

**SEPARATE STATEMENT OF  
COMMISSIONER KEVIN J. MARTIN**

*Re: General Motors Corporation and Hughes Electronics Corporation (Transferors) and The News Corporation Limited (Transferee) for Authority to Transfer Control, Order, MB Docket No. 03-124*

I support the Commission's decision to approve this transaction. While the merger of News Corp. and DirecTV presents potential harms and benefits, I believe that, on balance, the merger as conditioned will benefit consumers, competition, and the public interest.

I write separately to express my disappointment that a majority of my colleagues is unwilling to grant the public television community's request to clarify the requirements under the Satellite Home Viewer Improvement Act ("SHVIA") and specifically require that, in providing local-into-local service pursuant to SHVIA, DirecTV could not place certain local broadcast stations on wing satellites.<sup>1</sup>

As I have stated before, I believe Congress provided that DBS operators would have the opportunity to carry local broadcast stations, but if they choose to do so, they would have to provide consumers with *all* the local broadcast stations.<sup>2</sup> These "carry one, carry all" provisions of SHVIA include a prohibition against discriminatory treatment of the broadcast signals.<sup>3</sup> As I have explained in detail previously, I believe Congress's non-discrimination provision prevents DBS providers from placing "preferred" broadcasters on a main satellite and relegating certain "disfavored" broadcasters to a second satellite.<sup>4</sup> Non-discrimination requires that all broadcast stations be placed on the same dish. The Association of Public Television Stations and the Public Broadcasting Service, therefore, are asking no more than to require the merged entity to comply with the governing statute and our rules when rolling out "local-into-local" service to consumers across America. Licensees must *always* comply with the statute and our rules, and I am disappointed that only one of my colleagues was willing to make this clear.

This is an unfortunate day for public television stations, religious broadcasters and Spanish language broadcasters—the stations most often relegated to the second dish. Indeed, over 31 public broadcast stations in 20 markets have been denied carriage on the same dish as other broadcasters. Local religious broadcast stations are almost uniformly placed on the second dish, if they are carried at all. Similarly, numerous Spanish language station owners have all documented to the Commission the discriminatory treatment that their stations receive; most are carried on the second dish, unless they are willing to *pay* for placement on the main satellite. Recent reports have shown that very few consumers bother to acquire the second dish, which has meant that very few consumers can access these stations. Consumers and broadcasters deserve better, and the statute requires it.

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<sup>1</sup> See Comments of the Association of Public Television Stations and the Public Broadcasting Service at 1 (June 16, 2003).

<sup>2</sup> See, e.g., Statement of Commissioner Kevin J. Martin and Commissioner Michael J. Copps Re: 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, April 10, 2002 ("*Two-Dish Statement*"). See also 47 U.S.C. § 338(a)(1).

<sup>3</sup> See 47 U.S.C. § 338(d).

<sup>4</sup> See *Two-Dish Statement*. To the extent any Media Bureau decisions have been inconsistent with this interpretation of the statute, they have not been affirmed by the Commission and I believe they are in error.

It is important to emphasize that a DBS operator's roll-out of local-into-local stations need not be at the expense of public television, religious and Spanish language broadcasters. SHVIA does not hinder a DBS provider from expanding the markets – including rural markets – in which it carries local broadcast signals. The use of a second dish is a spectrum allocation issue. If DBS providers choose to use a “two-dish” solution to provide local broadcast service to more communities, compliance with the non-discrimination provision simply requires that all the local stations be treated similarly, whether they are placed on the main or wing satellite.

I, along with my colleague Commissioner Copps, continue to believe that this is a vital issue to all public, religious and Spanish-language broadcasters. I am disappointed that we were the only Commissioners willing to vote to clarify that DBS operators must place all broadcasters – or at least all public broadcasters – on the same dish. I also am disappointed that not one other Commissioner was even willing to address this fundamentally unfair policy and to clarify that these broadcasters are entitled to equal treatment under the law.

As my colleagues in the majority point out, this issue is the subject of an Application for Review that has been pending for over a year and a half, in which the Association of Public Television Stations challenges a Bureau decision that allows a DBS provider to place certain broadcasters on a second dish.<sup>5</sup> Given the current legal status and the continued, prolonged absence of Commission action in that docket, and in the face of a direct request from the public broadcast community in this proceeding, I am uncomfortable avoiding this issue any longer. Moreover, the Order recognizes that this is a merger-specific issue: “We recognize that the proposed transaction may give DirecTV greater incentive to favor News Corp.’s Fox broadcast network programming and therefore to move other broadcasters onto other satellites.”<sup>6</sup> I agree that this issue does raise merger-specific concerns.

Finally, I note that a clarification of the legal requirements of SHVIA’s non-discrimination provision here would be the industry-wide solution that some have called for. I fail to see why any Commissioner supportive of such a solution would not vote for that resolution when presented with that opportunity here.

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<sup>5</sup> See Association of Public Television Stations and the Public Broadcasting Service, *Application for Review*, CSR 5865-Z (May 2002); *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*, 17 FCC Rcd 6065 (MB 2002).

<sup>6</sup> Order at para. 273.