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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of )  
ALLEN OLDSMOBILE-GMC TRUCK, ) Protest No. PR-1168-90  
Protestant, )  
vs. )  
GMC TRUCK DIVISION, )  
GENERAL MOTORS CORPORATION, )  
Respondent. )

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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 30<sup>th</sup> day of October, 1990.

  
MANNING J. POST  
Vice-President  
New Motor Vehicle Board



in the Irvine Auto Center at 42 Auto Center Drive. The notices were received by the New Motor Vehicle Board ("Board") on April 16, 1990.

2. On April 26, 1990, Allen and Executive filed separate protests. On May 16, 1990, the protests were consolidated for hearing.

3. The hearing was held before George R. Coan, Administrative Law Judge of the Board, on July 24, 25, 26, and 31 and August 1 and 2, 1990, at Sacramento.

4. On August 31, 1990, Executive filed a request with the Board that its protest be withdrawn.

5. On September 4, 1990, pursuant to Executive's request, the Board issued an order dismissing Executive's protest.

6. Protestants were represented by A. Albert Spar, Esq. and Michael M. Miller, Esq. of Pilot, Spar and Siegler, 1801 Avenue of the Stars, Suite 1120, Los Angeles, California.

7. Respondent was represented by Wallace M. Allan, Esq., O'Melveny & Meyers, 400 S. Hope Street, Los Angeles, California and L. Joseph Lines, III, Esq., General Motors Corporate Staff, 515 Marin Street, Suite 226, Thousand Oaks, California.

#### Issues Presented

8. Allen alleges that good cause exists for not permitting the establishment of the proposed dealership in the Irvine Auto Center for the following reasons: <sup>2/</sup>

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<sup>2/</sup> Section 3066 provides that Protestants have the burden of providing that there is good cause not to enter a franchise establishing an additional dealership.

a. Protestant's investments are permanent, and will be adversely affected {Section 3063(a)};

b. Such establishment will have an adverse affect on the retail motor vehicle business and the consuming public in the relevant market area {Section 3063(b)};

c. Such establishment will be injurious to the public welfare {Section 3063(c)};

d. The current GMC franchisees in the relevant market area<sup>3/</sup> are providing adequate competition and convenient consumer care for the owners of GMC vehicles in the market area, including adequate motor vehicle sale and service facilities, equipment, supply of vehicle parts, and qualified service personnel {Section 3063(d)}; and

e. Such establishment will not increase competition and, therefore, will not be in the public interest {Section 3063(e)}.

#### Findings Of Fact

##### Facts Relating To Permanency Of The Investment

{Section 3063(a)}

9. Allen was established in 1949 as an Oldsmobile and Cadillac dealership and moved to its present location in 1972. The GMC truck franchise was added in 1975 and includes both light and medium duty trucks. The current owner, Dennis Allen, inherited the dealership and is the son of the founder. Dennis Allen has worked at the dealership since age 16 and became its

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<sup>3/</sup> Vehicle Code section 507 defines "relevant market area" as any area within a radius of 10 miles from the site of a potential new dealership.

President in 1974. He has expressed the intention that his sons take over the dealership upon his retirement.

10. Allen offered no evidence regarding the cost of acquisition of the dealership for the present owner. Allen also did not offer evidence as to any leasehold interest in the property or monthly/yearly rent payments, if any.

11. Allen claims to have total current assets of approximately \$8.1 million. This figure was developed by Allen's general manager and includes \$4.2 million for land and buildings (based on a 1986 appraisal), \$400,000 for a 1986 expansion to buildings which added 14 new service stalls, \$600,000 for three years appreciation (1986-1988) at 5%, and \$2,980,270 for capital or liquid assets.

12. The proposed dealer, Lewis M. Webb, acquired his first automobile franchise in 1976 and now owns eight (8) separate franchises in four (4) locations in southern California. Webb intends to dual the proposed GMC truck franchise with his new Oldsmobile store in the Irvine Auto Center facility which he purchased in 1989. As part of that transaction, Webb also acquired Toyota and Nissan franchises which share the three-part Irvine facility with Oldsmobile. Webb purchased the existing Oldsmobile franchise on July 27, 1990; he intends to maintain it at the Irvine location regardless of the outcome of this protest.

