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December 21, 2011

Ex Parte via Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Basic Service Tier Encryption; Compatibility Between Cable
Systems and Consumer Electronics Equipment,
MB Dkt. No. 11-169, PP Dkt. No. 00-67

Dear Ms. Dortch:

On December 19, 2011, Avner Ronen of Boxee, Inc. ("Boxee") and I met via teleconference with Sherrese Smith, Senior Counsel and Legal Advisor for Media, Consumer and Enforcement Issues to Chairman Genachowski, and on December 21, 2011, we met via teleconference with William Lake, Chief of the Media Bureau, and Mary Beth Murphy, Steven Broeckert and Brendan Murray of the Media Bureau. On each call we discussed the above-referenced rulemaking and the points set forth below, namely, that encryption of basic tier cable would damage the market for innovative products such as those developed by Boxee, absent the concurrent adoption of AllVid or a similar successor to CableCARD.

Boxee is a technology start-up company offering a product that enables consumers to view both internet video content and live programming via a single set top box by connecting the box to a TV tuner that is in turn connected to an unencrypted basic cable feed (QAM) or an over-the-air antenna (ATSC).¹ We expect that many of our users will choose to connect the product to QAM, as reception via antennas may be inconsistent or unavailable in some areas. The market for our product will therefore be significantly reduced if cable providers are permitted to encrypt basic tier cable programming, and users can no longer connect the product directly to QAM. Neither the CableCARD standard nor the interim measures set

¹ The product referred to herein is Boxee Live TV, an add-on to the Boxee Box by D-Link. It is currently being tested by a limited group of users and will become publicly available in January 2012. See www.boxee.tv/live.

forth in the current NPRM² sufficiently address the loss in competitiveness that Boxee will face, for the reasons set forth below.

The CableCARD standard will not lessen the damage caused to Boxee's potential market because Boxee's product is not CableCARD compatible. As a start-up company with limited finances and a small engineering team, Boxee was not well positioned to deploy the additional resources required to develop to the complex CableCARD standard, and was also aware that the outlay of such resources would result in a consumer product with a higher retail price. Furthermore, Boxee was aware that consumers had been experiencing difficulties with CableCARD products currently in the market, including difficult installs that sometimes required multiple truck rolls to resolve and the need to rent the CableCARD from their MSO for additional cost.³ Overall, it did not make business sense to take on the additional risk and expense when an equally pleasing end-user experience could be provided with a QAM tuner product developed more quickly, marketed for a lower retail price, and offering a simpler user connection experience that did not require additional rental charges. Finally, as the Commission has recognized, there are multiple reasons why the CableCARD standard is not a proper long term solution for competitive device compatibility, including that it does not support IP transmission.⁴ Boxee could not afford to invest significant time and expense in developing a product that it knew was likely to require redesign in the near term to accommodate a new standard. Even with recent changes to the CableCARD rules intended to make them more consumer-friendly,⁵ many of the company-borne development obstacles cited above remain, and therefore make design of a CableCARD device an unattractive alternative for companies such as Boxee that will be damaged by the encryption of basic tier cable.

The interim relief set forth in the NPRM also fails to sufficiently address Boxee's likely harm, because, as currently proposed, the rule does not require that interim set-top boxes be compatible with Boxee's device. The NPRM proposes interim relief in the form of free set-top boxes or CableCARDs to users who meet certain low-income requirements or who were subscribers to unencrypted basic

² Basic Service Tier Encryption, MB Docket No. 11-169, *Notice of Proposed Rulemaking*, FCC 11-153 (rel. Oct. 14, 2011) ("NPRM").

³ Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment, 76 Fed. Reg. 40,263 (July 8, 2011) (to be codified at 47 C.F.R. pts. 15, 76) ("CableCARD 2011 Final Rule"), at ¶¶ 4-6.

