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June 15, 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 a Motion for Acceptance of Surreply and Surreply of Comcast Corporation and Comcast Cable Communications, LLC (together, "Comcast") filed in the above-captioned proceeding pursuant to 47 C.F.R. § 76.9.

Comcast also is serving a copy of this Public Motion and Surreply 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)
Stephanie Roy, Steptoe & Johnson LLP (via overnight mail and electronic mail)

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

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

MOTION FOR ACCEPTANCE OF SURREPLY AND SURREPLY OF COMCAST CORPORATION AND COMCAST CABLE COMMUNICATIONS, LLC

1. In its Reply, beIN Sports, LLC ("beIN") materially alters (i.e., *corrects*) allegations from its Complaint concerning the beIN networks' (1) current carriage by Comcast, (2) carriage by other, unaffiliated MVPDs, and (3) potential carriage under Comcast's initial counterproposal. Together, these corrected data dispose of beIN's prima facie case of affiliation-based discrimination: They demonstrate, by beIN's own admission, that Comcast's current carriage of the beIN networks is *better* than that of other MVPDs on average, and that Comcast's proposed carriage of the networks even under its initial counterproposal would be squarely within the industry mainstream.[1] Pursuant to 47 C.F.R. § 76.7(d), this brief surreply is warranted in light of the new material facts beIN itself has introduced and in light of other arguments and

[1] *See Tennis Channel Order Joint Dissenting Statement of Commissioners Ajit Pai and Robert M. McDowell*, 27 FCC Rcd. 8508, 8551 (2012) ("*Tennis Channel Order Joint Dissenting Statement*") (noting that it was a critical mistake for the Commission to overlook that "Comcast's treatment of Tennis Channel was within the industry mainstream," showing that Tennis Channel was not viewed by any other major MVPD as similarly situated to the Golf Channel, which uniformly received greater distribution from these unaffiliated distributors).

claims that beIN improperly raises for the first time in its Reply in an effort to cure the deficiencies in its Complaint.[2]

2. In its Reply, beIN now admits that Comcast's carriage of the beIN networks is materially greater than it had originally alleged. Specifically, the Reply revises Comcast's carriage upwards from **[[ ]]** percent (as stated in the Complaint) to **[[ ]]** percent.[3] And beIN now states that its average penetration on other major MVPDs – *still not counting those that do not carry beIN at all* – is only **[[ ]]** percent.[4] beIN also admits to having used one methodology that significantly understated Comcast's carriage of the beIN networks (yielding the **[[ ]]** percent figure), and a different methodology that **[[ ]]** the networks' carriage by other MVPDs, in providing the comparative industry carriage figures in the Complaint.[5]

3. In other words, beIN's Complaint misleadingly understated beIN's alleged carriage by Comcast by *more than a third* (according to beIN's own methodology), creating a

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2 *See* 47 C.F.R. § 76.1302(f) ("[T]he complainant may file and serve a reply which . . . *shall not* contain new matters.") (emphasis added); *see also Petition of the City of Boston, Massachusetts, for Recertification to Regulate the Basic Cable Service Rates of Comcast Cable Communications, LLC (CUID MA0182)*, 27 FCC Rcd. 3763 ¶ 1 n.7 (2012) ("Fairness dictates that Comcast be allowed to file a Surreply to answer the [petitioner's] newly posited arguments."); *World Satellite Network, Inc. v. Tele-Communications, Inc., Satellite Services, Inc. and Netlink USA d/b/a Netlink International Program Access Complaint*, 14 FCC Rcd. 13242 ¶ 3 n.11 (1999) (granting motion to file surreply because complainant added "specific factual allegations" and raised "new issues" in its reply contrary to the express prohibition in the Commission's rules).

3 *Compare* Reply ¶ 67 (**[[**

]]), *with* Compl. ¶ 102 (listing Comcast's current carriage at **[[ ]]**).

4 Reply ¶ 67.

5 *Compare* Reply Ex. 3, Declaration of Ken Tolle ¶ 13, *with* Compl. ¶ 102. The Reply documents these revised carriage calculations by submitting (for the first time) beIN's own detailed MVPD carriage data, which are attached as an exhibit to its new 33-page expert report. *See* Reply, Ex. 1, Attach. C (beIN distribution data by MVPD, comprised of "[d]ata provided by beIN"), a copy of which is also attached hereto as Exhibit A. Notably, while beIN continues to maintain that it is distributed to **[[**

]]. *Compare* Reply Ex. 3, Declaration of Ken Tolle ¶ 13 (stating that **[[ ]]**), *with* Reply Ex. 1, Attach. C (showing that beIN Sports and beIN Sports en Español reach 12 percent and 3 percent of Charter subscribers via the Gold and Mi Plan Latino tiers, respectively).

