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VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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

Dear Ms. Dortch:

NCTA writes in response to a letter filed by Boxee in this docket on February 3, 2012.¹ Boxee claims that modifying the Commission's rules to permit basic tier encryption with certain conditions would harm QAM TV viewers without providing any benefits to consumers.² As set forth below, Boxee's claims are simply wrong.

- Contrary to Boxee's claims, the proposed rule change will result in substantial consumer benefits for tens of millions of cable customers. Encryption will free cable customers from having to wait at home for a service visit when connecting or disconnecting service. It also will result in improved service reliability for consumers by reducing theft of service, which RCN reports has been a particular problem for standalone broadband customers with QAM-capable devices. Furthermore, in light of these benefits, cable operators have strong incentives to migrate rapidly to all-digital networks, which translates into faster Internet and other services customers value.
- Boxee's proposal is that the Commission delay or deny these consumer benefits to protect Boxee's particular design for its product, which Boxee has deliberately chosen to build without a CableCARD slot (and without standard interfaces for connecting to a set-top box). That result would manifestly

¹ See Letter from Melissa Marks, General Counsel, Boxee, to Marlene H. Dortch, Secretary, FCC, MB Dkt. No. 11-169, PP Dkt. No. 00-67 (Feb. 2, 2012) ("Boxee Letter" & "Boxee Presentation").

² See Boxee Presentation at Slide 13 (stating that Boxee doesn't see any consumer benefits to basic tier encryption).

disserve the public interest, and the Commission should reject it. The whole point behind CableCARD is that consumer electronics manufacturers can build to a common technology that is supported across cable systems. Requiring operators to support one-off fixes for individual manufacturers is contrary to the Commission's basic objective in this area.

- Boxee's claims that 40% of its customers will be harmed by basic tier encryption are not credible. These claims cannot be squared with Boxee's marketing of Live TV as a cord-cutting device that can access broadcast signals via an off-air antenna. Moreover, given the Commission's successful oversight of the digital television transition, the notion that large swaths of the country are unable to receive digital broadcast signals is not tenable.
- Even assuming that a significant number of Boxee customers use the Live TV product to access clear QAM channels, that would still constitute a small fraction of the overall basic tier customer base. Record evidence makes clear that the overwhelming majority of basic tier customers in all-digital systems use set-top boxes or retail CableCARD devices to access cable service. And the small number of customers who do rely on QAM devices will be eligible to receive free equipment under the transitional measures.³

The Commission should reject Boxee's dilatory tactics and move forward as quickly as possible to permit encryption of the basic service tier in all-digital cable systems.

I. Contrary To Boxee's Claims, Basic Tier Encryption Will Have Substantial Consumer Benefits.

Boxee makes the astounding claim that basic tier encryption will have no consumer benefits, ignoring the substantial record evidence to the contrary – including the fact that encryption will free cable customers from having to wait at home for a service visit when connecting or disconnecting service. Without encryption, basic service tier channels must be transmitted “in-the-clear” (i.e., on an unencrypted basis) over the cable plant. To prevent unauthorized reception of these channels, operators must control the physical access to the cable plant. For new subscribers, this means that a cable operator typically must send a technician to the subscriber's home to physically connect cable service. Likewise, when a subscriber cancels service, an operator typically must send a technician to disconnect service. Such service calls are

³ See *In re Basic Service Tier Encryption, Compatibility Between Cable Systems and Consumer Electronics Equipment*, Notice of Proposed Rulemaking, 26 FCC Rcd. 14870 (2011) (“Notice”).

an inconvenience to customers, who must schedule an appointment and wait for a technician, and sometimes miss work.⁴

In contrast, by encrypting the basic tier (along with other tiers of service), an operator can keep the connection to the home “hot” at all times. For customers initiating service, an operator can ship equipment to them or give customers the option of picking up equipment at a customer service center. Customers would then simply hook up the equipment in their homes at their own convenience and start receiving the service, which would have been enabled remotely. Similarly, when disconnecting service, instead of having to schedule a traditional service appointment for a technician to visit the customer’s home to disconnect the service, encryption of the basic service tier would allow the operator to remotely discontinue access to its services. Importantly, once the basic tier is encrypted, the opportunity for truckless installation and/or disconnection becomes available to *all* customers, not just basic tier customers.

