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REPAIRING THE 21ST CENTURY CAR: IS TECHNOLOGY LOCKING THE CONSUMER OUT?

HEARING

BEFORE THE

SUBCOMMITTEE ON
COMMERCE, TRADE, AND CONSUMER PROTECTION

OF THE

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COMMERCE
HOUSE OF REPRESENTATIVES

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REPAIRING THE 21ST CENTURY CAR: IS TECHNOLOGY LOCKING THE CONSUMER OUT?

WEDNESDAY, SEPTEMBER 22, 2004

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON COMMERCE, TRADE,
AND CONSUMER PROTECTION,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:06 p.m., in room 2322, Rayburn House Office Building, Hon. Cliff Stearns (chairman) presiding.

Members present: Representatives Stearns, Upton, Shimkus, Bass, Bono, Issa, Otter, Barton (ex officio), Schakowsky, Gonzalez, Towns, Green, McCarthy, Strickland, and Dingell (ex officio).

Staff present: Chris Leahy, majority counsel and policy coordinator; David Cavicke, majority counsel; Brian McCollough, majority professional staff; Shannon Jacquot, majority counsel; Will Carty, legislative clerk; Jonathan Cordone, minority counsel; and Ashley Groesbeck, minority research assistant.

Mr. STEARNS. Good afternoon, everybody.

I wish we had a little bit more seats for all of you, so we will work it through here.

For most of us our car is an absolute necessity for our busy lives providing a safe and efficient means of going from point A to point B, whether that is the grocery store or grandma's house. Cars are also used for personal expression, usually expressed as horsepower. And for some simply a practicality. But when we have a breakdown, and that is a disabled car—no matter how fast or how practical this can mean major disruption for all of us.

When we lose our wheels, many of us go straight to the local garage and dealer technician or mechanic, as I remember calling them, to get us back on the road. I believe that a consumer has a right to choose that mechanic and shop that does the service on and repairs on his or car.

When one considers that from 1980 until the year 2004 the number of light-duty cars and trucks in the United States has almost doubled to over 220 million vehicles with Americans spending about $38 billion a year on auto care and repair, it is clear that these consumer choices are big business, very big business in a very competitive market.

The 21st century family car in our driveway is no longer just engine wheels, chrome and steel. Today's car is probably the most so-

phisticated piece of machinery we own and has on the average 15 on board computers that rival the computing horsepower that the Apollo Space Craft used for the moon landing. To tackle those repairs and service jobs today's automotive technician, not unlike a NASA engineer, is a well trained specialist armed with the latest in high tech tools and gadgetry. Gone are the days when a monkey wrench, timing light and firing orders from your repair manual were all you needed to handle that occasional stall or sputter.

The use of computers in cars became more common place after passage of the Clean Air Act in 1990. This law required for the first time the computerized engine and system management known as on-board diagnostic systems, OBD, be integrated into a car in an effort to regulate and improve air quality.

The OBD system originally was designed to monitor certain engine and transmission events that could worsen air quality, such as an engine misfire. Record them and ultimately alert the driver to have his or her car serviced. The driver is usually alerted by a check engine light or malfunction indicator lamp, MIL. And so when the car is serviced the auto technician uses a device known as a scan tool to harvest the recorded data through a port in the car, not unlike downloading data from your desktop onto your PDA.

These data are typically codes known as fault codes that tell the technician what system or component is malfunctioning.

Since the introduction of OBD in the 1990's car manufacturers have begun integrating systems other than admissions into their car computer networks. Today safety systems such as antilock brakes and convenience systems such as antitheft alarms are all part of the electronic network of a car's brain. All of this complexity makes a diagnosis and repair of car problems a very technical and sometimes capital intensive business that requires the right training, the right tools, and the right data.

The problem we are focused on today relates to access. Access to the complex and sometimes expensive tools of the trade and the critical data that now acts as a key and the Rosetta Stone for diagnosing problems and servicing your automobile.

Those advocating Federal legislation, particularly many in the aftermarket service repair and parts industry, claim both the tools and codes are at best hard to track down and at worst, not readily available for all but the car and the truck dealers. In contrast, the car manufacturers and others involved in the aftermarket service and repair industry say that the tools and data have been and are accessible with virtually all of the relevant information currently provided over the Internet. So there continues to be a real difference of opinion about the current state of affairs and the ability or inability to access to the tools and data necessary to service and repair our modern cars and trucks.

I think the following questions attempt to summarize our subcommittee's focus today:

Are scan tools available to independent repair shops and the general public? If so, are these the same tools provided to the car dealers? Are they prohibitively expensive?

Are the fault codes and other diagnostic data available to independent repair shops in the general public? And if so, why are there reports of tools showing "code undefined."

If there is a problem with the tool and data availability, how extensive is the problem?

Are there currently lawsuits or complaints to the Federal Trade Commission?

What is their quantifiable impact on small independent repair shops in terms of lost business, and what is the quantified economic impact on unsatisfied customers?

Are there legitimate public health and safety concerns that should be considered if we allow access to safety, emissions and security systems on cars and light trucks? Obviously, is there a chance to tampering?

Are there legitimate risks to the intellectual property invested in the programs and technologies that are used in OBD and other diagnostic systems?

And finally, my colleagues, will Federal legislation provide a solution to this ongoing issue or are there current programs at the Federal/State level with adequate enforcement available.

I would like to thank our witnesses for coming here and taking their valuable time to join us. And we look forward to your testimony and presentations.

And with that, I recognize Ranking Member Schakowsky for her opening statement.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman.

As you know, the opportunity to make opening statements has long been recognized by the Committee on Energy and Commerce on a bipartisan basis as a member's right. And I appreciate the opportunity this afternoon to make an opening statement. Nonetheless, this right which is vital for the minority in Congress and to our democracy was unfairly denied by Chairman Barton on Wednesday, September 15, at the full committee markup of House Res. 745, the resolution of inquiry into Vice President Cheney's secret energy task force.

Chairman Stearns, as I have said on a number of occasions, the manner in which you have lead this subcommittee have been nothing if not curious and respectful. And although we disagree on a number of issues, you have worked with me and with Ranking Member Dingell to ensure that the minority has had a voice in the happenings of the subcommittee. That is why I must say that I was surprised and disappointed to hear that Ranking Member Dingell's request for just one witness from the Federal Trade Commission was denied.

The request for this particular witness was not a partisan or political request. The divide on the topic of today's hearing, how technology changes in the design and maintenance of cars have affected both the consumer's right to choose repair shops and independent repair shops themselves, is not a divide on partisan lines. In fact, I may not have agreed with what the FTC would have had to say if a representative of the agency was allowed to testify, but because the FTC would be affected by any legislation we may decide to undertake, I believe that an FTC witness should be here to share the agency's knowledge and perspective on the issue.

Because of our history of cooperation and because we do have a number of other stakeholders here today, I find the decision to deny Ranking Member Dingell a witness to be quite unnecessary.

Having said that, I do look forward to hearing from the witnesses who are here today.

Many of the technology changes in car design and maintenance have made cars safer and more environmentally sound. The changes have truly been advances. However, they have also created new challenges for the consumer and for independent repair shops. Consumers are finding that they cannot take their cars to the repair shop of their choice. Repair shops are finding that they must refer their customers to dealers for repairs they cannot do. Those experiences are not because the mechanics are not capable, but because they cannot get the information they need or they cannot get the information they need in a timely fashion to make the necessary repairs.

I believe that the manufacturers of motor vehicles sold in the United States should disclose the information necessary to service or repair vehicles to car owners, repair shops and to the Federal Trade Commission. I believe that this information should be available while protecting industry trade secrets and intellectual property so that car owners can go to the repair service of their choice.

Some of the witnesses here today will say that the sharing of information is already occurring and that the auto makers and independent repair shops have been working together voluntarily. While I believe that there have been some positive changes since this issue came to light a few years ago, thanks in large part to the late Senator Paul Wellstone's prodding, I believe there is still room for improvement.

We need to ensure that the information provided to the car owners and independent repair shops is easily accessible, accurate, timely and not priced out of reach.

Again, I do look forward to hearing the ideas of our witnesses on this issue.

It is unfortunate that the Majority has denied us the opportunity to hear the Federal Trade Commission's perspective today.

Mr. STEARNS. Thank the gentlelady.

Mr. Upton?

Mr. UPTON. Well, thank you, Mr. Chairman.

As Representative of the great State of Michigan, the birthplace of the automobile and as Co-Chair of the Auto Caucus, I am glad to have the opportunity to exercise oversight over matters of the industry itself.

The auto industry is a driving force in the economy of every State creating an estimate 6.6 million jobs direct or indirectly and providing over $240 billion in payroll compensation every year. It is appropriate that our committee and this subcommittee keep an eye on the critical engine of commerce.

When it comes to the auto industry and the legislative process, I am of the mind set that less is more. I look at all the work that is being done in the area of alternative fuel vehicles without congressional mandate, and I know that this is a market drive rather than regulatory, and I think that is how it ought to be.

When the concern was first expressed about repair issues and consumer fairness, I was pleased to see that the auto industry came to the table, stepped up to the plate, with a voluntary proposal to deal with the issue. It has been little over a year and my

understanding is that this voluntary effort is working very well. The auto companies are already providing the same repair information to independent repair shops that they supply to their own dealers. Auto makers make available the same service and training information related to vehicle repair as is provided to franchised dealers and the same diagnostic tools related to vehicle repair that are provided to franchised dealers.

Progress has also been made with regard to tool information availability for the aftermarket industry. I am told that the auto makers are making factory tools available to independent repair ships and/or providing information to the Equipment and Tools Institute so that third parties can develop diagnostic tools with the same capability as factory tools.

And finally, auto makers are making training materials available either through their websites as an 800 number to ensure independent technicians throughout the country have access to all needed service, repair and training materials.

I look forward to hearing an update on the progress of that voluntary agreement and availability of tools to perform necessary auto repair.

As Chair of the Subcommittee on Telecommunications and the Internet, I am also aware of how evolving technology can revolutionize an industry. That often means that an industry can wide up on the bleeding edge of technology. With that in mind, I am also interested in hearing how proprietary information on parts can be protected so that we protect consumers against counterfeit parts.

And finally, I am curious just how widespread that problem actually is. I certainly have not hear from any of my constitutes about it. And although the statistics on post-warranty repairs would indicate that a huge number of repairs, over 75 percent, are done at independent stops rather than at dealers. So that if you think that there really is a big problem, you would think that we would hear about it.

Thank you, Mr. Chairman, I look forward to the hearing and appreciate the time that our witnesses are committing to us. I yield back my time.

Mr. STEARNS. I thank my colleague.

And now the distinguished ranking member of the full committee, Mr. Dingell also from Michigan.

Mr. DINGELL. Mr. Chairman, your courtesy to me is much appreciated, and I thank you for recognizing me and for recognizing all members for opening statements.

We had a very unfortunate experience in this committee last week, which I am pleased to see is at least not being repeated today. And, of course, I will continue to maintain an active interest in seeing that committee rules and their interpretation properly reflect the traditions of this committee, and that members are permitted to be heard on important matters of national concern.

On another procedural matter, I regret that we will not be hearing today from the Federal Trade Commission, despite my request that the FTC be allowed to offer its views. Therefore, minority members are delivering to you this afternoon a letter pursuant to Rule 11 of the House of Representatives requesting at least 1 additional day of hearings on the subject of today's hearing.

I am not altogether sure I can understand or explain why the leading Federal consumer protection agency was not invited to a hearing on the availability of automobile repair information. Moreover, the proposed legislation on this matter sponsored by our good friend and chairman, Mr. Barton, and Mr. Towns would give significant new authority to the FTC. Without an understanding of the position and views of that agency on the powers to be given and whether they are in fact needed or whether they would be adequate, it would be hard for us to come to a clear judgment as to what it is this committee ought to do with regard to the legislation.

Members and the public are entitled also to hear from the FTC on this entire subject.

Despite my misgivings with regard to the FTC's absence, I am pleased that we are holding this hearing today, and I thank you for it, Mr. Chairman. H.R. 2735, the Motor Vehicle Owners' Right to Repair Act of 2003, was reportedly introduced to help small independent repair shops. There are, however, questions surrounding this legislation which I am hopeful our witnesses will be able to help us understand.

For example, why is the most vocal and well funded supporter of the bill, the CARE Coalition, primarily composed of and funded by large corporations, many of which sell inexpensive replacement parts from overseas?

Moreover, why does the leading trade association representing independent service shops for whom this legislation was supposedly created oppose the bill?

These are questions which peak my curiosity, as I am sure they will anyone who looks at these matters. And I know that you will want to have answers to these questions, Mr. Chairman.

The issue is not as simple as it may appear. The publicly stated objectives of this legislation are laudable, indeed. Consumers should be able to choose who repairs their automobiles. It is not, however, the bill's stated objectives with which I am concerned. It is the means through which this legislation seeks to achieve its stated objectives and the consequences, whether intended or not, that give me real pause.

It is possible to help the consumers and to assist independent repair shops without jeopardizing the rights of automobile manufacturers and suppliers. Independent service stations across the Nation have joined with the world's automobile manufacturers to create the National Automobile Service Task Force. This task force has designed a nonlegislative means through which the objectives of the bill can be and are being achieved. I am told that independent service stations are now receiving the information they need to repair all makes and all models of motor vehicles.

No one should expect that an undertaking of this magnitude is going to be perfect from inception. There will be errors and there will be flaws. This requires communication, perseverance and, most importantly, the willingness of all stakeholders to succeed. It is, I think, therefore a matter into which this committee should be going, and I commend you for your leadership.

To the current members of the task force I say continue to work diligently. Keep us appraised of your progress. To those who are intent upon criticizing the goodwill of others, I suggest that you use

a portion of the vast resources you have spent on multimedia presentations and high priced lobbyists to help the task force achieve a real victory for consumers and independent repair shops. This, I believe, can be much better done by cooperation amongst the parties than it can by us enacting legislation unless there is extraordinary reason therefore.

Mr. Chairman, I look forward to hearing from our witnesses, and I look forward to a more thorough and complete examination of this issue in the near future.

And I thank you for the recognition.

Mr. STEARNS. I thank the distinguished ranking member. And we have your letter, and we will certainly look at it carefully.

Let me ask you as a suggestion, what happened if I offered unanimous consent to allow the subcommittee members to submit questions to the Federal Trade Commission for their answers? Would that be acceptable to you as a alternative approach.

Mr. DINGELL. Does my good friend direct these questions to me?

Mr. STEARNS. I do, indeed. And I recognize the gentleman.

Mr. DINGELL. If the Chair would yield to me. I think that is a splendid idea, and I would of course actively avail myself of this.

When we commenced the process, however, Mr. Chairman, of trying to get the views of an agency like the Federal Trade Commission on a question as complex as this, it may be that the answering of those questions will leave us with more questions than we have when we start. And I appreciate what I am satisfied is a genuinely good faith effort to meet my concerns, but the FTC is the agency that will be designated to engage in the enforcement of this matter. And I have no idea what they are going to say, but if there is something to be said on the enforcement and other judgments and a critique of the legislation, certainly the agency selected by the statute to address this and the principle consumer representative organization inside the Federal Government I believe should be here. Because I think all the members would want——

Mr. STEARNS. I respect your years of experience. So I am taking that to assume you would like an unanimous consent?

Mr. DINGELL. I really would, Mr. Chairman.

Mr. STEARNS. Okay.

Mr. DINGELL. I say this with both respect and affection.

Mr. STEARNS. No. I understand.

By unanimous consent so ordered that all the members will be able to submit questions to the Federal Trade Commission.

With that, the gentleman from New Hampshire.

Mr. BASS. Thank you, Mr. Chairman.

This is an interesting hearing. Clearly, as my friend from Michigan Mr. Dingell said, it is more complex than it appears to be at first. There are issues of safety and competitiveness involved, as well as good consumer oversight.

As one who is familiar personally with the problems that car owners face when they try to make repairs to systems that cannot be handled by any other entity than a dealer, I think it is important to seek to achieve an appropriate balance so that modern automobiles can be repaired and maintained safety outside of the dealership structure to help keep the cost of maintenance down while at the same time assuring that the motoring public is safe.

This is an excellent hearing and I look forward to hearing the views of our witnesses here today. And I thank Chairman for holding it.

Mr. STEARNS. Mr. Issa?

Mr. ISSA. Thank you, Mr. Chairman. And thank you for holding this hearing.

I am not a co-sponsor of the bill. I am here to decide whether or not this piece of legislation is necessary. But I do have an obligation to express two things.

First of all, many people on the committee know that I have a long history in the aftermarket industry designing manufacturing for the automobile. First of all, I have no financial interests any long in any company that is involved in that industry. So, hopefully, that puts aside any questions of conflicts.

However, in my 10 years on the Board of the Consumer Electronics Industry and my 20 years of manufacturing for the auto companies, I have personally witnessed a reluctance and a continued reluctance by the auto companies to provide in an expeditious fashion any technology that would allow anyone to develop a product in competition or even in addition to the auto companies with rare exceptions. So I come here today with concern that what I have observed for 20 years in the business and, as I said, about a decide on the board of the major trade association does tend to make me believe that there is a possibility that the auto companies deliver but do not deliver in a timely fashion, and certainly make very effort to not deliver in a predelivery of vehicle to anyone other than to their authorized dealers.