false picture of Comcast's distribution of the beIN networks compared to other providers – a refrain which beIN incredibly recycles in its Reply notwithstanding its own revised data and admissions.[6] In fact, beIN's new carriage calculations (a) demonstrate that Comcast's current distribution of the beIN networks *exceeds* that of other MVPDs on average, and (b) confirm that Comcast's proposed carriage in its initial December 2017 counterproposal would be in line with how nearly all other major MVPDs distribute the network (on upper-level and specialty tiers), as Comcast detailed in its Answer.[7] As Chairman Pai has observed, such clear and undisputed evidence that a complaining programmer's carriage by the defendant is "within the industry mainstream" constitutes "powerful evidence" of *non*-discrimination in program carriage cases.[8] The same evidence also highlights the unreasonableness of beIN's demand that Comcast distribute the networks to **[[ ]]** percent or more of its subscribers, which remained its steadfast demand as things stood when beIN broke off the parties' negotiations and filed its premature Complaint.[9]

4. Beyond these critical concessions, beIN's Reply – which is nearly twice as long as its Complaint and has twice as many declarations – also contains a host of new arguments, allegations, data, and exhibits. beIN has no excuse for failing to raise such matters in its Complaint, as is required by the Commission's rules,[10] especially given Comcast's detailed and

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6 *See*, *e.g.*, Reply ¶ 67 ("It is Comcast's relegation of beIN to the Siberia of low-distribution packages . . . that is the main culprit for beIN's lower penetration.").

7 *See* Answer ¶¶ 48-55. Notably, other MVPDs carry NBCSN to **[[ ]]** percent of subscribers and Universo to **[[ ]]** percent (using a standard methodology and factoring in non-carriage by certain MVPDs, both of which are in contrast to beIN's methodology). *Id.* ¶ 51.

8 *See Tennis Channel Order Joint Dissenting Statement*, 27 FCC Rcd. at 8551.

9 *See* Answer ¶¶ 49-51.

10 *See* 47 C.F.R. § 76.1302(f).

candid response to beIN's pre-filing notice.[11] beIN's latest gambit, while plainly improper, is of a piece with beIN's overall gamesmanship: rushing to file its Complaint more than four months before the parties' carriage agreement expires, at an early stage of renewal negotiations, in an attempt to use the program carriage remedy to extract what are clearly non-market fee and distribution terms from Comcast.[12]

5. In all events, the Bureau need not even consider the Reply, given the serious deficiencies in the Complaint itself. By beIN's own account, to determine if beIN has met its prima facie showing, the Bureau reviews the *Complaint* only.[13] But the Reply's very heft and new material only further expose the Complaint's failings. As the chart below outlines, these include numerous: (1) *omissions* – i.e., new points that beIN could have raised in its Complaint but simply did not; (2) *inadequacies* – i.e., new points that beIN makes in an attempt to shore up its Complaint; and (3) *inconsistencies* – i.e., new points that beIN now makes in direct *contradiction* of claims in its Complaint, undercutting the reliability of those initial claims.[14]

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[11] *See* Compl. Ex. 3.

[12] It also may be seen as an attempt to forestall an adverse decision on the merits by the Bureau (based on the detailed record Comcast assembled in its Answer and controlling program carriage precedent), without giving Comcast an opportunity to fully address what is essentially a new complaint.

[13] *See* Reply ¶ 109 (stating that the Commission has "clarified that the determination of the prima facie case would be 'based on a review of the complaint (including any attachments) *only*'") (emphasis added) (quoting *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 ¶ 17 (2011) ("*2011 Program Carriage Order*").

[14] To the extent beIN does respond to Comcast's substantial evidence of its legitimate business reasons underlying its negotiating position with beIN, the Reply does so without foundation. For example, beIN claims, among other things, that Comcast's January 2018 Viewership Analysis is "ostensibly" prepared by EBI, "hast[y] in its preparation," "unreliab[le]," and does not {{ }} *See* Reply ¶¶ 121-126. None of these criticisms are valid. As Comcast explained in its Answer, the January 2018 Viewership Analysis was based on and related back to a viewership analysis that Comcast's Content Acquisition team commissioned from EBI in June 2017 in the normal course. Of course, as the D.C. Circuit held in *Tennis Channel*, even if such an analysis had been "hasty" (which it was not), given that beIN, like Tennis Channel, did not (and cannot credibly) claim that such a cost-benefit analysis is "merely pretextual cover for some deeper discriminatory purpose . . .

