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REDACTED – FOR PUBLIC INSPECTION

June 21, 2018

By ECFS

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

Re: **beIN Sports, LLC v. Comcast Cable Communications, LLC and Comcast Corporation, MB Docket No. 18-90**

Dear Ms. Dortch:

In accordance with the *Protective Order* in the above-captioned proceeding,¹ beIN Sports, LLC (“beIN”) submits the enclosed public, redacted version of its Motion to Strike Comcast’s Surreply dated June 21, 2018.

beIN has denoted with “{{BEGIN HIGHLY CONFIDENTIAL}} {{END HIGHLY CONFIDENTIAL}}” information taken or derived from the Highly Confidential Information in Comcast’s Answer and Surreply. beIN has also denoted with “[[BEGIN CONFIDENTIAL]] [[END CONFIDENTIAL]]” beIN confidential information taken or derived from beIN’s Complaint and Reply. A Highly Confidential version and Confidential version of this filing are being simultaneously filed with the Commission.

Please contact me with any questions.

¹ beIN Sports, LLC, Complainant, v. Comcast Cable Communications, LLC and Comcast Corporation, Defendants, Request for Enhanced Confidential Treatment, *Order*, MB Docket 18-90, DA 18-487 (May 11, 2018) (“*Protective Order*”).

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Respectfully submitted,

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

Pantelis Michalopoulos

Stephanie A. Roy

Travis West

Counsel to beIN Sports, LLC

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

In the Matter of)	
)	
beIN Sports, LLC,)	MB Docket No. 18-90
Complainant,)	File No. CSR-8954-P
)	
v.)	
)	
COMCAST CABLE COMMUNICATIONS,)	
LLC,)	
and)	
COMCAST CORPORATION,)	
Defendants.)	
)	
)	
TO: Chief, Media Bureau)	

beIN MOTION TO STRIKE COMCAST’S SURREPLY

Comcast is used to having the last word, even when it is not permitted. It is an adjudication supposed to be decided on a complaint, answer and reply.¹ That is it, and not simply because of the Commission’s rules, but also because of the most elementary requirements for justice to be meted out justly: the complainant, who has the burden of proof, must have the last word in its attempt to carry that burden. Comcast has gotten away with this in the past.² But

¹ Implementation of Sections 12 & 19 of the Cable Television Consumer Protection & Competition Act of 1992, Development of Competition & Diversity in Video Programming Distribution & Carriage, *Second Report and Order*, 9 FCC Rcd. 2642, 2652 ¶ 23 (1993) (stating that “[g]iven the statute’s explicit direction to the Commission to handle program carriage complaints expeditiously, additional pleadings [beyond the complaint, answer, and reply] will not be accepted or entertained unless specifically requested by the reviewing staff.”).

² See, e.g., *Bloomberg L.P., Complainant v. Comcast Cable Communications, LLC, Defendant*, *Memorandum Opinion and Order*, 27 FCC Rcd. 4891, 4892 ¶ 4 (2012) (permitting Comcast to file a surreply in light of “extraordinary circumstance”) (“*Bloomberg Order*”).

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the past flexibility shown by the Commission, though undoubtedly springing from the best of intentions, has had a pernicious effect: it has contributed to the success of what has now become a notorious pattern of behavior on Comcast's part. Comcast has notoriously "played the clock" against everyone, usually smaller companies, that has been presumptuous enough to invoke any of the remedies created by Congress and the Commission to curb the power of vertically integrated cable operators. It has protracted disputes for years, and required the expenditure of massive resources, before being forced to eke out one ounce of relief. In the *Tennis Channel* case, one of the proceedings in which Comcast was allowed to surreply, the fight took 5 years; in the *Bloomberg* case, 4 years.³ In the *Project Concord* case, the complainant was largely vindicated after 2 years of proceedings, although one claim is still stuck in regulatory limbo; in the meantime, Concord has been forced into bankruptcy.⁴

This must stop. The Media Bureau should strike the motion.

Comcast's attempt at a surreply is all the more offensive because of the diversionary nature of its supposed substance. Comcast claims that beIN's reply shows Comcast is treating beIN better than other MVPDs do. This is both incorrect and irrelevant. beIN has shown that

³ See *Tennis Channel, Inc., Complainant v. Comcast Cable Communications, LLC, Defendant, Order*, 30 FCC Rcd. 849, 850 ¶ 40 (2015) (stating that initial complaint was filed in 2010 and final order was issued in 2015); *Bloomberg Order*, 27 FCC Rcd. at 4892 ¶ 4 (stating initial complaint was filed in 2011); see also *Bloomberg L.P.'s Request for Waiver of the News Neighborhood Condition, Memorandum Opinion and Order*, 30 FCC Rcd. 73, 73 ¶ 3 (2015) (granting a waiver of the news neighborhood condition that resolved the complaint in 2015).