Having said that, I am not signed on the bill. I look forward to finding out whether this particular piece of legislation is the best solution and, of course, whether or not the problem is sufficient is sufficient to justify a mandate of a Federal agency. But I come here with a history that I wanted to make sure I disclose.

And thank you, Mr. Chairman. I yield back.

Mr. STEARNS. I thank the gentleman.

The gentleman from Texas, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman.

I would like my full statement be placed into the record.

Mr. STEARNS. My unanimous consent, so ordered.

Mr. GREEN. I want to thank you for allowing this opportunity to give opening statements today. I think my colleagues from both sides of the aisle have a great amount of respect for the legislative processes. I am glad to see it being upheld here today in light of our last week's events.

I would like to thank the Chairman and also Congressman Towns for their leadership on this issue. About 2 months ago I met with about 20 repair shop owners from my own district asking me about the legislation. And since then we have received probably a lost of about 100 shops in the district I represent in Houston.

I have a pretty blue collar district and I grew up working on cars. And my constituents still do. And we have a lot of shade tree mechanics. And I guess my concern about it is that today the technology has changed.

When I was growing up, I would go pay $35 for a Chelton manual to be able to see how I repaired my vehicle. But nowadays with

everything else, you have to have a computer program or whatever. And my concern is if someone purchases a vehicle or a computer or anything else, they ought to be able to have someone that they want to repair that, and they ought to have the ability to get the information to do it.

Now, granted, auto dealers or auto manufacturers make it and they have a proprietary right to the information. But they ought to make it available just like I have to pay, at least in the 1970's, $35 which was a lot of money then for a book. But today I know it would be a lot more. But the goal I think is simple to make sure that the manufacturers provide this to not only my constituents, but also the folks that may be hired to repair those vehicles. And I would hope that they would be able to get a reasonable amount of money to compensate them for that, but also make sure that folks could repair their cars.

And with that, Mr. Chairman, I will not take my whole time and put the full statement in the record.

Thank you.

[The prepared statement of Hon. Gene Green follows:]

PREPARED STATEMENT OF HON. GENE GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

First, I'd like to thank the Chairman for giving us the opportunity to make opening statements today. I think many of my colleagues from both sides of the isle have a great amount of respect for the legislative process and I'm glad to see it being upheld here today in light of last week's events.

I'd also like to thank the Chairman and Congressman Towns for your leadership in bringing attention to the issue of auto repair.

It was about 2 months ago that I met with 20 repair shop owners from my district asking me about this legislation and what Congress could do. Since then, I have received a list of almost 100 shops in my district voicing concerns over having access to information that would enable to repair today's high-tech automobiles.

Like most large cities in the United States, Houston has as many independently owned repair shops as we do shade-tree mechanics. However, with the level of technology used in today's automobiles, the shade tree mechanic is often led to their nearest repair center which is most often an independent shop.

When I got my first car, I was able to buy a Hanes or Chilton manual that showed how the car could be repaired. These manuals included wiring diagrams, clock times to adjust the timing, and torque specifications for everything from the lug nuts on the wheels to the bolts securing the engine block.

Things have changed and computer systems in newer vehicles control everything from Air bag deployment to emissions.

I'm supporting this bill because I'm concerned about the consumer. If my constituents own a newer model car or truck, they should be able to take it to their local mechanic to be repaired. High tech advances shouldn't make repairing your vehicle at a neighborhood shop out of reach.

The goal of this legislation is simple: auto makers should be able to supply information to local repair shops so those shops can repair a vehicle. However, auto makers should also be fairly compensated for this information due to their investment in developing and engineering the cars and trucks in the first place.

I understand the Alliance of Automobile Manufactures and the Automotive Service Association are working towards this goal through the National Automotive Service Task Force. I hope you continue your efforts to resolve these issues regardless of what happens with this legislation. It's important for consumers and small businesses alike.

Thank you Mr. Chairman and I yield the balance of my time.

Mr. STEARNS. I thank my colleague.

And the gentleman, Mr. Otter.

No statement.

[Additional statement submitted for the record follows:]

PREPARED STATEMENT OF HON. JOE BARTON, CHAIRMAN, COMMITTEE ON ENERGY AND COMMERCE

Mr. Chairman, thank you for holding this important hearing today on the complex issue of information availability and access to auto repair information.

I have some indication after reviewing the testimony of our distinguished panel, that there are very strong opinions about the degree of progress that has been made in terms of information availability and access for independent repair shops.

Let me say before we evolve into a contentious debate that I have a wonderful General Motors plant in my district, in Arlington, TX. And, like most Members, I have local dealers I hear from occasionally. So this is not a constituency whose views I have failed to hear on the underlying legislation referenced in the testimonies of the witnesses here today. And so we are clear, I am not out to harm the technological advances made each day by our automakers or give away their trade secrets.

I have been involved in this issue since August of 2001, solely on the principle that I believe consumers need to have choice in auto repair, whether foreign or domestic, and they should be able to choose where they have the vehicle repaired and whether they choose aftermarket replacement parts or Original Equipment Manufacturer (OEM) parts.

Since introducing this legislation, I have been openly working with all parties to facilitate an agreement that would negate the need for legislation. However, let it be said, that we are here today discussing progress made on a voluntary industry agreement chiefly because of a hearing that was held by Senator Dorgan in July 2002. That hearing, and the fear that the late Senator Wellstone's companion legislation would be moved, persuaded the automakers (the Alliance and AIAM) to broker a deal with a smaller group of service providers, known as ASA—whose members are with us today.

Though, the Alliance, AIAM (the international automakers) and ASA declared the problem was solved, this agreement did not alleviate the primary concern of a larger group of aftermarket repair folks, known as the CARE coalition. Their concern is that this is a voluntary agreement and not enforceable. Rather, there is no recourse if the automakers decide not to continue supplying information. They along with AAA, NFIB, The Retail Industry Leaders Association, and the 60 Plus Senior Citizens Association support the legislation.

This voluntary agreement, reached in September of 2002, set a deadline of August 31, 2003, when all information necessary to diagnose, repair and service vehicles for both emissions and non-emissions related repairs would be made available in the same manner and to the same extent as it is to franchised dealerships.

The automakers, I believe, have been acting in good faith, but acknowledge that this is a mammoth undertaking, and possibly have not to date managed to get all the information to independent repairers. I have, from the automakers' task force (NASTF), an On-Board Diagnostic Scan Tool Table from September 9, 2003, that shows the spotty availability of scan tool information based on the efforts of individual automakers to get it out there. While I do not doubt their good faith efforts to do so, it is not clear that the Alliance and AIAM—which are trade associations—can "voluntarily" compel these companies to do what is in the agreement. In other words, what is the recourse for independent repairers and consumers, or the penalty for the automaker, if it is not done?

I appreciate the efforts the automakers have made to use the NASTF process as a conduit for independent repairers and the various automakers, however, it is simply not practical and not realistic to think that a consumer is going to wait 8 to 15 days (based on NASTF's best and average response time) for an independent repair shop of their choice to get the adequate information to repair their car. Sure, they may eventually get the information—but if the customer has already gotten tired of waiting, it is a moot point. We all know as consumers, when our car breaks, we want it fixed and back within a day or two. I question why it takes so long, and why independents have to go through this process—when dealers do not. In my opinion, this does not fully meet the voluntary agreement requirements.

The issue today is access and availability. It is NOT about gaining proprietary information, as some suggest. I personally take issue with some of the testimony exploring that notion. That argument is easily resolved by reading my legislation. But more so, I believe that argument keeps parties entrenched and distrustful of one another. If legislation is to be negated, agreements have to be improved and enforced. Automakers comply with the EPA rule that requires similar information for emissions related repairs, and it is written in a way that does not require them to release proprietary information. It states: "Information for making emission related

repairs does not include information used to *design and manufacture parts,* but may include OEM changes to internal calibrations, and other *indirect* information . . ."

I believe the same could be true for non-emissions repair information.

I am interested in brokering a solution today, as I have been since the beginning—some three years ago. I want to echo the comments from the 2002 Senate hearing . . . I want a solution that satisfies all parties or I will reluctantly move legislation. I know from personal dealings that my legislation would have been done away with had there been some coming to the table on the issue of private, third-party arbitration and dispute resolution—which did not involve the potential for litigation. But the Alliance felt that they could never get all their companies to agree to that.

So, instead of questioning my motives and those of others here today, I suggest we look at ways to reach a more lasting solution. It is easy to see why 9 of my colleagues on this Subcommittee, and 21 Members of the Full Committee support the underlying legislation.

The reason is simply that we want to know that as car technology advances more each day, the relevant information for aftermarket repair shops remains accessible, is provided at a reasonable cost, and is current. The EPA has already done this for emissions related repairs. The framework is there to protect proprietary information, and the same could work for non-emissions information.

Fear of Congressional action has gotten us to where we are today, and I commend automakers that have improved availability and access. Let's work together to see that it continues and can be improved upon to the extent that legislation is truly not necessary. I remain open to ideas to do so.

Thank you all for your participation today. And thanks to Chairman Stearns for holding this hearing.

Mr. STEARNS. With that, we will move right to our witness. And I would say to my colleagues and to the panel, we have two presentations before we start the opening statements. Mr. Dave Scaler, Mechanics Education Association in Maplewood, New Jersey and Mr. William Haas, Vice President Service Repair Markets Automotive Service Association.

I welcome both of you. And, Mr. Scaler, you are first. So your presentation, we look forward to seeing it.

STATEMENT OF DAVE SCALER, DIRECTOR, MECHANICS EDUCATION ASSOCIATION

Mr. SCALER. Mr. Chairman, members of the committee, it is a great pleasure to be here today to share some experiences that we have——

Mr. STEARNS. You might just pull the mike a little closer to you, just for those in the back.

Mr. SCALER. Is that better?

Mr. STEARNS. That is better.

Mr. SCALER. My name is Dave Scaler. I am the Director of Mechanics Education Association in New Jersey. We are a support center for independent repair shops throughout the country providing telediagnostic support, onsite troubleshooting as well as training.

I just want to share with you very briefly some experiences that we have in the best that I can in the brief time that we have, encapsulate some of the difficulties that we are having in getting real people's cars fixed.

This presentation is called "Real People, Real Cars, Real Problems In the World of Using OE Websites." Essentially everyone of these situations is a customer of ours that has a problem that we tried to address by fixing it through use of the equipment tools and information we currently have available.

The first care is 2000 Dodge Neon. The problem with the car, it has a check engine light on, a federally mandated light. There are over 50 different reasons this light could come on.

In this particular case, we followed the Chrysler factory procedures which is available on the web. That procedure tells that this car has an oxygen sensor problem. And we follow through the procedure. One of the options on the bottom suggests that the control unit or the engine controller could be faulty. In this particular case, that is what is faulty. In order to replace that controller, what is required according to the factory service information found on the website, is the use of the factory Chrysler tool. Very fortunately, we own the factory Chrysler tool with the latest updates and were able to continue with the process.

So at that point when we look at the factory tool, and this a screen shot from the factory diagnostic tool, it tells me if I replace the controller on this car, that the engine will not start unless I perform or enter a PIN number into the computer.

Now, right there it tells me on the next slide, it says enter PIN, personal identification number and contact Chrysler for this number. So, of course, the number is right on the tool. We called Chrysler, and unfortunately Chrysler was unable to provide that PIN number to us. They said they can only provide that to the dealership.

So in this case it was particularly disappointing because one of our technicians that worked for us owns the car. So in this case we have paid for the subscriptions, we have bought all the factory necessary equipment, we have the vehicle owner repairing the car and we still could not complete the repair because of the fact that I needed a PIN number.

So you can see while on the surface, particularly for those fixing cars, it may appear that a lot of there. But all that needs to be missing is one of step of the process and the repair cannot be finished.

The solution to this is often viewed in this example, which is a 1998 BMW. It failed the federally mandated I/M program for states that are non-attainment.

In this particular case, this is a 1998 car. It is important to note these are not all brand new vehicles. This is years of history here.

This is a SAE code made by EPA for secondary air or air pump problem. So the car fails inspection, in this case in New Jersey, for this problem.

We go the BMW website. Here I punch in the number for the code, it gives me a description, which is good. I am pleased with that. When I go to find repair documentation for it, it suggests that there are no documents found. I go through every page that I can of the repair information there. I cannot find any repair information, meaning a procedure to fix this car. So I complain to BMW, and this is basically a copy of an email to BMW suggesting what I am looking for. The BMW's response to me was P code information is found on the website. Now, I've just spent a tremendous amount of time looking for it, they are suggesting that it is there.

So once again I feel well it must be me. I go back and try again. I still cannot find it after literally hours and hours of looking. So

I complained to NASTF, which is coined the solution to the problem.

This is my confirmation to NASTF of the problem. This is my complaint showing documenting exactly what I was looking for and in hopes that they can clarify this, and obviously confirmation of that.

I get an email from Mr. Haas to my left here, who I have known for a long time, I was very pleased to get that email. He suggest that he is going to send this to BMW and take a look at it and we are going to be able to straighten this out. And knowing Bill, I was very pleased at that.

As time went on, I got additional emails and while I was a little disappointed in this particular one that the email got reduced to not a problem with the BMW but the Scaler complaint, in this case I was well aware that the other leader members of NASTF were aware of my complaint. So at least in that respect, that was good.

Bill came back and asked me, you know, is it not there, is it something you cannot find, are you are the right website? Of course I was, so I replied to him. "The complaint is that it is not on the website. I have searched every corner on the site, on and off for days (literally) and it is not there. There are descriptions but no troubleshooting procedures. I can access the website. I have sent them emails." And once again essentially I am being told that it is okay.

Now BMW responds, and this is important to me. It says "Mr. Scaler, you recently submitted a complaint through the IATN and the NASTF."

And they post it, because I did complain in November of last year, and that is important. I am a member of NASTF and last year in November at the meeting it was the understanding that we needed to give them time. So my complaint in November I let slide. I recomplained again. And they are giving me the same answer. And that answer is, the information is exact same, is at the BMW website.

It is important to note that I know it is not there, but once again I am being told that it is. It is very important to note at the bottom that this email is always, every response to me, is copied to every leader of NASTF as well as to me. BMW attaches the email they saved from me in November suggesting it is there.

I tried to help them understand, so I send a reply, and this is a copy of my reply explaining exactly what I am looking for, and I copy every leader of NASTF to try—and this is the third time now that I have been told, and I know it is not there, that it is there. So I am trying to clarify that particular situation.

Once again BMW comes back with a public announcement that says "We provide the exact same information" and everything is there. And I am very disappointed at this point that no one else has tried to access it other than me, and this is the third time I am told it is not there.

So at this point I decide to let them know where the problem probably lies. So I suggest to them that perhaps, and I copied everyone here also, that the problem may be that it is not there and I need a special tool in order to get.

Well it is very important to note that BMW acknowledges this, and this time after the fourth time, this is the only time they acknowledge it without copying the rest of the people. And it says: "Mr. Scale, I believe you are correct." After four times of being stonewalled, "A connection to the vehicle is needed to identify the problem," which means that the information was not available in order to get it. And needless to say, I was very disappointed and I have other examples of that.

And, again, I am trying to be brief in order to bring us through.

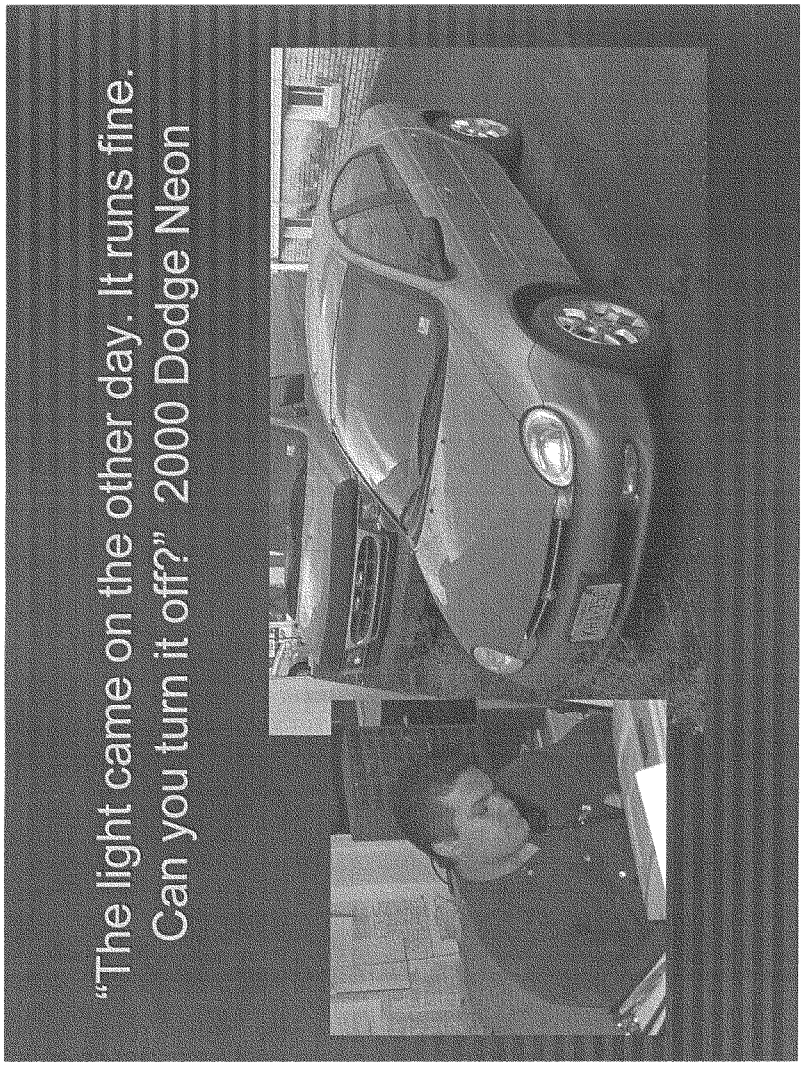
Just so you know, it did say that if I have a tester, I could do this. And my subscription, which was $20, has now become $15,800 at the time, which is now $18,900 if I want the tool to connect to get the federally mandated repair procedure for this vehicle. While I am okay with that, because in all of my scenarios I am willing to spend whatever it takes, unfortunately I have been told that there are certain pieces that I still cannot get which I will address in later testimony. But this is where we run into some of the problems what is coined as "the solution."

