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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

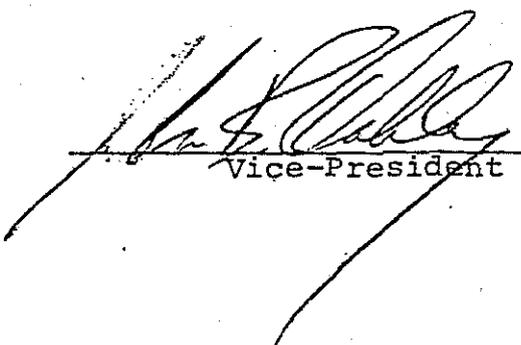
In the Matter of the Protest of)	
DOWNTOWN FORD SALES,)	
Protestant,)	Protest No. PR-144-77
vs.)	
FORD MOTOR COMPANY,)	Filed: April 5, 1978
Franchisor.)	

DECISION

The attached Proposed Decision of the Hearing Officer 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 March 31, 1978.



Vice-President

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In the Matter of the Protest of)
DOWNTOWN FORD SALES,) Protest No. PR-144-77
Protestant,)
vs.)
FORD MOTOR COMPANY,)
Franchisor.)

PROPOSED DECISION

Procedural Background

1. Respondent, Ford Motor Company ("Ford") gave notice on August 10, 1977, pursuant to Section 3062 of the Vehicle Code^{1/} of its intention to establish an additional franchise in West Sacramento, located along Interstate 80 between Interstate 880 and Sycamore Street. The proposed franchise ("proposed truck center") is intended to be a Ford Truck Center authorized to handle Series 500 Ford trucks and larger.

^{1/}All references are to the Vehicle Code.

2. A protest was filed with the New Motor Vehicle Board on August 29, 1977, by Downtown Ford Sales ("Downtown"), 525 North 16th Street, Sacramento, California.

3. A hearing was held pursuant to Section 3066, before Anthony M. Skrocki, Hearing Officer of the New Motor Vehicle Board, in Sacramento, California, commencing on January 30, 1978. Protestants were represented by Sy Dennis, Jr., and Chrisman Swanberg of Dennis & Schottky, a professional corporation. Respondent was represented by Richmond S. Frederick, Office of General Counsel, Ford Motor Company.

Issues Presented

4. Protestant contends that good cause exists for not establishing the proposed franchise for the following reasons:

(a) The additional franchise will jeopardize the permanent investment of Protestant.

(b) The additional franchise will have an adverse effect on the retail motor vehicle business and the consuming public in the relevant market area.

(c) It will be injurious to the public welfare for an additional franchise to be established.

(d) Franchises of the same line-make in the relevant market area are providing adequate competition and convenient consumer care for Ford Medium-Heavy and Extra-Heavy trucks.

(e) The establishment of the additional franchise would not increase competition and would, therefore, not be in the public interest.

Findings of Fact^{2/}

Facts Relating To Permanency Of Investment

5. Downtown is a corporation which has been franchised as a Ford dealer since 1946.^{3/}

6. In 1965, when Eugene Pleau acquired majority ownership, Downtown was located at 13th and I Streets in Sacramento.

^{2/}For clarification, the following terminology must be explained:

<u>Light Trucks</u>	<u>Heavy Trucks</u>	
	<u>Medium-Heavy Trucks</u>	<u>Extra-Heavy Trucks</u>
GVW 0 - 14,000 Lbs.	14,001 - 26,000 Lbs.	26,001 -
Ford Series 100 thru 350	500* thru 800	850 -

*At this time Ford is not manufacturing Series 500 trucks.

The proposed franchise is limited to Medium-Heavy and Extra-Heavy trucks only.

^{3/}Prior to 1963 Downtown was known as Burton Motors.

7. In January of 1976, while retaining the 13th and I Streets location, Downtown moved its major facility to its present location at 525 North 16th Street, Sacramento.

8. Downtown purchased seven acres of land at its present major facility and constructed an entirely new facility at a cost of a little over one million dollars. Downtown has sales and service facilities but no body shop.

9. The following is illustrative of the impact upon Downtown's financial status due to its sales of medium-heavy and extra-heavy trucks from 1973 through 1977.

