CONCURRING STATEMENT OF
COMMISSIONER PAMELA JONES HARBOUR
Regarding Federal Register Notice Rescinding the FTC's 1966 Guidance Concerning the Cambridge Filter Method

Today, the Commission has taken a bold step: removing its apparent imprimatur from cigarette advertisements. This action, while commendable, should only be a first step. Further action is needed.

Contrary to recent criticism,[1] the FTC has not been a passive player in the area of tobacco advertising. The Commission has long advocated for the development of a new test for tar and nicotine.[2] The Commission has sought assistance from the scientific community to determine what changes should be made to the testing method. There still is no consensus on this issue, however, and this lack of agreement has led the Commission to rescind its outdated guidance.

Tobacco companies will no longer be able to use terms indicating that the FTC approves or endorses the Cambridge Filter Method. The Commission also has clarified that if tobacco firms choose to make claims based on this discredited testing method, these claims will not enjoy any presumption of legitimacy. Going forward, advertisements for cigarettes, like any other ads, will continue to be scrutinized under Section 5 of the FTC Act.

Now that the FTC has removed its apparent imprimatur from the testing method, I urge the scientific community to redouble its efforts. Scientists must develop a test that provides consumers with a meaningful measure of the tar and nicotine yields of the cigarettes they smoke.

More importantly, I urge the next Congress to reintroduce S. 625, the Family Smoking Prevention and Tobacco Control Act. This bill includes several key consumer protection measures. First, the bill allows the Food and Drug Administration to regulate tobacco products. The FDA has lacked any authority in this area for decades, and tobacco manufacturers have exploited the void. The bill would authorize FDA scientists to track, analyze, and regulate the components of tobacco products. If this legislation is enacted, the FDA will wield more effective tools to protect public health.

Second, the bill properly assigns authority to the FDA to issue certain regulations concerning tar and nicotine yields, including requirements governing the methodology for determining tar and nicotine yields and the public disclosure of information about such yields or other constituents of tobacco smoke. For more than 10 years, the Commission has recommended to Congress that one of the government's science-based public health agencies be given jurisdiction over cigarette testing.

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[1] *See* Jerry Markon, *Suit on Tobacco Ads Sparks Feisty Debate*, Washington Post, Oct. 7, 2008, at A02.

[2] *See* Prepared Statement of the Federal Trade Commission Before the Committee on Commerce, Science, and Transportation, United States Senate (November 13, 2007), http://www.ftc.gov/os/testimony/P064508tobacco.pdf.

The FDA clearly has the requisite scientific expertise for this task.

Third, the bill appropriately preserves coordination between the FTC and the FDA in enforcing labeling and marketing requirements. This kind of enforcement is a core element of the FTC's consumer protection mission. The bill wisely preserves the FTC's jurisdiction over unfair or deceptive cigarette advertising.

The regulation of the manufacture, sale, advertising, and marketing of tobacco products is a tall order, but it is crucial to the health of our country, especially its young people. Smoking is a continuing public health crisis. It deserves to be at the top of the new administration's public health agenda.