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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

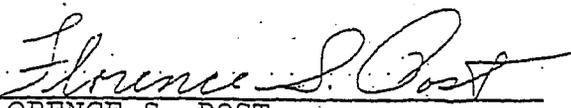
In the Matter of the Protest of )  
)  
BRIAN CHUCHUA'S JEEP dba BRIAN ) Protest No. PR-871-87  
CHUCHUA'S FOUR WHEEL DRIVE CENTER, )  
)  
Protestant, )  
)  
vs. )  
)  
AMERICAN MOTORS SALES CORPORATION, )  
)  
Respondent. )

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the New Motor Vehicle Board as its Decision in the above-entitled matter.

This Decision shall become effective forthwith.

IT IS SO ORDERED this 29th day of September, 1987.

  
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FLORENCE S. POST  
President  
New Motor Vehicle Board

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In the Matter of the Protest of )

BRIAN CHUCHUA'S JEEP )  
dba BRIAN CHUCHUA'S FOUR WHEEL )  
DRIVE CENTER, )

Protestant, )

vs. )

AMERICAN MOTORS SALES CORPORATION, )

Respondent. )

Protest No. PR-871-87

PROPOSED DECISION

PROCEDURAL BACKGROUND

1. By letter dated January 23, 1987 American Motors Sales Corporation (AMC), 23046 Avenida De La Carlotta, Suite 400, Laguna Hills, California gave notice pursuant to California Vehicle Code section 3060<sup>1</sup> to Brian

<sup>1</sup> Unless otherwise indicated, all references are to the California Vehicle Code.

Chuchua's Jeep (Chuchua), 777 West Orangethorpe Avenue, Placentia, California, of AMC's intention to terminate Chuchua's franchise. Notice was received by the New Motor Vehicle Board (Board) on January 29, 1987.

2. By letter dated February 5, 1987, Chuchua gave notice to the Board of its intent to protest the termination of its franchise by AMC.

3. On February 10, 1987, the Board notified Chuchua that its protest did not comply with the Board's regulations for filing a protest as set forth in Title 13, Chapter 1, Sub-Chapter 2, Articles 5 and 6 (commencing with section 583) of the California Administrative Code. On the same date, February 10, 1987, the Board mailed notice of Chuchua's protest to AMC.

4. A protest conforming with the Board's regulations was filed in behalf of Chuchua on February 13, 1987. On February 25, 1987, AMC filed its notice of appearance with the Board.

5. A hearing was originally scheduled to commence on Monday, May 18, 1987. At the request of Chuchua and with the concurrence of AMC the hearing was rescheduled for Monday, June 8, 1987.

6. A hearing was held before Robert S. Kendall, Administrative Law Judge of the Board on June 8, 9, 10, 11 and 22, 1987.

7. Chuchua was represented by Peter M. Gwosdof, Esq., Suite 251, El Camino Bank Building, 451 West Lincoln Avenue, Anaheim, California.

8. AMC was represented by Jonathan B. Frank, Esq. and Joseph M. Malkin, Esq., of O'Melveny and Myers, 400 South Hope Street, Los Angeles, California.

#### Issues Presented

9. Pursuant to section 3066, AMC has the burden of proving good cause to terminate the franchise.

10. In determining whether good cause exists for terminating a franchise, section 3061 requires the Board to take into consideration the existing circumstances, including, but not limited to the following:

(a) Amount of business transacted by the franchisee, as compared to the business available to the franchisee. [3061(a)]

(b) Investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise. [3061(b)]

(c) Permanency of the investment. 3061(c)]

(d) Whether it is injurious or beneficial to the public welfare for the franchise to be modified or replaced or the business of the franchisee disrupted. [3061(d)]

- (e) Whether the franchisee has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumers for the motor vehicles handled by the franchisee and whether the franchisee has been and is rendering adequate services to the public. [3061(e)]
- (f) Whether the franchisee fails to fulfill the warranty obligations of the franchisor to be performed by the franchisee. [3061(f)]
- (g) Extent of the franchisee's failure to comply with the terms of the franchise. [3061(g)]

Findings of Fact

Amount of Business Transacted By  
the Franchisee, as Compared  
to the Business Available  
[section 3061(a)]

11. Chuchua has been a franchised AMC Jeep dealer in the Los Angeles-Fullerton market area since 1963. Chuchua sells only the Jeep line of passenger vehicles and light trucks.