This “hot drop” model would eliminate the need for many service calls, to the benefit of customers. Cablevision, which has encrypted the basic tier in its New York City system pursuant to a Commission waiver, reports that, since July 2011, almost all disconnects have been handled remotely, and the percentage of households eligible for truckless reconnects continues to increase.⁵ Similarly, based on its experience with providing DTAs to customers, Comcast estimates that, with encryption, large numbers of customers will elect to have service activated or deactivated remotely.⁶ In this regard, Comcast reports that over 80% of customers have chosen to self-install their DTAs, without any significant volume of complaints.⁷ This translates into over 20 million DTAs being self-installed to date across Comcast’s footprint. Comcast further reports that customers elected the self-install option when also given the choice of a technician visit, and that the overwhelming majority of self-installations were successful.

Boxee ignores other consumer benefits that will flow from basic tier encryption. Encryption will improve service reliability for consumers by reducing theft of service.⁸ Piracy is often accomplished via unauthorized tap connections and the like, which can degrade connections and reduce service quality, which ultimately adds to consumer costs. Moreover,

⁴ See HTTP Comments at 1; *see also* Josh Sanburn, *We Lost \$38 Billion Last Year Just Waiting Around for the Cable Guy*, Time Moneyland (Nov. 4, 2011), available at <http://moneyland.time.com/2011/11/04/we-lost-38-billion-last-year-just-waiting-around-for-the-cable-guy/>.

⁵ See Letter from Christopher J. Harvie, Counsel to Cablevision, to Marlene H. Dortch, Secretary, FCC, MB Dkt. No. 11-169, PP Dkt. No. 00-67 (Jan. 24, 2012).

⁶ See Letter from Jonathan Friedman, Counsel to Comcast, to Marlene H. Dortch, Secretary, FCC, MB Dkt. No. 11-169; PP Dkt. No. 00-67 (Jan. 20, 2012) (explaining that basic tier encryption will reduce truck rolls to disconnect service by an estimated 90 percent and reduce truck rolls to reconnect service by an estimated 45 percent).

⁷ See Comcast Comments at 5.

⁸ See, e.g., Letter from Michael Nilsson, Counsel to RCN, to Marlene H. Dortch, Secretary, FCC, MB Dkt. No. 11-169, PP Dkt. No. 00-67 (Jan. 24, 2012) (“RCN Letter”); BendBroadband Comments at 2; NCTA Comments at 7; Comcast Comments at 8-9; MPAA Reply Comments at 1-3.

RCN has reported a growing problem of basic tier service theft among customers who take RCN's standalone broadband service.⁹ RCN noted that, because broadband and video are delivered over the same cable line, "[t]hat single cable provides Internet-only customers not only with the Internet service to which they have subscribed, but also with the opportunity to use a QAM tuner to illicitly watch unencrypted basic-tier programming."¹⁰

If all channels are encrypted, there is less ability for individuals to manipulate equipment to obtain unauthorized access to service and service reliability improves.¹¹ Likewise, encryption eliminates the ability of broadband-only customers from accessing basic tier channels illicitly. In short, encryption allows an operator to improve the integrity and security of its network and provide a better quality signal to *all* of its subscribers. Furthermore, as Cablevision explained, "[b]y controlling access to video programming content and preventing signal theft, encryption further helps to ensure that all recipients of video programming pay their fair share of the costs associated with such programming," which in turn "helps minimize rates for the subscriber base."¹²

In light of these pro-consumer benefits, cable operators have strong incentives to migrate rapidly to all-digital networks.¹³ Analog bandwidth that has been reclaimed through digitization can be used to increase broadband speeds and provide other services that customers value and demand. Comcast reports that all-digital systems typically offer DOCSIS 3.0 high-speed Internet, as well as 120 channels of HD programming, expanded Spanish-language and other ethnic programming, and substantially more VOD choices. All-digital networks also provide a platform for the eventual deployment of IP services.¹⁴ Operators can leverage IP to provide new applications and other innovative services to customers on a wide range of devices, use bandwidth more efficiently, lower costs, and accelerate innovation cycles.¹⁵

⁹ See RCN Comments at 3-4.

