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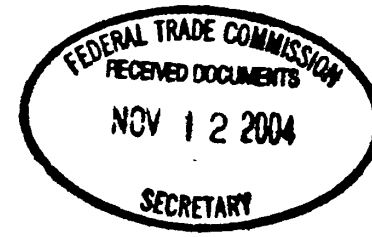

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VIA FEDERAL EXPRESS

Secretary
Federal Trade Commission
Room H-159 (Annex W)
600 Pennsylvania Avenue
Washington, D.C. 20580

Re: Franchise Rule Staff Report

Gentlemen:

Our client, Chevron U.S.A. Inc., a Pennsylvania corporation ("Chevron"), offers the following comments on the proposed revised Trade Regulation Rule on Franchising and the accompanying staff analysis.

Chevron is a wholly owned subsidiary of ChevronTexaco Corporation, a Delaware corporation, and is engaged in the refining and marketing of gasoline and other motor fuels in the United States. In this capacity, Chevron enters into service station leases and motor fuel supply agreements, under both the Chevron and Texaco brands, with gasoline distributors and dealers. Those lease and motor fuel supply agreements are subject to the Petroleum Marketing Practices Act, 15 U.S.C. sections 2801, et seq.

Proposed section 436.8(a)(4) of the revised Franchise Rule provides an exemption from the Rule if: "The franchise relationship is covered by the Petroleum Marketing Practices Act, 15 U.S.C. 2801." Chevron has no objection to the language of this exemption, which incorporates into the Rule the policy exemption previously granted for a "franchise" as defined in the PMPA (45 Fed. Reg. 51765, August 5, 1980).

But Chevron believes that the comments on this exemption contained in the staff analysis are ambiguous and will create unnecessary and unwarranted confusion regarding the scope of this exemption.

The following commentary is set forth on pages 230 and 231 of the staff analysis:

> "In response, only one commenter voiced any concerns. J&G maintained that the proposal leaves unanswered whether disclosure is warranted when other businesses – such as convenience stores, fast food, and ice cream shops – operate in these exempt gasoline franchise establishments. While we recommend that the Commission adopt the proposed petroleum marketers exemption as set forth in the NPR, we reject the suggestion that non-petroleum businesses should be included in the exemption. The Commission's policy exemption for petroleum franchises was based on the finding that any problems in that specific industry were addressed by the PMPA. The PMPA has not been revised to extend to non-petroleum businesses, nor are we aware of any other applicable legislation. Indeed, in the absence of any additional information in the record, it would appear that an individual who operates a gasoline station is just as much in need of pre-sale disclosure for the purchase of a non-related franchise, such as an ice cream store, as any other member of the public. We believe the fractional franchise exemption, coupled with the sophisticated investor exemptions discussed below, are the appropriate vehicles for limiting the Rule's scope in this arena."

Serious ambiguity is created by the staff's reference to a "non-related franchise." Chevron agrees that the exemption should not apply to any business relationship that is contained in a separate contract unrelated to the motor fuel franchise. But that is not the normal case in the petroleum industry.

First, the commentary reflects a misunderstanding of the coverage of the PMPA. It states "The PMPA has not been revised to extend to non-petroleum businesses, nor are we aware of any other applicable legislation." It is true that the PMPA has not been revised, but the PMPA has always applied to non-petroleum businesses covered by the same contract as the petroleum arrangement.

The "franchise" covered by the PMPA is defined in 15 U.S.C. section 2801(1). The term means "any contract" which involves (i) a motor fuel trademark license, (ii) a service station lease for premises to be employed for motor fuel sales under the franchisor's trademark, or (iii) any supply contract for motor fuels to be sold under the franchisor's trademark. If any of these contracts also covers other businesses, then the entire contract is protected by the PMPA.