⁴ In the matter of Video Device Competition, Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumer Electronics Equipment, MB Docket No. 10-91, CS Docket No. 97-80, PP Docket No. 00-67, *Notice of Inquiry* (rel. Apr. 21, 2010).

⁵ CableCARD 2011 Final Rule.

tier cable without use of a set-top box or CableCARD (either at all or on a second TV in household subscribing to digital cable on a primary TV) at the time the provider moved to encryption of the basic tier.⁶ For the reasons set forth above, an interim CableCARD would not be of use to a user of Boxee's product. Furthermore, a set-top box that can "descramble or decrypt the basic service tier signals"⁷ does not necessarily require that the output of that set-top box be a QAM stream, as it would need to be in order to be compatible with the Boxee device. If the output is just a viewable video stream, such as was the case with those used at the time of the transition to digital cable, then they are unlikely to be compatible with Boxee's product.

The interim relief as proposed in the NPRM is also inadequate because it provides for relief only to a group of consumers that is more narrowly defined than Boxee's target market. We believe that our target market includes a significant number of consumers who currently either (a) subscribe to premium cable on all of their household TVs (which may be only one household TV) or (b) who don't subscribe to cable at all. The former group of consumers includes those who feel that they are currently overpaying for their cable, but who do not have an alternative way to access both premium content and live events such as sports or annual awards shows; Boxee's product provides this alternative at a lower cost. The latter group of consumers includes those who do not realize that basic tier cable is available to them at low cost, or who have found it difficult to subscribe to basic tier cable without also incurring hidden fees or being upsold services they do not desire. Both of these groups would be well-served by Boxee's product, but since they fall outside the group eligible for interim relief as set forth in the NPRM, they would not be able to obtain a free set-top box (assuming for the moment that such a box would provide the QAM output necessary to be compatible with the Boxee device). These consumers will be less likely to purchase Boxee's product if they are required to also pay for a converter box from their cable operator (again, assuming such boxes are compatible) in order to access basic tier cable. Boxee's competitiveness in the market will be hurt unless these consumers are guaranteed free access to a device that will decrypt basic tier cable and provide a QAM output.

For the reasons described above, on both conference calls we requested that the Commission not act on the NPRM without simultaneously taking sufficient measures to protect the ability of Boxee, and other companies that have invested in developing innovative products dependent upon the availability of unencrypted basic tier cable,⁸ to remain competitive. On this point, we agree with those

⁶ NPRM App. A.

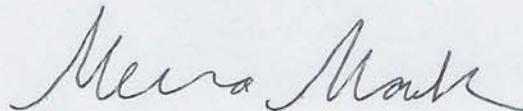
⁷ *Id.*

⁸ Boxee is not the only company that has developed products for use with an unencrypted QAM signal. *See, e.g.*, Consumer Electronics Association Comments, MB Docket No. 09-168,

commenters in this proceeding who have urged the Commission to proceed with an AllVid rulemaking before further reducing compatibility of competitive devices such as Boxee's.⁹ Until the Commission takes action towards adopting a standard enabling companies such as Boxee to offer consumers innovative products without encountering the many hurdles posed by the CableCARD standard, permitting encryption of basic tier cable will greatly limit the compatibility of Boxee's device and stifle its ability to compete in the consumer marketplace.

Pursuant to the Commission's rules, this notice is being filed in the above-referenced dockets for inclusion in the public record.

Respectfully Submitted,



Melissa Marks
General Counsel

cc: Sherrese Smith ✓
William Lake
Mary Beth Murphy
Steven Broeckaert
Brendan Murray

at 2-3 (filed Oct. 22, 2009); Elgato Comments, MB Docket No. 09-168, at 2 (filed Oct. 15, 2009).

⁹ See, e.g., AllVid Tech Company Alliance Reply Comments, MB Docket No. 09-169, at 5-8 (filed Dec. 12, 2011); Consumer Electronics Association Comments, MB Docket No. 09-169, at 3 (filed Nov. 28, 2011).