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February 7, 2012

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 February 3, 2012, representatives of Boxee, Inc. ("Boxee") spoke with members of the Media Bureau staff via teleconference regarding the above-referenced rulemaking. In attendance were: Avner Ronen, Roe Vulkan, Melissa Marks and Nicholas Miller of Boxee, and Bill Lake, Allison Neplokh and Brendan Murray of the Media Bureau.

In Boxee's prior conversations with the Commission, Boxee explained that encryption of basic tier cable would harm consumers and limit device competition in ways not adequately addressed in the Notice of Proposed Rulemaking for the above-referenced proceeding (the "NPRM").¹ Ms. Neplokh noted these concerns and, referring to the requirement that by December 2012, certain cable-operator-provided set-top boxes shall comply with an open industry standard that provides for audiovisual communications including service discovery, video transport, and remote control command pass-through standards for home networking,² inquired whether such concerns would be resolved if such open industry standard was based on DLNA, perhaps in connection with a DTCP encryption standard.

¹ See Letter from Melissa Marks, General Counsel, Boxee, to Marlene H. Dortch, FCC, MB Docket No. 11-169, PP Docket No. 00-67 (Dec. 21, 2011) (the "December Letter"); Letter from Melissa Marks, General Counsel, Boxee, to Marlene H. Dortch, FCC, MB Docket No. 11-169, PP Docket No. 00-67 (February 2, 2011) (the "February Letter") and attachment thereto (the "Presentation" and, together with the December Letter and the February Letter, the "Boxee Letters"). See also Letter from John Bergmayer, Senior Staff Attorney, Public Knowledge, to Marlene H. Dortch, FCC, MB Docket No. 11-169, PP Docket No. 00-67 (Feb. 5, 2012).

² See 47 C.F.R. 76.640(b)(4)(iii).

Boxee responded that such a standardized DLNA-based interface could potentially ameliorate some of the harms to device compatibility and competition caused by basic tier encryption,³ but that it would be necessary to review the details of any such proposed standard in order to determine if those goals would be achieved in practice. Most notably, in order to enable interoperability on the same scale as currently provided by Clear QAM, the implementation of such a standard would need to ensure that non-MVPD devices are able to access the broadcast channels without any need to obtain consent, certification or other affirmative acts from individual MVPDs, CableLabs, or a similar cable entity.

Furthermore, Boxee noted that many of the points raised in the Boxee Letters with respect to basic tier encryption would not necessarily be addressed by a standardized IP interface on set top boxes. For example, even if set top boxes complied with a DLNA-based standard interface, consumers would still be forced to bear the costs of products they had purchased to connect via Clear QAM that would be rendered inoperable, if such products could support the IP interface. Moreover, consumers would still be forced to rent additional set top boxes from their cable provider, either to use with TVs that had previously been connected directly to Clear QAM or to provide the new IP interface necessary for a non-MVPD device to connect to the basic tier programming that would otherwise have been accessible via Clear QAM. In contrast, direct delivery over IP of the broadcast channels would have the same compatibility and competition benefits, but would also spare consumers the significant added hardware rental costs.

In summary, Boxee supports the Commission's consideration of a DLNA-based open industry standard as one approach to increasing device compatibility with MVPD content, but cautions that it is likely not enough to make consumers whole with respect to the loss of Clear QAM. Thus, Boxee hopes to have opportunity to provide comment on any specific proposal of an open industry standard in an on-record proceeding. Such a proceeding is necessary in order to receive comment on whether the proposed standard will in practice achieve interoperability: Will it permit non-MVPD devices to access the basic tier over IP as they currently can via Clear QAM, without needing a cable entity's consent? Will it prevent MVPDs from implementing it in ways that limit compatibility of non-MVPD devices that comply with the standard?

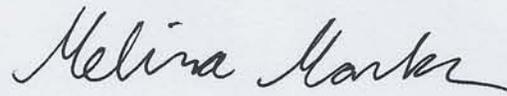
Finally, Boxee emphasizes that the question of whether such an open standard will be successful in practice is distinct, though related, from the question of whether such a standard can remedy the harms caused by basic tier encryption. With respect to the harm of imposing additional hardware rental costs on consumers, the answer to the latter question is no. Other potential solutions, such

³ See, e.g., Boxee Presentation at 8, 11, 26.

as direct delivery via IP of broadcast channel content, would better address that issue. Thus, a proceeding about an open industry standard should move forward alongside, not instead of, a full review of the harms to consumers and competition caused by loss of Clear QAM, and until such a review is complete, the Commission should not proceed with a final rule permitting encryption of basic tier cable.

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

Respectfully Submitted,

A handwritten signature in cursive script that reads "Melissa Marks".

Melissa Marks
General Counsel

cc: Bill Lake
Allison Neplokh
Brendan Murray ✓