12. Since 1983, Chuchua has failed to achieve its new vehicle sales planning potential. Chuchua has performed consistently below average in that regard when compared to the other dealers in the district and in the Western Region.

13. The following chart indicates the comparison of Chuchua's sales performance with that of the District and Western Region.

<u>YEAR</u>	<u>SALES PLANNING POTENTIAL</u>	<u>CHUCHUA'S ACTUAL SALES</u>	<u>CHUCHUA'S SALES AS A % OF SALES PLANNING POTENTIAL</u>	<u>DISTRICT SALES AS A % OF SALES PLANNING POTENTIAL</u>	<u>WESTERN REGION SALES AS A % OF SALES PLANNING POTENTIAL</u>
1983	248	169	68.14%	105.85%	55.58%
1984	621	256	41.22%	109.26%	67.73%
1985	621	345	55.55%	113.49%	87.45%
1986*	621	298	47.98%	119.90%	96.97%

\*THRU 11/30/86

14. As the chart indicates, Chuchua's sales, as measured by AMC as a percentage of sales planning potential, have been consistently lower than that of the Western Region and lower than that of the district where Chuchua's dealership is located.

15. During 1987 Chuchua's performance has improved significantly. At its present sales pace, Chuchua is achieving 138% of its sales planning potential. The improvement is attributed to a change in the organization of its sales department.

Investment Made and Obligations  
Incurred by the Franchisee to Perform  
its Part of the Franchise  
[section 3061(b)]

16. The dealership is a closely held corporation owned by Brian Chuchua and his family. Chuchua became a Jeep dealer in April 1963. At one time Chuchua also represented Toyota Land Cruiser and Citroen but since 1970 has been a Jeep only dealer.

17. The property on which the dealership is located is owned by Mr. and Mrs. Chuchua. The dealership occupies 3.6 acres upon which are buildings with a total of 48,000 square feet. The buildings were erected in 1973 when the dealership was moved to its present location in Placentia from Fullerton. AMC assisted in the planning and design of the sales and service buildings. No evidence was presented as to the cost of the facilities or their present value.

18. Within four months prior to the hearing Chuchua borrowed \$800,000 and re-invested it in the business. The proceeds were used to pay off an SBA loan on the business and provide additional working capital.

Permanency of the Investment  
[section 3061(c)]

19. Chuchua's dealership, as of nine months ending February, 1987, had total assets of \$2,471,658; total

liabilities of \$1,942,456, and a total net worth of \$529,209. Its total net profit for that nine month period was \$236,579.

20. All of the investment in land and buildings is permanent and was made for the operation of the Jeep franchise.

Whether it is Injurious or Beneficial  
to the Public Welfare for the Franchise  
to be Modified or Replaced or the Business  
of the Franchisee Disrupted  
[section 3061(d)]

21. AMC measures a dealer's service performance through the use of a Customer Satisfaction Index (CSI). The information upon which it is based is obtained from service customers. The results are then used to compare the dealer's service performance to the other AMC dealers in the region where the particular dealer is located.

22. Chuchua's CSI has fallen dramatically from 1985 through 1986. The following chart indicates Chuchua's CSI performance in the Western Region, based upon the latest report available at the time of hearing.