And finally where I will leave this in order to be brief, is that it is very important to note that there are often times two different levels of service information. In the case of Ford, I will use as prime example there is the Motorcraft website for the Ford aftermarket. Along with the Ford Motorcraft website there is also fmcdealer.com. The technicians at the Ford dealers use fmcdealer.com to repair vehicles, not motorcraft.com.

I can tell you from very technical experience, and that is important because realize while I am a technician, I still repair cars, and many people that are auditing this do no longer fix cars. And this site is where I go now to fix cars. Unfortunately, I had to make arrangements with friends, because I am not allowed in here. As you can see, it is a secured website not to be accessed but anybody but Ford or technician at Ford. And the information that I use currently today to fix many cars, including programming of vehicles, I get from this website and I cannot get from the Motorcraft website. So once again we have two different playing fields on this issue.

[The prepared statement of Dave Scaler follows:]

Real Cars, Real Problems, Real People, in the Real World of OE Websites


"The light came on the other day. It runs fine.
Can you turn it off?" 2000 Dodge Neon

Chrysler Procedure for SAE code

Tech Authority OnLine - Microsoft Internet Explorer

https://techauthorityonline.extra.daimlerchrysler.com:9311/service/tsds2002/Dispatcher/?SERVICE=TechAuthorityMain1A

TSBs/Recalls | Service Info | Wiring | Collision Info | Training Materials | Flash Matrix | Flash | Search | OBD II :

VIN: | Year: 2000 | Model: PL - Neon | Engine: - 2.0L 4 CYL SOHC 16V (SFI)

111%

DRIVEABILITY

Previous Page

Symptom List:

P0131-1/1 O2 SENSOR SHORTED TO GROUND
P0137-1/2 O2 SENSOR SHORTED TO GROUND

Test Note: All symptoms listed above are diagnosed using the same tests. The title for the tests will be P0131-1/1 O2 SENSOR SHORTED TO GROUND.

When Monitored and Set Condition:

P0131-1/1 O2 SENSOR SHORTED TO GROUND

When Monitored: At a cold start, engine coolant below 98° F, ambient/battery sensor reading within 27° F, and engine coolant temperature above 179° F on the previous key off.

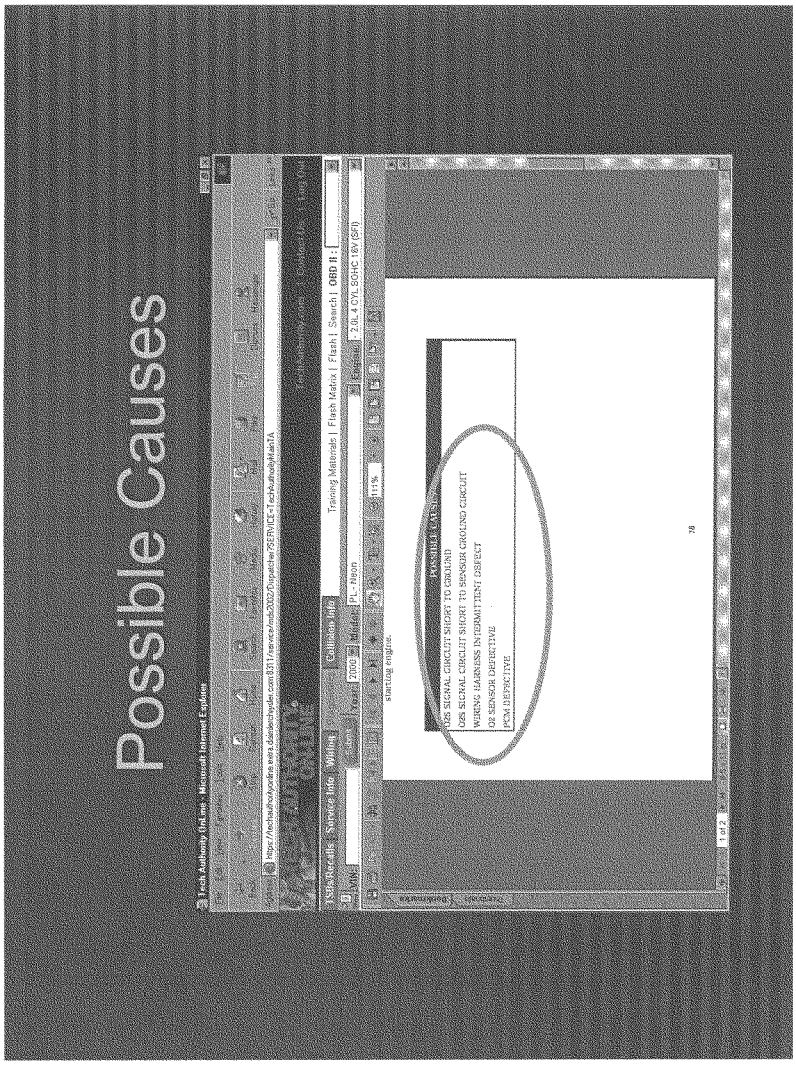
Set Condition: The oxygen sensor signal voltage is below 0.155 volts for 28 seconds after starting engine.

P0137-1/2 O2 SENSOR SHORTED TO GROUND

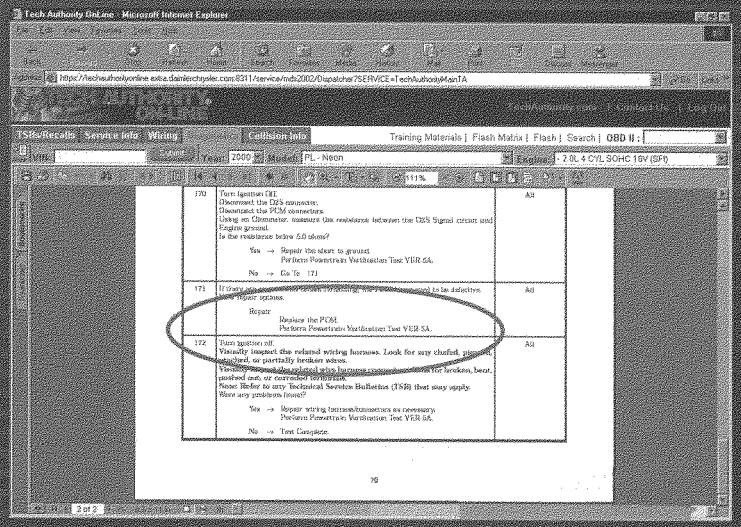
When Monitored: At a cold start, engine coolant below 98° F, ambient/battery sensor reading within 27° F, and engine coolant temperature above 179° F on the previous key off.

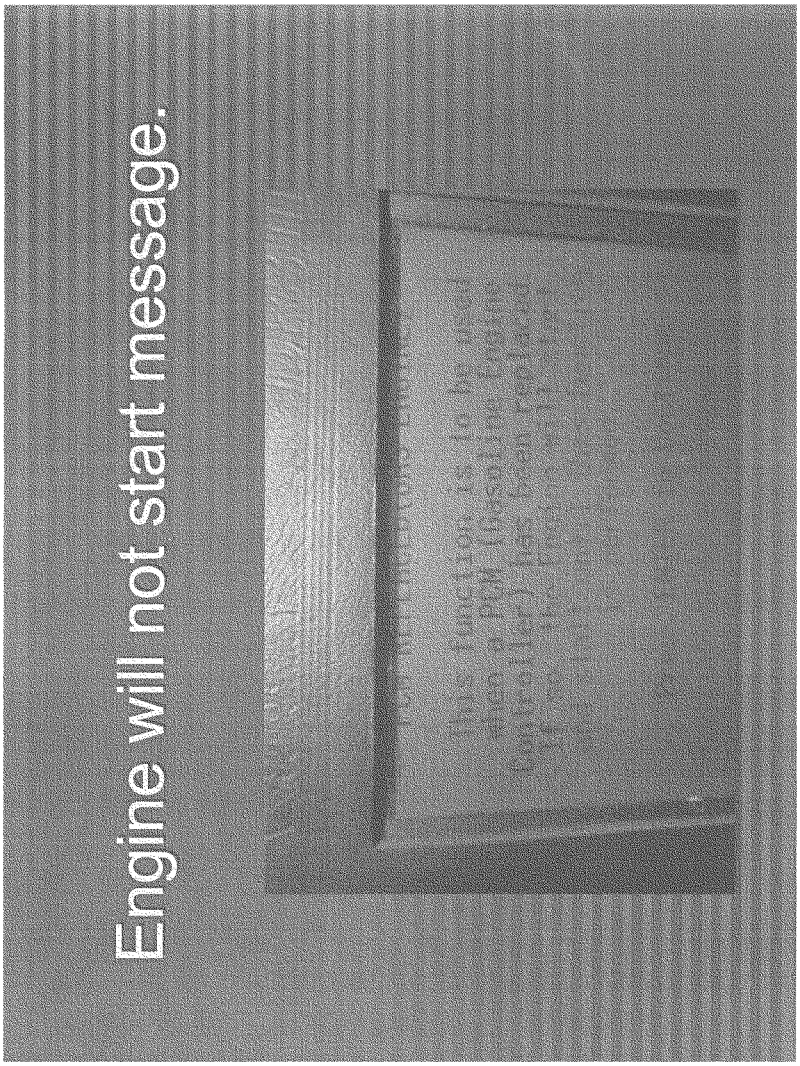
Set Condition: The oxygen sensor signal voltage is below 0.155 volts for 28 seconds after starting engine.

1 of 2


Possible Causes
Tech Authority 1hd.exe - Microsoft Internet Explorer
Training Materials | Flash Matrix | Flash | Search | OBD II :
Service Info
Wiring
Calibration Info
2.0L 4 CYL SOHC 16V (SFI)
starting engine.
POSSIBLE CAUSES
P0135 SIGNAL CIRCUIT SHORT TO GROUND
P0135 SIGNAL CIRCUIT SHORT TO SENSOR GROUND CIRCUIT
WIRING HARNESS INTERMITTENT DEFECT
O2 SENSOR DEFECTIVE
PCM DEFECTIVE
78

The Factory Procedure

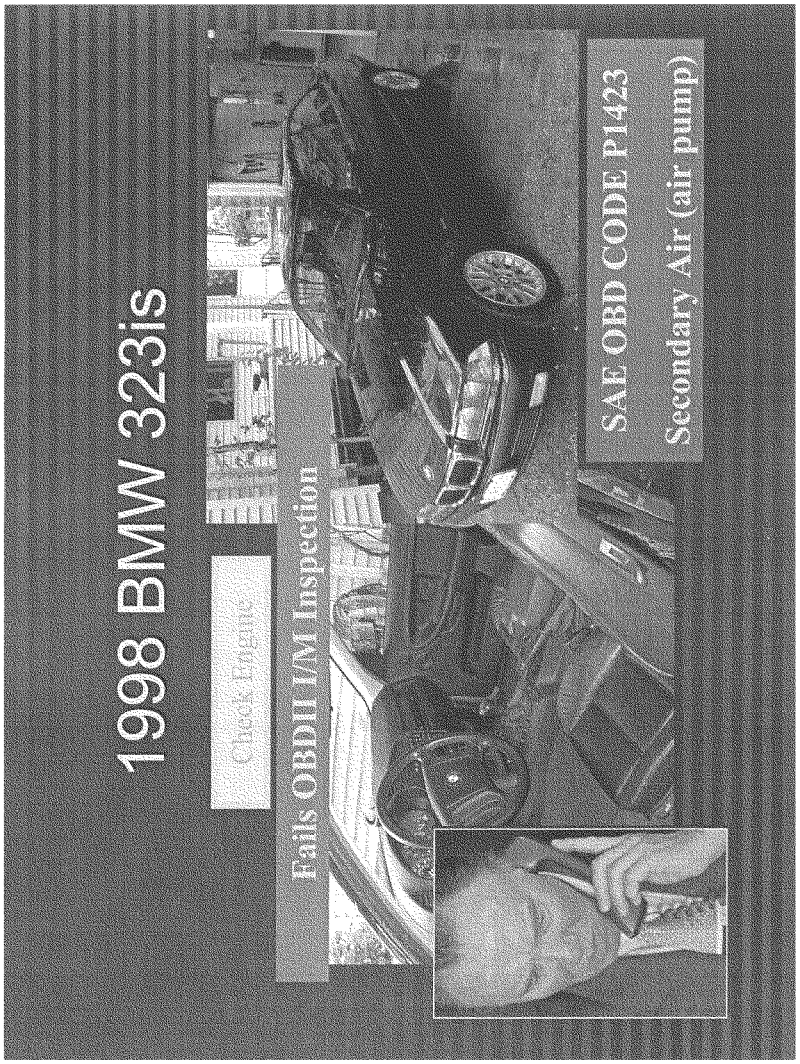


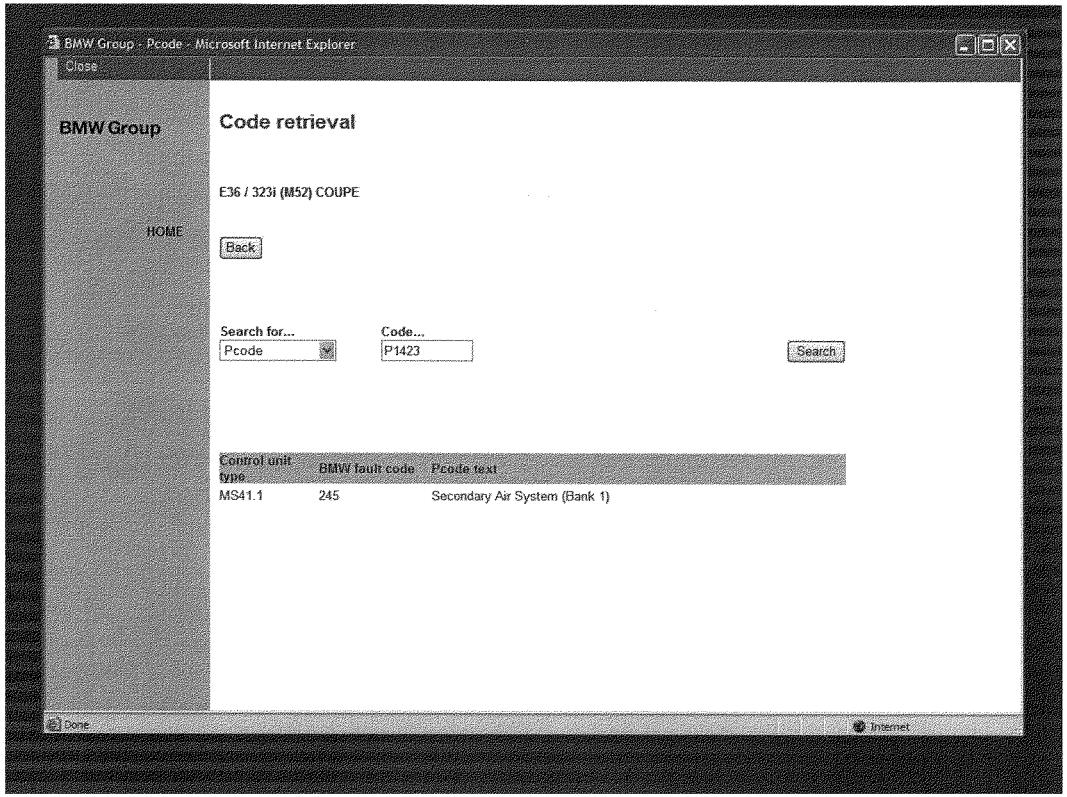

Engine will not start message.

