STATEMENT OF CHAIRMAN MICHAEL K. POWELL

Re*: Application of EchoStar Communications Corporation (EchoStar); General Motors Corporation and Hughes Electronics Corporation (DirecTV)*

Today, the Commission has declined to approve the merger of EchoStar and DirecTV. The record in this case compels this result. The combination of EchoStar and DirecTV would have us replace a vibrant competitive market with a regulated monopoly. This flies in the face of three decades of communications policy that has sought ways to eliminate the need for regulation by fostering greater competition. I decline the invitation to turn our national communications policy back so many years.

The record before us irrefutably demonstrates that the proposed merger would eliminate an ***existing viable competitor in every market in the country***. The case against approving the transfer application is particularly compelling with respect to residents of rural America who are not served by any cable operator. Those Americans would be left with only one choice for their subscription video service, now and in the foreseeable future. But that alone is not the cornerstone of our decision. At best, this merger would create a duopoly in areas served by cable; at worst it would create a merger to monopoly in unserved areas. Either result would decrease incentives to reduce prices, increase the risk of collusion, and inevitably result in less innovation and fewer benefits to consumers. That is the antithesis of what the public interest demands.

DirecTV and EchoStar propose a "national pricing" condition, to alleviate the competitive harms of this transaction. Under this plan, EchoStar and DirecTV would have us replace healthy competition with a monopoly governed by a scheme of regulated pricing. The Communications Act and the Commission's overall policy goals aim at replacing regulated monopoly service providers with free market competition among multiple service providers. If economic history has taught us anything, it is that healthy competitive markets, not regulated monopolies maximize consumer welfare.

The Merger Application rests on the following claims; (1) EchoStar and DirecTV only compete with cable but not with each other; (2) Standing alone they are weak competitors to cable; (3) Absent the merger, the applicants cannot provide "local into local" broadcast services.

The facts undermine these claims. First, the record shows that EchoStar and DirecTV compete vigorously, not only with cable, but with each other. Second, neither operator is failing in its efforts to compete against cable. DBS subscriber growth rates are 2.5 times larger than those of cable. Cable is attempting to respond to the DBS threat by increasing channel capacity and adding new services for consumers. Third, the record shows that each company standing alone will be capable of offering local broadcast stations to 80-85% of American homes in a very short period of time. They have the economic incentive to do so, since both EchoStar and DirecTV are much stronger competitors to cable in markets where they offer "local into local" service.

In short, the very premises upon which this proposed merger rest are themselves without foundation.

The DBS story so far is one of successful, intra-modal, facilities-based competition. This competition has led to more innovation, more programming, and more subscribers; exactly the benefits one would expect. For those who believe, as I do, that these benefits flow from competition between DBS providers, the elimination of that competition, absent a more compelling showing, cannot be squared with the public interest.