AMC CSI - Dealer Summary Report, Western Region

<u>Date</u>	<u>Number of Dealers Surveyed</u>	<u>Chuchua's Ranking</u>
Apr/June 1985	61	8 out of 61
Jan/Mar 1986	73	39 out of 73
July/Sept 1986	73	58 out of 73
Oct/Dec 1986	70	69 out of 70

Whether the Franchisee has Adequate Motor Vehicle  
Sales and Service Facilities, Equipment, Vehicle Parts,  
and Qualified Service Personnel to Reasonably Provide  
for the Needs of the Consumers for the Motor Vehicles  
Handled by the Franchisee and has Been and is  
Rendering Adequate Services to the Public  
[section 3061(e)]

23. Chuchua's service department employs four mechanics, a service manager, a warranty writer, and two detailer/cleaners. There are three people in the parts department. The dealership also has six sales persons, two sales managers, a financial/insurance manager, and an office worker. Chuchua also works full-time as overall manager of the corporation.

24. Chuchua's facility occupies 3.6 acres and has a large parts department consisting of an area of approximately 20,000 square feet. The dealership specializes in parts for older Jeeps. The parts are marketed both nationally and internationally.

25. No evidence was offered to indicate that Chuchua does not have adequate motor vehicle sales and service facilities, equipment, vehicle parts and qualified service personnel to reasonably provide for the needs of the consumers for the motor vehicles handled by Chuchua. Whether Chuchua has been and is rendering adequate service to the public is addressed below.

Whether the Franchisee Fails to Fulfill  
the Warranty Obligations of the Franchisor  
to be Performed by the Franchisee  
[section 3061(f)]

26. AMC's warranty provides that an owner may take a vehicle to any Jeep dealer in the United States or Canada for warranty work and expect that it will be performed.

27. The AMC franchise obligates Chuchua to perform warranty repairs on Jeep vehicles irrespective of whether they were purchased at a dealer other than Chuchua.

28. The following are instances of Chuchua's failure to perform warranty work on Jeep vehicles.

29. Arnold Kubo purchased a 1985 Jeep Cherokee at Orange Coast AMC in late 1984. In May 1985 Kubo took the vehicle to Chuchua's service department, which was approximately three blocks from his office, for required warranty service. After being made to wait for approximately two hours Kubo was told that because he had

not bought the vehicle at Chuchua's, he would have to take it elsewhere for warranty service.

30. Kubo subsequently returned the vehicle to Orange Coast AMC where the required warranty work was performed. Thereafter, Kubo related his experience with Chuchua's service department to an AMC employee.

31. Robert Reuilinger bought a 1984 Cherokee from Orange Coast AMC on Memorial Day weekend 1984. In 1985 Reuilinger phoned Chuchua's service department to arrange an appointment to have an oil leak repaired under warranty. Reuilinger called Chuchua because it was his understanding that he could have warranty service performed at any Jeep dealership.

32. Upon calling the dealership Reuilinger was asked where he had purchased the vehicle and when he told the service writer where he had purchased his Cherokee he was instructed to take it back there. Reuilinger did so despite the fact that he was required to travel approximately seven (7) miles when Chuchua's premises were only two (2) miles distance from his employment.

33. In June, 1985, Tracy Wood, purchased a new Jeep Cherokee from a Costa Mesa dealer. In late 1985, Wood phoned Chuchua's service department to arrange warranty maintenance service for the vehicle. It was Wood's belief that she could obtain this service at any AMC dealer. Once at the dealership, Wood, in response to questions, stated

the vehicle was under warranty and had not been purchased at Chuchua's. She was told it was not Chuchua's policy to perform warranty service work on Jeeps not purchased there, and therefore, she should not bring the vehicle in. Wood had the warranty service performed elsewhere.

34. On March 23, 1986, Ray Sharp, who had purchased a Jeep Wagoneer at Jim Click Motors, took the vehicle to Chuchua's for required warranty repairs. At first, the service manager told Sharp they were too busy. When Sharp asked for an appointment later on, he was refused and was told that a "fifty mile rule" required he take it to the selling dealer if that dealer was within 50 miles of his home. After protestation by Sharp and further discussion, he was told the dealership did not do warranty work on vehicles not sold there.