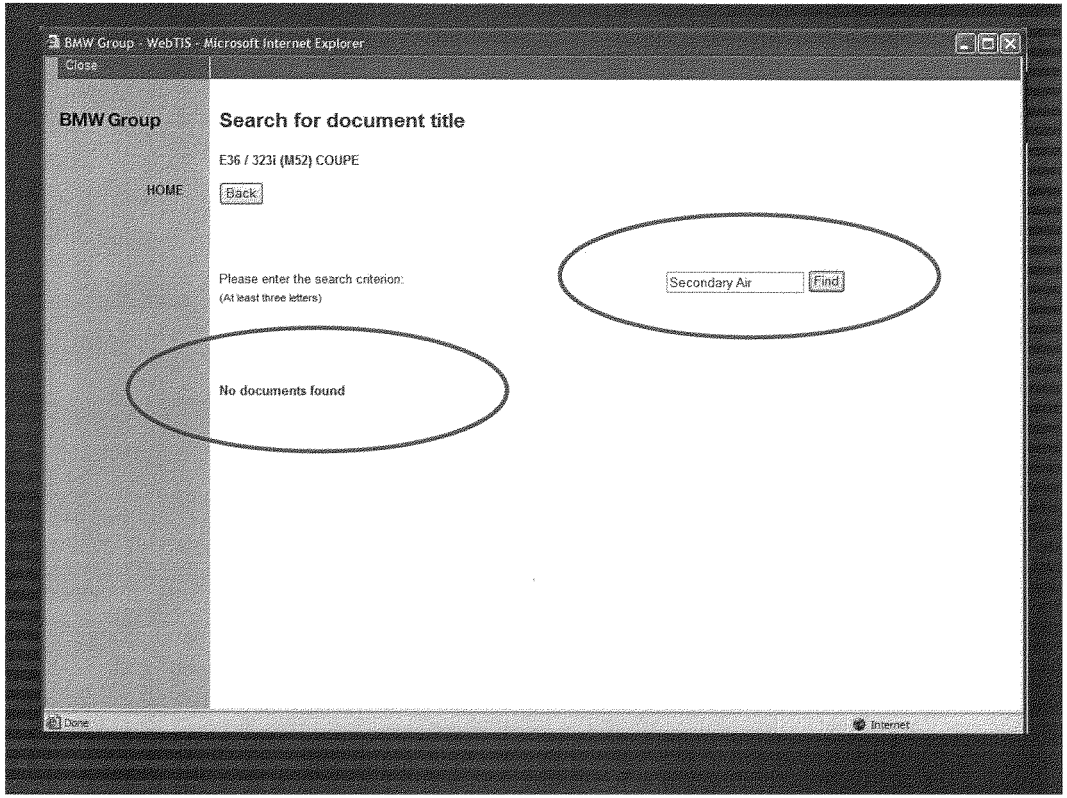
Call Chrysler
Enter PIN (Personal
Identification Number)
Contact the vehicle owner
or Chrysler Corporation at
1-800-992-1997 to obtain the
PIN number

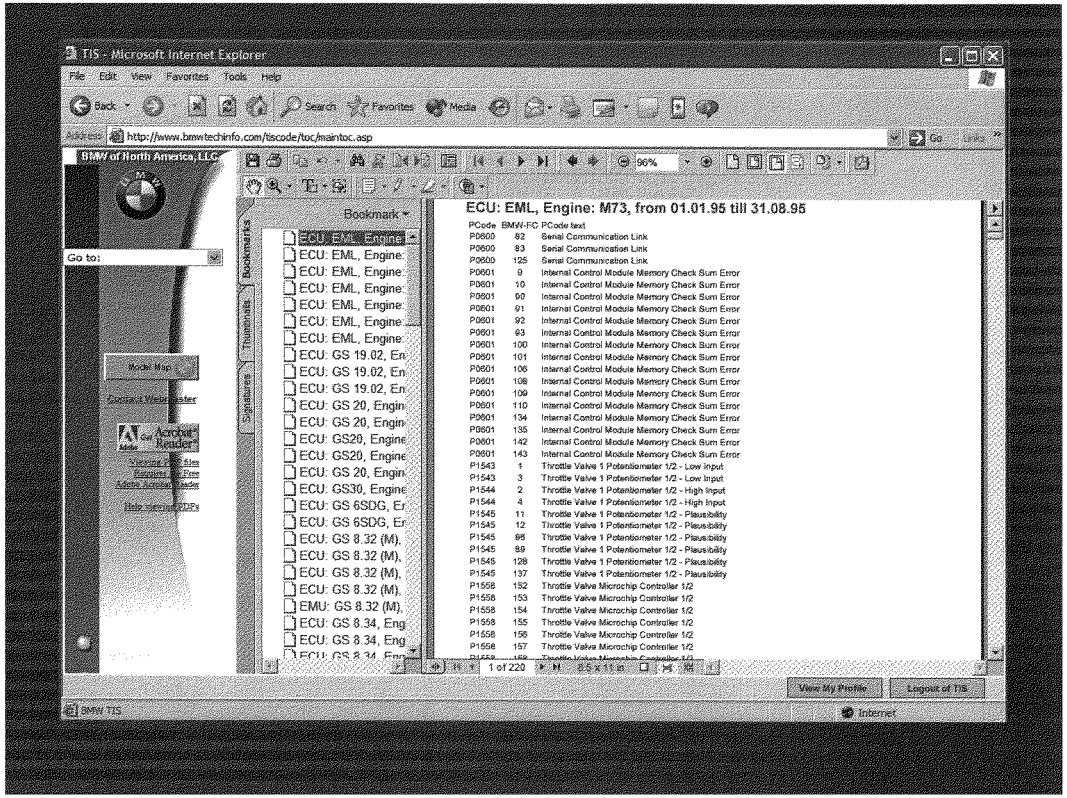
OE WEBSITES

Paid Subscription
Purchased OE equipment
Vehicle owner repairing the car
Cannot complete the repair


1998 BMW 323is
Check Engine
Fails OBDII I/M Inspection
SAE OBD CODE P1423
Secondary Air (air pump)


BMW Group - Pcode - Microsoft Internet Explorer
Close
BMW Group
HOME
Code retrieval
E36 / 323i (M52) COUPE
Back
Search for...
Pcode
Code...
P1423
Search
Control unit type
BMW fault code
Pcode text
MS41.1
245
Secondary Air System (Bank 1)
Done
Internet


BMW Group - WebTIS - Microsoft Internet Explorer
Close
BMW Group
HOME
Search for document title
E36 / 323i (M52) COUPE
Back
Please enter the search criterion:
(At least three letters)
Secondary Air
Find
No documents found
Done
Internet


TIS - Microsoft Internet Explorer
File Edit View Favorites Tools Help
Back Search Favorites Media
Address http://www.bmwtechinfo.com/tiscode/toc/maintoc.asp
Go
BMW of North America, LLC
Go to:
Model Map
Contact Webmaster
Get Acrobat Reader
Viewing PDF Files
Requires the Free Adobe Acrobat Reader
Help viewing PDFs
Bookmarks
Thumbnails
Signatures
Bookmark
ECU: EML, Engine
ECU: EML, Engine:
ECU: EML, Engine:
ECU: EML, Engine:
ECU: EML, Engine:
ECU: EML, Engine:
ECU: EML, Engine:
ECU: GS 19.02, En
ECU: GS 19.02, En
ECU: GS 19.02, En
ECU: GS 20, Engin
ECU: GS 20, Engin
ECU: GS20, Engine
ECU: GS20, Engine
ECU: GS 20, Engin
ECU: GS30, Engine
ECU: GS 6SDG, Er
ECU: GS 6SDG, Er
ECU: GS 8.32 (M),
ECU: GS 8.32 (M),
ECU: GS 8.32 (M),
ECU: GS 8.32 (M),
EMU: GS 8.32 (M),
ECU: GS 8.34, Eng
ECU: GS 8.34, Eng
ECU: GS 8.34, Eng
ECU: EML, Engine: M73, from 01.01.95 till 31.08.95
PCode BMW-FC PCode text
P0600 82 Serial Communication Link
P0600 83 Serial Communication Link
P0600 125 Serial Communication Link
P0601 9 Internal Control Module Memory Check Sum Error
P0601 10 Internal Control Module Memory Check Sum Error
P0601 90 Internal Control Module Memory Check Sum Error
P0601 91 Internal Control Module Memory Check Sum Error
P0601 92 Internal Control Module Memory Check Sum Error
P0601 93 Internal Control Module Memory Check Sum Error
P0601 100 Internal Control Module Memory Check Sum Error
P0601 101 Internal Control Module Memory Check Sum Error
P0601 106 Internal Control Module Memory Check Sum Error
P0601 108 Internal Control Module Memory Check Sum Error
P0601 109 Internal Control Module Memory Check Sum Error
P0601 110 Internal Control Module Memory Check Sum Error
P0601 134 Internal Control Module Memory Check Sum Error
P0601 135 Internal Control Module Memory Check Sum Error
P0601 142 Internal Control Module Memory Check Sum Error
P0601 143 Internal Control Module Memory Check Sum Error
P1543 1 Throttle Valve 1 Potentiometer 1/2 - Low Input
P1543 3 Throttle Valve 1 Potentiometer 1/2 - Low Input
P1544 2 Throttle Valve 1 Potentiometer 1/2 - High Input
P1544 4 Throttle Valve 1 Potentiometer 1/2 - High Input
P1545 11 Throttle Valve 1 Potentiometer 1/2 - Plausibility
P1545 12 Throttle Valve 1 Potentiometer 1/2 - Plausibility
P1545 88 Throttle Valve 1 Potentiometer 1/2 - Plausibility
P1545 89 Throttle Valve 1 Potentiometer 1/2 - Plausibility
P1545 128 Throttle Valve 1 Potentiometer 1/2 - Plausibility
P1545 137 Throttle Valve 1 Potentiometer 1/2 - Plausibility
P1558 152 Throttle Valve Microchip Controller 1/2
P1558 153 Throttle Valve Microchip Controller 1/2
P1558 154 Throttle Valve Microchip Controller 1/2
P1558 155 Throttle Valve Microchip Controller 1/2
P1558 156 Throttle Valve Microchip Controller 1/2
P1558 157 Throttle Valve Microchip Controller 1/2
1 of 220
8.5 x 11 in
View My Profile
Logout of TIS
BMW TIS
Internet

My complaint to BMW!

Thank you for contacting us.

P code information is found at the service information website.
www.bmwtechinfo.com

Service Tech Info

-----Original Message-----
From: BMWCOM.Web.User@vltis.spx.com
[mailto:BMWCOM.Web.User@vltis.spx.com]
Sent: Friday, November 21, 2003 12:27 PM
To: Service Tech Info
Subject: BMW Technical Information Web Site

Comments:
I am looking for P0 code definitions and testing for a 1998 BMW 323i.Please contact me at 105177.307@compuserve.com

I ask NASTF for help.

NASTF - Vehicle Manufacturer Service Information Matrix - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Address http://www.iatn.net/nastf/oemmatrix.html#bmw

National Automotive Service Task Force (NASTF)

The Vehicle Manufacturer Service Information Matrix below provides information for each vehicle manufacturer on how to obtain service information, tools, and training materials.

This document is maintained by the National Automotive Service Task Force (NASTF). This document contains only access information for service information, tools, and training materials [illegible] OEM sources. Both emissions and non-emissions related information is available via the listed sources. This matrix is also available in PDF (http://www.iatn.net/nastf/oemmatrix.pdf).

To report problems or corrections regarding the matrix, please see http://www.iatn.net/nastf/#complaint.

Vehicle Manufacturer Service Information Matrix

As of 10/01/2003 (Updated Quarterly)

The latest version of this matrix can be found at http://www.iatn.net/nastf/oemmatrix.html

The following references for each vehicle manufacturer provide the sources for accessing OEM service information, tools, and training materials. The information is listed by manufacturer rather than nameplate. For example, the Ford listings cover Ford, Lincoln, and Mercury vehicles. The auto manufacturers are listed alphabetically, but the links below allow you to scroll directly to a specific manufacturer's listings. Some small volume, specialty manufacturers (such as, Lotus or Panoz) may not be listed. Most manufacturers' service information is available via the Internet. Website links are provided. In many cases, the references also provide toll-free telephone contacts.

Company Contacts

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

ACURA
(see Honda)

ASTON MARTIN

Internet

My complaint to NASTF

ce Information Complaint Form - Microsoft Internet Explorer

Favorites Tools Help

Search Favorites Media

/members.iatn.net/tech/nastf/complaint.cgi

submitting the form below.

Your Contact Information

Name	Dave Scaler
Title	Educator/Instructor
Email	105177.307@compuserve.com
Shop Name	Mechanic's Education Association
Location	New Jersey, USA

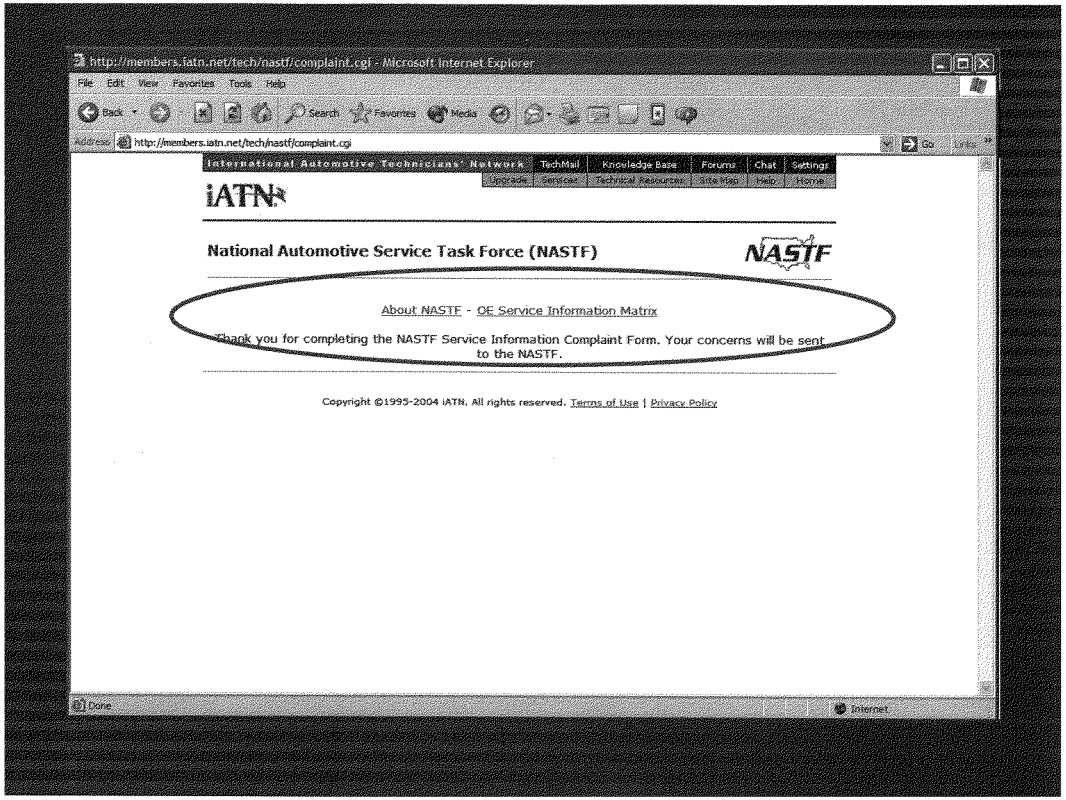
You may update your contact information from the IATN Support Configuration page.

Description of Service Information Complaint

Please enter the details of your experience below. Only submit this form if you were unable to obtain service information from a particular vehicle manufacturer.

Vehicle Manufacturer	BMW
Phone Number Called	e-mail only
Date of Call	12/16/03
Time of Call	2:24
Contact Name	service tech info
Information Requested	Diagnostic Trouble Shooting Chart for a code P1423 (code description is available) no troubleshooting chart to diagnose the code
Briefly describe response from contact	P Code information is found at the service information website www.bmwtechinfo.com

Internet


http://members.iatn.net/tech/nastf/complaint.cgi - Microsoft Internet Explorer
File Edit View Favorites Tools Help
Back Search Favorites Media
Address http://members.iatn.net/tech/nastf/complaint.cgi
Go Links
International Automotive Technicians' Network
TechMail Knowledge Base Forums Chat Settings
Upgrade Services Technical Resources Site Map Help Home
iATN
National Automotive Service Task Force (NASTF)
NASTF
About NASTF - OE Service Information Matrix
Thank you for completing the NASTF Service Information Complaint Form. Your concerns will be sent to the NASTF.
Copyright ©1995-2004 iATN. All rights reserved. Terms of Use | Privacy Policy
Done
Internet

NASTF

CompuServe - [RE: NASTF Service Information Complaint Submission]

File Edit Access Screen Names Window Help Sign Up a Friend

Back Next New Mail! Create Mail My Favorites Internet Main Menu Instant Message People & Chat Shop Search My Calendar Stock Quotes Weather

Refresh Stop Mail Center Print http://member.compuserve.com/menu/default.mm

Dave,

I have received the NASTF complaint that you submitted to my office. The information has been sent to BMW for their investigation and you can expect a reply directly from BMW. Thank you for taking the time to make us aware of this situation. If you are not satisfied with the response from BMW for any reason please call me.

Regards,

Bill

Bill Haas, AAM
Automotive Service Association
Vice President, Service Repair Markets
Chief Staff Liaison:
* Government Affairs
* Education and Training
* OEM Relationships

1901 Airport Freeway
Bedford TX 76021-5732
Phone (800) 272-7467 ext. 222

Reply
Forward
Reply All
Add Address

A few notes from NASTF

Dave,

Is your complaint that the information you need is at the BMW website and you think it should be elsewhere? Or that you cannot access the website? The address you have here is not correct. It should be www.bmwtechinfo.com Let me know. Thanks.

Bill

Bill Haas, AAM
Automotive Service Association
Vice President, Service Repair Markets

aiam.org]
AM

Complaint Submission

FYI. More information on the Scaler complaint.

Regards.

The complaint is that it is not on the website. I have searched every corner of the BMW site on and off for days (literally) and it is not there. There are P code description but no troubleshooting procedures. I can access the website and have sent many e-mails to them when there has been concerns over navigation. I must have mistyped the webpage in the complaint form.