¹⁰ *Id.* at 3; see also RCN Letter at 2 (noting that traps are no substitute for encryption in eliminating service theft).

¹¹ See, e.g., Comcast Comments at 11; Time Warner Cable Comments at 5. The Media Bureau recognized these very benefits in its *OneLink Order*, where it noted that "with less compromise to the physical integrity of its system, OneLink will be able to offer a better quality signal to all authorized subscribers." *In re San Juan Cable LLC d/b/a OneLink Communications Petition for Waiver of Section 76.630a) Basic Tier Scrambling*, Memorandum Opinion and Order, 26 FCC Rcd. 321, ¶ 9 (MB 2011).

¹² Cablevision Comments at 9-10.

¹³ See Comcast Comments at 12-13; NCTA Comments at 8-9; Time Warner Cable Comments at 5.

¹⁴ See Comcast Comments at 12.

¹⁵ IP-delivered cable services are furthering the Commission's device compatibility goals by facilitating the delivery of the service to a growing number of IP-enabled consumer electronics devices without the need for a set-top box. See, e.g., Letter from Kathryn A. Zachem, Senior Vice President, Comcast Corporation, *et al.* to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-91, at 4 (Oct. 17, 2011); Letter from Kathryn A. Zachem, Senior Vice President, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-91 (Oct. 5, 2011).

II. CableCARD Provides A Simple Solution To Boxee's Compatibility Concerns.

As NCTA has explained previously, in contrast to other QAM devices, the Boxee product is incompatible with cable set-top boxes and DTAs.¹⁶ Boxee's response to this situation, which is entirely of its own making, is to urge the Commission to block basic tier encryption until and unless a special fix is developed for Boxee's Live TV product.¹⁷ Such an approach would be patently unreasonable. It would place the interests of a single company ahead of the interests of tens of millions of cable customers. Moreover, pursuing a special fix for Boxee is completely unnecessary. As Boxee well knows, its customers would be able to access encrypted cable channels if it included a CableCARD slot in its device. The whole point behind CableCARD is that consumer electronics manufacturers can build to a common technology that is supported across cable systems. Requiring operators to support one-off fixes for individual manufacturers like Boxee is completely contrary to the Commission's basic objective in this area.

Boxee's objections to CableCARD are without merit. It says that the technology is "not mature."¹⁸ To the contrary, the Commission has established a detailed regulatory regime for CableCARD devices over the last decade,¹⁹ and cable operators have expended over a billion dollars supporting CableCARD, both in retail devices and in their own leased devices. The simple fact is that CableCARD technology works and can be supported in a wide range of devices, including devices like TiVo's DVRs and CableCARD-equipped PCs that can access both cable services and over-the-top video.

Boxee further states that CableCARD causes consumer frustration and results in multiple truck rolls.²⁰ Boxee appears to ignore the fact that the Commission recently completed a

¹⁶ See Letter from Neal M. Goldberg, NCTA, to Marlene H. Dortch, Secretary, FCC, MB Dkt. No. 11-169, PP Dkt. No. 00-67, at 2 (Dec. 29, 2011) ("NCTA Letter"). The specific compatibility issue with the Boxee product does not apply generally to other QAM devices. Typically, QAM-capable TVs and PCs will include standard RF and/or HDMI interfaces, which are compatible with the outputs on cable set-top boxes and DTAs.