6. Because beIN's own Reply is a roadmap to the many shortcomings of the Complaint, the Bureau should have no difficulty concluding that beIN has not met its prima facie burden. Dismissal on that ground is further justified by beIN's improper attempt to stake its Complaint (and substantial re-pleading of it in the Reply) on an initial counterproposal from Comcast, early in the parties' negotiations. Allowing beIN to proceed under these circumstances would contravene Congress's express intent for the program carriage regime to preserve robust, aggressive marketplace negotiations, subvert the Commission's procedural rules, and unduly chill Comcast's exercise of its protected editorial discretion in its carriage of programming in an intensely competitive environment for MVPDs.[15]

Comcast's [asserted] haste is irrelevant." *See Comcast Cable Commc'ns, LLC v. FCC*, 717 F.3d 982, 987 (D.C. Cir. 2013). As to the asserted "unreliability" of the analysis, it is notable that the Department of Justice, in its challenge to the AT&T/Time Warner Inc. transaction, submitted and cited to similar analyses prepared by EBI (using the same viewership data and findings from Comcast's actual experience) and used by Content Acquisition to analyze potential network drops. *See* Proposed Findings of Fact of the United States at 50-54, *United States v. AT&T Inc.*, No. 17-2511 (D.D.C. May 8, 2018), the relevant excerpts of which are attached hereto as Exhibit B. Neither the court in its decision nor AT&T challenged the reliability of these analyses. *See United States v. AT&T Inc.*, No. 17-2511, slip op. at 17-18, 118 n.36 (D.D.C. June 12, 2018) (noting that distributors "might perform 'drop' or 'go dark' analyses to estimate the potential impact of a blackout . . . on the distributor's customer base" and that they "rel[y] on these analyses to get a general sense of 'the value' of a programmer's content"); Defendants' Proposed Findings of Fact and Conclusions of Law at 61-62, *United States v. AT&T Inc.*, No. 17-2511 (D.D.C. May 3, 2018). Finally, beIN's claimed "material omission" that the January 2018 Viewership Analysis does not include {{

}}. *See* Answer, Brayford Decl., Attach. A at nn.2, 3.

15 *See* Answer ¶¶ 78-79.

Omissions, Inadequacies, and Inconsistencies in beIN's Prima Facie Case

What beIN Now Claims in Its Reply	**What beIN Says in Its Complaint**	**Comments**	**Relevant Precedent**
Similarly Situated			
Only *marquee* programming, which beIN artificially limits to live soccer programming, matters for purpose of the similarly situated analysis. In other words, the Commission should only examine marquee soccer programming offered by the NBCUniversal networks and ignore all other programming they offer. As part of this cabined analysis, the Commission also should take into account the soccer programming on the NBC and Telemundo *broadcast* networks, and should discount the impressive ratings for the NHL Stanley Cup Playoffs on NBCSN. (Reply ¶¶ 22-29)	***Inconsistent/Inadequate***. beIN's only programming analysis in the Complaint is a strictly quantitative analysis of NBCSN's and Universo's soccer-related programming (live games and related content), which constitute a tiny fraction of (and are dwarfed by) beIN's overwhelming amount of soccer-related programming minutes. (Compl. ¶¶ 60-64) Nor does the Complaint mention NBC or Telemundo broadcast networks as part of its comparisons between the beIN networks and NBCSN and Universo.	Besides changing (and now limiting) its allegations to focus only on "marquee" live soccer games, beIN artificially ignores NBCSN's substantial other marquee live sports programming – including hockey, auto racing, and Olympics content. In fact, hockey and auto racing combined account for *three times* the amount of NBCSN's programming minutes as soccer. (*See* Answer ¶¶ 23-31) There is no proper factual or legal basis for the Commission to ignore this other programming, much less NBCSN's Stanley Cup Playoffs coverage – constituting *dozens* of prime-time games garnering high ratings over an eight-week period. Likewise, beIN wholly ignores the multiple scripted and reality series on Universo that make up its "marquee" programming. Finally, the Reply's resort to discussing programming on the NBC and Telemundo *broadcast* networks only underscores beIN's inability to demonstrate similarity among the subject video programming vendors in the Complaint.	*WealthTV Order*, 26 FCC Rcd. 8971 ¶¶ 23-25 (2011) (upholding 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*); *GSN Order*, 32 FCC Rcd. 6160 ¶¶ 48-50, 62 (2017) (finding networks were not similarly situated after analyzing the overall programming carried on each network as a whole and the "enormous *overall* differences in programming") (emphasis added); *Liberman Broadcasting Order*, 31 FCC Rcd. 9551 ¶¶ 12-13 (MB 2016) (finding that the program carriage rules only apply to "video programming vendors," not broadcast networks and stations) (petition for reconsideration pending).
The networks have similar audiences in terms of a variety of demographics, and, like beIN, NBCSN and Universo target Hispanic viewers. (Reply ¶¶ 46-55)	***Omitted/Inadequate***. In a one-paragraph audience analysis, the Complaint claims that "soccer fans" are the relevant target audience (Compl. ¶ 66), and makes no attempt to identify, let alone quantify, gender, ethnicity, age, and income demographics for different	This new audience analysis is not only procedurally improper but also meritless. Even one key metric that is materially different demonstrates that the audiences are not similar (i.e., skew young versus skew old, skew Hispanic versus non-Hispanic, and skew male versus evenly split); other less pronounced differences amplify those core differences. (*See* Answer ¶¶ 32-35)	*2011 Program Carriage Order* ¶ 14 (noting that an age difference alone could be dispositive of differences in two networks' target audiences); *GSN Order* ¶¶ 52-54 (analyzing the subject networks' different audiences based on differences in gender, age, and marital status); *WealthTV Order* ¶¶ 25-26 (analyzing the subject networks' different audiences based on differences in affluence, age, education, and gender).