Regards,

Dave Scaler
MEA

obile Manufacturers

Email: jcabaniss@aiam.org

BMW Responds

CompuServe - [RE: NASTF Service Information Complaint Submission]

File Edit Access Screen Names Window Help Sign Up a Friend

Back Next New Mail! Create Mail My Favorites Internet Main Menu Instant Message People & Chat Shop Search Stock Quotes

Reload Stop Mail Center Print http://member.compuserve.com/menu/default.mm

Dear Mr. Scaler,

You recently submitted a complaint through the IATN and the NASTF regarding the availability of BMW service information. I have copied and pasted below your previous questions and our replies from November, 2003. I will restate the answers here again. Pin out charts can be found using the DIS VIEWER. The information found on the bmwtechinfo.com website is the exact same information available to a BMW Center.

Regards,

Marc Jackson
BMW of North America, LLC
Technical Service

Subj: **RE: NASTF Service Information Complaint Submission**
Date: 1/7/2004 4:32:15 PM Eastern Standard Time
From: Marc.Jackson@bmwna.com
Sender: Marc.Jackson@bmwna.com
Reply-to: Marc.Jackson@bmwna.com
To: davescaler@cs.com
CC: Doug.McGregor@bmwna.com, BILLH@ASASHOP.ORG, jcabaniss@aiam.org

BMW attaches e-mails from Nov.!

CompuServe - [RE: NASTF Service Information Complaint Submission]

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EMAIL REPLY SENT TO DAVE SCALER ON NOV. 21, 2003 PROVIDING HIM WITH AN ANSWER TO HIS QUESTION

Thank you for contacting us.

P code descriptions is all you will find listed. If you desire wiring diagram, pin out charts you will need to use the Dis Viewer. You may also search the OBD section and review the training manuals. The service information found on our website is the same as found at a BMW Center.

Service Tech Info
-----Original Message-----
From: Davescaler@cs.com [mailto:Davescaler@cs.com]
Sent: Friday, November 21, 2003 2:38 PM
To: Service Tech Info
Subject: Re: BMW Technical Information Web Site

We can find descriptions of the P codes, but we cannot find any troubleshooting/pinpoint charts.

For example P0171.

Reply | Forward | Reply All | Add Address

Same Complaint in November!

I try to help them understand

CompuServe - [Re: NASTF Service Information Complaint Submission]

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Subj: **Re: NASTF Service Information Complaint Submission**
Date: 1/8/2004 11:40:49 AM Eastern Standard Time
From: Davescaler
To: Marc.Jackson@bmwna.com
CC: Doug.McGregor@bmwna.com, BILLH@ASASHOP.ORG, jcabaniss@aiam.org

Marc,

Thank you for your response. Perhaps I miscommunicated, I do not need a pinout or wiring chart, but a repair chart to diagnose an Secondary air system code P1423 (BMW code 245) on a 1998 323. This is a common failure and I would like the steps to troubleshoot the components. I have located the training information, which helps with understanding of the system, but not the repair procedures. I have truly tried the techniques that you previously recommended but have not been successful. Any guidance would be greatly appreciated.

Dave Scaler

Information Requested
Diagnostic Trouble Shooting Chart for a code P1423 (code description is available) no troubleshooting chart to diagnose the code

Reply
Forward
Reply All
Add Address

BMW Public Announcement

CompuServe - [RE: NASTF Service Information Complaint Submission]

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Subj: **RE: NASTF Service Information Complaint Submission**
Date: 1/8/2004 11:39:48 AM Eastern Standard Time
From: Marc.Jackson@bmwna.com
To: JCabaniss@aiam.org, Davescaler@cs.com
CC: billh@asashop.org, Doug.McGregor@bmwna.com

All,

We provide the exact same information to the subscribing public as we do to our dealers. We do not have a specific troubleshooting guide or procedures with P codes.

Regards,

Marc Jackson
-----Original Message-----
From: John Cabaniss [mailto:JCabaniss@aiam.org]
Sent: Thursday, January 08, 2004 11:12 AM
To: Doug McGregor; Marc Jackson
Cc: Bill Haas
Subject: FW: NASTF Service Information Complaint Submission

My response to BMW

CompuServe - [Re: NASTF Service Information Complaint Submission]

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Subj: **Re: NASTF Service Information Complaint Submission**
Date: 1/8/2004 11:51:34 AM Eastern Standard Time
From: Davescaler
To: Marc.Jackson@bmwna.com
CC: billh@asashop.org, Doug.McGregor@bmwna.com, JCabaniss@aiam.org

Marc,

My apologies, I sent the previous e-mail before recieving yours. But, it does not have to be the P chart since it is the same as a (BMW code 245). The FAQ's suggest I may need a pass thru system to allow me to hook up to the car to continue further, is this correct?

Regards,

Dave Scaler

> All,
>
> We provide the exact same information to the subscribing public as we do to our dealers. We do not have a specific troubleshooting guide or procedures with P codes.

Reply
Forward
Reply All
Add Address

BMW acknowledges

CompuServe - [RE: NASTF Service Information Complaint Submission]

File Edit Access Screen Names Window Help Sign Up a Friend

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Subj: **RE: NASTF Service Information Complaint Submission**
Date: 1/8/2004 1:33:04 PM Eastern Standard Time
From: Marc.Jackson@bmwna.com
To: Davescaler@cs.com

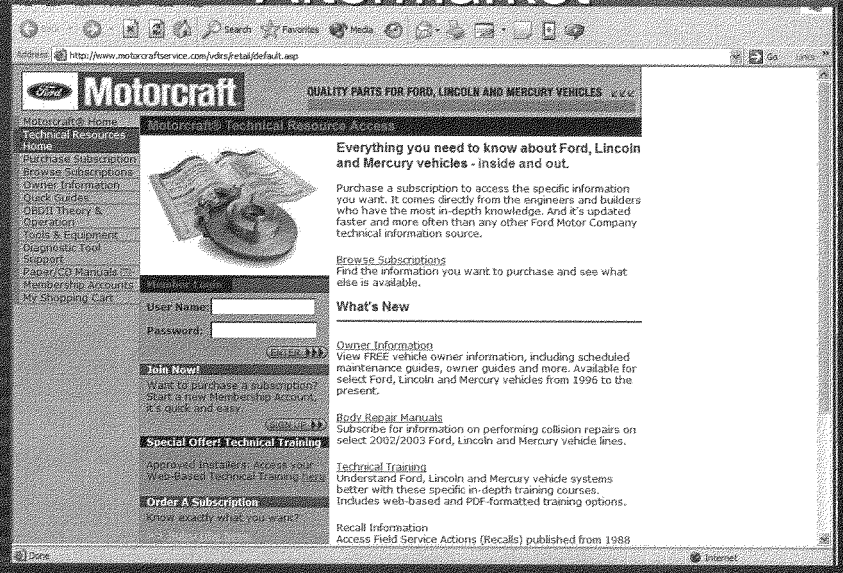
Mr. Scaler,

I believe you are correct. A connection to the vehicle is needed to identify the problem. You can use either a GT1, or a pass through tool.

Regards,

Marc Jackson

Motorcraft for the FORD Aftermarket



FMC Dealer.com

Business to Business User Login - Microsoft Internet Explorer

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Address https://www.password.dealerconnection.com/login/?WsIIP=68.36.224.1658back=http://www.fmcdealer.dealerconnection.com/portal/

Go Links

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Secure Web Logon

By logging into this site, I agree to the following terms and conditions:
Ford Motor Company owns all rights to this work and intends to maintain it in confidence to preserve its trade secret status. Those having access to this work may not copy or print it, except for use within their own dealerships, or disclose the information contained in it without the written authorization of Ford Motor Company.

Enter your userid and password to login

Userid:

Password:

Login

NOTE: PLEASE DO NOT SHARE YOUR USER ID OR PASSWORD WITH ANYONE

Thank you for your time!

copyright MEA

Mr. UPTON [presiding]. Thank you.

Now Mr. Haas.

STATEMENT OF WILLIAM J. HAAS, VICE PRESIDENT, SERVICE REPAIR MARKETS FOR THE AUTOMOTIVE SERVICE ASSOCIATION

Mr. HAAS. Good afternoon. Mr. Chairman, subcommittee members, and I appreciate your invitation to make this presentation at today's hearing on House Resolution 2735, The Motor Vehicle Owners' Right to Repair Act. I am the Vice President of Service Repair Markets for the Automotive Service Association.

ASA is the oldest and largest trade organization in the automotive industry with the distinction of serving only those businesses that perform service and repairs for the motoring public.

After a vehicle is out of warranty consumers prefer independent shops to the alternatives 74 percent of the time. As for the confidence that consumers place in independent repair facilities, I would like you to consider this: In the J.D. Powers and Associates, Service Usage and Retention Study independent shops rate exceptionally high in customer service satisfaction. When compared to 56 alternatives, they beat out every aftermarket chain, mass merchandiser and the OEM franchises. You can imagine how proud I am to work for and represent those small businesses. Families that are living the American dream.

I have an extensive background in the automotive industry. Prior to joining the staff of ASA my career included 26 years as an automotive technician, shop manager, shop owner and automotive instructor. I have successfully tested and been certified by the National Institute of Automotive Service Excellence since 1976. I have also completed the required courses to earn my accredited automotive manager designation from the Automotive Management Institute.

It is a special honor for me to be here today as I was also a witness in the July 2002 for the hearing on Senate bill 2617, the Motor Vehicle Owners' Right to Repair Act of 2002. The late Senator Paul Wellstone from Minnesota introduced Senate Bill 2617 because he believed in fighting for the small guy and equal opportunity. At that time the Automotive Service Association came to Congress with a strong message that independent automotive repair businesses were in trouble. Those entrepreneurs were challenged to have a future continuing to provide for the needs of America's motoring public.

After the Senate subcommittee heard all of the testimony, Subcommittee Chairman Dorgan of North Dakota closed the hearing with an important message for the automotive industry. I will quote Senator Dorgan: "Let this hearing stand as an expression of concern that this problem be resolved. It can be resolved legislatively by us passing legislation here in Congress, or it can be resolved through the negotiations and the determination that were described here today. I would agree with Senator Wellstone that if progress is not made or if we face a circumstance where we are discovering independent shop are systematically being frozen out of the information, I think that Congress will take a hard look at passing legislation of the type Senator Wellstone has introduced."

In the testimony I provided for the Senate in July of 2002 I was able to provide very clear cases of auto makers that were prohibiting the release of information or restricting access that prevented independent repairers from having the same capabilities as their counterparts in the franchised dealership. My testimony include specific situations with several major auto manufacturers. Fortunately, for the automotive service industry I cannot cite those examples today.

My testimony in 2002 also illustrated the infringement on consumer choice. When an independent repair shop was not able to perform a diagnosis or repair because of the limitations created by the auto manufacturer, independent shops had no alternative other than refer their customer to the franchised dealer. And now I must tell you that such an anti-competitive environment no longer exists.

As a result of the Senate hearing, ASA and the auto makers discussed what could be done to satisfy the needs of independent repairers and ultimately resolve the problem. Through negotiation and determination, ASA and the associations representing all of the major automobile manufactures reached an agreement in September of 2002. The ASA/OEM agreement specifies that auto makers will make available to independent repairers the same service information, training and tools as are available to their franchised dealers.

The decision to exercise the agreement with the auto makers was unanimously approved by the ASA Board of Directors. Twelve individuals from: Pittsburgh, Pennsylvania; Laguna Hills, California; Mankato Minnesota; Milwaukee, Wisconsin; Brookville, Ohio; Augusta Georgia; Lubbock, Texas; Tallahassee, Florida; Dublin, California; Chino, California; Raleigh, North Carolina, and; Eugene, Oregon that were elected by their peers to represent them. Twelve individuals that understand and face the same daily challenges as anyone who owns and operates an independent automotive service and repair facility.

Those 12 individuals are representative of over 115,000 businesses that have an average of five service bays, five employees and annual sales of approximately $1 million.

You should find great comfort in knowing that the solution to this problem came from within the industry by the people who live and work in it everyday. I want to point out to you that you will see those people here today, and there is a good reason. The owners and technicians of those shops are home, they are busy, they are at work servicing their customers' vehicles because the information, the training and the tools that they need are available.

All of the automobile manufacturers service information websites were launched by April 1, 2003. This was far in advance of August 31, 2003 date that was set forth in the ASA/OEM service information agreement. These websites allow anyone, automotive service professional or a vehicle owner to access the information, training or tools necessary to diagnose and repair the complex systems in today's automobiles. Access to the websites is subscription based and subscriptions may be purchased for a short, mid or long term period.

The average cost of a short term subscription is $18.50. When one consider the incredible amount, the volumes of service informa-

tion produced by an automobile manufacturer every year, it appears that the subscription rates to access all the information for all models for multiple years is more than reasonable.

You should also be aware that the OEM website is not the only place that the independent repairers access service information. Auto makers continue to license the use of service information to third party information providers, companies like Motor publications, ALLDATA, which is owned by AutoZone and Mitchell1, which is partly owned by NAPA.

Regardless of whether a shop decides to purchase the information directly from the OEM or a third party information provider, it has a cost. In fact, the cost to purchase the first Motor manuals in 1927 was $3.

The National Automotive Service Task Force was identified in the ASA/OEM agreement to continue to provide a forum for the industry and aftermarket to resolve service information issues. Established in October of 2000, the NASTF is a voluntary effort among the automotive service and repair industry, the equipment and tool industry and the automobile manufacturers.

As a side note, the cooperation demonstrated by the automobile manufacturers participating in NASTF weighed heavily in ASA Board of Director's decision to execute the agreement with the auto manufacturers.

As you might expect, nothing is perfect and on occasion someone may encounter difficulty finding the information that they need. NASTF makes a complaint process available for the automotive industry for these situations. The NASTF service information committee——

Mr. STEARNS. Mr. Haas, I am going to ask you summarize. We are trying to keep everything within 5 minutes. Now your colleague had about 8 minutes, so you are over eight——

Mr. HAAS. I apologize, Mr. Chairman.

Mr. STEARNS. No, I understand. I mean this hearing is a long time in coming, so now is your chance. But if you do not mind, if you can, just sort of summarize so we can get Mr. Donovan and everybody else.

Mr. HAAS. Sure. Be happy to.

Mr. STEARNS. I do not want to lose the members here.

Mr. HAAS. Okay. I think what is important is that NASTF does have a complaint process. I can show you quickly there is a report from 2003 the complaints that were received and the responses by the manufacturers. Here is what we have to date in 2004. And this is a recent NASTF complaint, this just took place on September 14th. This was a complaint that was filed by a shop. They were looking for a specification at an Nissan website and they could not find the information they needed. This was the response they got from Service Technical Publications that refunded their money.

This was a response from Nissen that showed them exactly where the information, it explained where to find the information that they were looking for. And if you were to go to the Nissen website, which this is their homepage, and go into their website, the upper most photo gives you exactly the information that that particular shop was looking for that day.

And is often times the case, it is not always necessarily that the information is missing. We might not find it where we expect to find it.

So I would summarize in saying that, you know, the process that we have is working. We have every indication that it will continue to work. We understand that it is far from perfect, but I think you will find that all the parties that are dedicated to NASTF want to see this be successful.

[The prepared statement of William J. Haas follows:]

PREPARED STATEMENT OF WILLIAM J. HASS, VICE PRESIDENT, SERVICE REPAIR MARKETS AUTOMOTIVE SERVICE ASSOCIATION

Good afternoon Mr. Chairman and committee members. My name is Bill Haas and I appreciate your invitation to make this presentation at today's hearing on H.R. 2735, the Motor Vehicle Owner's Right to Repair Act. I am the Vice President of Service Repair Markets for the Automotive Service Association. ASA is the oldest and largest trade organization in the automotive industry with the distinction of serving only those businesses that perform service and repairs for the motoring public. After a vehicle is out of warranty consumers prefer independent shops to the alternatives 74% of the time. As for the confidence that consumers place in independent repair facilities, I would like you to consider this, in the J.D. Powers and Associates, Service Usage and Retention Study independent shops rate exceptionally high in customer service satisfaction when compared to 56 alternatives they beat out every aftermarket chain, mass merchandiser and the OEM franchises. You can imagine how proud I am to work for and represent those small businesses. People that are living the American dream.

I have an extensive background in the automotive industry. Prior to joining the staff at ASA in 2000 my career included 26 years as an automotive technician, shop manager, shop owner and automotive instructor. I have successfully tested and been certified by the National Institute of Automotive Service Excellence since 1976. I have also completed the required courses to earn my Accredited Automotive Manager designation from the Automotive Management Institute.

It is a special honor for me to be here today as I was also a witness in July 2002 for the hearing on Senate bill 2617, the Motor Vehicle Owner's Right to Repair Act of 2002. The late Senator Paul Wellstone from Minnesota introduced Senate bill 2617 because he believed in fighting for the small guy and equal opportunity. At that time the Automotive Service Association came to Congress with a strong message that independent automotive repair businesses were in trouble. Those entrepreneurs were challenged to have a future continuing to provide for the needs of America's motoring public. After the Senate Subcommittee heard all of the testimony Subcommittee Chairman Mr. Dorgan of North Dakota closed the hearing with an important message to the automotive industry. I will quote Senator Dorgan, "let this hearing stand as an expression of concern that this problem be resolved. It can be resolved legislatively by us passing legislation here in Congress, or it can be resolved through the negotiations and the determination that were described here today. I would agree with Senator Wellstone that if progress is not made or if we face a circumstance where we're discovering independent shops are being frozen out of the information systematically, I think that Congress will take a hard look at passing legislation of the type Senator Wellstone has introduced." End quote.