13. Webb estimates that \$3.25 to \$3.5 million of the total \$11 million real estate purchase price for the three-part Irvine facility could be attributed to the Oldsmobile/GMC truck

building. Since purchasing the Irvine location, Webb has invested approximately \$650,000 in the Oldsmobile/GMC truck portion of the facility for a new interior, new roof and new air conditioning. The building now satisfies Oldsmobile and GMC truck space guidelines.

14. Webb expects to hire a total of 40 employees to staff the dual Oldsmobile/GMC truck franchise and stated he will assign half of them to GMC truck. He also plans an advertising program for GMC truck in which he will spend \$50,000 per month to stimulate sales.

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

{Section 3063(b)}

15. GM has divided the Anaheim-Santa Ana Multiple Dealer Area ("MDA") into Areas of Geographic Sales and Service Advantage ("AGSSA"). An AGSSA is made up of census tracts or geographic areas which are closer and more convenient to the dealers in the AGSSA than other dealers of the same line-make. Each dealer or proposed dealer point in the MDA is assigned its own AGSSA. Allen is in AGSSA 31. Webb would be assigned AGSSA 35.

16. Allen exists in a "corridor market" along Interstate 5 and 405. There are three distinct markets where automobile dealers cluster along the corridor- Tustin, Irvine and Laguna Nigel. Webb's dealership (Irvine) is located in an auto mall. Allen is in the Laguna Nigel market.

17. Major competitors for GMC truck in Orange County are Toyota and Nissan. Orange County had about 1% of the national population in 1989 and 1.2% of new retail truck registrations. Toyota and Nissan both have about 1% of their dealer networks in Orange County, whereas GMC truck has 0.2%.

18. The straight-line distance between Allen and the proposed point in Irvine is 7 miles even.

19. The driving distances from GMC truck dealerships in the RMA are as follows: <sup>4/</sup>

	DRIVING MILES		
	<u>Allen</u>	<u>Executive</u>	<u>Proposed Point</u>
Allen	0	14.5 (Approx.)	7 (Approx.)
Executive	14.5 (Approx.)	0	7.7

20. There has been substantial population and household growth in the RMA between 1970 and 1989 and much of the growth is concentrated on the Interstate 5/405 corridor near existing dealerships and the proposed point. This growth trend is projected to continue at least through 1994.

<u>Year</u>	<u>RMA Households</u>	<u>Total Population</u>
1970	66,054	194,110
1980	152,598	405,419
1989	207,124	549,661
1994 (projected)	237,664	627,774

<sup>4/</sup> Executive is included to show only that the distance and drive times between GMC truck dealers would be nearly halved by the addition of the proposed dealer.

21. Population growth in the AGSSA 35 has also been strong.

AGSSA 35

<u>Year</u>	<u>Households</u>	<u>Total Population</u>
1970	19,104	52,167
1980	57,380	150,408
1989	76,968	196,880
1994 (projected)	87,888	221,846

22. There is a preponderance of upper income households (i.e. over \$40,000 per year) in the RMA. From 1980 to 1989, there was a 33% increase in employment in Orange County. Likewise, there has been significant growth in the driving-age population and households in the RMA from 1970-1989 and this growth is projected to continue.

23. From 1982-1989 the number of light-duty truck registrations <sup>5/</sup> has dramatically increased in the RMA by 229% and in the AGSSA 35 by 206%. This is an unusually high growth rate.

24. The market opportunity <sup>6/</sup> for the existing five (5) GMC light truck dealers in the Anaheim-Santa Ana MDA (which is larger than and includes the RMA) is the largest of any of California's light-duty truck markets. With the addition of the new dealer point in Irvine, the market opportunity will be the second largest in California.

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<sup>5/</sup> All references to light-duty truck sales or registrations concern retail sales only.

<sup>6/</sup> Market opportunity is determined by taking the total registration of all makes of light-duty truck in a particular area and dividing by the number of GMC light-duty dealers in the same area.

25. In 1989, nationally, GMC light truck achieved a market penetration of 7.33%. However, when unique consumer preferences in the RMA are taken into account the expected penetration is 6.19% for the RMA.