What beIN Now Claims in Its Reply	**What beIN Says in Its Complaint**	**Comments**	**Relevant Precedent**
	soccer fans, much less other “targeted” sports fans.		
Evidence of similarity between NBCSN and beIN programming can be seen in NBC Sports’ alleged “focus” on soccer coverage on its sports news website and in podcasts, in merchandise it sells, and in its NBC Sports Soccer Twitter feed. (Reply ¶¶ 30-40)	***Omitted***. The Complaint contains no discussion of similarly situated factors other than programming, target audience, ratings, and advertising (all in a cursory fashion). (Compl. ¶¶ 56-84)	beIN’s new “evidence” is comprised of cherry-picked promotions of soccer coverage, leaving out the full picture of NBCSN’s promotions of other, more dominant sports coverage for NHL, NASCAR, and Olympics. None of this new evidence is at all relevant to the Commission’s established factors for evaluating similarity of NBCSN as a programming network. (*See* Answer ¶¶ 21-31) For the same reasons, beIN’s coverage of NBA games on its website and Twitter feed, which are not carried on beIN’s networks, is irrelevant to an analysis of those networks.	*WealthTV Order* ¶¶ 23-24 (analyzing the overall *programming* of each network); *GSN Order* ¶¶ 48-50, 62 (finding networks were not similarly situated based on the analysis of the overall differences in *programming* carried on each network as a whole).
Comcast’s current carriage of beIN sits at **[[ ]]**. (Reply ¶ 67 & n.83; Tolle Decl. ¶ 13) beIN’s penetration on distributors other than Comcast is **[[ ]]**%. (Reply ¶ 94)	***Omitted/Inconsistent***. The Complaint claims that Comcast’s current carriage of beIN is **[[ ]]**% (based on a different methodology than beIN applies to other distributors), and omits its average penetration data for other distributors, to create the false impression that Comcast lags behind other MVPDs and OVDs on average. (Compl. ¶ 102)	beIN’s initial distribution chart was deliberately misleading, using two different methodologies (without any disclosure) to artificially lower Comcast’s alleged carriage, while inflating **[[ ]]** alleged carriage (and presumably that of other MVPDs and OVDs listed). If anything, beIN’s new distribution data demonstrate that Comcast’s current carriage of the beIN networks is *above market*. Thus, beIN’s claims of being in “Siberia” under its current agreement with Comcast are false. Moreover, according to beIN, Comcast’s initial counterproposal would put beIN’s carriage at **[[ ]]**% – well within the industry mainstream. Contrast this with beIN’s proposed carriage under its renewal proposals at **[[ ]]**% or greater penetration, which is *more than double* beIN’s alleged average penetration across other distributors that carry it. beIN’s **[[ ]]**% figure does not appear to take into account the many MVPDs and OVDs that do not carry beIN *at all*.	*Tennis Channel Order Joint Dissenting Statement*, 27 FCC Rcd. at 8551 (noting that it was a critical mistake for the Commission to overlook that “Comcast’s treatment of Tennis Channel was within the industry mainstream,” showing that Tennis Channel was not viewed by any other major MVPD as similarly situated to the Golf Channel, which uniformly received greater distribution from these unaffiliated distributors, and thus there was no evidence of discrimination).