Consequently, when cable operators encrypt the basic tier, customers using clear QAM devices can access encrypted basic tier channels by connecting a set-top box or DTA. The situation with the Boxee product is fundamentally different because the product does *not* include these standard interfaces. As a result, a Boxee customer cannot connect the Boxee device to a cable set-top box or DTA. The bottom line is that the equipment transition measures proposed in the *Notice* will work for the vast majority of QAM devices, but not for Boxee.

¹⁷ See Boxee Presentation at Slide 14. Boxee's embrace of AllVid as a possible solution is a red herring. See NCTA Letter at 3. AllVid does not have any relevance to Boxee's situation. As noted, Boxee made the business judgment not to invest in CableCARD. If Boxee has no interest in spending the money to support CableCARD, it seems improbable that it would have any interest in any proposed successor technology to CableCARD, like AllVid. Moreover, Boxee's suggestion (at Slide 15) that AllVid would be cheaper than CableCARD is purely speculative.

¹⁸ See Boxee Presentation at Slide 14.

¹⁹ See 47 C.F.R. § 15.123 (requirements for labeling of digital cable ready products); 47 C.F.R. § 76.640 (requirements relating to cable system support for CableCARD); *id.* §§ 76.1200 *et. seq.* (navigation device requirements).

²⁰ See Boxee Presentation at Slide 14.

rulemaking addressing these very concerns. Consumers have the ability to self-install CableCARDS, and where a customer requests a professional installation, the installer must come to the service appointment with the number of CableCARDS requested by the customer; the Commission's new rules also make CableCARD pricing transparent to customers.²¹ Boxee's criticisms of CableCARD do not reflect marketplace realities today. In fact, Hauppauge Computer Works noted in this docket that its CableCARD-equipped PC device "has been extremely popular" with Hauppauge customers, and Hauppauge is "happy to report that the cable TV operators in the United States are doing a good job in the activation of CableCARDS."²²

Chairman Genachowski stated his hope and expectation that the Commission's CableCARD policies will spur further innovation in the device marketplace.²³ Consistent with these goals, Boxee can simply modify its Live TV product to support CableCARD. In fact, the *Notice* anticipated this very issue and noted that, in situations where peripheral devices may not be compatible with set-top boxes, "CableCARD-compatible computer peripherals may offer a solution to this problem."²⁴ Manufacturers like Hauppauge have developed CableCARD solutions, recognizing that the clear trend in the marketplace is toward encryption of video services.²⁵ DBS and telco IPTV providers have always encrypted all of their programming; online video distributors like Netflix and Hulu also encrypt their video; and cable operators now typically encrypt all of the channels above the basic service tier.²⁶ Integrating CableCARD into retail devices accommodates this trend. In contrast, Boxee's proposal would hold back

²¹ See *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Third Report and Order and Order on Reconsideration, 25 FCC Rcd. 14657 (2010); 47 C.F.R. §76.1205 (requirements relating to CableCARD support).

²² Hauppauge Reply Comments at 2. Boxee also is incorrect in asserting that CableCARD will result in significant rental fees for customers. See Boxee Presentation at Slide 14. As NCTA reported in its recent CableCARD report, monthly CableCARD fees typically range from \$0 to \$2.37 per month. See Letter from Neal M. Goldberg, NCTA, to Marlene H. Dortch, Secretary, FCC, CS Dkt. No. 97-80 (Jan. 30, 2012).

²³ See Statement of Chairman Julius Genachowski, *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, CS Dkt. No. 97-80 (Oct. 14, 2010) ("We hope and expect that these steps will lead to greater innovation and consumer choice and lower prices in consumer equipment.").

²⁴ *Notice* ¶ 11 n.56.