IRVINE RMA

<u>Year</u>	<u>Actual</u>	<u>Expected</u>	<u>Percentage of Expected</u>
1987	3.51	5.24	67.0
1988	4.70	5.97	78.7
1989	4.90	6.19	79.2

AGSSA 35

<u>Year</u>	<u>Actual</u>	<u>Expected</u>	<u>Percentage of Expected</u>
1987	3.59	5.11	70.3
1988	4.16	5.81	71.6
1989	4.79	6.09	78.7

26. The two (2) existing GMC truck dealers in the RMA (Allen and Executive) achieve their maximum penetration for light truck sales within two (2) miles of their dealerships and penetration decreases steadily at distances further from the dealerships. Neither Allen nor Executive alone or in combination are able to penetrate the market at distances needed to reach the AGSSA 35 proposed point. The data concerning maximum penetration establishes that convenience is an important factor to consumers in the RMA.

27. GMC truck is currently in the worst position for customer convenience in the AGSSA 35 relative to the convenience offered by other brands. Average distance to the nearest light-duty truck dealer for other brands in the AGSSA 35 is 3.8

to 3.9 miles, but for GMC truck is 5.4 miles without the proposed point. With the proposed Irvine point, average distance would be reduced to 3.7 miles for GMC.

28. In 1989, sales of GMC light truck in the RMA of GMC dealers outside of the RMA were 333, 47% of the total GMC sales. This establishes that buyers are dissatisfied with existing dealers in the RMA and represents lost opportunity by the existing dealers in the RMA. In those portions of the RMA which GMC truck failed in 1989 to achieve an expected market penetration of 6.19% a total of 218 lost GMC truck sales resulted. Combined with the lost truck sales of 333, the total lost opportunity for dealers in the RMA is 551 sales.

29. If the proposed dealer achieves market penetration at the level achieved by the average dealer in the RMA; its total retail truck sales in the RMA would be 173. Since the total lost opportunity for the existing dealers is 551 truck sales, there would still be lost opportunity for Protestant to increase its sales even if the proposed dealership were established.

30. Allen has estimated that it will lose 149 sales if the proposed dealership is established. This loss in sales was determined by identifying all of Allen's sales by zip codes. Allen's management personnel then estimated the number of sales in each zip code which would be lost to the new dealer point.

31. Allen has experienced a decline in profitability for the dealership over the last five (5) years. Oldsmobile sales have been declining, although Allen has experienced less of a percentage loss than experienced by other dealers in the MDA. Allen's net profit for the entire dealership for the first six (6) months of 1990 was \$85,000 and is projected to be \$171,000 before taxes and bonuses for the full year. Profitability of the truck department is relied upon to keep the dealership profitable. Allen employees took a 5% pay-cut in early 1990.

32. Allen sold 539 light truck in 1989. Allen's light-duty truck sales have increased from 1988 to 1989. Sales for 1990 are forecast to increase again by 9.49% and were increasing commensurate with this forecast at the six months point.

Facts Pertaining To The Injury To Public Welfare

{Section 3063(c)}

33. The Irvine proposed point is located adjacent to a busy north-south freeway (Interstate 5/405) in the Irvine Auto Center. The building in the Webb facility which will house the GMC truck/Oldsmobile dual meets or exceeds General Motors standards except for apparently minor and correctable deficiencies in the mechanical space and Parts Department. Mr. Webb intends to hire about 40 employees total to staff the dual and will assign about 20 to the GMC Truck portion of the franchise. As a result, employment opportunities in the AGSSA 35 will increase for various sales and service personnel. Improvements have already been made to the building which will

make it more suited for its intended use and more pleasant for the public.

34. Webb is a very successful dealer in his four other locations and his plans and business philosophy indicate that he will be an aggressive competitor in the light-duty truck market. Webb has received numerous awards from the various line-makes he represents and was appointed a Lexus dealer in the Cerritos Auto Square in 1989 and appointed to a second Lexus franchise in Mission Viejo in early 1990. Since 1986, Webb has been ranked the number one Buick dealer in the country with sales three times the state average.

35. In 1988 and 1989, Webb's Buick dealership received the Best-in-Class award of which there are 35 or 40 given nationally. To receive the award, the dealership's CSI rating must exceed 92%.

