STATEMENT OF COMMISSIONERS SHEILA F. ANTHONY, ORSON SWINDLE, AND THOMAS B. LEARY

Concerning Western States Gasoline Pricing Investigation

File No. 981-0187

The Federal Trade Commission has completed its investigation of various marketing and distribution practices employed by the major oil refiners in Arizona, California, Nevada, Oregon, and Washington ("Western States"). Initiated almost three years ago to explain the differences in the price of gasoline between Los Angeles, San Francisco, and San Diego, the investigation was extensive.[(1)] It examined whether observed price differences between metropolitan areas, service disruptions, and abrupt price increases at the refiner, wholesale, and retail levels were the result of illegal conduct by the Western States refiners. In its recently-concluded investigation of last year's gasoline price spikes in Midwestern States, the Commission was asked to identify the full array of reasons for the price increases. In the Western States matter, however, the Commission was asked to investigate solely whether there was an antitrust violation.[(2)] Accordingly, this statement touches only briefly on significant non-antitrust factors, such as limited refining capacity, specialized fuel requirements, or the costs of shipping gasoline or crude oil to the Western States. On the particular question that was investigated, the investigation produced no evidence of conduct that violates the antitrust laws.

The Western States have several important characteristics that set them apart from much of the rest of the U.S. gasoline market. Two of the most important characteristics are their relative isolation from the Gulf Coast, which has the largest pool of refined petroleum products in the U.S., and their unique product requirements, such as gasoline satisfying California Air Resources Board ("CARB") standards. There are also a limited number of gasoline refiners in the Western States -- BP/ARCO, Chevron, Equilon, ExxonMobil, Tesoro, Tosco, Ultramar Diamond Shamrock, and Valero -- and all refiners do not compete in all metropolitan areas. Thus, markets at the refining level of the industry are moderately or highly concentrated, as are markets as the wholesale level, which includes both refiner-controlled and independent distributors of gasoline. Our investigation examined marketing and distribution practices within this industry context.

The investigation produced no evidence of horizontal agreement on price or output at any level of supply. The investigation did identify some similarities in distribution practices. Most refiners set uniform wholesale prices and supply branded gasoline directly to their company-operated and leased stations and to some independent open dealer[(3)] stations within a small but distinct geographic area called a "price zone." These price zones are roughly drawn to define an effective area of local competition among retailers, based on geographic features and local demand patterns. The investigation revealed no evidence of coordination by refiners in their use of price zones or in the zones' geographic locations or dimensions.

Refiners also sell branded gasoline to independent distributors ("jobbers"), who resell to the jobber's own stations[(4)] or to independent stations not served by the refiner. Most of the Western

States refiners prevented their jobbers from competing with them to supply branded gasoline to independent dealers in metropolitan areas, a practice called "redlining."[(5)] There are two general types of redlining: 1) territorial, in which the contract between the refiner and the jobber gives the refiner the right to refuse to approve the jobber's request to supply branded gasoline to independent stations or supply its own stations in specific price zones; and 2) site-specific, in which the contract includes financial disincentives for the jobber to sell in locations directly supplied by the refiner and prevents a jobber from shipping low-priced gasoline to stations located in high-priced zones.[(6)] Refiners use different redlining methods and redline different geographic areas. The result is that, in certain metropolitan price zones, refiners either prevent or discourage their jobbers from undercutting refiner prices to company-supplied stations. Again, the investigation revealed no evidence of conspiracy or coordination of these practices by vertically integrated West Coast refiners.

Absent a conspiracy among refiners, redlining likely would be evaluated under the rule of reason. This would require the Commission to show actual or prospective consumer harm. Absent direct proof of harm, the Commission would need to prove a refiner had the ability profitably to raise price or reduce output. In an evaluation of consumer harm, it is also necessary to consider whether the discounted jobber prices -- which were designed in part to stimulate incremental sales in more rural areas or new markets[(7)] -- would be (or continue to be) offered in the event jobbers could simply solicit sales from the refiners' existing customers.[(8)] The investigation uncovered no evidence that any refiner had the ability profitably to raise price market-wide or reduce output at the wholesale level, nor did it find a situation in which a refiner adopted redlining in a metropolitan area and increased market-wide prices.

In conclusion, the investigation did not uncover any evidence of conduct by the Western States refiners that would, on balance, result in likely consumer harm sufficient to establish an antitrust violation. Accordingly, the Commission has closed its antitrust investigation of Western States gasoline pricing.

Endnotes:

1. The inquiry led to the production of over 300 boxes of documents, huge amounts of statistical data in electronic form, over 100 interviews, and over 30 investigational hearings.

2. The primary focus of the investigation was on certain distribution practices employed by West Coast refiners that could possibly have explained the price patterns in the Western States. Although the investigation concluded that this limited set of practices does not appear to violate the antitrust laws, this determination should not be construed as an opinion regarding the legality of any broader set of distribution practices or of similar practices employed by refiners in other regions.

3. Independent dealers who own the land and improvements, run the station, and agree to sell a company's brand for a specified period of time are called "open dealers." They are supplied by refiners directly or by independent distributors.

4. A more complete summary of distributional arrangements and their rationales can be found in Shepard, Andrea, "Contractual Form, Retail Price, and Asset Characteristics in Gasoline Retailing," 24:1 Rand J. Econ. 58 (Spring 1993).

5. Redlining and price zones are nationwide practices. This investigation focused on West Coast practices.

6. In its most common form, site-specific redlining, as the name implies, occurs when a refiner sets a price to the jobber based upon the jobber's stated delivery location. Refiners use various methods to track deliveries and thereby ensure that jobbers do not divert gasoline intended for an area where prices are low to an area where they are high. In one variation, the refiner adjusts its prices to the jobbers via a post-sale end-of-the-month accounting intended to reflect changes in retailer prices or other refiners' wholesale prices that prevailed during the preceding month. Site-specific redlining decreases the incentive for a jobber to charge lower prices to its customers. This could have the same practical effect as airtight territorial redlining, but for the reasons stated in the text, there is insufficient evidence to prove an antitrust violation.

7. Jobbers can serve multiple brands, thereby allowing their trucks to carry different brands of gasoline on successive runs.

8. Some of the major gasoline marketers in California charge different prices to different jobbers at the rack depending on the destination of the gasoline. If jobbers arbitrage gasoline between different locations, this zoning scheme will fail.