²⁵ Hauppauge has argued in this docket that basic tier encryption will be one transition too many for consumers. See, e.g., Hauppauge Reply Comments at 6-7 (Dec. 22, 2011); Letter from Ken Plotkin, Hauppauge Computer Works, to Marlene H. Dortch, Secretary, FCC, MB Dkt. No. 11-169, PP Dkt. No. 00-67 (Jan. 26, 2012). As NCTA and Comcast have previously explained, consumers have adjusted rapidly to the broadcast digital transition and to the digitization of analog cable. See NCTA Letter at 3 n.9; Letter from Jonathan Friedman, Counsel to Comcast, to Marlene H. Dortch, Secretary FCC, MB Dkt. No. 11-169, PP Dkt. No. 00-67 (Feb. 2, 2012). In cable systems that have completed the transition to all-digital service, the overwhelming majority of customers already have equipment to receive encrypted channels, so the encryption of the basic service tier will largely be a non-event. And for the small number of customers using QAM devices, cable operators will provide equipment under the proposed equipment transition conditions.

²⁶ See NCTA Comments at 4-5; see also Comcast Comments at 18 n.46; Cablevision Comments at 10-11. Boxee products enable access to Netflix and Vudu, among other online video distributors. See <http://www.boxee.tv/>.

innovation in cable networks, to the detriment of millions of cable customers, while preserving indefinitely a technology – clear QAM – that is rapidly becoming obsolete. In light of these clear marketplace trends, it is puzzling that Boxee would suggest that clear QAM is the “future of technological innovation.”²⁷

Furthermore, a common misperception running through the Boxee Letter is that clear QAM can somehow be viewed as an alternative to CableCARD as a cable compatible solution for retail. The Commission has unequivocally stated that only CableCARD-equipped devices can be marketed as digital cable-ready. In contrast, clear QAM devices that do not include a CableCARD – like the Boxee Live TV product -- are not, and cannot be marketed as, digital cable ready devices, and are not subject to the Commission’s requirements.²⁸

III. Contrary To Boxee’s Claims, The Number Of Basic Tier Customers Impacted By Encryption Will Be Small, And Any Harms To QAM TV Viewers Will Be Addressed By The Equipment Conditions.

Boxee claims in its letter that over-the-air reception of broadcast is not an adequate alternative to access broadcast channels because as many as 40% of clear QAM customers are unable to receive such signals with an off-air antenna.²⁹ We address these claims here, but note as an initial matter that the argument is disingenuous on Boxee’s part. The interests of QAM device customers are a legitimate concern that has nothing to do with the Boxee product, and those interests are being addressed by the specific equipment proposals before the Commission. Those interests have nothing to do with the professed need for a requirement that would specifically support Boxee since the overwhelming majority of QAM device customers are not also Boxee customers. Further, Boxee’s product is billed as a cable replacement product, so in the first instance, it clearly intended for its customers to use an off-air antenna to receive broadcast signals, and if it believed that this would be a major challenge for many customers, the failure to include CableCARD compatibility is puzzling. Leaving all that aside, Boxee’s assertions are vastly overstated.

Boxee appears to base its assertion that 40% of clear QAM customers are unable to receive off-air signals on the percentage of customers it claims have connected Boxee Live TV via clear QAM, rather than by antenna.³⁰ These claims are simply not credible. Boxee just started selling its Boxee Live TV product this year, so it is doubtful that it has very many Boxee Live TV customers – or, in any event, enough customers to draw any conclusions about how many are likely to use clear QAM rather than an off-air antenna. No doubt that is the reason that

²⁷ See Boxee Presentation at Slide 15.

²⁸ See 47 C.F.R. § 15.123(b) (prohibiting the labeling of devices as digital cable ready unless the device supports CableCARD and satisfies other technical requirements).

²⁹ See Boxee Letter at 2.

³⁰ See *id.* at 2 n.1.

Boxee only cites to a percentage of customers allegedly affected rather than giving any indication of how many customers that percentage represents.