In the testimony I provided for the Senate in July 2002 I was able to provide very clear cases of automakers that were prohibiting the release of information or restricting access that prevented independent repairers from having the same capabilities as their counterparts in the franchised dealership. My testimony included specific situations with companies like BMW, Daimler Chrysler and American Honda. Fortunately for the automotive service industry I cannot sight those examples today.

My testimony in 2002 also illustrated the infringement on consumer choice. When an independent repair shop was not able to perform a diagnosis or repair, because of the limitations created by the auto manufacturer, independent shops had no alternative other than to refer their customer to the franchised dealer. And now I must tell you that such an anti-competitive environment no longer exists.

As a result of the Senate hearing ASA and the automakers discussed what could be done to satisfy the needs of independent repairers and ultimately resolve the problem. Through negotiation and determination ASA and the associations representing all of the major automobile manufacturers reached an agreement in Sep-

tember of 2002. The ASA/OEM agreement specifies that the automakers will make available to independent repairers the same service information, training and tools as are available to their franchised dealers. The decision to exercise the agreement with the automakers was unanimously approved by the ASA board of directors. Twelve individuals from Pittsburg PA, Laguna Hills CA, Mankato MN, Milwaukee WI, Brookville OH, Augusta GA, Lubbock TX, Tallahassee FL, Dublin CA, Chino CA, Raleigh NC, and Eugene OR that were elected by their peers to represent them. Twelve individuals that understand and face the same daily challenges as anyone that owns and operates an independent automotive service and repair facility. Those twelve individuals are representative of over 115,000 businesses that have an average of five service bays, five employees and annual sales of approximately one million dollars. You should find great comfort in knowing that the solution to this problem came from within the industry by the people who live and work in it everyday. I want to point out that you will not see those people here today and there is a good reason. The owners and technicians of the BEST shops in America are at work. They are busy servicing and repairing consumer's vehicles and they are able to do that because service information, training and tools are available.

All of the automobile manufacturers service information Web sites were launched by April 1, 2003. This was far in advance of the August 31, 2003 date that was set forth in the ASA/OEM service information agreement. These Web sites allow anyone, automotive service professional or a vehicle owner to access the information, training or tools necessary to diagnose and repair the complex systems in today's vehicles. Access to the Web sites is subscription based and subscriptions may be purchased for a short, mid or long term period. The average cost of a short-term subscription is $18.50. When one considers the incredible volume of service information produced by an automobile manufacturer every year it appears that subscription rates to access all the information for all models for multiple years is more than reasonable. You should also be aware that the OEM Web site is not the only place that independent repairers access service information. Automakers continue to license the use of service information to third party information providers, companies like MOTOR publications, ALLDATA which is owned by AutoZone and Mitchell1 which is partly owned by NAPA. Regardless of whether a shop decides to purchase the information directly from the OEM or a third party information provider it has a cost. In fact the cost to purchase the first MOTOR manuals in 1927 was three dollars.

The National Automotive Service Task Force was identified in the ASA/OEM service information agreement to continue to provide a forum for industry and aftermarket to resolve service information issues. Established in October of 2000 the National Automotive Service Task Force is a voluntary effort among the automotive service and repair industry, the equipment and tool industry, and automobile manufacturers. As a side note—the cooperation demonstrated by the automobile manufacturers participating in NASTF weighed heavily in the decision of the ASA board of directors to execute the ASA/OEM service information agreement. The willingness of the automakers to engage in a process of identifying concerns and working towards solutions for those problems has earned them the trust of the independent repairer. As you might expect nothing is perfect and on occasion someone may encounter difficulty finding the information that they need. NASTF makes a complaint process available to the automotive industry for these situations. The NASTF service information committee monitors complaints submitted to NASTF. The complaint is forwarded to the automaker for their investigation and they are asked to respond directly to the complainant. The complainant is notified that the complaint has been received and they can expect a reply directly from the automaker. They are also asked to notify NASTF if they are not satisfied with the response from the automaker for any reason. During 2003 NASTF received eighty-eight complaints and automakers have responded to all of them. You can see on the slide that sixty-seven percent of those complaints were logged against a single automaker of which thirty-one were submitted during a nine day period. That particular automaker was Volvo and the problem was compounded by the fact that the nine days was the start of the Christmas holiday. As quickly as possible Volvo's technical staff worked to investigate, resolve and then respond to each individual complaint. The eventual outcome led to a NASTF meeting of Volvo representatives and the owners of nine independent Volvo repair specialists. That meeting started the dialogue that continues today and offers independent Volvo specialists a forum to have their issues addressed.

From January 1, 2004 through last Friday, September 17, 2004 NASTF has received thirty-three complaints. Automakers have already provided responses to thirty-one of those. Allow me to show you the most recent complaint that was submitted to NASTF and how the process worked. A shop in Tukwila, Washington submitted

this complaint on September 14, when the shop was not able to find a torque specification for replacing a cross member. Service Technical Publications, the company that maintains the site for Nissan processed a credit for the subscription on Sept. 15 and on Sept. 16 Nissan contacted the shop to apologize for the inconvenience and provided the shop with directions on where the information was located on the Web site.

All of this was accomplished quickly because the automaker just wanted to do the right thing. It did not require regulation or oversight of a government agency. This is a system that can work and is working. I am optimistic that until such time that independent repairers present evidence to Congress that the ASA/OEM service information agreement has failed our industry will not incur the burden of regulation that will result in delays and increased costs for small businesses.

I will close with one more example of what is being accomplished through our voluntary and cooperative efforts. At the start up of NASTF there were four committees established. They are service information, training and education, tools and equipment and communications. This year NASTF established a fifth committee. After members of NASTF had two meetings with the locksmith community to discuss their concerns with reproducing keys and unlocking vehicles for consumers it was apparent that NASTF could provide locksmiths with a forum to work directly with the automakers and a vehicle security committee was established in July. As all NASTF committees are co-chaired by a representative of the aftermarket and a representative of the automobile manufacturers. I believe the issues locksmiths face will be well represented as one of the co-chairs of the committee is the government affairs representative for the Associated Locksmiths of America.

Mr. Chairman there are two kinds of people in the world. Those that solve problems and those that make problems. I believe the majority of people in the automotive service and repair industry are problem solvers. As you can see the problems that the service and repair community have experienced have been, and continue to be, addressed by people that engage in a process of solving problems. Having said that it is clear that this legislation is NOT necessary. So if there is more to H.R. 2735 than access to service information, training and diagnostic capabilities, I hope this committee will discover what it is and expose it for what it really is.

I appreciate your attention and I am available for questions. Thank you.

Mr. STEARNS. I thank the gentleman.

Mr. Donovan, AAA Automotive Technical Services for your opening statement.

STATEMENT OF EDWARD C. DONOVAN, DIRECTOR OF TECHNICAL SERVICES, AAA AUTOMOTIVE TECHNICAL SERVICES

Mr. DONOVAN. Good afternoon. I am very pleased to be here this afternoon on behalf of AAA to discuss our support of H.R. 2735.

AAA, who is a member organization of over 47 million members, strongly supports the Right to Repair Bill for three important reasons: Consumer choice, vehicle safety and the right of car owners to own the information generated by their automobiles.

My name is Edward Donovan, and I serve as Director of Technical Services for the Mid-Atlantic region of AAA. I have worked with consumers for over 25 years helping them manage one of their largest and most needed assets, their automobile. Throughout my career I had the opportunity to repair vehicles, direct a vehicle fleet repair group, manage our customer relations division and oversee a large scale operation of independent repair facilities for AAA. I know the firsthand the importance that consumer placed on having a trust service advisor to help them.

Mr. Chairman, technology has made the cars we drive smarter. A car can tell you when it is time for an oil charge, whether your tire pressure is too low, or identify an impending problem with your breaks before there is a critical safety breakdown, before you have to call AAA from the side of the road.

Now if you will for just a moment, imagine you and your family are traveling on a Saturday afternoon. The dashboard light comes on warning of a malfunction with the antilock breaking system. The technology you, the vehicle owners have paid for, is now paying off by identifying a potential problem.

You go into the local shop and the technician checks the car and discovers the problem. But the problem is in a system that only a dealership can address. Not because the dealership technician is more skilled, but because the independent technician cannot acquire the information required to accurate diagnose and repair the system. You find out that the nearest dealership is 25 miles away, and it will not be open until Monday morning. What should you do? Is it safe to pack your family in the car and continue driving to your destination? Should you have your vehicle towed, and then what? You may be risking your families' safety, but maybe not. It might just be a simple fuse. At that point you have wasted and delayed your outing for the unnecessary trip to the dealership.

Mr. Chairman, why should only some people be able to obtain repair information while others do not have access to it? AAA believes that when you drive off the lot with your vehicle, you the consumer own the information to have it repaired correctly at the repair facility of your choosing. That is not to say that AAA is here today to say that motorists should not have their vehicles serviced at a dealership. Quite the contrary. Many of our members enjoy the relationship and service offered by our dealerships, and many dealerships receive the AAA approved designation because of the outstanding service they provide.

We are simply saying that motorists should have a choice. Today you have heard compelling testimony regarding the parts, diagnostic tools, intellectual property and websites and how the necessary information is now available to all technicians. However, while progress has been made, we still have a long way to go. The information available on the websites is difficult to navigate, costly and incomplete. In the end, consumers end having to go to a second facility or paying for unneeded repairs because technicians are trying to satisfy a consumer's automotive need without the required information available. We must resolve this problem to provide consumers with the complete quality repair service that they deserved after paying for the vehicles.

When Congress deliberates over these important issues, AAA only asks that you remember that the consumers who rely on their vehicle everyday to get to work, to care for their family and our future, support Right to Repair.

Thank you for your opportunity.

[The prepared statement of Edward C. Donovan follows:]

PREPARED STATEMENT OF EDWARD C. DONOVAN, DIRECTOR OF AUTOMOTIVE AND TECHNICAL SERVICE, AAA MID ATLANTIC

Good afternoon, Mr. Chairman and members of the subcommittee. I am very pleased to be here today on behalf of AAA to provide testimony in support of H.R. 2735, the Motor Vehicle Owner's Right to Repair Act. As you may know, AAA has advanced the interests of car owners for over 100 years, and currently represents more than 47 million members, or one quarter of all US households.

My name is Ed Donovan. I am the Director of Automotive Technical Service for AAA Mid-Atlantic, the local AAA affiliated club. AAA strongly supports the Right to Repair bill for three important reasons: consumer choice, vehicle safety, and the

right of car owners to own the information generated by their automobiles. The measure before you today will ensure that motorists receive the kind of service that is best suited to meet their particular needs.

Members look to AAA for advice and assistance on a variety of automotive-related issues. We offer guidance regarding the proper maintenance and servicing of their vehicles, finding quality repair facilities, and shopping for a vehicle that best meets their needs. Our goal is to take some of the mystery out of finding, buying, operating and maintaining a vehicle.

Consumers are often uncertain about how to communicate with repair providers. Study after study reveals that consumers find automotive repair and maintenance stressful. Having confidence in a trusted service technician goes a long way to alleviating that stress.

Technology has made the cars we drive today smarter. A car can tell you when it's time for an oil change, whether your tire pressure is too low, or identify an impending problem with your brakes—*before* there is a problem or critical safety breakdown. *Before* you have to call AAA from the side of the road.

Now imagine traveling on a Saturday afternoon. The dashboard light comes on warning of a malfunction with the anti-lock brake system. You stop at the first service station and ask the technician to fix the problem. The technician checks the vehicle and discovers the problem is in the electrical system on which only a dealership can perform the necessary repair—not because dealer technicians are more skilled, but because the independent technician cannot acquire the appropriate repair information. Then you find out the closest dealership is 25 miles away, and it won't open until Monday morning. Is it safe to keep driving the car? Is it safe to drive the car to the dealer and wait until Monday or should you get a tow truck? Can the dealer service the car on Monday, or are they already booked up?

Your weekend is likely ruined, and you learn first-hand a little known fact—not every repair facility can service your vehicle because the technician does not have access to the needed repair information.

That is not to say that AAA believes motorists should not have their vehicles serviced at a dealership. Quite the contrary, many of our members enjoy the relationship and service offered by dealerships. We simply believe that motorists should have the choice, and that safety and consumer confidence is best served by having this choice.

AAA believes that when you drive off the lot with your car, you, the consumer, own more than just the vehicle; you should control the information the vehicle generates so that it can repaired by a trusted service advisor of your choosing—whether it be at an independent facility or a dealership. The diagnostic information should not be accessible only by the dealerships.

The members of this panel are keenly aware of how a downturn in the economy or recent increases in gasoline prices directly impacts the wallets of your constituents. In tough economic times, repairs can be put off as household expenses are prioritized, often exacerbating the initial mechanical problem. If motorists do not have an adequate choice of repair facilities, they may not be able to gain a second opinion or would have to return to a facility that provided unsatisfactory service. Many must juggle expenses on a fixed income, and others are faced with economic challenges that demand competitive prices for parts and labor. Let's face it—some people simply cannot afford to go to the dealership for every repair.

Lower cost doesn't mean lower quality if all service technicians have the information necessary to diagnose and repair problems. Consumers have a right to high quality repairs as well an opportunity to seek a second opinion. They should not be compelled to use service facilities that have previously delivered poor service.

AAA knows that buying a vehicle is a major investment for consumers and for families. It's what keeps us mobile and what we hope will keep us safe. Let's allow consumers to protect that investment and maintain choice for safe, reliable, and enjoyable operation of their automobiles by supporting the Right to Repair bill.

Mr. STEARNS. I thank the gentleman.

Mr. Seyfer?

STATEMENT OF DONALD L. SEYFER, SEYFER AUTOMOTIVE, INC.

Mr. SEYFER. Good afternoon, Mr. Chairman and members of the subcommittee. My name is Donnie Seyfer, and I am honored to have the opportunity to speak to you today about auto repair.

Mr. Chairman, with your permission I would like to quickly summarize the statement that I provided for you, and then make a few short comments that I think might help you to understand what goes on in independent repair facilities everyday.

I believe that I am uniquely qualified to provide some of this information for you because in addition to managing my family's business, Seyfer Automotive, which is a AAA approved repair facility, a member of NFIB and we are also a NAPA AutoCare center, I am the business consultant and marketing director for 41 of Colorado's NAPA's AutoCare centers. And I am also the education director for 385 shops for ASA Colorado. So I deal with their educational issues everyday, it is part of my job.

I hold the ASE Master and Advanced Diagnostic Certifications as well as the ASE Service Consultation designation, a test I actually helped ASE development. And I am a graduate of the Automotive Management Institute's Accredited Automotive Manager program.

In addition, I have the pleasure of being in my eighth year hosting a call-in consumer car show in Denver that is, we speak to over 20,000 listeners every Saturday morning.

I'm here representing Automotive Service Association. ASA represents 12,000 independent repair facilities and about 55,000 technicians, and it is the oldest and largest trade association independent automotive repairers in the United States.

I want to thank Chairman Barton, who is not with us today, but for introducing this Vehicle Owners' Right to Repair Act in the last Congress. The support and leadership of Congressman Barton and others was the catalyst for the agreement that put information right on my computer.

I have four ASE certified master technicians and two have also the O/1 advanced diagnostic certification as well. Cars do not roll out of our shop unrepaired. If we choose to send a car to a dealership, it is usually because we cannot rationalize that we work on enough of them to buy that piece of equipment, so we simply have an arrangement with the dealership to do the flashing, if you will, or replacing of software in many of the machines. We take them for our customer, and the car is on its way.

We have 1200 customers and work on about 2200 cars per year, so we are not a small facility but we are not gigantic facility either.

The process for gaining that information through websites and all data and all of our sources that we use, it is not perfect. But because it is built by people who design and build cars, they are also the ones that bring us the information. It is not going to be perfect. It just takes some time to work out all the details.

But I have had two opportunities to work with online information providers to correct inaccuracies on their sites. I did not go through NASTF because I was able to make direct contact with them. I contact forwarded on their OE website on a situation I found where there was a diagram that had been swapped inadvertently which would have caused me to break apart if I followed the torque spec that was there. I emailed them and said, hey I think this is wrong. I got a response back within 2 hours that not only was it wrong, they had already fixed it.

I sent the same information to ALLDATA, because I referenced the two sources to find that. ALLDATA also found the same prob-

lem, the pages had been scanned and reversed when they put them in, and they fixed it. It took them a couple of days.

In 2002 we were in a crises. Many of our shops could not access information, but more importantly they could not get hold of the scan tools to really get to the bottom of problems. We were able to do generic information, but not the real specific items that were body controls and HVAC systems, and engine controls and those sorts of things. Now today I own every factory scan tool for all the domestic models that I work on because 80 percent of my business is domestics. I do flashing and PCM reprogramming for other shops in my AutoCare group and we just do not run into many issues.

There is some tools that I would love to see come to the market, they have not yet. I feel that being able to buy these tools suddenly become a real small issue. I was able to buy my tools from NAPA. I did not have to go to a dealer. I did not have the price the dealer was asking. NAPA got me a pretty reasonable price for them, I thought. In one case the Chrysler tool was 30 percent less than what the dealer wanted to sell it to me for.