For example, in the petroleum industry, a retail outlet typically does not sell gasoline only, but may also offer automotive repair services, or car wash services, or (with increasing frequency) convenience store products (or a combination of all of them). When Chevron leases a service station to a dealer, Chevron does not just lease the dealer the gasoline dispensers, but as part of the same agreement, also leases to the dealer any automotive service bays, convenience store, or car wash located on the same premises. All of these activities are encompassed in a single lease. That lease is covered by and is protected by the PMPA.[1] Hence, under the language of the proposed exemption set forth in section 436.8(a)(4), Chevron believes that the entire PMPA protected "franchise" (i.e., the entire PMPA protected "contract") should be exempt from coverage under the Rule. And Chevron believes that this is exactly what the proposed Rule says.

But this logical result, which flows from both the language of the PMPA and the language of both the current exemption and the proposed exemption, is cast in doubt by the proposed staff commentary when that commentary says: "We reject the suggestion that non-petroleum businesses should be included in the exemption." It is not practical to break an integrated lease of service station premises into parts—one portion of which is covered by the exemption, and another portion of which is not covered by the exemption

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[1] That was true in 1980 when the original exemption was granted, and it is true today. The cases in this area hold that separate, unrelated agreements are not covered by the PMPA. *See Geib v. Amoco Oil Co.*, 29 F. 3d 1050 (6th Cir. 1994); *Millett v. Union Oil Co. of Calif.*, 24 F.3d 10 (9th Cir. 1994); *Aurigemma v. ARCO Petroleum Products Co.*, 698 F. Supp. 1035 (D. Conn. 1988); *Atlantic Richfield Co. v. Brown*, 1985 WL 3316 (N.D. Ill.); *Smith v. Atlantic Richfield Co.*, 533 F. Supp. 264 (E.D. Pa. 1982). But implicit in these decisions, as well as explicit in the PMPA's definition of a "franchise", is that any activity included in and governed by the service station lease or motor fuel supply agreement is covered by the PMPA. As one of the decisions involving separate, but related, agreements notes: "To hold that ARCO could validly terminate the lease and motor fuel franchise pursuant to its decision to withdraw from a geographic market but could not cancel its mini-market franchise for the same reason because the PMPA's coverage does not extend this far would result from an unduly narrow reading of the PMPA and would lead to incongruous circumstances." *Brown*, 1985 WL 3316 at *7. J&G, the one commentator that the staff's analysis noted as voicing concerns in the previous round of comments, agrees on this point, stating in Section (2) of its letter to Mr. Donald S. Clark dated December 22, 1999: "[O]ur proposal would clarify that relationships that are governed by the PMPA which are presently exempt from the disclosure requirements, would not be brought back into the disclosure requirements of the Rule because a service station franchisee operates a convenience store from the premises or sells branded sandwich or bagel products from the service station premises. The real estate leases and other franchises are so intertwined with the gasoline franchises that it may be virtually impossible for petroleum franchisors to avail themselves of the PMPA exemption if the Rule applies to only a part of a franchisee's business."

and is therefore subject to the Franchise Rule. It is not appropriate to call a convenience store a "non-petroleum business" when it is governed by the same lease as the motor fuel facilities—a lease that is covered by and protected by the PMPA. If the convenience store lease is not covered by the exemption, then the exemption is rendered meaningless for almost all of Chevron's service stations and for most service stations of other oil companies covered by the PMPA.

As noted in the staff commentary, 24 years of experience have not identified abuses or problems under the current exemption to the Rule. Perhaps unknowingly, the staff commentary suggests a significant change, which is not reflected in the language of the proposed Rule itself nor supported by any identified problem in the record with the scope of the existing exemption.

Accordingly, Chevron respectfully requests that the commentary be amended to reflect the language of the proposed Rule. It should acknowledge that any "contract" which is a "franchise" as defined in the PMPA, and is therefore covered by and protected by the PMPA, is covered by the proposed exemption.

Please do not hesitate to contact me if you have any questions in this regard.

Very truly yours,

Bruce W. McDiarmid

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