<u>**What beIN Now Claims in Its Reply**</u>	<u>**What beIN Says in Its Complaint**</u>	<u>**Comments**</u>	<u>**Relevant Precedent**</u>
		beIN also does not dispute or otherwise address its admission last year to the Commission that major MVPDs tend to carry its English-language channel at the 20% level. (*See* Answer ¶¶ 48-55, 66-69)	
beIN's lack of distribution by other MVPDs and OVDs is the product of its **[[** **]]**. (Reply ¶¶ 95-97)	***Omitted***. This newly minted theory appears nowhere in the Complaint.	The **[[** **]]**. In fact, as beIN boasts, it has broad distribution on Verizon and fuboTV – both of which launched beIN *after* Comcast did, thus discrediting beIN's baseless **[[** **]]** claims. (*See* Answer ¶¶ 49, 54) Rather, as Comcast has explained, beIN's distribution by Comcast and most other MVPDs on upper-level/specialty tiers is due to the more limited appeal of beIN's niche programming. (*See* Answer ¶¶ 67-69; Litman Decl. ¶¶ 32-34) In all events, any claim relating to the **[[** **]]** is untimely since it is predicated on beIN's 2012 contract terms.	*See Tennis Channel Order Joint Dissenting Statement*, 27 FCC Rcd. at 8551 (noting that "Comcast's treatment of Tennis Channel was within the industry mainstream," which serves as "powerful evidence" disproving a claim of discrimination on the basis of affiliation); 47 C.F.R. § 76.1302(h)(1) (requiring that program carriage complaints based on an existing agreement be filed within one year of entering into the contract).
NBCN's and Universo's superior carriage on other MVPDs should be discounted, because it is the product of bundling. (Reply ¶¶ 98-101)	***Omitted***. This newly minted theory likewise appears nowhere in the Complaint.	Claims relating to "bundling" practices by programming groups are beyond the scope of a program carriage complaint proceeding. This new theory is also half-baked; for example, beIN now claims that the NBC Broadcast network helps drive carriage of NBCSN in part due to its Olympics coverage, but NBCSN is actually the network showing the most Olympics programming (some of it the very "marquee" programming that beIN artificially ignores). Moreover, beIN's bundling claims are disproven by marketplace evidence. As Comcast's expert, Peter Litman noted in his report, NBCUniversal recently shut down three affiliated networks (Esquire, Chiller, and Cloo) with larger prime-time audiences than beIN,	*Tennis Channel Order Joint Dissenting Statement*, 27 FCC Rcd. at 8551 ("*[E]very* 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 carriage decisions." This is "powerful evidence" that Comcast had not discriminated on the basis of affiliation.) (emphasis in original)

What beIN Now Claims in Its Reply	**What beIN Says in Its Complaint**	**Comments**	**Relevant Precedent**
		while continuing to distribute beIN to millions of customers. (Litman Decl. ¶ 117)	
Unreasonable Restraint[16]			
High switching costs deter customers from leaving Comcast to access beIN on other outlets, and OVDs are hamstrung in their ability to compete with MVPDs. (Reply ¶ 141)	***Omitted/Inconsistent***. This claim is not only new but directly contradicted by beIN's claims in the Complaint (a) that most Comcast customers who want to watch beIN have *already left* to fuboTV or other lower-cost OVDs, and (b) about the importance of today's "OTT phenomenon." (Compl. ¶¶ 12-13, 101-103)	OVDs are capturing substantial market share from MVPDs, including through highly discounted offerings. beIN is available for free on go90. beIN is also available for only $10/month on Sling TV and iGol, as well as on multiple other distribution platforms. 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. (Answer ¶ 85)	*See Time Warner Cable Inc. v. FCC*, 729 F.3d 137, 157-58 (2d Cir. 2013) (the "unreasonable restraint" element at the prima facie stage effectively requires the complainant to demonstrate market power by the defendant MVPD, which is necessary to ensure that such complaints do not impinge on the defendant MVPD's editorial discretion in violation of the First Amendment); *cf. Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311 ¶ 128 n.469 (2018) (citing survey evidence that one-third of all broadband customers have switched providers in the last two years and almost half in the last four years).
beIN is unreasonably restrained from competing today by the fact that other distributors are **[[** **]]** because beIN has not secured a renewal with Comcast, the "industry leader." (Reply ¶¶ 134, 145)	***Omitted/Inconsistent***. beIN's Complaint and supporting declarations express great confidence that other distributors would share beIN's view of the value of its programming and readily offer greater distribution to the networks. (Compl. ¶ 103)	This claim is baseless since Comcast *has* offered to renew beIN's carriage agreement, simply not on beIN's exorbitant terms. Nor is this new theory legally relevant, much less credible. Comcast is not the largest MVPD – AT&T/DirecTV is – and Charter is not far behind Comcast in terms of video subscribers. (*See* Answer ¶¶ 78-79, 84-86) Notably, despite beIN's new claims of a significant jump in (highly selective) ratings in the Dallas market for a limited period when Time Warner Cable (TWC) provided beIN broader carriage in that	*See Tennis Channel Order Joint Dissenting Statement*, 27 FCC Rcd. at 8553 (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.") (emphasis added); *see also Time Warner Cable*, 729 F.3d at 166 (noting that, if the Commission were to accept "*any* detrimental effect on an unaffiliated network as sufficient to

