

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

In the Matter of)	
)	
beIN Sports, LLC,)	MB Docket No. 18-384
Complainant,)	
v.)	File No. CSR-8972-P
COMCAST CABLE COMMUNICATIONS,)	
LLC, and COMCAST CORPORATION,)	
Defendants.)	

**REPLY OF SPORTS FANS COALITION TO COMCAST’S OPPOSITION TO
APPLICATION FOR REVIEW**

Pursuant to Section 1.115 of the Commission’s rules, 47 C.F.R § 1.115, Sports Fans Coalition, Inc. (“SFC”) submits this Reply to the Opposition of Comcast Cable Communications, LLC and Comcast Corporation (together, “Comcast”) to the Emergency Application of beIN Sports, LLC (“beIN”) for Review.¹ SFC is a grassroots advocacy organization that represents sports fans. We believe that fans should be the number one priority of sports leagues and the companies that distribute games on video platforms. Established in 2009, SFC has members across the country and is one of the largest fan-oriented consumer groups with a membership that transcends geographic, demographic, and socio-economic boundaries. We won a unanimous 5-0 bipartisan Commission vote in 2014 to end the so-called Sports Blackout Rule,² resulting in the National Football League’s voluntary suspension of its anti-fan local blackout policy, and continue to represent fans wherever sports and public policy intersect.

SFC is taking the unusual step of filing a reply in this proceeding because of the skyrocketing popularity of soccer among American sports fans, and the troubling signs that the

¹ Opposition to Application for Review of Comcast Cable Communications, LLC and Comcast Corporation, MB Docket No. 18-384 (Aug. 16, 2019) (“Comcast Opposition”).

² Sports Blackout Rules, *Report and Order*, 29 FCC Rcd. 12053 (2014).

anti-fan, anti-competition, restrictive and downright unfair practices of U.S. professional football, baseball, basketball, and hockey leagues, and their big media partners, are starting to infect soccer. We need fair competition on and off the field of play. Comcast's blatant attempt to shut down competition for the acquisition and distribution of international soccer leagues within the U.S. is bad for fans and all consumers. Moreover, while the Bureau should wear the stripes and be a neutral referee in this dispute, its behavior seems a little less than even-handed, to put it generously.

American soccer fans know that beIN is must-have programming because it distributes two of the top European soccer leagues—the Spanish La Liga and the French Ligue 1—including some of the world's most popular clubs such as Barcelona, Real Madrid, and Paris Saint Germain, and the highest tier of superstars like Messi, Neymar, and Mbappé. Comcast's discriminatory conduct has left millions of its subscribers unable to watch beIN on Comcast's cable systems. The Media Bureau's dismissal of beIN's December 13, 2018 complaint against Comcast³ harms sports fans and provides a roadmap for vertically integrated distributors to deny access to their platforms, squeezing out innovative companies like beIN and continuing to charge customers ever increasing fees for the sports they love. By ruling effectively that distributors may drop unaffiliated networks on their say-so alone, the Bureau leaves customers prey to the distributors' unchecked ability to justify their own actions. It endows any vertically integrated company, such as Comcast, with the dual role of referee and player in its own game. All sports fans know this is wrong.

³ See *beIN Sports, LLC v. Comcast Cable Communications, LLC, and Comcast Corporation*, *Memorandum Opinion and Order*, MB Docket No. 18-384, DA 19-623 (July 2, 2019).

The Bureau's decision caps this proceeding's troubling history. First, beIN filed a discrimination complaint in March 2018. The Bureau dismissed it without prejudice in August 2018, on the ground that beIN had not defined the rights it was offering Comcast with sufficient certainty. beIN then filed a second complaint to address the Bureau's concern. In that second complaint, it emerged that beIN was actually providing more certainty about its rights to distributors than Comcast's affiliate NBC Sports does. The Bureau was finally satisfied on this point. The Bureau agreed with beIN's *prima facie* showing that beIN is similarly situated with NBC Sports, that Comcast had discriminated against beIN and in favor of NBC Sports, and that Comcast had unreasonably restrained beIN's ability to compete. But, instead of setting the case for a hearing, the Bureau took it upon itself to deny the complaint, satisfying itself that Comcast had dropped beIN for business reasons.

