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I am Vicki Giles Fabr , Executive Vice President of the Washington State Auto Dealers Association (WSADA) for 16 years. WSADA proudly represents Washington’s 293 franchised new car and truck dealers both before the state legislature and to the public.

The WSADA Board of Directors, our member dealers, and I share a deep concern over the FTC’s workshop held on January 19, 2016. The workshop demonstrated a deeply flawed view of the franchise system, its current context and history, and the benefits it brings to consumers, local governments, and local communities across both Washington and in the other forty-nine states. Franchise laws help ensure the new car and truck industry operates fairly and efficiently.

Washington’s franchise law is explicit when explaining its purpose:

“The legislature finds and declares that the distribution and sale of motor vehicles in this state **vitaly affect the general economy** of the state and the...**public welfare**, that...**warranty service to motor vehicles is of substantial concern** to the people of this state... and that the maintenance of strong and sound dealerships is essential to **provide continuing and necessary reliable services**...and to provide **stable employment** to the citizens of this state.”

RCW 46.96.010 (emphasis added).

The FTC workshop did not fairly address any of these vital state interests that serve as the foundation for state franchise laws. State legislatures recognize the powerful benefits the driving public receives from having a network of local franchised dealerships that have equitable relationships with their manufacturers.

We appreciate the FTC’s willingness to include panelists with experience in the industry, however it was apparent that many of the panelists were openly hostile and participated merely to denigrate the franchise system, with little regard to the devastating impact its dismantling would have on local economies and consumers. Franchise laws are predicated on state legislatures understanding that the end of the franchise system would ultimately lead to higher prices, diminished convenience for consumers, and compromised safety for the driving public.

#### FRANCHISE LAW BENEFITS: SAFETY

The Washington Legislature enacted its franchise laws to protect consumers in a multitude of ways. As noted in the second panel at the workshop, a primary motivating factor is safety. A diverse network of dealerships ensures convenient outlets for safety recall and warranty repair work from certified technicians with experience with a particular manufacturer’s vehicles. Recent reports on the Takata airbag recall alone indicate the company may be forced to recall an

additional 70-90 million airbag inflators, bringing the total vehicle recall to nearly 120 million.<sup>i</sup> Without a robust dealer network to service those vehicles once the manufacturers establish a supply of replacement parts, the repairs would be delayed even further. During a recall, dealerships also serve as information points for customers and explain its significance, help customers evaluate their options, and advocate on their behalf with manufacturers.

Statutes like RCW 46.96.060, which prevents a manufacturer from forcibly closing a dealership unless it can prove its goals or standards for the dealer are reasonable, ensure customers have a convenient network of repair facilities and ensure that dealerships are incentivized to shoulder the costs to maintain expensive special repair equipment and to constantly train and certify technicians.

Other warranty provisions, such as those that require manufacturers to fairly reimburse their dealers for warranty work at the same rate the dealer charges to its retail customers also help ensure customers receive convenient and knowledgeable service.<sup>ii</sup> As panelist Richard Sox noted, today's technicians are now earning upwards of six figures in compensation and cost a dealership tens of thousands of dollars to train. Manufacturer reimbursement for work a dealership is required to perform should reflect the significant investment dealerships make to ensure consumers have safe, reliable vehicles.

#### FRANCHISE LAW BENEFITS: LOWER PRICES

Dealerships compete directly with one another on price. Manufacturers provide vehicles to dealers at a largely uniform wholesale price that the dealer is generally able to discount, spurring price competition that squeezes margins and that ultimately lowers prices for consumers. There is a small retail markup, and dealerships average just 2.2% net margin for new vehicles. A manufacturer would incur at least the same overhead costs under a manufacturer-owned dealership system, but would have no need to further compete within its own brand. That manufacturer would price its vehicles accordingly. Consumers would ultimately face a more expensive product in a manufacturer-controlled or dominated market.

Healthy inter-brand competition at the national and local level, paired with the healthy intra-brand competition produced by a strong local dealer network, combine to produce the savings referenced by panelist Maryann Keller.

#### FRANCHISE LAW BENEFITS: LOCAL INVESTMENT

Franchise laws also provide secondary benefits to local communities. While WSADA absolutely believes that franchise laws are vital instruments to maintain a stable network for sales and safety service across each state, several panelists suggested that some state franchise laws simply shift profits from manufacturers to local businesses. WSADA disagrees and believes this view purposefully ignores the many benefits of local franchised dealerships. However, even if it were true, a recent study found that local retailers recirculate up to 48% of their revenue into local economies, while nationally owned stores return just 14%.<sup>iii</sup> Local businesses benefit local communities.