⁴ *Project Concord, Inc. Application for Review, Project Concord, Inc. v. NBCUniversal Media, LLC*, Case No. 72 472 E 01147 11 (arbitration award), *In re Applications of Comcast Corp., General Electric Co., and NBC Universal, Inc., for Consent to Assign Licenses and Transfer Control of Licenses*, MB Docket No. 10- 56 (filed Dec. 13, 2012); see also *Ex Parte Letter of Stop Mega Comcast Coalition*, MB Docket No. 14-57 at 2-3 (Apr. 8, 2015).

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Charter, Verizon and FuboTV have afforded beIN better distribution than Comcast does today.⁵

And beIN's complaint is not about the current treatment of beIN by Comcast. It is about the offer Comcast made beIN on December 13, 2017. That offer would demote beIN to substantially lower penetration than beIN's average penetration on the systems of all other significant MVPDs and to "add-on" tiers whereas all other major MVPDs carry beIN in general packages. Comcast's surreply does not deny this. Instead, what is billed by Comcast as the major revelation warranting a surreply is an alleged inconsistency in beIN's penetration numbers as between the Complaint and the Reply. Not only is there no inconsistency, but the reason why there is not was fully explained already by beIN in its Reply.⁶

The slenderness of the surreply is also revealed when, out of all the errors and infirmities that beIN pointed out in Comcast's "Viewership Analysis,"⁷ the surreply takes issue primarily with beIN's description of it as "hasty" and "unreliable."⁸

⁵ Reply ¶ 93.

⁶ As beIN stated, [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]. Reply ¶ 67 & n.83. *See also* Declaration of Ken Tolle ¶ 13, attached as Exhibit 3 to beIN's Reply.

⁷ Reply ¶¶ 121-29.

⁸ The surreply raises only one genuinely factual objection—{ {BEGIN HIGHLY CONFIDENTIAL} }

{ {END HIGHLY

CONFIDENTIAL} }.

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As to Comcast's claim that beIN's reply raises new issues and the ink-heavy chart it has produced in support of that claim, Comcast evidently wants beIN to leave the claims Comcast made in its opposition unanswered. Every single beIN argument that Comcast includes in its chart is in direct rebuttal of Comcast's 210-page submission, including an 82-page Answer, and four expert statements, including one by an economist, but not including the voluminous exhibits. What Comcast denounces as the "heft" of beIN's reply was simply necessitated by Comcast's answer. In addition, as the Commission has made clear, the roles of the answer and reply are to determine, among other things, whether there are substantial and material questions of fact.⁹ beIN would be remiss if it left much of Comcast's Answer stand unanswered, as Comcast clearly prefers.

⁹ See *2011 Program Carriage Order*, 26 FCC Rcd. at 11506 ¶ 17 ("If the Media Bureau determines that the complainant has established a prima facie case, the Media Bureau will then review the answer (including any attachments) and reply to determine whether there are procedural defenses that might warrant dismissal of the case (e.g., arguments pertaining to the statute of limitations); whether there are any issues that the defendant MVPD concedes; whether there are substantial and material questions of fact as to whether the defendant MVPD has engaged in conduct that violates the program carriage rules; whether the case can be addressed by the Media Bureau on the merits based on the pleadings or whether further evidentiary proceedings are necessary; and whether the proceeding should be referred to an ALJ in light of the nature of the factual disputes.").

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For these reasons, Comcast's surreply must be rejected.

Respectfully submitted,


Antonio Briceño
Deputy Managing Director, US & Canada
beIN Sports, LLC
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(305) 777-1900

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

June 21, 2018

VERIFICATION OF ANTONIO BRICEÑO

I, Antonio Briceño, have read beIN's Motion to Strike Comcast's Surreply in this matter, and state that, to the best of my knowledge, information, and belief formed after reasonable inquiry, the Motion to Strike Comcast's Surreply is well grounded in fact and is warranted under existing law or a good faith argument for the extension, modification, or reversal of existing law. The Motion to Strike Comcast's Surreply is not interposed for any improper purpose.



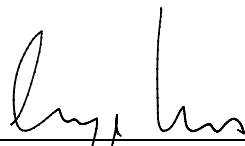
Antonio Briceño
Deputing Managing Director,
US & Canada
beIN Sports, LLC

Dated: June 20, 2018

CERTIFICATE OF SERVICE

I, Georgios Leris, hereby certify that on June 21, 2018, I caused a copy of the foregoing Highly Confidential Motion to Strike Comcast's Surreply, the Confidential Motion to Strike Comcast's Surreply, as well as a copy of the redacted version thereof electronically filed with the Federal Communications Commission on this day, to be served upon the parties listed below by overnight delivery.

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



Georgios Leris