

**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>)	

OPPOSITION TO MOTION TO STRIKE

For the record, Comcast opposes the Motion to Strike (“Motion”) filed by beIN Sports, LLC (“beIN”), which should be denied. As demonstrated in the Surreply, beIN’s Reply introduced a host of new allegations, arguments, and data in an obvious attempt to shore up a deficient Complaint, which fails to establish critical elements of beIN’s prima facie case. Basic fairness and the Commission’s processes allow a surreply under such circumstances.¹

beIN’s Motion criticizes the Commission’s acceptance of surreplies in prior proceedings, but such criticism is unfair and inaccurate. The Commission has properly allowed surreplies where a complainant has introduced new arguments and material on reply, which beIN has done here to an unprecedented degree in Comcast’s experience. beIN also wrongly claims that the Commission has allowed Comcast to “play[] the clock” in other (unrelated) programming

¹ See Surreply at 2 n.2 (citing relevant precedent). beIN attempts to excuse its outsized Reply due to the length and detail of Comcast’s Answer, *see* Motion to Strike at 4, but the Commission extended the time to answer program carriage complaints from 30 to 60 days precisely to afford the defendant the opportunity “to develop a full, case-specific response, with supporting evidence, to the evidence put forth by the complainant” and thus “allow for the development of a more robust factual record earlier in the complaint process.” *Revision 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, 26 FCC Rcd. 11494 ¶ 18 (2011).

adjudications, when the facts prove otherwise.² Of course, the procedural gamesmanship in *this* case is decidedly *beIN*'s modus operandi in filing a premature Complaint clearly designed to gain perceived negotiating leverage and predicated on a theory of *anticipatory* harm.

Nor does *beIN*'s Motion substantively address, much less undermine, the fact that its Reply revealed material distortions and discrepancies in the Complaint, including about *beIN*'s carriage by Comcast and other MVPDs, as highlighted in Comcast's Surreply. Tellingly, *beIN* offers no credible defense for its misleading carriage claims in the Complaint, given its actual MVPD carriage data in the Reply.³ These newly-disclosed data (*see* Reply, Ex.1, Attach. C) speak for themselves and disprove any claim that Comcast's current or proposed carriage of the *beIN* networks is out of step with the rest of the industry, or that Comcast's assessment of *beIN* and initial counterproposal in response to *beIN*'s aggressive renewal demands was based on affiliation rather than legitimate commercial considerations. And the Motion now concedes that Comcast's current carriage of the *beIN* networks is *irrelevant* to *beIN*'s case theory, which further undermines *beIN*'s many meritless assertions throughout its Complaint and Reply that the *beIN* networks' limited viewership and lack of broad carriage (or carriage at all) by other distributors are somehow the result of *Comcast's* carriage, rather than *beIN*'s own business decisions and limited, costly value proposition in a highly competitive video marketplace.⁴

² For example, *beIN*'s characterization of the Bureau's *Project Concord* Order on Review is inaccurate. *See* Motion to Strike at 2 (asserting that "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"). NBCUniversal – *not* Project Concord – was the party "largely vindicated" in that case; the Bureau's Order was timely issued 120 days after both parties appealed the expedited arbitration; and NBCUniversal acted reasonably and licensed substantial content to Project Concord throughout its tenure. *See Project Concord, Inc., Claimant v. NBCUniversal Media, LLC, Respondent*, Order on Review, 27 FCC Rcd. 15109 ¶¶ 1, 16 (Media Bureau 2012) (finding in NBCUniversal's favor on the merits of its contract defenses and no evidence "that NBCU acted in bad faith or engaged in dilatory or improper tactics"); *see generally id.* ¶¶ 2-15.

³ *See* Motion to Strike at 3 & n.6 (simply repeating the same cursory explanation from the Reply).

⁴ *Compare id.* ("beIN's complaint is not about the current treatment of *beIN* by Comcast."), *with* Complaint ¶¶ 9, 16, 48-50, 92-93, 105-106 (complaining about such treatment), *and* Reply ¶¶ 60-61, 67-70, 95-96 (same).

Respectfully submitted,



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June 27, 2018

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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 Opposition to Motion to Strike 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 27, 2018



Francis M. Buono

CERTIFICATE OF SERVICE

I, Melanie A. Medina, certify that on this 27th day of June 2018, I caused true and correct copies of the foregoing Opposition to Motion to Strike to be electronically filed with the Commission this day, and served by electronic mail on the following:

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June 27, 2018