16 As Comcast explained, the Commission has consistently stated that program access and carriage remedies arising out of transaction conditions must be formally invoked or initiated prior to the condition's expiration. *See* Answer ¶ 80 & n.187. However, in an effort to sidestep its inability to satisfy the "unreasonable restraint" prong of its prima facie showing, beIN maintains in its Reply – without citing *any* precedent – that it may invoke the program carriage condition in the *Comcast-NBCUniversal Order* notwithstanding its expiration on January 20, 2018, before beIN sent its pre-filing notice to Comcast on February 13, 2018 and before beIN filed its Complaint on March 15, 2018. *See* Reply ¶ 146.

What beIN Now Claims in Its Reply	**What beIN Says in Its Complaint**	**Comments**	**Relevant Precedent**
		market (*see* Reply ¶ 72), beIN is still carried there today on two low-penetrated tiers by TWC's successor (Charter) – which suggests that such ratings data, to the extent credible and meaningful, did *not* persuade TWC or Charter that carrying beIN more broadly would yield any net benefits.	prove a *prima facie* violation, rather than demanding proof of the significant or material detrimental effect implicit in the term 'unreasonable restraint,'" the Commission would "effectively nullify the unreasonably restraint requirement") (emphasis in original).
beIN competes with NBCSN and Universo for advertisers large and small. And Comcast's limited distribution of beIN hinders beIN's ability to compete for advertisers. (Reply ¶¶ 85-92, 143-144)	***Omitted/Inadequate***. The Complaint only provides evidence of **[[ ]]** overlapping advertisers. (Compl. ¶¶ 81-82, 97)	beIN tries to excuse *its own* failure to include this new advertising evidence in its Complaint by arguing that it has no obligation to do so at this stage in the proceeding. But even if this new advertising evidence had been properly introduced, advertising overlap alone does not establish competition for advertisers between networks (or similarity for that matter), and there is no evidence (in the Complaint or Reply) that broader distribution on Comcast systems would enhance beIN's ability to attract advertisers in competition with NBSCN or Universo, as Comcast and Dr. Lerner have already explained. (*See* Answer ¶¶ 45-47, 83)	*GSN Order* ¶¶ 59-60 (finding 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").

Respectfully submitted,

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June 15, 2018

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

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

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 Motion for Acceptance of Surreply and Surreply, 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
June 15, 2018

Francis M Buono

Francis M. Buono

EXHIBIT A

MVPD Distribution Data

Distributor / Package	Type	Penetration	Subscribers	beIN Sports	beIN Sports Español
AT&T					
U-Basic	General	13%	513,866		
U-Family	General	25%	956,250		
U200	General	15%	573,750		
U300	General	20%	765,000		
U450	General	19%	726,750	✓	✓
U200 Latino	Add-On	3%	114,750	✓	✓
U300 Latino	Add-On	5%	191,250	✓	✓
Sports Pack*	Add-On	0%	-	✓	✓
DirectTV					
Select	General	15%	3,202,050		
Entertainment	General	10%	2,134,700		
Choice	General	11%	2,348,170		
XTRA	General	9%	1,921,230		
Ultimate	General	6%	1,280,820		
Premier	General	27%	5,763,690	✓	
Optimo Mas	Add-On	3%	640,410	✓	✓
Mas Ultra	Add-On	8%	1,707,760	✓	✓
Lo Maximo	Add-On	1%	213,470	✓	✓
Comcast Offer					
Limited Basic	General	10%	2,061,612		
Economy	General	8%	1,737,099		
Starter	General	15%	3,136,959		
Preferred	General	39%	8,220,996		
Preferred Plus	General	0%	-		
Premier	General	26%	5,417,034		
Basic Latino (TV 150 Latino)	Add-On	1%	171,801	✓	✓
Economy Latino (TV 200 Latino)	Add-On	0%	97,566	✓	✓
Economy Plus Latino (TV 300 Latino)	Add-On	1%	139,986	✓	✓
(Starter Latino (TV 450 Latino)	Add-On	1%	226,947	✓	✓
Sports & Entertainment Package	Add-On	23%	4,878,300	✓	✓
Charter					
Basic	General	28%	4,417,067		
Select	General	29%	4,574,820		
Silver	General	31%	4,890,324		
Gold	General	12%	1,893,029	✓	✓
Mi Plan Latino	Add-On	3%	473,257	✓	✓
Dish					
Flex Pack	General	7%	933,240		
America Top 120	General	30%	3,999,600		
America Top 200	General	19%	2,533,080		
America Top 250	General	17%	2,266,440	✓	✓
America's Everything Pack	General	4%	533,280	✓	✓
DishLatino Basic	Add-On	1%	133,320	✓	✓
DishLatino Clasico	Add-On	1%	133,320	✓	✓
DishLatino Plus	Add-On	2%	266,640	✓	✓
DishLatino Dos	Add-On	0%	33,330	✓	✓
DishLatino Max	Add-On	2%	266,640	✓	✓
World Sports	Add-On	0%	-	✓	✓
Cablevision-Altice					
Broadcast Basic	General	6%	145,235		
Optimum Value	General	7%	169,441		
Optimum Preferred	General	12%	290,471		
Optimum Silver	General	15%	363,089		
Optimum Gold	General	20%	484,118	✓	✓
Optimum Core	General	22%	532,530		
Optimum Select	General	10%	242,059		
Optimum Premier	General	8%	193,647	✓	✓
Optimum en Esp	Add-On	0%	-	✓	✓

