (2011)	Relevant precedent for beIN case; upheld by Ninth Circuit; financial interest claim did not pertain to Comcast
5/6/2008	NFL Enterprises, LLC	MB 08-214	Tier Discrimination; Demand for Financial Interest	23 FCC Rcd. 14787 (2008)	Settled	MB recently “disavowed” part of NFL HDO (see below)
7/1/2008	TCR Sports Broadcasting Holding, LLP	MB 08-214	Denial of Carriage	23 FCC Rcd. 14787 (2008)	Settled	Enforcement Bureau filed comments recommending dismissal on merits to ALJ
1/5/2010	The Tennis Channel, Inc.	MB 10-204	Tier Discrimination	25 FCC Rcd. 14149 (2010)	Commission dismissed on merits, 30 FCC Rcd. 849 (2015), after D.C. Circuit vacated/remanded, 717 F.3d 982 (D.C. Cir. 2013)	Relevant precedent for beIN case
6/13/2011	Bloomberg LP	MB 11-104	“Neighborhooding” Discrimination Under <i>Comcast-NBCU Order</i>	27 FCC Rcd. 4891 (2012)	Settled	Not a discrimination case
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	2016 MB Order dismissed without prejudice	
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)	2017 MB Order dismissed on merits	Complainant misstated C-NBCU program carriage condition; as to financial interest claim, MB “disavowed” earlier NFL HDO

CERTIFICATE OF SERVICE

I, Samuel Eckland, certify that on this 14th day of May 2018, I caused true and correct copies of the foregoing Answer to Complaint, as well as a copy of the redacted version thereof electronically filed with the Commission this day, to be served by overnight mail (Highly Confidential Version) and electronic mail (Confidential Version and Public Version) on the following:

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Counsel to beIN Sports, LLC



Samuel Eckland

May 14, 2018