EVERGREEN OIL COMPANY

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Via Email (consentagreement@ftc.gov)

Office of the Secretary

Federal Trade Commission

Room 159-H

600 Pennsylvania Avenue, N.W.

Washington, D.C. 20580

RE: Conoco, Inc. and Phillips Petroleum Company

Dear Mr. Secretary:

My company, (Evergreen Oil Company) is a second generation, family-owned and operated Colorado business founded by my father in 1973. Evergreen Oil Company currently oversees the operation of 29 retail gasoline facilities throughout the state of Colorado, with sales representing approximately 35,000,000 gallons per year. Although our company represents only a small fraction of the gasoline sold in the state of Colorado, there are dozens of companies in Colorado that operate similar to ours. The independent petroleum marketer sells approximately 55% of the gasoline to the end consumer in Colorado.

I am writing in response to the September 9, 2002 notice in the Federal Register (67 F.R., 174 at 57235). Although I know it was not the intention of the Federal Trade Commission (FTC) to unfairly impact the small independent petroleum marketer, the actions of the FTC have done just that. When I signed contracts with Phillips 66, I was making arrangements with a group of people with whom I had a long history, a group of people with whom I trusted and respected. As a Phillips 66 marketer, I am now forced to honor those same contracts with people I don't even know. The type of contracts I executed will absolutely require me to work with this unknown entity. Unfortunately, this unknown entity is going to be supplying me through an antiquated refinery with poor economics - a refinery that I believe ConocoPhillips would have either closed or sold on its own anyway.

The buyer of this package will almost certainly be a second or third tier brand, without the wherewithal or ability to support the brand as Phillips 66 did. I have no doubt that the Phillips 66 brand will eventually wither and die in the State of Colorado. Most Colorado Phillips 66 marketers are already actively pursuing other supply relationships. Unfortunately, unlike in the past, there aren't as many suppliers from which to choose. The choice is even more limited for the Phillips 66 marketer, who is not allowed to brand with ConocoPhillips. ConocoPhillips is the only proven independent marketer-friendly supplier in the state of Colorado and as a Phillips marketer, I am not allowed to do business with them.

At one time, Evergreen Oil Company had 10 units branded with Total Petroleum. Total Petroleum came into Colorado with an emphasis towards supplying the independent petroleum marketer such as Evergreen Oil Company. In very short order, Total Petroleum had branded a couple hundred locations in Colorado. They attracted marketers through competitive wholesale prices and innovative programs. There was much enthusiasm with the Total Petroleum brand until the merger with Ultramar Diamond Shamrock. When Ultramar Diamond Shamrock took over, the innovative programs were gradually phased out, the wholesale price was no longer as competitive, and we were told by its top level executives that its emphasis was not toward wholesale, but rather direct retail operations with major metropolitan areas being redlined. The truth of the matter is that the top executives of Ultramar Diamond Shamrock were not in the business of petroleum marketing at all, but rather they were in the business of mergers and acquisitions. Those individuals profited greatly from their exploitations. The Diamond Shamrock and Total brands were run into the ground, and Valero is now trying to pick up the pieces. It took Evergreen Oil Company, and virtually every Total Petroleum branded marketer, several months to exit the relationship. Ultramar Diamond Shamrock not only wanted us to pay back all of the upfront image monies we had received from Total, but they also threatened to sue us for five cents per gallon for all gallons that we would have purchased from Total over the remaining term of the contract. Had it not been for a good attorney, Evergreen Oil Company's payback would have been somewhere in the neighborhood of $1.2 million dollars. Many of the Total Petroleum marketers in Colorado switched to the Phillips 66 brand once they were able to get out of the contracts with Ultramar Diamond Shamrock. Those same marketers are again in the same position of having to honor those agreements with an unknown company.

