

**SEPARATE STATEMENT OF  
CHAIRMAN MICHAEL K. POWELL**

*Re: General Motors Corporation and Hughes Electronics Corporation, Transferors and The News Corporation Limited, Transferee, for Authority to Transfer Control*

The Commission has now completed a multi-year review, involving two separate transfer applications, to transfer control of Commission licenses involving nationwide DBS provider DirecTV. Unlike the transfer application involving EchoStar Communications—which ultimately became the first major transaction blocked by this Commission in decades because it would have harmed the public interest by combining the only two nationwide DBS providers in the country<sup>1</sup>—this transaction, as conditioned, involving General Motors, Hughes Electronics Corporation and The News Corporation (“News Corp.”) will bring significant benefits to the American public.

As a result of this transaction, DirecTV will be a stronger competitor in the pay-television space, especially against market-leading cable operators. This increased competition to cable will spur new innovative services and programming, lower prices and increased service quality not just to current and future DirecTV subscribers, but to all pay-television subscribers as cable operators throughout the country will be forced to respond to this new nationwide competitive threat.

This transaction, as proposed, did raise concerns about use and abuse of market power. Our strict and narrowly tailored conditions, however, will prevent the realization of these harms to the public. For example, we were concerned that the merged entity would discriminate against unaffiliated programmers, preventing DirecTV subscribers from accessing compelling programming from a multiplicity of diverse sources. To address this concern, we condition this transaction to ensure that unaffiliated programmers have access to the DirecTV platform on nondiscriminatory terms and conditions.

We were concerned that the merged entity would force across-the-board MVPD price increases by using its increased incentive and ability to threaten to or actually withhold highly valued programming by consumers—namely local broadcast signals and regional sports networks<sup>2</sup>—to extract excessive rents or unfair carriage concessions from MVPDs—programming costs almost certain to be passed on to subscribers. We addressed this concern by setting up a commercial arbitration remedy that will help reign in excessive programming price

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<sup>1</sup> See *Application of EchoStar Communications Corporation, General Motors Corporation, Hughes Electronics Corporation (Transferors) and EchoStar Communications Corporation (Transferees)*, 17 FCC Rcd 20559 (2002).

<sup>2</sup> One should not view our conditions regarding retransmission agreements or regional sports networks as anything other than a condition to mitigate a merger-specific harm identified in the record of this proceeding. It, especially, should not be interpreted as an industry-wide declaration of the Commission concerning the ongoing commercial disputes between MVPDs and broadcasters or regional and national sports programming networks. The broadcast industry and the sports programming market continue to evolve on all fronts. In the case of sports, for instance, increased channel capacity on MVPD systems and advances in broadband Internet access are providing leagues, teams, MVPD providers and sports programming networks with new opportunities for sports distribution. In addition, there are signs in the marketplace to suggest that the extraordinary increases in license fees paid by sports networks to teams over the past year—which then get passed on to MVPDs, then on to consumers—is stabilizing. I continue to believe these issues are best resolved in the marketplace.

increases and ensure that the public will not lose access to the valued programming during negotiations and arbitration. In addition, we ensure that News Corp.'s other affiliated programming will be offered to all MVPDs on a non-discriminatory basis.

Finally, this transaction will result in more local programming being carried by DirecTV in more local markets. In fact, as a condition of this license transfer, we mandate that the merged entity provide, by year end 2004, local channel service in an additional 30 DMAs beyond what had been previously funded, projected or planned by Hughes/DirecTV. As DBS providers continue to carry local broadcasting services to more and more Americans and in the process become a more effective competitor against cable, both of our collective localism and competition goals are enhanced. I share the desires of my colleagues to see more DBS providers carry local broadcast signals and local programming into more local markets—especially to rural America.<sup>3</sup>

In short, facilities-based competition among satellite and cable providers has led to more innovation, more programming and more subscribers. As a result of this transaction those trends, along with competitive prices and better quality of service will continue for the American public. I, therefore, approve this transaction, as conditioned, as I believe it serves the public interest.

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<sup>3</sup> With regard to APTS/PBS's proposed condition to restrict DirecTV from segregating local broadcast stations to wing satellites, I do not believe there is sufficient record evidence to suggest that there was a merger-specific public interest harm that called for the proposed condition. To the extent APTS/PBS advocated a further clarification of an interpretation of the nondiscriminatory local broadcast carriage provisions of SHVIA, I do not believe this question is best resolved in this license-transfer proceeding, but is better suited for a separate Commission review. As noted by APTS/PBS in their comments to this proceeding, the Commission will have this opportunity in considering the APTS/PBS Application for Review (*see* Application for Review of the Association of Public Television Stations and the Public Broadcasting Service, CSR-5865-Z (May 6, 2002)) of a previous Media Bureau interpretation of SHVIA. *See National Association of Broadcasters and Association of Local Television Stations Request for Modification or Clarification of Broadcast Carriage Rules for Satellite Carriers*, Declaratory Ruling and Order, DA 02-765 (Apr. 4, 2002). Until that time, DBS providers using a two-dish solution must do so consistent with Section 76.66 of our rules and Section 338(d) of the Communications Act.