In defending this 40% figure, Boxee asserts that “[m]any parts of the country still have little or no HD antenna reception;” that it “can’t count on [its] users being able to use Boxee Live TV with an OTA signal;” and that “Clear QAM users will have to rely on Antennas that in many cases are not a viable option due to reception issues.”³¹ Boxee’s statements may suggest that it is providing its customers with a low-quality antenna, but hardly indicate that over-the-air signals cannot be received using the appropriate reception equipment. The relevant benchmark for determining whether a household is capable of receiving off-air signals is whether such signals can be received with an indoor *or* outdoor antenna.³² Boxee made no showing that 40% of its customers were unable to receive over-the-air signals even after trying outdoor antennas or trouble-shooting for better indoor reception.³³ Given the Commission’s successful oversight of the digital television transition, Boxee’s claim that large swaths of the country are unable to receive digital broadcast signals lacks credibility. Boxee customers can and should be expected to take similar steps that any over-the-air viewers take to receive viewable DTV signals.

Further, Boxee’s claims that a significant percentage of Live TV customers will not be able to access broadcast signals using an antenna cannot be squared with its marketing of Live TV as a cord-cutting device. NCTA has attached to this letter an appendix that includes numerous statements on Boxee’s website and elsewhere touting Live TV as way for consumers to access broadcast signals without a cable subscription.³⁴ If Boxee genuinely believed that almost half of its customers couldn’t get broadcast signals with an antenna, it seems unlikely it would be urging its Live TV customers to “cut the cord,” cancel cable service and use an off-air antenna.

Even assuming that a significant percentage of Boxee customers use the Boxee device to access clear QAM channels, that would still constitute a small percentage of the overall basic tier customer base. Tellingly, Boxee does not provide any actual data on how many customers it has in the U.S. (rather than worldwide), or how many customers access broadcast signals via clear QAM. Presumably, those numbers are small, and most Boxee customers likely access clear QAM channels by plugging the coax cable directly into their QAM TVs, not the Live TV

³¹ See Boxee Presentation at Slides 9, 11.

³² For example, in its implementation of the distant signal rules for DBS, the Commission assumes a household has an outdoor antenna in assessing whether the household is “unserved” for purposes of importing distant signals on DBS. See *In re Establishment of a Model for Predicting Digital Broadcast Television Field Strength Received at Individual Locations*, Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd. 16426, ¶ 30 (2010) (“[T]he Commission has always assumed that households will use the type of antenna that they need to achieve service; if an indoor antenna is insufficient for a particular household, it generally will rely on a rooftop antenna . . . Thus, we disagree that households that are not able to receive service with an indoor antenna should be considered unserved simply because they do not use an outdoor antenna.”).

³³ See DTV.gov, *Fix Reception Problems*, <http://www.dtv.gov/fixreception.html>.

³⁴ See Appendix.

product. Record evidence underscores that a very small number of cable customers in all-digital cable systems access broadcast signals using clear QAM devices. Rather, the overwhelming majority of basic tier customers in those systems use set-top boxes or retail CableCARD devices. Cablevision has stated that in its New York City system, which encrypted the basic service tier pursuant to Commission waiver, “less than 0.1 percent of subscribers requested the free set-top box or CableCARD to decode the newly encrypted signal, because the overwhelming majority of subscribers already had such devices in their homes.”³⁵ Other operators anticipate that they will experience a similar response in systems that go all-digital.³⁶

In short, contrary to Boxee’s claims, very few cable customers will be negatively affected by basic tier encryption, and those that do rely on QAM devices to access basic tier channels will be eligible for free equipment under the FCC’s conditions, thereby mitigating any potential consumer harm.³⁷

* * * * *

In launching this rulemaking, the Commission has observed that the basic tier encryption rule is largely a relic of a bygone analog era.³⁸ Repeal of the rule for all-digital cable systems is precisely the type of action that President Obama called for in his Executive Orders regarding regulatory burdens³⁹ and that Chairman Genachowski has embraced,⁴⁰ and would advance this Commission’s ongoing efforts to eliminate outmoded regulations to accommodate technological

³⁵ Cablevision Comments at 13-14; *see also* Comcast Comments at 17 (noting the limited number of requests for equipment from QAM TV customers in Comcast’s Portland, Oregon system).

