

An Open Letter to VADA Toyota and Lexus Dealer Members

March 25, 2011

Earlier today we had a conference call with representatives from Toyota to discuss the legislation recently passed by the Virginia General Assembly. George Brenner, Assistant General Manager of Central Atlantic Toyota, and lawyers for the company expressed concerns about the effect of the legislation on Toyota's allocation system. We worked to assure them that this statute does not impact their allocation system. While the Toyota representatives expressed some concerns at the end of the call, we made it very clear throughout the discussion that we have never heard complaints from dealers about Toyota's or Lexus' allocation systems, that Toyota and Lexus actions were not targeted by the allocation provision, and that the allocation provision will have no impact on the way Toyota and Lexus do business.

Many of the issues we heard expressed today were driven by the unnecessary concerns dreamed up by the lobbyists fighting the bill in Richmond representing the Alliance of Auto Manufacturers and Volkswagen. Having gotten no support in the General Assembly, they are now trying to incite other manufacturers by repeating these unrealistic concerns. Those same lobbyists were provided this legislation in late December of 2010 and stirring up Toyota almost three months later is a last ditch effort to try to amend this bill.

It was always VADA's intent, and the clear purpose of the patrons that worked so tirelessly on the bill, to create an allocation provision that includes a standard required by the Virginia Supreme Court while not micromanaging any franchisor's allocation system. We believe that the bill does that.

Let us state clearly the effect of this statute: As long as a manufacturer has an allocation system and operates according to its system without manipulating it to withhold vehicles to punish or manipulate a dealer, this statute will not affect that manufacturer's system. Toyota and Lexus do not treat their dealers that way so this provision does not affect them.

The new law would give a manufacturer total control over its own allocation system. We very carefully used the phrase "objectives or goals established by the franchisor" without defining those terms or limiting them to some fixed time period such as "annual objectives" to provide maximum flexibility to manufacturers in using their own allocation systems. **A manufacturer can set annual objectives or monthly objectives. Or it can let a turn and earn system set monthly goals that a dealer will have to "turn" the vehicles it "earned" through previous performance to continue to "earn" more vehicle through the allocation process.** Because of this, the "scare" stories that dealers may be hearing, that the new law will cause manufacturers to starve dealers having very successful months from getting enough inventory, are simply untrue.

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The new law will have no impact on any manufacturer's present allocation system, except when the manufacturer attempts to interfere with its own system by withholding vehicles a dealer has earned or to which the manufacturer's own allocation system says the dealer is entitled in order to punish or manipulate the dealer.

In fact, the new provision is a vast improvement **for manufacturers** over the existing language of the Virginia Code. The existing statute (*see below 7.*) leaves no room for state or local conditions and allows no manufacturer flexibility. It actually causes the problems that Toyota is worried about because it presently makes it unlawful:

7. To fail to ship monthly to any dealer, if ordered by the dealer, the number of new vehicles of each make, series, and model needed by the dealer to **receive a percentage of total new vehicle sales of each make, series, and model equitably related to the total new vehicle production or importation currently being achieved nationally by each make, series, and model covered under the franchise.**

No manufacturer that is interested in operating a fair allocation system and in delivering vehicles that dealers earn under that system will be impacted in any way by the language of the new proposed law.

Thank you.

Sincerely,



Donald L. Hall
President