35. Sharp later returned the vehicle to the selling dealer, who performed the needed work. When the selling dealer was told of Chuchua's refusal, he gave Sharp the phone number for AMC's Customer-Service Department where Sharp lodged a complaint.

36. In May, 1986, Todd Seiders purchased a new 1986 Jeep Cherokee at Orange Coast AMC. Seiders took the vehicle to Chuchua's service department for required warranty repairs. Seiders was refused warranty service by the service manager who told him he would have to return to Orange Coast Jeep for the work. The service manager

explained that it was Chuchua's policy to perform warranty service only on vehicles sold by his dealership.

37. In response to Seider's protestations that his owner's manual indicated any Jeep dealer would perform warranty service, the service manager advised Seiders to call the AMC Customer Complaint Service and offered to provide the phone number.

38. Seiders contacted AMC to complain about Chuchua's refusal to service his vehicle and later had the needed warranty work performed at County Wide Jeep in Garden Grove.

39. In January, 1986, Dick Miller purchased a 1986 Jeep Cherokee from Jim Click Jeep. In May, 1986, Miller took the vehicle to Chuchua's service department where he met the dealership's service manager at that time. Miller was asked if he had bought the vehicle there, and was told warranty service would not be done for him unless he was "in transit", or that he lived more than 125 miles away.

40. Miller thereafter took the vehicle to Orange Coast AMC where the warranty work was performed. Subsequently, Miller contacted the AMC Customer Service Department to lodge a complaint.

41. On August 22, 1986, Brad Perrin, who had in September or October 1985 purchased a 1986 Grand Wagoneer from Roger Harmon AMC, took the vehicle to Chuchua's service department. Perrin needed warranty service performed on his

vehicle and Chuchua's dealership was nearest his home. Perrin's vehicle had a power steering fluid leak causing hard steering.

42. Once at the dealership Perrin became involved in a dispute with a service department employee, who equivocated over whether or not the work would be performed in a timely manner, and whether the vehicle was still under warranty. Despite Perrin's offer to pay for the repairs and seek later reimbursement from AMC, the employee demanded the vehicle be removed from the lot and taken back to the selling dealer for any needed service whether under warranty or not.

43. Ultimately, Perrin took his vehicle to County Wide Jeep, paid for the repairs, and was later reimbursed by AMC. This was done after he complained to the AMC Customer Service Department by both phone and letter.

44. Kent Kitselman leased a Jeep Cherokee Laredo in June, 1986, from a dealer in Glendale. On or about September 10, 1986, Kitselman took the Jeep to Chuchua's service department because at 3,000 miles, the "Check Engine" light was on.

45. The service department employee, upon seeing the word "Glendale" on the spare tire, told Kitselman he would have to take the vehicle back to the dealer who sold it because under California law, should Chuchua fail to fix

the vehicle properly, Chuchua would have to "buy it back". The employee then advised Kitselman to call Orange Coast AMC to see if they might fix the vehicle for him. The employee also advised Kitselman that were the engine to go inoperative and the vehicle was towed back in to the dealership, their policy would permit them to get the vehicle ". . . drivable so you can get it back to the dealer . . ."

46. The service department employee also advised Kitselman to call AMC's Zone Office if he wanted to complain, that it was in San Clemente and the number was in the directory.

47. David Graham purchased a 1986 Cherokee Pioneer from Orange Coast AMC in June 1986. In October, 1986, Graham phoned Chuchua's service department to ascertain if he could have the vehicle towed there for warranty repairs. He made the call because the tow truck driver advised him ". . . (he) might have a problem . . ." if he towed it there.