DOWNTOWN SALES PERFORMANCE

	Medium-Heavy Sales (Units)	Extra-Heavy Sales (Units)	Medium-Heavy Sales % of Total Sales Volume (dollars)	Medium-Heavy Sales % of Total Gross Profit (dollars)
1973	10	1	.72%	.29%
1974	13	0	1.39%	.43%
1975	9	0	1.00%	.44%
1976	7	0	.56%	.20%
1977	9	0	.58%	.30%

(EXHIBIT J)

Facts Relating To The Effect On The Retail Motor Vehicle Business
And The Consuming Public In The Relevant Market Area.

10. At present, there are seven Ford dealers in the Sacramento multiple point.^{4/} Six are franchised to sell light and

^{4/}See Appendix A for definition of the Sacramento multiple point, and dealer locations.

medium-heavy trucks. Only Suburban Ford in the Sacramento multiple point is franchised to sell extra-heavy trucks as well as medium-heavy and light trucks.

11. Three of the seven Sacramento multiple point dealers are within the relevant market area of the proposed franchise. (Downtown, Harrold Ford and Senator Ford.)

12. The proposed location in West Sacramento is near existing Kenworth, White and International Harvester heavy truck dealerships.

13. The following indicates Ford representation by registrations among heavy trucks in operation in the Sacramento multiple point area:

HEAVY TRUCK UNITS IN OPERATION TRENDS
(6 YEARS AND UNDER)

<u>Year</u>	<u>Medium-Heavy Truck</u>			<u>Extra-Heavy Truck</u>		
	<u>Ford</u>	<u>Industry</u>	<u>Ford % Industry</u>	<u>Ford</u>	<u>Industry</u>	<u>Ford % Industry</u>
1973	756	1,983	38.1	136	1,040	13.1
1974	812	2,238	36.3	153	1,301	11.8
1975	729	2,195	33.2	145	1,346	10.8
1976	731	2,300	31.8	157	1,378	11.4

(Exhibit T)

Facts Relating To The Effect On The Public Welfare.

14. The proposed truck center will be franchised only for medium-heavy and extra-heavy trucks and will be designed especially for selling and servicing such vehicles.

15. The proposed truck center will be located on between five and seven acres, with an 18,300 square foot building plus a 2,500 square foot parts mezzanine. There will be seven drive through service bays, equivalent to 14 service stalls with capability for expansion.

16. The estimated cost of the land and buildings will be \$800,000 to \$1,000,000. There is planned an initial operating investment of \$325,000, increasing to in excess of \$700,000.

Facts Relating To Adequate Competition And Convenient Customer
Care

17. Downtown is franchised to sell all Ford passenger cars and light and medium-heavy trucks, but is not franchised to sell extra-heavy trucks.^{5/}

18. Ford dealers not franchised to sell extra-heavy trucks are permitted under the franchise to order them through other dealers who are franchised for extra-heavy vehicles, thus Downtown is expressly permitted to sell the extra-heavy trucks to its retail customers.

19. As shown by the following chart Sacramento multiple point dealers sold more medium-heavy trucks than were registered

^{5/}It was represented by Ford that Suburban Ford, the only dealer in the Sacramento multiple point area franchised to sell extra-heavy trucks, has agreed to surrender that portion of their franchise if and when the proposed truck center is built.

in the Sacramento multiple point from 1972 through 1974. From 1975 to date Sacramento multiple point dealers have sold fewer vehicles than were registered in Sacramento.^{6/}

SACRAMENTO MULTIPLE POINT

FORD MEDIUM-HEAVY TRUCK SALES AND REGISTRATIONS

	<u>Sales</u>	<u>Registrations</u>	<u>Sales % Registrations</u>	<u>Ford Medium-Heavy Truck Penetration*</u>
1972	225	182	124%	49.7%
1973	191	125	153	40.5
1974	147	124	119	33.3
1975	107	109	98	32.4
1976	94	112	84	30.4
1977 (Oct. Year to Date Annualized)	113	145	78	40.8

*Compared to total industry registrations.