³⁶ *See, e.g.*, Comcast Comments at 14-15; Time Warner Cable Comments at 6; RCN Comments at 5-6.

³⁷ Boxee is incorrect in asserting that “[c]onsumers who rely on QAM in their Bedrooms, Dens, etc. will see their Cable bills increase by \$5-15 per month as they will be required to rent additional set-top boxes.” Boxee Presentation at Slide 10. In fact, such customers who are using QAM equipment when an operator encrypts the basic tier will be eligible to receive set-top boxes and CableCARDS at no additional charge during a transitional period – a requirement proposed by the Commission and demanded by a number of consumer groups. Moreover, Boxee’s statement that leased equipment will add significantly to energy consumption in the home is unfounded. *See id.* at Slide 18. As NCTA noted previously, the transitional equipment that cable operators typically provide, such as DTAs, use very little power. *See* NCTA Reply Comments at 12-13. The cable industry has also embarked on a wide-ranging energy efficiency initiative. *See* Jonathan Make, *Major Cable Operators Target Energy Star 3.0 Devices*, Comm. Daily (Nov. 21, 2011).

³⁸ *See Notice* ¶¶ 2-4.

³⁹ *See* Exec. Order No. 13563 – Improving Regulation and Regulatory Review, 76 Fed. Reg. 3821 (Jan. 21, 2011); Exec. Order No. 13579 – Regulation and Independent Regulatory Agencies, 76 Fed. Reg. 41,587 (July 14, 2011). *See also* Press Release, White House, *Address by the President to a Joint Session of Congress* (Sept. 8, 2011) (speech by President Barack Obama) (“We should have no more regulation than the health, safety and security of the American people require. Every rule should meet that common-sense test.”), *available at* www.whitehouse.gov/the-press-office/2011/09/08/address-president-joint-session-congress.

⁴⁰ *See* News Release, FCC, *Statement from FCC Chairman Julius Genachowski on the Executive Order on Regulatory Reform and Independent Agencies* (July 11, 2011), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-308340A1.pdf.

changes.⁴¹ Moreover, the Commission has proposed a balanced approach in amending the rule, recognizing the immediate and substantial benefits that will result from the rule change for all cable customers while proposing reasonable transitional measures for the limited number of QAM TV customers who will need equipment.

A broad range of commenters in this docket expressed general support for the Commission's approach.⁴² Boxee is essentially asking the Commission to delay the consumer benefits associated with the rule change for millions of cable customers while a special fix is developed just for Boxee's new product. Such an approach would disserve consumer interests, slow cable's transition to all-digital and IP services, and continue to place cable at a competitive disadvantage relative to other video providers. In light of the foregoing, the Commission should reject the proposals in Boxee's letter and proceed without undue delay to eliminate the encryption ban for all-digital cable systems.

Sincerely

/s/ Neal M. Goldberg

Neal M. Goldberg

cc: Sherrese Smith
Jessica Almond
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⁴¹ FCC, *Preliminary Plan for Retrospective Analysis of Existing Rules*, at 7 (Nov. 7, 2011), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-310874A1.pdf.

⁴² See, e.g., Public Knowledge/Media Access Project Comments at 14; Minority Media and Telecommunications Council Comments at 3; Hispanic Technology & Telecommunications Partnership Comments at 1; City of Miami Reply Comments at 1; City of Hialeah Reply Comments at 1; Time Warner Cable Comments at 3-6; Comcast Comments at 4-8; BendBroadband Comments at 1-3; American Cable Association Comments at 2-5; MPAA Reply Comments at 2-3.