Distributor / Package	Type	Penetration	Subscribers	beIN Sports	beIN Sports Español
Cox					
TV Starter	General	28%	945,253		
Contour TV	General	15%	524,238		
Contour TV Flex	General	38%	1,285,381		
Contour TV Ultimate	General	19%	631,861	✓	✓
Sports & Information Package	Add-On	11%	379,726	✓	✓
Sports Pak 2	Add-On	7%	227,429	✓	✓
Latino Pak	Add-On	2%	67,687	✓	✓
Verizon					
FiOS TV Local	General	18%	751,712		
Preferred HD	General	32%	1,336,378	✓	
Extreme HD	General	14%	584,665	✓	✓
Ultimate HD	General	22%	918,760	✓	✓
Fios TV Mundo	Add-On	3%	125,285	✓	✓
Mediacom					
Local Plus	General	49%	351,029		
Family TV	General	51%	365,356		
Sports & Information	Add-On	12%	85,966	✓	✓
Canales Latinos	Add-On	6%	42,983	✓	✓

Source: Data provided by beIN.

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *Plaintiff,* v. AT&T INC., DIRECTV GROUP HOLDINGS, LLC, and TIME WARNER, INC., *Defendants*.	Civil Action No. 1:17-cv-02511 (RJL) **REDACTED**

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refinement in the hybrid methodology for the rest of the 150 television networks. Tr. 1284:15–21 (Bewley/Altman Vilandrie). Altman Vilandrie had been unable to do this work within the timing and scope of the previous project, but returned to work for Charter in the fall and completed the implementation of the refined hybrid methodology not just for Turner but for all 150 networks. Tr. 1284:19–1285:1, 1286:16–24, 1313:8–10 (Bewley/Altman Vilandrie).

b) Comcast regularly analyzes viewership data to estimate potential subscriber losses

141. When preparing for programming negotiations, Greg Rigdon, Executive Vice President of Content Acquisition for Comcast Cable, reviews internal analyses that attempt to quantify the value of that programming. Tr. 862:10–15; 859:1–4 (Rigdon/Comcast). These "drop analyses" project the number of subscribers that Comcast Cable would lose if it no longer carried certain programming, along with the financial impact of not having that content. Tr. 862:16–863:3, 864:9–20 (Rigdon/Comcast).

142. The purpose of a drop analysis is [redacted] Tr. 917:19–918:11 (Rigdon/Comcast). Though drop analyses are a little bit of art and a little bit of science, [redacted]. Tr. 962:1–963:19 (Rigdon/Comcast). For this reason, Rigdon [redacted] Tr. 962:1–963:19 (Rigdon/Comcast). When reviewing drop analyses, [redacted] Tr. 916:22–917:7 (Rigdon/Comcast).

143. Comcast Cable relies on proprietary viewership data, [redacted], and public data sources to create drop analyses. Tr. 862:16–863:3,

916:1-916:12, 962:1–963:19 (Rigdon/Comcast). Comcast Cable began producing drop analyses at Rigdon's request, [redacted]. Tr. 863:4–12, 924:23–925:8 (Rigdon/Comcast). Rigdon and his team work closely with the Comcast group that produces drop analyses, asking them questions and providing them with input. Tr. 863:18–864:8 (Rigdon/Comcast).