So if I run into an information issue where I cannot find it on OE website, we use ALLDATA, we subscribe to them. I use ALLDATA to access information. If I cannot find something, you can email them and say, hey, I cannot find this. Here is where I am at. Cannot find this information. They will have that information on my fax machine faster than a pizza can get there.

The opponents to letting this agreement work want you to believe that it is expensive and difficult to access the information that we use to diagnose and repair our customer's cars. They have published statistics that I feel are skewed to cause fear and resentment within the industry. I ask you to take the time to read between the lines and encourage these people to remove their blinders and look at the vast amount of information that is available and work the system with the National Automotive Service Task Force and become a partner with them.

The car makers have brought the goods to my shop. It is my responsibility as a shop owner and consumer of their product to advise on improvements their product needs.

I will leave you with this thought in my willingness to answer any question that I can: The number of dollars that appear to have been spent to lobby for a law that will only make my information costs go up and the complexity of the process increase would have paid for someone in the neighborhood of 500,000 days of information access and would have kept Seyfer Automotive connected for 1369 years.

I rest easy knowing that if this agree were to fail, my elected officials, you, would be able to take swift action because the service industry in this country had made every effort to make it work.

Thank you for your time.

[The prepared statement of Donald L. Seyfer follows:]

PREPARED STATEMENT OF DONALD L. SEYFER, SEYFER AUTOMOTIVE, INC.

Good afternoon, Mr. Chairman and Members of the Subcommittee my name is Donny Seyfer and I am grateful for the opportunity to participate in today's hearing on automotive repair. I manage our family business, Seyfer Automotive, Inc., which was founded in 1961. We are now in our 43rd year of business in the Denver, Colorado area. I am a second generation small business owner and a ASE certified tech-

nician. We are members of the Automotive Service Association, the National Federation of Independent Business, an AAA Approved Repair Facility, an ASE Blue Seal of Excellence Facility and a NAPA AutoCare Facility. I also host a local NAPA AutoCare radio show in the Denver area.

All of our technicians are ASE certified and four members of our staff hold the ASE Master and Advanced Diagnostic Certification. I write training materials used by technicians all over the country in preparation for the ASE Certification Tests. I have written 14 books on automotive repair. I am also a graduate of the Automotive Management Institute's Accredited Automotive Manager program.

I am here today representing the Automotive Service Association. Our association represents 12,000 independent repair facilities nationwide employing 55,000 technicians. ASA is the oldest and largest trade association representing independent automotive repairers in the United States.

I want to thank Chairman Joe Barton for his leadership in introducing the Motor Vehicle Owners Right to Repair Act in the last Congress. We believe it encouraged independent repairers and automakers to begin talking about service information availability. As we testified before the U.S. Senate Commerce Committee's Subcommittee on Consumer Affairs in July of 2002, ASA was very concerned about the number of repairs the independent repairer had to turn away because of a lack of service information. Independent repairers perform 70% of all automotive repairs. We estimate that our market contains 115,000 mechanical and collision repair facilities nationwide. In 2002, ASA determined there were over one billion repair orders or incidents of service. This is the number of service opportunities when a consumer drives a vehicle to our business. Today, this would represent total sales of $131 billion nationally.

We determined prior to the Senate testimony in 2002 that we were losing 15% of all incidents of service, rejected due to a lack of information or access to a diagnostic tool. This was an annual loss of over 160 million incidents of repair. This is significant in the loss of technician positions to our industry and the local economies.

In 2002, ASA brought several hundred repair shop owners to Capitol Hill asking their members of Congress for help. Members of the House and Senate encouraged ASA to sit down with the automakers and work out an agreement that would meet the needs of the independent automotive repairer and the concerns of the automakers. ASA did this and in September of 2002 reached a written agreement with the automakers.

The agreement with the automakers is working. The automakers committed to make a good faith effort at providing service information, tools, tool information and training to the independent repairer just as they do to the new car dealer. To date, they have kept their word. Is it perfect? No. Have we established a structure to resolve problems that do arise in an industry serving 224 million vehicles? Yes. The mechanism for addressing complaints is the National Automotive Service Task Force. ASA and the automakers pledged to use the National Automotive Service Task Force as a conduit for resolving any specific service information issues that arose. This is an organization open to the public and the media with representation from all the automakers, new car dealers, the aftermarket, independent repairers and the federal government.

ASA, the automakers and the automotive trade press have gone to great lengths to educate repairers and technicians as to the availability of the complaint process and the National Automotive Service Task Force resolution procedure. ASA has a full-time staff person traveling the United States conducting meetings demonstrating to repairers how to best use the automaker Websites. To date he has conducted meetings in 23 states. We are committed to this voluntary, industry process.

In 2003, the NASTF received a total of 88 complaints. Automakers have responded to all 88. Please recall that this is 88 complaints in a universe of over one billion repair orders. This year, through June 30, the NASTF has received 27 complaints and automakers have responded to 27 of those complaints.

Why so few complaints? Two reasons. First, repairers still use the same mechanism for problem-solving they used prior to the 1990 Clean Air Act Amendment's dramatic changes to the automobile's technology. Repairers use third party information providers such as: Alldata, which is owned by AutoZone, Mitchell 1 in which Genuine Parts has a significant stake and Indentifix. Parts distributors who argue there is a decline in service information in the aftermarket continue to increase their profits. Both AutoZone and Genuine Parts reported increases in earnings in recent publications.

These third party information providers continue to move timely information into the repair marketplace. Second, because of the ASA-Automaker agreement and the U.S. Environmental Protection Agency's 2003 final regulation on emissions service

information, the automakers' Websites provide the same service information the new car dealer receives.

The 1990 Clean Air Act Amendments' assurance that independent repairers would receive the same emissions service information as the new car dealers sets the tone for this debate. The U.S. EPA published its 1990 Clean Air Act Amendments' final emissions service information regulation in 1995. In their own words, the final regulation was flawed and lacked sufficient enforcement authority. Despite the recognition of the flaws, it was the summer of 2003 before the EPA published a new final emissions service information regulation that worked.

If we go through a contentious legislative process, a lengthy regulatory review and possible litigation, many independent shops will not survive. We see this only as a last resort.

Our 2002 agreement with the automakers is working. If it fails, we will come back to Capitol Hill and ask for your help. We are entrepreneurs. Many independent repairers begin as technicians, then buy an existing shop or start a new one. As small businesspersons, we all share the American Dream. We believe in free markets and commit to you that we will not come to Capitol Hill unless we are in a crisis as in 2002. Your encouragement to seek an industry solution has been successful. Please accept our gratitude.

Many organizations have a natural tendency to seek new legislation or even litigation. ASA does not represent those values. We believe in solving our industry problems by working them out within the industry if at all possible. Only if that process fails would we look to the government for help. This past week, we were proud to see the U.S. House of Representatives highlight and address the excess litigation occurring in our country that chokes the business community.

The Congress' leadership and encouragement in the development of this agreement has resolved a serious problem for the automotive repair industry. Please allow this agreement and the NASTF to continue improving the plight of the independent repairer. Thank you.

Mr. STEARNS. Thank you.

Bob Merrill, Horsepower Auto Care.

STATEMENT OF BOB MERRILL, HORSEPOWER AUTO CARE, NATIONAL FEDERATION OF INDEPENDENT BUSINESSES

Mr. MERRILL. Yes, Mr. Chairman and members of the subcommittee. My name is Bob Merrill and I own the Horsepower Auto Care in Windham, Maine. I am here on behalf of the National Federation of Independent Business whose 600,000 members and 20,000 small automotive repair businesses just like mine strongly endorse the H.R. 2735, the Motor Vehicle Owners' Right to Repair Act. When NFIB polled its members on this issue in January, 2003, 77 percent of the NFIB members agreed that automobile manufacturers should be required to disclose to car buyers and repair shops information needed to repair or maintain their vehicles.

My business, Horsepower Auto Care is a full service automotive repair facility that has been operating since 1979. We provide services ranging from oil changes to engine replacements and everything in between. I have worked on vehicles for more than 40 years, starting my career as a field service technician for Caterpillar Tractor Company. I am a Master ASE Technician, I have earned my accredited Automotive Managers Degree from the Automotive Service Association Management Institute. I recently named the 2004 NAPA ASE Technician of the year presented by NAPA Auto Parts and the National Institute for Service Excellence.

The auto repair business is changing. With the increased use of computers and cars automobiles have become more complicated to service and repair. Like many shops across the United States Horsepower Auto Care works on many different makes and models

of vehicles. To serve my customers I need to be able to repair many different kinds of cars and the current system of accessing repair data makes that very difficult. Unfortunately, it is ultimately the customer who suffers. With little competition in the marketplace customers are forced to pay whatever the dealerships charge them. If the right information were provided at a reasonable cost, there are thousands of qualified independent repair shops that would be able to service these vehicles and save the driving public serious money.

The current voluntary system created by the manufacturers has no enforcement mechanism to guaranteed to the driving public that manufacturers are, in fact, making all repair data available. Even if the independent mechanics were willing to pay for information that is currently available, how can they be assured that they are really able to access all the information available and how can we be assured that the flow of information will continue? For many small repair shops a lack of repair data really comes down to a timeframe problem. We cannot tie up a customer's vehicle for several days while we wait to obtain repair data. This puts us in the uncomfortable position of having to refer to our customers to a local dealer who has access to all the repair data. We lose business and the customer loses choice.

In my area of Maine we have a network of shops that talk regularly about our problems accessing repair data. I have pages of examples but would like to share just a few.

A very, very qualified auto body shop in our area, Coachworks cannot get air bag access to the following vehicles: A 2002 Volvo, a 2000 Jetta, a 2001 Mercedes, a 1992 Volvo. These cars all had to go back to the dealer.

One shop, Autoworks in Kittery, has spent thousands of dollars to purchase equipment only to find that they cannot perform all the functions and still must return to the dealers to complete the job. This shop indicated that Saab would not sell a factory tool to an independent shop.

Now these are top notch shops unable to service their customers, a problem that should not be happening.

Another example is Cumberland Avenue Garage in Portland. Tried to turn off an ABS break light on a 1997 Mitsubishi. After trying different scan tools and calling the diagnostic hotline, the car still had to go back to the dealer.

Also State inspections are becoming a problem for us because our State law dictates that no warning or emission lights can be on. I have had to send some of our Audi customers back to the dealer because we could not turn off the light with our equipment.

Small businesses are just asking for a system that is fair for all. We are not looking for a competitive advantage over the manufacturers or the dealers. We just want to be able to serve our customers and run our business.

Thank you, Mr. Chairman, for the opportunity to testify today.

[The prepared statement of Bob Merrill follows:]

PREPARED STATEMENT OF BOB MERRILL, OWNER, THE HORSEPOWER AUTO CARE, ON BEHALF OF THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Mr. Chairman and members of the Subcommittee, My name is Bob Merrill, and I own The Horsepowerautocare in Windham, Maine. I am here on behalf of the Na-

tional Federation of Independent Business (NFIB), whose 600,000 members, and 20,000 small automotive repair businesses just like mine, strongly endorse H.R. 2735, The Motor Vehicle Owner's Right to Repair Act. When NFIB polled it's members on this issue in January 2003, 77% of NFIB members agreed that the "automobile manufacturers should be required to disclose to car buyers and repair shops information needed to repair or maintain their vehicles."

My business, Horsepowerautocare, is a full service automotive repair facility that has been operating since 1979. We provide services ranging from oil changes to engine replacements, and everything in between. I have worked on vehicles for more than 40 years, starting my career as a field service technician for Caterpillar Tractor company. I am a Master ASE technician, and I have earned my Accredited Automotive Manager's degree from the Automotive Service Association's management institute. I was recently named the 2004 NAPA/ASE Technician of the Year, presented by NAPA Auto Parts and the National Institute for Automotive Service Excellence.

The auto repair business is changing. With the increased use of computers in cars, automobiles have become more complicated to service and repair. Like many shops across the United States, Horsepowerautocare works on many different makes and models of vehicles. To serve my customers, I need to be able to repair many different kinds of cars, and the current system of accessing repair data makes that very difficult.

While some data is available through the Original Equipment Manufacturer's (OEM) websites, the data is incomplete and extremely difficult to navigate. As a small business owner, I cannot afford to spend all my time searching through 25 different websites with 25 different formats every time a vehicle comes into my shop. I would have to spend all my time in front of a computer screen instead of repairing cars—and this is no way to run an auto repair business.

Unfortunately, it is ultimately the customer who suffers. With little competition in the marketplace, customers are forced to pay whatever the dealerships charge them. If the right information were provided—at a reasonable cost—there are thousands of qualified independent repair shops that would be able to service these vehicles and save the driving public serious money.

H.R. 2735 is a simple, needed fix that restores the right of consumers to have their vehicle serviced at the repair facility of their choosing by requiring automobile manufactures to release to small businesses and mechanics any data that they provide to franchised dealerships or other repair shops. The auto manufacturers have claimed that they are making all repair data available voluntarily, but unfortunately, as I stated earlier, this information is not being provided fully nor in an accessible format.

Furthermore, the current voluntary system created by the manufacturers has no enforcement mechanism to guarantee to the driving public that manufacturers are in fact making all repair data available. In reading one manufacturer's website, under Terms and Conditions it says that they reserve the right "at their discretion" to change these Terms and Conditions at any time.

Even if independent mechanics were willing to pay for information that is currently available, how can they be assured that they are really able to access all of the information available, and how can we be assured that the flow of information will continue? Enactment of H.R. 2735 is crucial to ensuring that all automobile repair data is being made available to consumers and independent repair shops.

For many small repair shops, the lack of repair data really comes down to a time frame problem. We can't tie up a customer's vehicle for several days while we wait to obtain repair data. This puts us in the uncomfortable position of having to refer our customers to a local dealer who has access to all the repair data. We lose business, and the customer loses choice.

In my area of Maine, we have a network of shops that talk regularly about our problems accessing repair data. I have pages of examples, but would like to share just a few. A very qualified auto body shop in our area, Coachworks, cannot get airbag access to the following vehicles: 2002 V40 Volvo, 2000 VW Jetta, 2001 E 320 Mercedes, and a 1992 940 Volvo. These all had to go back to the dealer.

One shop, Autoworks in Kittery, has spent thousands of dollars to purchase equipment, only to find that they cannot perform all functions and still must return to the dealers to complete the job. This shop indicated that Saab would not sell a factory tool to an independent shop. These are top-notch shops unable to service their customers—a problem that should not be happening.

Another example: Cumberland Avenue Garage in Portland tried to turn off an ABS brake light on a 1997 Mitsubishi. After trying different scan tools and a call to the diagnostic hotline, the car still had to go back to the dealer.

Also, state inspections are becoming a problem for us because our state law dictates that no warning or emissions lights can be on. I have had to send some Audi customers back to the dealer because we could not turn out the light with our equipment.

We need a more common sense approach to this problem and I think HR 2735 is the answer.

Small businesses are just asking for a system that is fair for all. We are not looking for a competitive advantage over the manufacturers or dealers, we just want to be able to serve our customers and run our business. It is important to note that H.R. 2735 does not require automobile manufacturers to disclose any trade secrets or proprietary information, and does not affect their warranty agreements with their dealer network.

By restoring competition to the automobile repair market, the Motor Vehicle Owner's Right to Repair Act would make the system more fair—for small businesses *and* customers.

Thank you Mr. Chairman for the opportunity to testify before you subcommittee on an issue vital to small, independent auto repair shops.

Mr. STEARNS. I thank you.

Mr. Dana?

STATEMENT OF GREG DANA, VICE PRESIDENT, ENVIRONMENTAL AFFAIRS ALLIANCE OF AUTOMOBILE MANUFACTURERS

Mr. DANA. Thank you, Mr. Chairman and members of the committee. My name is Gregory Dana, I am with the Alliance of Automobile Manufacturers.

There are over 220 million vehicles registered in the United States. To repair and service these vehicles quickly and properly we need the broad network of independent repair shops, aftermarket part suppliers and dealerships as partners. Over 75 percent of vehicle service and repairs is performed in independent repairs shops. While there may always be a few instances where needed information to perform a particular repair is difficult to obtain, the vast majority of repairs occur without incident or problem. Based on these facts alone we do not understand why this bill is needed.

Instead of Federal legislation, the Alliance and our member companies are working with the service industry through NASTF and stand ready to work today with any effected party in the marketplace to resolve any remaining communication issues surrounding repair of cars and light trucks.

Member companies of the Alliance and AIM committed to provide the same repair training and diagnostic tool information to independent repair shops that they supply to their dealers. Our commitment has been honored and the industry has no intention to reverse these actions. It was the right decision for our business, but more importantly it was the right decision for our customers.

As a result of our actions the Automotive Service Association and is 12,000 members dropped its support for Federal legislation for the simple reason that they are getting information they need to repair vehicles in a timely basis. Rather than spending years battling in Congress on relegislation, ASA recognized that a voluntary agreement and a regular dialog with auto makers is in the best short term and long term interest of its members and American consumers.

The Alliance also had meetings with representatives of the Coalition for Automotive Repair Equity or CARE in an attempt to un-

derstand CARE's concerns and to resolve any issues or problems that their members may be experiencing.