APPENDIX

Marketing and Promotional Statements About Boxee Live TV Enabling Cord-Cutting

Boxee Website:

- “Still Spending Too Much on Cable TV?: A lot of TV shows and movies are online, but some things are still best enjoyed in the moment. Boxee Live TV delivers live sports, local news, special events, and shows from your local broadcast stations (like ABC, CBS, FOX, NBC) via an HD antenna – it means more stuff to watch on a Boxee device *with no monthly fees . . . so why spend so much on cable TV?*”¹
- “Broadcast + Internet = *Easy Alternative to Cable*: Boxee intelligently blends live broadcast TV with shows and movies from the Internet to give you one interface for everything you want to watch. . . . *Boxee provides an easy alternative to high-priced monthly cable bills.*”²
- “Top Shows + HD Quality With No Monthly Fees: 89 of the top 100 shows are available on broadcast TV. *With a simple antenna and no monthly fee, you’ll get HD picture quality that’s even better than cable. . . .*”³
- [The Boxee website includes a calculator to find out how much you could save by cutting the cord.]⁴

Boxee Blog:

- “To celebrate the launch of Live TV; Boxee is throwing down the gauntlet, challenging YOU to have a better Superbowl party than us. All you have to do it watch the Big Game on your Boxee Box with Live TV, or stream it over the web (*we love cordcutters*) to a big screen television for your chance to win.”⁵
- “The web has given us freedom. Cable TV has not. The web has made it easy and affordable to find what you’re looking for and enjoy it wherever you’d like. Meanwhile cable’s pushing the same boring interface and charging you even more for it (\$75/month on average) while you’re really only watching 14% of the channels you’re paying for. There’s a percentage of

¹ See Boxee, Boxee Live TV, <http://www.boxee.tv/live> (last visited Feb. 3, 2012) (emphasis added).

² See *id.* (emphasis added).

³ See *id.* (emphasis added).

⁴ See *id.*

⁵ Will Robinson, Boxee Team Blog, *Throw a Party, Watch the Superbowl on Boxee, and WIN!!*, Jan. 31, 2012, at <http://blog.boxee.tv/2012/01/31/throw-a-party-watch-the-superbowl-on-boxee-and-win/> (emphasis added).

the population that's realized this and decided to cut the cord and get rid of cable. . . . Boxee Live TV is a perfect alternative to cable for them.”⁶

- “The problem with canceling your cable subscription and relying just on the Internet has been the lack of live sports, local news, special events and live TV shows But these things are all available on broadcast TV channels like ABC, CBS, Fox, and NBC for free, over the air in HD. With Boxee Live TV you can watch them all on your Boxee Box[.]”⁷
- “The Superbowl, the World Series, the Oscars, the Grammys, presidential debates and addresses, the Olympics . . . they're all on broadcast. Yes, there are hundreds of cable channels, but make a list of the stuff you actually watch. You will probably find that most are on broadcast and the rest are available on Vudu/Netflix/Network sites.”⁸
- “Cable companies keep telling the press and investors that ‘cord cutting’ is not real, and that if it exists then it's limited to people who can no longer afford cable. . . . [W]e are meeting more and more ‘cord never getters’ and ‘cord cutters’ every day. They are more than just people tightening their belts in tough economic times, these are people who have left cable TV behind because it does not fit their lifestyle. They are part of a changing culture, with a changing expectation of how they watch the shows they love.”⁹
- “There is a better way for you to get TV... and we think Boxee with Live TV can deliver that promise. *We want Boxee to be your alternative to Cable TV.*”¹⁰

⁶ See Andrew Kippen, Boxee Team Blog, *Boxee Live TV now available for \$49 – let the cord cutting begin!*, Jan. 24, 2012, at <http://blog.boxee.tv/2012/01/24/boxee-live-tv-now-available-for-49-let-the-cord-cutting-begin/>.

⁷ See Avner Ronen, Boxee Team Blog, *Boxee Live TV is coming. Time to cut the cord.*, Nov. 16, 2011, at <http://blog.boxee.tv/2011/11/16/boxee-live-tv-is-coming-time-to-cut-the-cord/>.

⁸ See *id.*

⁹ See *id.*

¹⁰ See *id.* (emphasis added).