Facts Relating To Whether The Franchises Of The Same Line-Make In That Relevant Market Area Are Providing Adequate Competition And Convenient Consumer Care For The Motor Vehicles Of The Line-Make In The Market Area Which Shall Include The Adequacy Of Motor Vehicle Sales And Service Facilities, Equipment, Supply Of Vehicle Parts, And Qualified Service Personnel.

{Section 3063(d)}

36. Allen presented no specific evidence concerning the adequacy of facilities, equipment, parts and qualified personnel for itself in regards to standards established by GMC. However, Allen won GMC's Five-Star Performers Honor of 1990, which is given to the top 10% of GMC dealers in the MDA for superior performance in all areas of their dealership. Allen has received various service and parts department awards for 1983

and 1986 through 1989. Allen's most recent CSI rating, based on purchases through November 1989 and surveyed through May 1990 is 85% for the three-month period and 84% for the previous 12 months. Both of these figures are one point above zone average for other GMC truck dealers.

37. Allen is located on a 4 acre site near the San Diego freeway and employs 114 persons, of whom 21 are devoted full-time to the GMC truck franchise.

38. Allen provides a variety of free services for service customers including a shuttle service to the customer's home or place of work, loaner pick-up trucks and cars and rental trucks and cars. Allen has a service lounge equipped with free coffee, television and magazines.

39. Allen is visible and accessible from the freeway. The proposed dealer in the Irvine Auto Mall will also be accessible to the freeway. Webb will provide greater competition and convenience to certain consumers due to location in the mall and extended service hours on Saturdays.

Facts Pertaining To Whether the Establishment  
of an Additional Franchise Would Increase  
Competition and Therefore Be In The  
Public Interest

{Section 3063(e)}

40. Over the past four (4) years, Allen has exceeded the performance of GMC truck dealers in L.A. Marketing Center (essentially central and southern California), the multiple

dealer area (essentially Orange County) and the State of California as follows: (Figures represent the percentage of Allen's sales over the comparable area averages.)

ALLEN SALES EFFECTIVENESS

	1986	1987	1988	1989
LA Marketing Center <sup>7/</sup>	119	116	137	108
MDA	136	141	179	153
State	120	147	132	133

41. In 1989, GMC truck had a 7.32% market share nationally compared to a 4.97% market share in California and a 4.7% share in the MDA. Allen's market penetration was 6.41%.

42. Gross profit per light duty truck sold by Allen averaged \$1,213. This was somewhat below the zone average of \$1,348 per truck. Allen is also slightly below the zone average for gross profit retained from mechanical labor and parts and accessories. Service personnel at Allen were paid more than the zone average because some have been employed 12, 14, or 16 years. Total expense per new truck sold is somewhat lower than the zone average which allows Allen to sell for less than other dealers.

43. Allen belongs to a multi-dealer advertising association which collectively spends money on county-wide advertising for GMC trucks. Webb will join the association, thereby giving it additional funding and increasing GMC's exposure in the marketplace.

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<sup>7/</sup> Los Angeles marketing center covers all of central and southern California.

Determination of Issues

The Protestant has failed to prove that there is good cause for not establishing the additional dealership in that:

1. Protestant established that their investment is permanent but failed to establish that their investment would be adversely affected {Section 3063(a)};
2. Protestant failed to prove that the establishment would have an adverse effect on the retail motor vehicle business and consuming public in the relevant market area {Section 3063(b)};
3. Protestant failed to prove that the establishment would be injurious to the public welfare {Section 3063(c)};
4. Protestant failed to prove that there is adequate competition and convenient consumer care in terms of sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel for GMC trucks in the RMA {Section 3063(d)};
5. Protestant failed to prove that the establishment would not increase competition, and therefore would not be in the public interest {Section 3063(e)}.

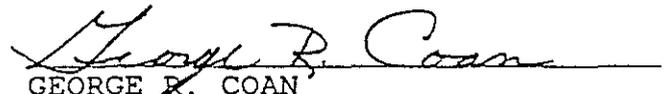
Proposed Decision

The following proposed decision is respectfully submitted:

The protest is overruled. GMC shall be permitted to establish the proposed dealership at the Irvine Auto Center, 42 Auto Center Drive, Irvine, California.

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 and recommend its adoption as the decision of the New Motor Vehicle Board.

DATED: October 16, 1990

  
GEORGE R. COAN  
Administrative Law Judge  
New Motor Vehicle Board