144. For example, Comcast Cable dropped YES Network, a regional sports network that carries Yankees games, [redacted]. Tr. 895:4–11, 934:2–10 (Rigdon/Comcast). [redacted]. Tr. 935:20–936:11 (Rigdon/Comcast). [redacted] Tr. 934:11–935: 2 (Rigdon/Comcast). [redacted] Tr. 934:5–10 (Rigdon/Comcast). [redacted] Tr. 934:11–14 (Rigdon/Comcast). And Comcast [redacted] Tr. 924:23–925:8, 928:24–929:7 (Rigdon/Comcast), PX0385: PX0306.

145. [redacted]

[redacted] Tr. 925:21–926:18 (Rigdon/Comcast); PX0385-011. [redacted] Tr. 926:19–927:11 (Rigdon/Comcast). [redacted] Tr. 926:19–927:11 (Rigdon/Comcast); PX0385-011 ([redacted]). [redacted] Tr. 926:13–18, 927:12–14, 959:23–960:1 (Rigdon/Comcast). [redacted] Tr. 934:11–935:2 (Rigdon/Comcast).

146. Rigdon shares drop analyses with his boss, Comcast Cable CEO Dave Watson, and with executives from Comcast Corporate. Tr. 865:15–17, 866:5–7 (Rigdon/Comcast).

147. In 2015, Comcast and Turner negotiated a new contract. Tr. 871:11–14 (Rigdon/Comcast). [redacted] Tr. 909:25–910:8 (Rigdon/Comcast). [redacted] PX0384-006. [redacted] Tr. 917:19–918:21 (Rigdon/Comcast).

148. [redacted] Tr. 918:22–919:2 (Rigdon/Comcast); *see also*

Tr. 999:4–9 (Breland/Turner); PX0123-019 ([redacted]). [redacted] Tr. 919:3–7 (Rigdon/Comcast). [redacted] Tr. 919:8–15 (Rigdon/Comcast). In addition, [redacted]

149. Comcast and Turner negotiated a new contract this year. Tr. 874:6–8 (Rigdon/Comcast). [redacted] PX0385-010, Tr. 923:18–20 (Rigdon/Comcast). [redacted] Tr. 924:23–925:5 (Rigdon/Comcast). [redacted] PX0385-010. [redacted] Tr. 941:4–9 (Rigdon/Comcast); *see also* PX0385-010 ([redacted]). [redacted]

[redacted] Tr. 927:15–21 (Rigdon/Comcast). [redacted] Tr. 923:8–17 (Rigdon/Comcast). [redacted] Tr. 941:10–13 (Rigdon/Comcast). In its new contract, Comcast Cable again agreed to increase the rates it paid to Turner. Tr. 874:9–11 (Rigdon/Comcast).

c) Cox estimated potential subscriber losses when considering whether to drop [redacted]

150. While Cox never analyzed dropping Turner, it did analyze dropping [redacted]. *See* Tr. 695:17–696:10 (Hinson/Cox); PX0523-C. Cox conducted an analysis to determine the impact that going dark on [redacted] would have in advance of negotiating a renewal agreement to better understand Cox's leverage, and Cox used this analysis as a starting point in the negotiations. Tr. 102:9–103:6 (Fenwick/Cox); Tr. 695:17–696:10 (Hinson/Cox); PX0523-C. Cox does not conduct "go dark" analyses on all programmers unless they "have a concern about how popular . . . the network may be." Tr. 103:7–13 (Fenwick/Cox). Cox has not conducted a similar analysis for Turner "[b]ecause we had concerns whether that [other] network's content was valuable. We don't have any concerns or questions about how valuable the Turner content is. We know it's extraordinarily valuable." Tr. 154:16–155:1 (Fenwick/Cox).

151. Based on its analysis, Cox concluded that it would not make financial sense to drop [redacted], even though it only has a single channel that is, sometimes, in the top twenty rated channels. Tr. 695:17–696:10 (Hinson/Cox); PX0523-C. Turner is far more important than [redacted], given that Turner has three channels in the top 20 rated channels (with CNN being number seven), so dropping Turner would be even less viable than dropping [redacted]. Tr. 695:17–697:13 (Hinson/Cox); PX0523-C. Cox executive Suzanne Fenwick believes it is possible

CERTIFICATE OF SERVICE

I, Samuel Eckland, certify that on this 15th day of June 2018, I caused true and correct copies of the foregoing Motion for Acceptance of Surreply and Surreply, 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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June 15, 2018