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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of )  
DON MONDAY BUICK, )  
Protestant, ) Protest No. PR-153-77  
vs. )  
AMERICAN MOTORS SALES CORPORATION ) Filed: July 21, 1978  
and KIRBY OLDSMOBILE-AMC, )  
Respondents. )

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DECISION

Procedural Background

1. Respondent, American Motors Sales Corporation ("American Motors"), advised the protestant, Don Monday Buick ("Monday"), by a letter dated November 16, 1977, that a Jeep franchise was being added at Kirby Oldsmobile-AMC ("Kirby"), 6424 Leland Way, Ventura, California 93001.

2. Monday, located at 2121 North Oxnard Boulevard, Oxnard, California 93030, filed a protest pursuant to Vehicle Code section 3062<sup>1/</sup> on November 22, 1977, with the New Motor Vehicle Board requesting a hearing.

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1. Unless otherwise stated, all references to code sections are to the Vehicle Code.

3. Pursuant to section 3066, a hearing was held before George C. Woodmansee, a Hearing Officer on behalf of this Board, beginning on January 18, 1978, at 1:30 p.m. in Los Angeles, California. The protestant was represented by A. Albert Spar of the Law Office of Sidney I. Pilot. The respondents were represented by Joseph M. Malkin of the Law Offices of O'Melveny & Myers.

#### Issues Presented

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

(a) That the additional franchise will jeopardize the permanent investment of protestant. (§3063(1).)

(b) That the additional franchise will adversely affect the Jeep business and the Jeep consuming public in the relevant market area. (§3063(2).)

(c) That the additional franchise will be injurious to the welfare of the Jeep consuming public. (§3063(3).)

(d) Protestant is providing adequate competition and convenient consumer care for Jeep owners and buyers in the relevant market area. (§3063(4).)

(e) That the additional franchise will not increase competition and, therefore, will not be in the public interest. (§3063(5).)

Findings of Fact

Findings Relating to Permanency of Investment  
(3063(1))

Don Monday Buick

5. Monday is franchised as both a Buick and a Jeep dealer. The Jeep agency was first established by Kaiser in October 1967, and was located at 350 South Oxnard Boulevard in downtown Oxnard.

6. Monday occupied its present facility in January 1972.

7. At the time Monday moved to its present location, Ventura was a Jeep open point<sup>2/</sup> and had been since at least 1970 when American Motors acquired Jeep.

8. Monday's facilities consist of 5.5 acres of land with buildings having a current assessed value of \$550,000. The total investment in the dealership is in excess of \$600,000.

9. Don Monday Buick is wholly owned by Don Monday Investments, Inc., of which Don Monday is sole owner. Monday's facilities are owned by Leasing Corporation of America of which Don Monday is also the sole owner. Monday pays Leasing Corporation of America \$37,956 a year rent for the facilities.

10. Don Monday devotes full time to the dealership.

Kirby Oldsmobile-AMC

11. Kirby is franchised as an Oldsmobile and American Motors dealer. It acquired the Oldsmobile franchise in 1966

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2. An "open point" is a market area in which American Motors would like to have Jeep representation, but currently does not, and is seeking it.

and added the American Motors passenger car franchise in 1969 or 1970. Kirby moved to its present facility in January 1972. It was previously located at 52 East Main Street in downtown Ventura.

12. Kirby's facilities consist of 3.5 acres of land with buildings housing 30 service stalls, two floors of parts, salesmen's offices, and a showroom. Kirby has an investment of approximately \$1,450,000 and a net worth of approximately \$314,000.

13. Frank Kirby devotes full time to the dealership, which is his only source of livelihood.

14. Kirby is located approximately 2.3 miles from Monday as driven on surface streets.

Findings Relating to the Effect on the Retail  
Motor Vehicle Business and the Consuming  
Public in the Relevant Market Area  
(\$3063 (2))

15. The City of Oxnard, where Monday is located, and the City of Ventura, where Kirby is located, are both in Ventura County.