48. Graham thereupon phoned Chuchua's dealership and was told over the phone by the dealership's service department employee that if the vehicle was towed there it would not be repaired because it was their policy not to work on a vehicle unless it had been purchased at the dealership.

49. Subsequently, Graham contacted Orange Coast AMC. Orange Coast arranged to have the vehicle towed in, and thereafter performed the required warranty work.

50. On October 3, 1986, Sharon Carol Lee, an employee of AMC, was instructed by her superior, Robert Roth, to take a 1986 Jeep Cherokee originally sold in 1985, to Chuchua's service department to attempt to obtain warranty service, or other service, while posing as the vehicle owner.

51. Lee was met at Chuchua's dealership by Bob Collett, Chuchua's sales manager, who saw that the vehicle was purchased at Orange Coast AMC. Collett informed Lee the dealership could not work on the car as the dealership did not service Jeeps which were not purchased there.

52. When Lee continued to insist she wanted service, Brian Chuchua was called over. He affirmed Collett's statements, telling Lee that a new state law allowed them to decline service to vehicles that had not been sold by them. Brian Chuchua also indicated that if Lee did not like his decision to call the Owner Relations Department of AMC's Western Division, Lee did not ask for warranty service. She explained that there were urgent service problems involving braking, turning, engine dying, and exhaust leaks causing nausea.

53. On October 6, 1986, Rebecca Holland, an employee of AMC, was instructed by her superiors, Steve Center and Vic Crofts, to take Center's 1986 Jeep Wagoneer to Chuchua's dealership. A wire had been loosened on the engine to cause the "Check Engine" light to come on.

54. Chuchua's Service Manager at that time, Wayne Nichols, advised her that she would have to take the vehicle where she bought it to have it serviced. Nichols explained that the work could not be done at Chuchua's because of the owner's policy of not servicing vehicles purchased at other dealerships.

55. When Holland told Nichols she had been informed when she bought the vehicle that any Jeep dealer would perform warranty work, he told her she could not have the repairs made at Chuchua's because of the owner's policy.

56. Brian Chuchua, or his service department personnel, were advised by AMC's employees of complaints received by the regional AMC Customer Service Department. Brian Chuchua was advised that owners of Jeep vehicles had been refused either warranty service work, or routine service, by Brian Chuchua personally as well as by Chuchua's service department employees.

57. The following are instances of contacts between AMC and Chuchua in regard to failure to perform warranty service.

58. Jerry R. Mack, is employed by AMC as an owner's relations analyst. His duties include receiving phoned and written complaints from customers and resolving them. On at least three occasions, between February and September, 1985, Mack discussed complaints with Brian Chuchua concerning refusals to perform warranty service on vehicles not sold by him. Mack advised Brian Chuchua he was obligated to perform such service.

59. On September 8, 1986, AMC's employee Priscilla Hedin, an owner relations analyst, contacted Brian Chuchua personally by phone. The conversation concerned his service department's refusal to perform warranty service work on a Jeep Grand Wagoneer owned by a Patrick Malaney which was not purchased at Chuchua's.

60. Hedin told Brian Chuchua that AMC's warranty policy required that he must service the vehicle. Brian Chuchua refused to service the vehicle because it was under warranty and not purchased at his (Chuchua's) dealership. Brian Chuchua also stated that he would service the vehicle when it was in the "customer-pay period."

61. On November 18, 1986, Walter Peyton, AMC's Assistant Regional Manager, informed Brian Chuchua during a meeting that it was a franchise responsibility to perform warranty service work on vehicles not sold by him. At this meeting, Brian Chuchua advised Peyton of a continuing

problem in service personnel turnover caused by other dealers hiring his mechanics away, and that he did not want to carry accounts receivables for warranty work performed on vehicles he had not sold.

62. During the period April-May, 1986, AMC's employee Victor Crofts, in a conversation with Brian Chuchua, commented on Brian Chuchua's refusal to perform warranty service on vehicles he had not sold. Brian Chuchua told Crofts he was having warranty claims payment problems. Crofts told Brian Chuchua he would look into the complaints, but that in the meantime Brian Chuchua was obligated to perform warranty service for vehicles no matter where purchased.

