SEPARATE STATEMENT OF
COMMISSIONER MICHAEL J. COPPS

Re: In the Matter of Application of EchoStar Communications Corporation (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporations), Transferors, and EchoStar Communications Corporation (a Delaware corporation), Transferee, CS Docket No.01-348

I support the decision to set this proposed merger for hearing. Based on the evidence presented, I simply cannot see how the consumer benefits that Applicants claim will flow from the merger would actually be realized, much less guaranteed. In particular, I have heard from many rural stakeholder groups concerning this proposed merger, and the overwhelming majority have either opposed it or been highly skeptical that this combination would bring the benefits Applicants claim. Furthermore, it would be an enormous risk to approve a transaction that results, at best, in the merger of a duopoly into a monopoly in a critical sector of multi-channel video programming.

Many people's first reaction – certainly mine – to this proposed merger was to think of its monopoly implications. Nevertheless, I have said many times that every proposed combination coming before this Commission deserves to be looked at on it own merits and within its own particular factual and contextual situation, absent ideological judgments or predetermined conclusions of how some idealized marketplace should look. I have attempted to apply this approach here.

But the threat of monopoly kept coming back at me as I examined the proposal. We are asked to take a lot on faith to approve this agreement, yet at the end of the day we can be certain of only one thing: we are eliminating whatever exists of competition in this sector in favor of something that walks and talks and looks very much like a monopoly. While some speak at this late date of altering the agreement again so as to encourage the development of a second player, the facts are these: (1) a second player exists now, unless we approve the merger; and (2) expecting a new, unformed entity to come in and compete successfully with a merged EchoStar and DirecTV is to dream the impossible dream, especially in light of the capital starvation that continues to stalk this sector. Were this merger to proceed as presented, the likelihood of another satellite provider entering the market in the near future – and being able to compete effectively with the huge merged entity Applicants seek to create – would be so tiny as to be almost invisible.

At the end of the day, the Applicants are asking us to find that eliminating a current, viable competitor from every market in the country would somehow serve the public interest. Congress instructed us to encourage ***competition***. The people's representatives recognize the power of competition to give choices to consumers – choices of services, choices of technology, choices of providers, choices of sources of content. This proposed merger raises such significant concerns because, for the vast majority of consumers, it would result in a ***reduction*** in competition, reducing the number of multi-channel video programming providers for many consumers from three

to two, or from two-to-one, depending on whether the consumer today has access to cable service.

Moreover, even if the Applicants were required to implement their proposed uniform national pricing scheme – which they claim would ameliorate some of the competitive concerns raised in this *Order* – effective enforcement of such a commitment would require significant levels of regulatory oversight. I am not persuaded that this particular Commission has the appetite for such extensive regulatory oversight.

Lately we are told that this proposed merger could ***potentially*** bring benefits to consumers by forcing cable rates down. It is an interesting but unproven theory. One could as easily argue, with better historical factuality, that instead of cable prices being forced down, monopoly DBS prices would in the end go up. Moreover, I cannot agree with those who argue that the only way to fight one entrenched industry is to create a monopoly in a closely related industry. Competition in the media industry should really be something more than two guys from High Noon facing off in the street to see who is left standing after the gunsmoke clears.

The overwhelming input I have received from rural America – by no means uniform but certainly preponderant – is that this agreement has the potential to wreak great havoc across our towns and farms and valleys. "Not necessarily so," some say, but the future of rural America must never be subject to a roll of the dice from the Commission because a few believe that somehow such an unprecedented combination of commercial power will be dedicated to rural development. That is playing fast and loose with too many Americans whose future is challenging enough without our foisting upon them a monopoly that could further erode their well-being and independence. I am simply not convinced that the evidence in the record before us supports a finding that allowing the transaction to proceed ***would*** bring those benefits. And therefore, based on my analysis of the evidence that has been presented, I do not believe that the Applicants have met their burden to demonstrate that this merger would serve the "public interest, convenience and necessity."

With respect to the concerns raised about EchoStar's two-dish policy and its compliance with the terms of the Satellite Home Viewer Improvement Act of 1999 ("SHVIA") and our rules, I wish to make it perfectly clear that I remain wholeheartedly supportive of the finding that EchoStar violated the nondiscrimination provision of SHVIA and § 76.66(i) of the Commission's rules. However, I believe that it would be more appropriate for the Commission to address the issues raised by EchoStar's two-dish policy in a separate proceeding dedicated specifically to that issue. EchoStar has had some time to take steps to come into compliance with SHVIA and our rules, but the Commission has not yet had an opportunity to weigh in on this matter. As this *Order* points out, the matter of EchoStar's compliance with our rules and SHVIA is currently subject to decision by the full Commission, pursuant to three applications for review filed in response to the Bureau's Order. I hope and expect that these proceedings will be moved along expeditiously. Once we review this matter, our findings could be incorporated into the hearing proceeding on the proposed merger.

Reviewing this proposal has been a challenge. Even now, parties are preparing new ideas and alterations. I continue to believe that the public's business can be more expeditiously and effectively transacted when applicants present their best possible deal up front, keeping changes to an absolute minimum, and not waiting until the last possible moment to change the terms of play. Our review process should not have to include sitting across the table from applicants trying to anticipate last minute changes in strategy.

That being said, our rules do not preclude Applicants from proffering conditions or making amendments to their application that could address the competitive and public interest concerns we have with the proposed merger. I believe that the designated hearing process is capable of addressing the concerns, old and new, of the Applicants and arriving at a determination in the public interest.