(Exhibit K)

20. The following table indicates the occurrence of a "pump-out" situation in 1972 and 1973 and a "pump-in" situation from 1973 to the present in extra-heavy trucks in the Sacramento multiple point:

FORD EXTRA-HEAVY TRUCK SALES AND REGISTRATIONS

<u>Year</u>	<u>Sales</u>	<u>Registrations</u>	<u>Sales % Registrations</u>	<u>Ford Extra-Heavy Truck Penetration</u>
1972	57	33	173%	15.4%
1973	44	29	152	10.3
1974	25	31	81	10.4
1975	19	27	70	14.1
1976	20	32	63	15.5
1977 (Oct. Year to Date Annualized)	9	37	24	16.8

(Exhibit O)

^{6/}A "pump-out" situation occurs when the dealer sells more vehicles than are registered in its area, showing clearly that some vehicles must be sold and registered outside that dealers primary market area. A "pump-in" situation occurs when the area dealer sells fewer vehicles than are registered in its market area, indicating dealers outside the area are selling vehicles into that dealers primary market area.

21. Ford's market penetration has tended to increase in areas where truck centers have been built.

22. The nationwide demand for diesel engined trucks increased from 81% of the extra-heavy market in 1974 to 90.7% by November of 1977.

23. Downtown has no service stalls specifically designed for extra-heavy trucks. Downtown does have three heavy truck mechanics but neither Downtown, nor the other two Ford dealers in the relevant market area have any diesel mechanics.

24. Many Ford heavy trucks have Caterpillar or Cummins diesel engines. Downtown is not certified by Caterpillar or Cummins to do warranty work. Suburban Ford is certified to do diesel warranty work for Caterpillar but not for Cummins.

Facts Relating To The Effect Upon Competition And The
Public Interest.

25. The franchise of the proposed truck center will not expressly include a right to buy new light trucks from other Ford dealers, as compared to the express franchise right of the existing Sacramento multiple point dealers to purchase extra-heavy trucks from Ford extra-heavy truck franchisees.

26. At the time of the hearing there were 79 Ford truck centers nation wide. Sixty-two of these were initially financed

by Ford, and 30 are still in whole or part financed by Ford.

27. The proposed truck center will initially be Ford financed and operated by a wholly-owned subsidiary of Ford until such time as a qualified private operator is obtained.

28. Twenty-seven of the 79 existing truck center franchises were originally franchised as medium-heavy and extra-heavy truck centers. None of these have been granted the additional light truck franchise.

29. Ford represents that as long as the proposed truck center is owned by the Ford subsidiary it will not sell light trucks.

Determination of Issues

1. Protestant has failed to establish that good cause exists for not establishing the proposed franchise for the following reasons:

(a) The establishment of the additional franchise will not jeopardize the permanent investment of Protestant. The income derived by Protestant from the sale of medium-heavy trucks is minimal and the income derived from the sale of extra-heavy trucks is virtually non-existent.

(b) The establishment of the additional franchise will not adversely affect the retail motor vehicle business and the consuming public in the relevant market area. There

are significant numbers of medium-heavy and extra-heavy Ford trucks in operation in the Sacramento multiple point area requiring Ford service facilities. Ford market penetration has decreased in this area, with many of the Ford registrations in the area resulting from sales of dealers outside the area.

(c) There will be a beneficial effect on the public welfare through the proposed truck center's capital investment and increased service and sales facilities for heavy trucks.

(d) Franchisees of the same line make in the relevant market area are not providing adequate competition and convenient consumer care for Ford medium-heavy and extra-heavy trucks. In addition to the decline in Ford heavy truck market penetration in the Sacramento multiple point area, there are no Ford dealer diesel mechanics in the relevant market area of the proposed truck center.

(e) The establishment of the additional franchise will promote Ford competition with other manufacturers in the heavy truck market and would, therefore, be in the public interest. If at some future date Ford were to express the interest to enfranchise this proposed truck center to sell light trucks in competition with other Ford dealers in the relevant market area

compliance with the applicable California Vehicle Code Sections 3062-3066, would be required.

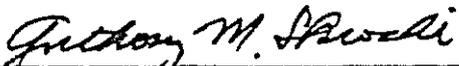
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THE FOLLOWING PROPOSED DECISION is respectfully submitted:

The protest is overruled. The respondent is entitled to establish the additional Ford medium-heavy and extra-heavy truck dealership in the proposed area.