63. Between March 1986 to the date of his testimony, AMC's employee Paul Winovich, an owner relations analyst, received approximately 20 or 21 phone and letter complaints from Jeep owners. The complainants alleged that the Chuchua dealership refused to perform warranty service on Jeeps which the complainants had bought at dealerships other than Chuchua's. During this same period, Winovich did not receive this type of complaint involving any other dealers in the Western Zone.

64. On several occasions, Winovich discussed with Chuchua's service department employees the dealership's refusal to perform warranty work on vehicles not sold by it. Wayne Nichols, Chuchua's former service manager, told

Winovich "it was Brian Chuchua's policy to refuse warranty work on vehicles that were not purchased at his dealership."

65. Brian Chuchua contends in his testimony that he was not aware of the AMC Jeep franchisee's obligations to perform warranty service, or out-of-warranty service, for any Jeep owner irrespective of where the vehicle was purchased. These contentions are found to be not credible in view of the length of time he has been in the motor vehicle business, the number of times in 1986 and 1987 he was told of this obligation by AMC employees, and the fact that, seemingly, until at least 1985, he had routinely performed warranty work and out-of-warranty work without reservation.

66. Brian Chuchua testified that he had a policy of servicing Jeeps sold by other Jeep dealers if they were brought to his dealership because of an unsafe condition, were immobile, or were towed-in. Chuchua's testimony is not supported by the evidence.

67. Brian Chuchua testified that his dealership adopted a policy permitting warranty work on tow-ins in mid-summer 1986. However, the policy was not applied to owner David Graham, whose vehicle was immobile, and who was told in October, 1986 by a service department employee over the phone not to tow the vehicle to Chuchua's service department. This incident is in contradiction to Brian Chuchua's testimony.

68. Brian Chuchua testified that he adopted a policy permitting warranty or nonwarranty work for "unsafe" vehicles. The testimony is contradicted by the experience of AMC employee Sharon Carol Lee, who was refused warranty, or out-of-warranty service, in October 3, 1986, for braking problems, fume leakage into the passenger compartment, and steering difficulties.

69. Brian Chuchua's testimony that he refused to do warranty service for vehicles not sold by him because of the nearly \$70,000 owed him by AMC for such repairs is not credible. No evidence was introduced by protestant to show Brian Chuchua had notified AMC of his intention in this regard, either before or after he began refusing service to owners of vehicles purchased elsewhere.

70. Wayne Nichols, Chuchua's service manager between September 1985 and September 1986, was told by Brian Chuchua that he (Chuchua) "does not want to service any vehicle that he does not sell, under warranty." This policy was in effect the entire time that Nichols worked for Chuchua.

71. During the last three and one-half months of his employment, however, Brian Chuchua advised Nichols that he would repair vehicles that he did not sell, if they were broken down, in transit, or if they were towed into the dealership.

72. Nichols testified that during his period of employment he would turn away at least two Jeep owners daily that requested warranty service. These customers were refused service because they had purchased their vehicles elsewhere. Nichols also observed, on an average of once a day, that Brian Chuchua himself refused to provide warranty service on vehicles that were not purchased from his dealership. During this entire period, Nichols testified that Chuchua's mechanics were under-employed and could have performed warranty service work.

73. Chuchua's service employees would occasionally, if Brian Chuchua was away on vacation, perform warranty work on vehicles not purchased at the dealership.

74. In 1985, Chuchua performed warranty work on 165 vehicles not sold by the dealership. In 1986, however, the number had dropped to 46. In 1987, to the date of the hearing, Chuchua had performed warranty work on vehicles sold by other dealers in 34 instances. Of these, one (1) was performed on January 5, 1987, and two (2) on January 30, 1987. Chuchua's letter of notice of termination is dated January 23, 1987.