Today's independent petroleum marketer faces unimaginable odds of survival. The competition is fierce. All across the country petroleum marketers are trying to figure out ways to make enough money on other products and services in order to overcome selling gasoline at a loss. The warehouse clubs are selling at below their cost in order to attract more people as members. Grocery stores are now working with manufacturers in helping them supplement the loss they are seeing on gasoline. A coupon in a grocery store is no longer "buy two, get one free." The coupon now states "buy two, get $2.00 off your gasoline purchase." I'm not sure what the future holds for the independent petroleum marketer. It may be a business model that will not survive the future. But I do know this, we will continue to get better; we will continue to find ways to provide a service to our customers at a more competitive price. Just as the major oil companies are merging, many independent petroleum marketers are finding it necessary to merge to help drive down costs.

I understand the FTC's thinking that in order for the Denver refinery to be viable, there needs to be an outlet for its product. However, Phillips 66 marketers are made up of small independent businesses. It's not fair to force them to do business with someone with whom they don't want to do business. In addition, it is not fair to tell them that they can't do business with the best source of supply available to them, ConocoPhillips. A mechanism needs to be established that benefits the Phillips 66 marketer if he chooses to stay with the company that buys the refinery and marketing assets. An additional mechanism should be created that makes it easier for a ConocoPhillips marketer to switch brands; this will ensure that ConocoPhillips continues to stay competitive at the rack. I believe that the mechanism sufficient to accomplish this would be as follows:

1. During the time it takes for the Denver refinery and the Phillips marketing assets to be sold and for one year thereafter, a Phillips 66 marketer could cancel its contract, just as it could before the merger, by paying all contractual obligations with Phillips to either the holding company or to the company that purchases the assets. In addition, during this time period, the marketer would not be able to brand with ConocoPhillips.

2. After that the above period of time, if the Phillips 66 marketer decides it wants to cancel its contractual agreements with its new supplier, ConocoPhillips will be required to pay on behalf of the Phillips 66 marketer those remaining contractual obligations such as incentive and image monies. At that time, the Phillips 66 marketer would be free to brand with ConocoPhillips or anyone else for that matter. This will put pressure on the company that buys the assets to be competitive in its price and programs, and will give the Phillips marketer a way out if the company is not marketer-friendly. It would also require ConocoPhillips to pay out more money in order to obtain a contract with the Phillips 66 marketer, i.e., ConocoPhillips would not only have to pay the purchaser the image monies due, but would have to pay the marketer whatever the going incentive and image monies are at the time. The Phillips 66 marketer benefits if it stays with the new supplier for the one year by eliminating the payback of its contractual obligations, and getting back the ability to brand with ConocoPhillips. The buyer of the Conoco refinery benefits by having the opportunity of a full year to prove itself as a good supplier to the Phillips 66 marketer.

3. Any contractual obligations that ConocoPhillips marketers have should be eliminated or at least reduced. Perhaps the time period and the amount of incentive and image money payback should be cut in half. It is my opinion that Phillips 66 kept Conoco honest at the Denver rack. Phillips 66 had a more economical supply source than Conoco, and was usually more competitively priced than Conoco. The tables have now turned; those that have the Phillips 66 brand will now have the less economical supply situation. Because of the tremendous hold that Conoco has on its marketers thru very long-term agreements, Conoco may feel they can take advantage of the situation by being less competitive. I believe that the competitive situation could be enhanced by reducing the hold that Conoco has on its marketers. The best way to accomplish this is by eliminating or by reducing the contractual obligations that the marketer has with ConocoPhillips.

In conclusion, I realize that my perspective is from a limited point of view, and that other stakeholders affected by this merger have completely different issues to address. I can only ask that you give some consideration to the injustice placed upon the Colorado Phillips 66 marketer as a result of the merger, and ask you to consider ways to eliminate that injustice.

If you have any questions, please don't hesitate to call. Thank you for your consideration in this matter.

Respectfully submitted,

EVERGREEN OIL COMPANY

Andrew K. Smith Jr.

President

AKJr/tem