SEPARATE STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY

Re: 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 (adopted October 9, 2002).

I am unable to find, based on the record before me, that the proposed transaction serves the public interest, convenience, and necessity and I therefore support designating this application for hearing. I start with the premise that a proposed merger generally creates efficiencies for the combined entity and those efficiencies may ultimately benefit consumers. But the inquiry cannot end there. We must determine what effect the merger will have on the state of competition in the relevant market and whether the efficiencies created by the merger will be passed on as benefits to consumers in the form of better services and lower prices. The Commission must then balance the potential benefits against the potential harms of the merger. The Commission's review goes beyond traditional antitrust considerations to encompass a broader public interest analysis.

The record developed thus far demonstrates that this proposed merger will likely harm consumers by eliminating a viable competitor in every market, driving up prices, and decreasing innovation and quality of service. The Applicants have not demonstrated any merger-specific public interest benefits that outweigh these harms. More specifically, the proposed merger will substantially increase the level of concentration in an already highly concentrated market. It would at best be a merger to duopoly in markets where cable is available, and at worst a merger to monopoly in markets where there are no other competitive multichannel video programming providers. It does not appear that the Applicants' commitment to a national pricing plan, coupled with competition from cable in certain areas, will provide a sufficient competitive check on the merged entity. Furthermore, the high level of concentration resulting from the merger will likely reduce, rather than increase, the Applicants' incentives to carry through on many of the conceivable merger benefits, such as expanding local-into-local programming into all markets.

I have no doubt that business combinations in the multichannel video market may be pro-consumer, and it would be a mistake to equate bigness with badness. But our task is to review only the application in front of us and to weigh the potential benefits against the threats to competition. On this record, I am forced to conclude that the public interest would not be served by granting the application.