16. Kirby is located at the southern end of the City of Ventura, approximately 2 miles north of Monday's facility, which is located at the northern end of the City of Oxnard.

17. American Motors acquired Jeep on February 5, 1970. Since that time Monday has executed two Jeep franchise agreements with American Motors, one in 1972 and one in 1974. Both franchise agreements indicate that Monday is responsible for developing the Oxnard market area. The Oxnard market area is that portion of Ventura County south of the Santa Clara River

and includes the City of Oxnard, Camarillo, Port Hueneme, and a number of smaller communities in southern Ventura County.

18. Kirby would be responsible for the Ventura market area. The Ventura market area is that portion of Ventura County north of the Santa Clara River and includes the City of Ventura, Santa Paula, Ojai, Fillmore, and several smaller communities in northern Ventura County.

19. There has been no Jeep dealer in the Ventura market area, although there are Dodge, Subaru, Ford, Chevrolet, and Toyota dealers, as well as a Chrysler/Plymouth dealership under construction, all of which sell (or, in the case of the Chrysler/Plymouth dealer, will sell) 4-wheel drive vehicles in competition with Jeep.

20. Three of Jeep's direct 4-wheel drive competitors (Ford, Chevrolet, and Toyota) have dealers in both Ventura and Oxnard. In addition to the 4-wheel drive competitors of Jeep that are represented in both Oxnard and Ventura, GMC, Pontiac, Buick, Mazda, Lincoln-Mercury, Datsun, and AMC passenger cars all have dealers in both markets.

21. Ventura County is bordered by the ocean on the west and by coastal mountains on the north and north-east. Ventura County also contains regions of farmbelt zoning with 100 acre minimum. There is growth generally in Camarillo and the City of Ventura with restricted growth in Oxnard. The population and personal income of Ventura County have been on the increase for the past several years, but most dramatically in the last two years.

22. The following chart shows Monday's Jeep sales by market area for the 1972 through 1977 model years:

<u>Market Area</u>	<u>Model Year</u>					
	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>
Oxnard	9	15	16	11	19	19
Ventura	4	6	2	2	4	15
Thousand Oaks	1	1	2	2	0	3
All Other Areas	<u>5</u>	<u>0</u>	<u>7</u>	<u>2</u>	<u>9</u>	<u>6</u>
Total	19	22	27	17	32	43

23. For each of the last three years for which such information is available (1974-76), the highest number of Jeeps sold in the Ventura market area was sold by Joe Burton Motors in Santa Barbara, approximately 30 miles north of Ventura. Joe Burton Motors sold the following number of Jeeps in the Ventura market area: 1974, 5; 1975, 7; 1976, 10.

Findings Relating to the Effect on Public Welfare  
(§3063(3))

24. Kirby has been in operation as an automobile dealer since 1966 and has been at the same location since January 1972 as a franchised dealer for Oldsmobile and AMC passenger cars.

25. There is no evidence that Kirby could not adequately function as a Jeep dealer.

26. The Kirby Jeep franchise would provide an alternative sales and service facility for the motoring public in Ventura County.

Findings Relating to Adequate Competition  
and Convenient Customer Care  
(§3063(4))

27. Monday has over \$16,000 in parts for current Jeep models, and a supply of parts for older Jeep models.

28. American Motors describes the Monday facilities as good.

29. Jeep service requires mechanics with specialized training and skills. Monday has had difficulty securing and retaining such skilled mechanics.

30. Monday testified that its facility was built to handle 600 new vehicle sales per year, however, it is profitable with a present travel rate of 200 to 240 Buicks and 50 to 60 Jeeps per year.

31. Kirby has spent more than \$8,300 for parts, tools, and accessories related to Jeep service. Kirby is experienced in servicing 4-wheel drive vehicles and has not had any problems with turnover of its personnel.

32. Kirby has committed itself to participate in all of the sales and service training programs that American Motors makes available to its Jeep dealers.