Washington dealers provide 21,064 jobs statewide, with an additional 20,207 indirect and induced jobs. Removing dealerships from local communities negatively impacts every other

business present. Whether it is a local office supply vendor, a car wash, restaurants, or even grocery stores, a dealership and the well-paying jobs it provides is often one of the primary drivers of local income and economic vitality for communities.

#### MANUFACTURERS CONTINUE TO HAVE DISPROPORTIONATE BARGAINING POWER OVER LOCAL DEALERSHIPS

Franchise laws exist because of the continuing imbalance between local dealerships and national manufacturers. Franchised dealers are responsible for the investment needed to build stores, buy vehicles for inventory, and supply all the necessary equipment to service them once sold. Once the dealer has made that substantial investment, the dealer is at the mercy of the manufacturer and – even with franchise laws – manufacturers have repeatedly proven their unwillingness to abide by such laws and negotiate fairly.

Here in Washington, there are a number of examples of this type of behavior in recent years. Four recent representative examples include:

First, when one area of Washington experienced severe flooding and a dealership found itself literally underwater, it luckily had a brand new facility available across the street to relocate their franchise. The move would have required that the dealer co-locate different brands for a period, but would not have violated any relevant market restrictions and was the only realistic local option for the dealer. Closing the store would force customers to drive nearly 30-40 miles to reach the next closest dealership. The manufacturer refused to approve the move.

Second, manufacturers have increasingly implemented “turn and earn” programs. A dealer who sells a particular model is rewarded with more inventory. This works well in theory, however the proper mix of inventory is itself necessary for sales. A large number of Washington dealers of a particular manufacturer were notified that their performance was too low and that they were in danger of termination, however the manufacturer refused to provide additional inventory of the most popular models. Manufacturers are allowed to set reasonable goals, but must be held accountable if its actions then make those goals unattainable. Without restrictions in place, we have seen that a manufacturer can and will “squeeze out” a dealer by denying dealers access to necessary inventory.

Third, as referenced earlier in these comments, Washington and other states have implemented laws dictating how manufacturers reimburse their dealers for warranty repairs. Even with these laws, a manufacturer’s power over their franchisees is immense. In Washington, manufacturers have alternately refused to comply with the statute, instituted programs for submitting rate increase requests that do not conform to Washington law, and threatened their dealers with invasive audits if they assert their rights. Recently a domestic manufacturer threatened to banish dealers who filed for the retail warranty rate they are entitled to under state franchise laws from a program the manufacturer refers to as “Option C,” which provides annual inflation increases in a dealer’s labor rate for warranty repairs. The manufacturer was essentially forcing dealers to choose one of two alternatives instead offering voluntary options that would best suit an individual store. A dealer who objects may have no alternative except to sue their manufacturer – an unwelcome option when they are so tied to a sole supplier.

Finally, manufacturers often leverage their bargaining power to force dealers into business decisions they would normally not make. Recently, a manufacturer required that all of its dealers purchase “diagnostic” electronics that provided no value to the customer and which dealers did not believe would increase service levels or revenues. Each unit was thousands of dollars, but the dealers had no recourse and could not return the units if they failed to prove useful. This has become a regular occurrence for dealers, as manufacturers use their franchisees’ bank accounts to experiment. The manufacturer is insulated while the dealer bears the cost and risk.

## CONCLUSION

All fifty states have chosen to regulate the relationship between local dealerships and national manufacturers. We have commented on just a few of the reasons why these laws are so important to ensure that consumers and local communities continue to receive the best available safety and repair services, local jobs and tax revenue, and community support.

The FTC’s interference in state level legislation and regulation is misguided and the agency should take all relevant factors into account before it makes determinations or attempts to substitute its judgment for those of duly elected state officials. Thank you for your consideration of my views on this important matter.

Vicki Giles Fabré

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<sup>i</sup> Automotive News, Takata may be forced to recall up to 90 million more airbag inflators in U.S. (2/22/2016), available at <http://www.autonews.com/article/20160222/OEM11/160229990/takata-may-be-forced-to-recall-up-to-90-million-more-airbag>

<sup>ii</sup> RCW 46.96.105.

<sup>iii</sup> Civic Economics Study of Independent Businesses