Extent of Franchisee's Failure to Comply With the Terms of the Franchise  
[section 3061(g)]

75. On November 1, 1986 Chuchua's franchise was extended for a single one-year term because of perceived

deficiencies in the quantity of vehicle sales previously made. Subsequently, Chuchua's franchise was extended to March 31, 1987 to provide Chuchua and AMC more time to correct the sales deficiency as well as to resolve a conflict which had arisen concerning Chuchua's failure to provide both warranty and nonwarranty service for Jeep owners who had purchased their vehicles at dealerships other than Chuchua's.

76. As part of the franchise agreement, Chuchua and all other AMC Jeep dealers were, and are, required to perform needed warranty service. The dealers are also required to perform any routine service requested by an owner without regard from whom or from where the owner purchased the vehicle.

77. Tracy Wood took her vehicle to Chuchua's for routine service in October, 1986. At that time, Wood's vehicle was out of warranty. Wood called Chuchua's to arrange an appointment. She was told by a person who identified himself on the phone as the service manager, not to bring the vehicle in. She was informed it was the dealership's policy not to service Jeeps which were not sold there. The service manager told Wood that if she did not like the policy to call the AMC Customer Service Department for which he gave her the phone number.

DETERMINATION OF ISSUES

I

a) It is determined that the franchisee has made the necessary investment and incurred the necessary obligations to perform its part of the franchise. [section 3061(b)]

b) It is determined that the investment is permanent. [section 3061(c)]

c) It is determined that the franchisee has adequate motor vehicle sales and service facilities; equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumers for the motor vehicles handled by the franchisee. [section 3061(e)]

II

Respondent has proven that there is good cause for terminating the franchise in that:

a) It is determined that the franchisee does not transact an adequate amount of business compared to the amount of business available. [section 3061(a)]

b) It is determined that it would be beneficial to the public welfare to replace the franchisee with a franchisee that would perform warranty, and out-of-warranty, service work for Jeep owners in the market

area irrespective of where the vehicles were purchased. [section 3061(d)]

c) It is determined that the franchisee has not been rendering adequate service to the public in that it has consistently refused to provide service for Jeep vehicles that were not purchased from the franchisee. [section 3061(e)]

d) It is determined that the franchisee has failed to fulfill the warranty obligations of the franchisor to be performed by the franchisee. [section 3061(f)]

e) It is determined that the franchisee failed to comply with the terms of the franchise which require it to perform service on Jeep vehicles irrespective of where the vehicles were purchased, and whether they are under, or out of warranty. [section 3061(g)]

PROPOSED DECISION

PROPOSED DECISION

THEREFORE, the following proposed decision is respectfully submitted:

The protest is overruled. AMC shall be permitted to terminate the franchise. However, the termination shall be stayed on the following conditions:

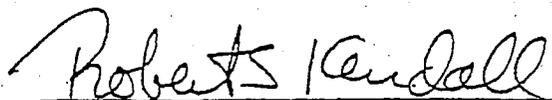
1. Protestant shall fully comply with all of its obligations under the franchise and the law in regard to performing service on Jeep vehicles, whether under warranty or not, irrespective of where the vehicles were purchased.

2. In the event Respondent receives evidence that Protestant has failed to comply with the conditions set forth in paragraph one, immediately above, Respondent may move the Board for an order removing the stay.

If the Board finds that Protestant has not properly performed its service obligations the protest shall be overruled unconditionally and Respondent shall be permitted to terminate the franchise.

I hereby submit the foregoing which constitutes my proposed decision in the above-entitled matter, as a result of a hearing held before me on the above dates and recommend adoption of this proposed decision as the decision of the New Motor Vehicle Board.

Dated: September 9, 1987



ROBERT S. KENDALL  
Administrative Law Judge  
New Motor Vehicle Board