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

Dated: March 15, 1978



ANTHONY M. SKROCKI
Hearing Officer
New Motor Vehicle Board

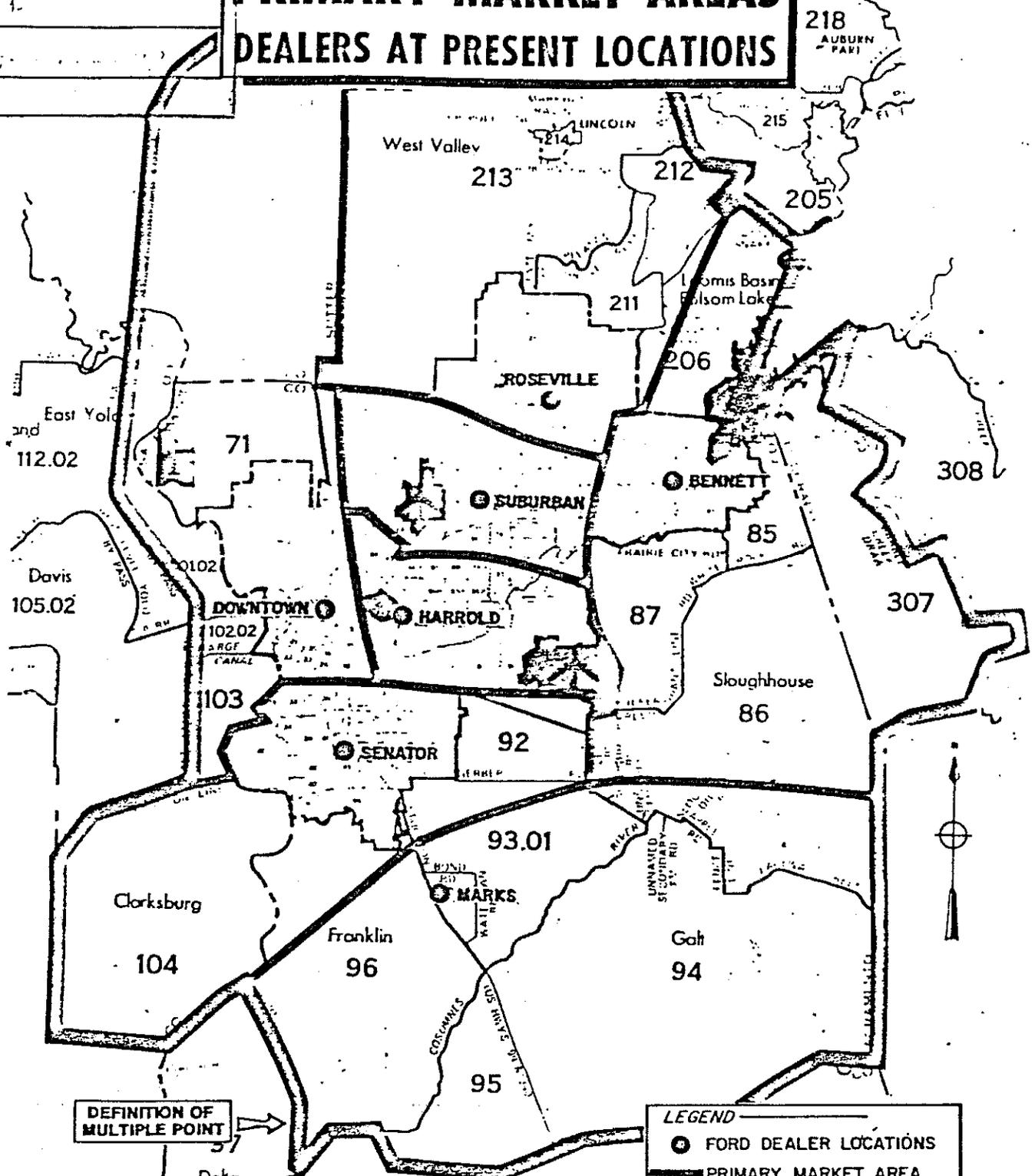
PR-144-77

NEW MOTOR
VEHICLE BOARD

SACRAMENTO PRIMARY MARKET AREAS DEALERS AT PRESENT LOCATIONS

Exhibit _____

File No. _____

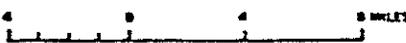


DEFINITION OF
MULTIPLE POINT

LEGEND

- FORD DEALER LOCATIONS
- ▭ PRIMARY MARKET AREA

REPRESENTATION
PLANNING DEPARTMENT
STUDY DATE : 1977



▭ PUBLIC INSTITUTIONS

APPENDIX A