To borrow a phrase from baseball, the Bureau's action has put beIN in an impossible pickle play. How can beIN challenge Comcast's claim that this was business as usual without discovery and a hearing? The Bureau said it itself: to prevail, beIN would have had to show "expert evidence to the effect that X number of subscribers would switch to Comcast if it carried [beIN] more broadly or that Y number would leave Comcast in the absence of broader carriage, or a combination of the two, such that Comcast would recoup the proposed increment in cost."⁴ All of that information is in Comcast's possession. The Bureau is saying to beIN: you will fail to make an adequate showing because I am preventing you from doing so. As a result, sports fans across the U.S. remain harmed by their inability to watch on Comcast's cable systems two of the top European soccer leagues.

⁴ *Id.* ¶ 28 n.113 (quoting *Comcast Cable Communications, LLC v. FCC*, 717 F.3d 982, 986 (D.C. Cir. 2013)).

Such conduct is unfortunately familiar to soccer fans. In soccer terminology, the Bureau hands Comcast—a player competing against beIN in a negotiations match—the power of the referee. Instead of Comcast’s foul of discrimination in favor of NBCSN resulting in a red or even a yellow card, Comcast is being rewarded with an insurmountable number of goals and can declare the game over.

This is a dangerous precedent because it establishes a foothold for additional discrimination and anticompetitive conduct by vertically integrated cable operators toward similarly situated independent programmers in the future, which now know they will be able to insulate their discriminatory conduct down the line. Comcast, having sidelined beIN, is now free to pillage its superstars—the valuable programming rights it holds—for itself. In the case of sports programming, even if an independent programmer like beIN can match dollar-for-dollar the bids of cable-owned sports programmers for the right to distribute soccer and other sports within the U.S., the cable-owned programmer will have an advantage in competing for those rights because it can offer better distribution, promotion, and other treatment of its own programming service compared to that of the independent. This poses a threat to the independent sports programmer because without acquisition of video rights from sports leagues around the world, the independent programmer’s key offering is diminished. This leads to decreased viewership, decreased advertising revenues, decreased distribution, and ultimately the demise of the independent programmer. Less competition from independent programmers like beIN results in consolidation of key programming rights with vertically integrated distributors like Comcast, which then raise prices and restrict distribution, all to the detriment of sports fans.

Finally, the Bureau should note that Comcast’s actions potentially harm competition across the entire sports ecosystem. The NFL apparently has taken note that its own drop in

viewership tends to correspond with an increase in viewership of soccer games, among other sports.⁵ Many of the investors in Major League Soccer teams also own NFL teams and see soccer as a hedge against falling NFL popularity.⁶ SFC, upon information and belief, posits that many of the same fans who leave football in disgust turn to soccer as an exciting new way to enjoy competitive sport. That matters here because Comcast alleges rather incredibly that beIN's programming lacks sufficient appeal.⁷ It also matters because anything that undermines competition in the distribution of soccer and restricts fans' ability to watch as many games as possible from as many sources as possible not only harms competition in the video programming and distribution markets, it undermines the growing competition between professional soccer and other professional sports in the U.S.

The Commission should expeditiously grant beIN's Emergency Application for Review, deny Comcast's opposition, and designate beIN's complaint for a hearing.

Respectfully Submitted,

/s/

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⁵ Filip Bondy, *Soccer Will Soon Be America's Third-Favorite Spectator Sport*, Forbes (Jan. 8, 2018), <https://www.forbes.com/sites/filipbondy/2018/01/08/soccer-will-soon-be-americas-third-favorite-spectator-sport/#1faebbe03c53>.

⁶ Darin Gantt, *MLS To Expand to 30 Teams, Panthers Owner Wants One*, ProFootballTalk (Apr. 19, 2019), <https://profootballtalk.nbcsports.com/2019/04/19/mls-to-expand-to-30-teams-panthers-owner-wants-one>.

⁷ Comcast Opposition at 15.

CERTIFICATE OF SERVICE

I, DeVan Hankerson, hereby certify that on August 26, 2019, I caused true and correct copies of the foregoing Reply of Sports Fans Coalition to Comcast's Opposition to Application for Review to be served by overnight mail on the following:

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