Concurring Statement of Commissioner Mozelle W. Thompson

Western States Gasoline Pricing

File No. 981-0187

The Western States gasoline markets are both concentrated and isolated from other refinery markets in our country. New refineries likely could not be built in the near future to increase competition in the Western States markets, and information about the markets is readily available to market participants so that they may monitor each others' activities. Consequently, gasoline prices in the Western States markets most likely suffer oligopolistic pricing, and in fact, their prices are among the highest in the country. Further, this market structure makes the Western States gasoline markets more susceptible to the employment, and vulnerable to the possible anticompetitive effects, of distributional restraints.

The Commission has closed the investigation into whether certain distribution practices employed by the Western States gasoline refiners amount to antitrust violations. I voted to close our investigation because I believe that insufficient evidence exists showing that any of the Western States refiners' distributional practices have themselves caused higher wholesale and retail prices for gasoline. Notwithstanding my vote, I remain somewhat troubled by the practice of site-specific redlining that some Western States refiners utilize as part of their distribution strategies. Such vertical restraints could be unlawful in those circumstances where - whether in the Western States or other gasoline markets - the practice leads to higher-than-otherwise wholesale prices.[(1)]

Site-specific redlining is a disconcerting pricing practice that creates *de facto* territorial restrictions on jobbers. This type of restriction can limit the ability of independent jobbers to supply wholesale gasoline to those areas that demand it most, for example, California's highest priced wholesale and retail markets. Such artificial restraints can forestall natural market forces from lowering the high prices in these local markets. Additionally, while I believe that the Commission's analysis does confirm that site-specific pricing can increase wholesale prices (despite the fact that it cannot be proved in this particular case), the investigation did not uncover compelling evidence that site-specific redlining generates any particular cognizable benefits to consumers (*i.e.*, economic efficiencies, such as encouraging, or enhancing the ability of, dealers to provide higher quality services to their customers).

The Commission has vigilantly protected the competitiveness of the nation's energy sector for years through its enforcement actions. I therefore am confident that, should the Commission find evidence in any future investigation that site-specific redlining results in anticompetitive effects without generating countervailing consumer benefits, it would challenge the practice.

Endnote:

1. Perhaps the most compelling evidentiary case would be where a refiner places an existing station's distributor under a new site-specific redlining provision in a highly concentrated market and the practice causes wholesale

prices to increase market-wide (thus decreasing intrabrand competition without increasing interbrand competition). *See, e.g.*, *Continental T.V., Inc. v. G.T.E. Sylvania, Inc.*, 433 U.S. 36 (1977).