33. Kirby has 30 service stalls and 19 personnel in its parts and service departments, not including parts and service management.

34. American Motors has increased Jeep production from 500 vehicles per day in May 1977 to 630 vehicles per day at present.

35. American Motors' 1978 Jeep production is scheduled to be 131,831 vehicles, while the total Sales Planning Potential assigned to all existing Jeep dealers is only 122,000.

36. Despite the increase in American Motors' Jeep production, California Jeep dealers were for a time unable to obtain a sufficient supply of 1978 "J" series vehicles due to the absence of California emissions certification of certain models prior to January 1, 1978.

37. As of January 1978, American Motors was accepting all Jeep orders from its Jeep dealers.

38. The following chart shows Jeep's percentage of the 4-wheel drive industry in the subject market area as compared with American Motors local districts, American Motors Zone, and the National Jeep penetration:

<u>Market Area</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>
Ventura	9.9	9.0	8.3	9.9	8.2
Oxnard	12.7	15.7	23.5	15.1	12.4
Thousand Oaks	11.9	12.4	11.6	10.1	13.7
Santa Barbara	24.9	25.7	28.1	27.5	27.9
District	12.6	11.2	13.2	9.8 <sup>3/</sup>	9.0 <sup>3/</sup>
Zone	14.0	13.6	14.6	12.5	12.6
National	17.4	18.4	17.0	15.9	15.5

3. The district percent of industry figures for 1975 and 1976 are this low because throughout this time one-fourth of the dealer points in the district were without dealers.

Findings Relating to Competition  
as it Affects the Public Interest  
(§3063(5))

39. The Oxnard and Ventura market areas are separate market areas and Ventura has been considered an open point by American Motors since at least 1970. Monday, in 1974, requested that the Ventura open point be closed but this request was denied by American Motors.

40. Jeep's percentage of the 4-wheel drive industry sales in the Ventura market area was substantially lower than its percentage of the 4-wheel drive industry sales in the surrounding market areas.

Determination of Issues

1. For the reasons given by Vice President Oakley in his attached opinion, in which all public members of the Board concur but which is set forth separately on account of its legally technical nature, the Board determines that it has the power to hear and determine this protest. On the merits thereof, the Board determines that Monday has failed to establish that good cause exists for not establishing the Kirby franchise for the following reasons:

(a) The establishment of Kirby as a Jeep franchise will not jeopardize the permanent investment of protestant since there is additional demand for Jeep vehicles in the relevant market area and an increase in the supply of Jeep vehicles as American Motors increases production. Kirby has and will continue to have a permanent investment in its dealership.

(b) The establishment of Kirby as a Jeep franchise will not adversely affect the Jeep business and the Jeep consuming public in the relevant market area since the facilities and services of Kirby are adequate to serve the consumer and there is no indication that Monday will be unable to compete.

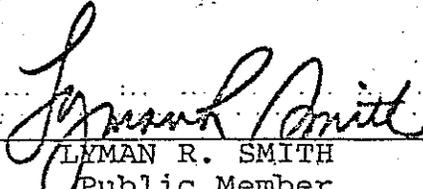
(c) The establishment of Kirby as a Jeep franchise will give American Motors an outlet in Ventura to enable it to compete with other 4-wheel drive manufacturers who are presently represented in Ventura. This will result in additional sales, service, and parts convenience to Jeep owners and buyers in Ventura.

(d) American Motors has not, in the past, competed effectively for Jeep sales in the Ventura area. Its percentage of the 4-wheel-drive industry sales in this market area has been less than two-thirds of its percentage of the industry sales in Monday's market area, in the Zone, and in the nation. The establishment of Kirby as a Jeep franchise will increase competition and will therefore be in the public interest.

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The protest is overruled. The respondent is entitled to establish the additional dealership in the proposed area.

IT IS SO ORDERED this 17<sup>th</sup> day of July, 1978.

  
LYMAN R. SMITH  
Public Member  
New Motor Vehicle Board