In March of 2003 the following meeting with Chairman Barton, CARE representatives presented six issues involving service information and repair. We successfully resolved all these issues. Additional meetings were held in May of 2003 after which all services presented by CARE were addressed by the auto makers. CARE has shown no interest in continuing a direct dialog with auto makers or in submitting issues to NASTF, the cross industry task force specifically designed to resolve any difficulties in obtaining service or diagnostic tool information.

I would like to make an offer again at this hearing as the automobile manufacturers and the NASTF are prepared to meet with the CARE Coalition or directly with aftermarket parts distributors who are members of CARE to address any concerns affecting their business. We know that a dialog directly involving all interested parties is the best and quickest method to resolving differences. If the CARE Coalition is truly interested in putting consumers first, they should welcome the opportunity to sit down with auto makers because we want our customers' vehicles to be repaired quickly and professional by anyone in the repair industry.

In fact, Alliance members are already working to verify and fix if necessary the issues cited in today's testimony.

Mr. Chairman, besides believing the legislation is not necessary, it would also create harm for the industry. First, the legislation would most likely force the release of proprietary information that is unrelated to vehicle repair and could result in inappropriate modifications to the computer systems that control motor vehicle emissions and safety.

Second, with access to auto maker proprietary design and engineering information, aftermarket parts manufacturers could begin producing competing parts without bearing any of the costs associated with reverse engineering. This would harm the original equipment parts manufacturers.

And finally, the Private Right of Action clause in H.R. 2735, it could result in a flood of litigation on these issues.

It is also interesting that the provisions in the bill seek to override existing trade secret provisions and create a new regime that would effectively require trade secrets created and protected under the laws of all 50 days either be registered with the FTC or else disclosed to competing firms. State courts would have the ultimate jurisdiction of what constitutes a trade secret.

It is our view that the FTC hearing process envisioned under the bill would ultimately construed to require trial type proceedings over each and every tested trade secret, thereby upon a filing by the aftermarket parts industry, motor vehicle manufacturers will be forced to defend through formal adjudication any trade secrets they wish to protect. Such a regime invites competitors to use the FTC as a competitive weapon for obtaining access to manufacturer's valuable proprietary information. This entire process is far too uncertain and loose for the auto makers to have any comfort that they will be adequately protected.

Thank you very much for the opportunity to speak here today.

[The prepared statement of Greg Dana follows:]

PREPARED STATEMENT OF GREG DANA, VICE PRESIDENT—ENVIRONMENTAL AFFAIRS, THE ALLIANCE OF AUTOMOBILE MANUFACTURERS

Mr. Chairman, thank you for the opportunity to testify before the Subcommittee regarding H.R. 2735, the Motor Vehicle Owners' Right to Repair Act. My name is Greg Dana and I represent the Alliance of Automobile Manufacturers (Alliance), a trade association of 9 car and light-truck manufacturers. Our member companies include BMW Group, DaimlerChrysler Corporation, Ford Motor Company, General Motors Corporation, Mazda, Mitsubishi, Porsche, Toyota Motor North America and Volkswagen of America.

Alliance member companies have more than 600,000 employees in the United States, with more than 250 manufacturing facilities in 35 states. Our industry is a significant driver of the U.S. economy. Overall, a University of Michigan study found that the entire automobile industry creates more than 6.6 million direct and spin-off jobs in all 50 states and produces almost $243 billion in payroll compensation annually.

H.R. 2735 was introduced with the stated objective of promoting the consumer's right to choose where his/her vehicle can be serviced. We are pleased to report that consumers already have this ability to choose and do so hundreds of times each day. As a result, it would appear on the surface that this legislation is not needed. But, the industry proponents of this legislation also assert that automakers intentionally use special codes and other practices to make it difficult for vehicle owners and independent repair facilities to diagnose problems and repair the vehicles. Unfortunately, these claims misrepresent the actual availability of repair information, tooling and parts. The automobile industry believes that the legislation would allow aftermarket parts distributors and manufacturers access to the proprietary information and intellectual property of the automakers that is NOT needed to repair the vehicle, but which would reduce the R&D and engineering costs involved in producing aftermarket replacement parts. Disclosure of automakers' intellectual property also could enable the vehicle performance characteristics of the operating systems to be altered, which in the case of emissions performance could result in tailpipe emissions to be exceeded. These situations undermine the intellectual property rights of the auto manufacturers and are inappropriate and competitively unfair.

There are over 220 million vehicles registered in the United States. To repair and service these vehicles quickly and properly, we need a broad network of independent repair shops, aftermarket parts suppliers and dealerships as partners. Over 75 percent of vehicle service and repairs are performed in independent repair shops. While there may always be a few instances where needed information to perform a particular repair is difficult to obtain, the vast majority of repairs occur without incident or problem. Based on these facts alone, we do not understand why this bill is needed. Instead of federal legislation, the Alliance and our member companies are working with the service industry through NASTF and stand ready to work today with any affected party in the marketplace to resolve any remaining communication issues surrounding the repair of cars and light trucks.

Member companies of the Alliance and AIAM committed to provide the same repair, training and diagnostic tool information to independent repair shops that they supply to their dealers. Our commitment has been honored and the industry has no intention to reverse these actions. It was the right decision for our business but more importantly, it was the right decision for our customers.

As a result of our actions, the Automotive Service Association (ASA) and its 12,000 members dropped its support for federal legislation for the simple reason that they are getting the information they need to repair vehicles in a timely basis. Rather than spending years battling in Congress over new legislation, ASA recognized that a voluntary agreement and regular dialogue with automakers is in the best short-term and long-term interests of its members and American consumers.

The Alliance also had meetings with representatives of the Coalition for Automotive Repair Equality (CARE) in an attempt to understand CARE's concerns and to resolve any issues or problems that their members may be experiencing. In March 2003, following a meeting with Chairman Barton, CARE representatives presented six issues involving service information and repair. We successfully resolved all issues. Additional meetings were held in May 2003, after which all service issues presented by CARE were addressed by automakers. But our success in addressing these issues has not deterred CARE from continuing its pursuit of legislation. In fact, despite repeated attempts by the Alliance and our member companies, CARE has shown no interest in continuing a direct dialogue with automakers or in submitting issues to NASTF, the cross-industry task force specifically designed to resolve any difficulties in obtaining service or diagnostic tool information.

In recent months, it is our understanding that they have carefully selected issues to highlight as reasons this legislation is necessary. However, the CARE coalition refuses to tell the Alliance, AIAM or individual companies specifically what those issues are because they know that we will promptly work to solve any issues that they or any member of the service industry brings to our attention. For instance, in that same March 2003 meeting with Chairman Barton, testimony was given by the Associated Locksmiths of America (ALOA). Since that time, NASTF has held two special meetings with ALOA to identify the needs of security professionals. In July of this year, NASTF formed a new vehicle Security Committee to tackle the difficult issues surrounding release of necessary information to security professionals. The commitment to address the issues is there and dialogue is already underway.

Therefore, I'd like to make an offer again at this hearing that the automobile manufacturers and the NASTF are prepared to meet with the CARE coalition or directly with aftermarket part distributors that are members of CARE to address any concerns affecting their business. We know that a dialogue directly involving all interested parties is the best and quickest method to resolving differences. If the CARE coalition is truly interested in putting consumers first, they should welcome the opportunity to sit down with automakers because we want our customers' vehicles to be repaired quickly and professionally by anyone in the repair business.

Another claim by the aftermarket is that they are losing sales and business to dealerships and other competitors. In looking at recent financial statements by leading aftermarket companies who are members of the CARE coalition, it appears that they are doing quite well in the marketplace. For instance, Advance Auto Parts announced in February that the company posted its best quarterly and year-end results in company history. O'Reilly Auto Parts reported in July that the company had record revenues and earnings for the second quarter of 2004. In its 2003 Annual Report, AutoZone highlighted its record sales, record earnings per share, record net income and record return on invested capital. It proudly stated that it is the clear leader in the growing do-it-yourself automotive aftermarket. CARE members own reports confirm that the aftermarket industry is healthy and poised for future sales growth. Further, the aftermarket repair shop businesses have more than doubled since the 1990's and project to grow throughout this decade.

For the purposes of this hearing, it is also important for the Committee to be aware of an important subsidiary of the AutoZone corporate family. ALLDATA is a leading provider of automotive repair information and solutions to the automotive service industry. According to its website, ALLDATA is the "world-leading provider of electronic diagnostic and repair information and services for the automotive service industry." The company has access to over 5,000 automaker manuals and Technical Service Bulletins provided to third party service information providers as a courtesy by some automakers. It also provides illustrated diagnosis and repair procedures and even has a goal of answering repair questions within 30 minutes.

As I stated earlier, automakers view companies like ALLDATA as partners in providing repair information to consumers. The automotive companies enjoy a good business relationship with ALLDATA and its chief competitor, Mitchell. Numerous independent shops and ASA members subscribe annually to these services in order to obtain necessary information. In fact, repair shops can get almost all diagnostic questions answered through either of these two services. Automakers are not aware of any deficiencies with the data provided to these multi-manufacturer information services. Further, if there is a need for additional information which ALLDATA or Mitchell may chose not to include on their web site, under our 2002 industry commitment, a technician can log on to an automobile company's web site to find the necessary information.

We are pleased to report that in March of this year, EPA reviewed and approved the structure and pricing of the emission related company web sites. We have also received positive feedback regarding the non-emission information. This is no small task. Significant financial resources were allocated to develop the Internet sites and keep them current with the latest information. There are hundreds of makes and models in the auto industry and the corresponding diagnostic repair information for each of those vehicles can involve thousands of diagnostic codes and hundreds of pages in vehicle manuals. There are also new makes and models that enter the marketplace each year and all of the related repair information gets posted on the web sites. In an undertaking of this magnitude, there are bound to be difficulties from time to time, but all automobile companies are committed to addressing such problems on a priority basis. The industry has consistently demonstrated it is responsive to all complaints submitted through the NASTF task force and has a track record of resolving nearly every issue in a very short amount of time.

If the aftermarket service providers have the information they need, what is the real intent of this legislation? Well, in our opinion, the aftermarket part distributors and manufacturers, rather than the repair shops, stand to benefit most from the bill. First, the legislation would most likely force the release of proprietary information that is unrelated to vehicle repair and could result in inappropriate modifications to the computer systems that control motor vehicle emissions and safety. Aftermarket parts that are not quite up to OEM specifications could require these "alterations" to allow them to function and not trigger warning lights or systems within the vehicle. But the "alterations" also affect the operation of critical control systems in the vehicle—threatening warranty issues and perhaps even the proper performance of these control systems.

Second, with access to automaker proprietary design and engineering information, aftermarket parts manufacturers could begin producing competing parts without bearing any of the costs of engineering the parts. This would short circuit the historical and customary practice of reverse engineering replacement parts for aftermarket use. This "reverse engineering" requirement helps level the playing field between automakers—who invest enormous resources in the design, testing, and certification of parts—and aftermarket parts makers—who would gain a significant competitive advantage by not having to invest in the "reverse engineering."

The proponents of the bill assert that this is not the intent and would not happen, but because of the "Private Right of Action" clause in H.R. 2735, there could result in a flood of litigation on these issues. It is also interesting that the provisions in the bill seek to override existing trade secret protections and create a *new regime* that would effectively require trade secrets created and protected under the laws of all fifty states either be "registered" with the FTC or else disclosed to competing firms. State courts would have ultimate jurisdiction over what constitutes a trade secret.

Additionally, it is our view that the FTC hearing process envisioned under the bill would ultimately be construed to require trial-type proceedings over each and every contested trade secret. Thereby, upon a filing by the aftermarket parts industry, motor vehicle manufacturers will be forced to defend through formal adjudication any trade secrets they wish to protect. Such a regime invites competitors to use the FTC as a competitive weapon for obtaining access to manufacturers' valuable proprietary information. This entire process is far too uncertain and loose for the automakers to have any comfort that we will be adequately protected.

Meeting today's very stringent emission and safety regulations requires even more design, development, testing, and certification of parts. This is just as true for automakers as it is for aftermarket part distributors. Automakers recognize it as the price of doing business—The CARE coalition sees it differently. Rather than putting their money in R&D and engineering to develop quality competitive parts, they now seem to be putting their money into lobbying for legislation and regulation in the hopes that Congress or the Federal Trade Commission will force automakers to turn over proprietary design specifications and software. Aftermarket parts manufacturers would have a significant savings every year in avoided costs. However, the end result would be a devastating blow to the intellectual property rights governing computer software and inappropriate modifications to vehicle pollution control and safety systems and the computers that control them. We would expect these changes to have adverse impacts on U.S. employment as well—since many of the aftermarket parts would be produced overseas rather than in the U.S. facilities currently used by OEM parts suppliers.

Summary:

Key members of the independent repair community and all automakers agree that service issues can be resolved without the need for legislation. Moreover, they agree that cooperative solutions will yield better results in less time than legislation and regulation.

The automobile industry stands ready to work with all affected parties in resolving remaining differences. We believe we are headed in the right direction and look forward to keeping the Committee updated on our progress.

Thank you.

Mr. STEARNS. I thank you.

Mr. Cabaniss?

STATEMENT OF JOHN CABANISS, CHAIRMAN, NATIONAL AUTOMOTIVE SERVICE TASK FORCE, DIRECTOR, ENVIRONMENT AND ENERGY ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS

Mr. CABANISS. Good afternoon. My name is John Cabaniss. I am Director for the Environment and Energy at the Association of International Automobile Manufacturers.

Mr. Chairman, I have consolidated my statement today, but I would like to have my full written statement entered into the record of the hearing.

For the past 4 years I have had the privilege of serving as the Chairman of the National Automotive Service Task Force, a cooperative activity involving auto makers, the service industry and the equipment and tool industry. I have been with AIM since the spring of 1995. Prior to that I worked in EPA's Motor Vehicle Admissions program for 15 years and the State of Virginia Air Pollution Control program for about 10 years. I grew up with an automotive trades background. Both father and my grandfather were shop owners and technicians in Southern Virginia for many years.

I have been asked to brief you today on the task force and its activities. The task force is a completely voluntary effort and takes no positions on issues. Any opinions that may be expressed are my own, and not necessarily those of AIM members companies.

During the past decade auto makers have faced a technology explosion and a growing volume of information for service and repair. As a result, some service providers have experienced difficulty in obtaining necessary information. However, these difficulties primary involve where and how to access information rather than its actual availability.

The task force originated in 1999 when the Arizona legislature was considering a service information bill. During this process it became clear a continuing forum was needed for dialog between parties at the national level. Thus, in November 2000 the task force was established with the mission of facilitating the prompt identification and correction of gaps in availability and accessibility of service information training, diagnostic tools and equipment and communications to service professionals.

The task force has made significant and sustained progress. Early in 2001 a website was launched to provide a ready reference for anyone requiring information in tools from auto makers. This reference is updated quarterly and broadly publicized by task force participants.

One special feature is the inclusion of a complaint form for a technician to use if the information needed to fix the vehicle cannot be located. Complaints can be submitted by email or by fax to the Service Information Committee. Complaints are immediately sent directly by email to the auto manufacturer for prompt investigation and response directly to the company or individual that submitted the complaint. Complainers are notified that the complaint has been received and forwarded to the manufacturer and that they can expect a direct reply.

During 2003 88 complaints were received involving 17 manufacturers. To date this year 33 complaints have been received involv-

ing 15 manufacturers. Only two very recent complaints are pending.

In addition to these complaints, individual auto makers report that they receive occasional suggestions about ways to improve content in their service document or navigation of their websites. Manufacturers use such feedback to continually improve their services.

At a July 2002 subcommittee hearing Senator Dorgan challenged auto makers to work with the service industry to address any service issues. We took that challenge very seriously and within a few weeks all manufacturers agreed to make all service tool and training information available within a short time. By March 2003 all auto makers had launched Internet service sites available to anyone 24/7. The access charges are minimal. Users can have immediate access to practically any of these websites for 24 to 72 hours at a charge of $10 to $20. Frequent users have the option of subscribing monthly or annually.

The success of the task force is due to the participation of a wide range of parties. Currently over 100 organizations participate in the task force and participation is growing. These are just a few examples of the progress being made.

The central question being considered today is whether technology is locking out the consumer and independent shops. I believe just the opposite it true. We are using Internet and e-business technology to provide needed service information, training and tools to anyone who needs it much quicker and cheaper today than ever before. The task force process also ensures a forum for identifying and addressing problems. I am confident that working cooperatively within the process, we can continue to be successful in bringing together the talents and resources of the stakeholders to address service technology issues.

In conclusion, auto makers are completely committed to the task force. We believe it is the proper venue for continuing to address service technology issues and that it is making significant and sustained progress. Therefore, we believe legislation in this area is not only unnecessary, but potentially counterproductive.

Thank you again for the opportunity to address the subcommittee.

[The prepared statement of John Cabaniss follows:]

PREPARED STATEMENT OF JOHN CABANISS, ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS

Thank you for the opportunity to testify before the Subcommittee regarding vehicle service technology issues. My name is John Cabaniss. I am the Director for Environment and Energy at the Association of International Automobile Manufacturers.[1] For the past four years, I have had the privilege of serving as the chairman of the National Automotive Service Task Force, a cooperative activity involving automakers, the automotive service industry, and the equipment and tool industry.

[1] AIAM members include American Honda Motor Company, Inc.; American Suzuki Motor Corporporation; Aston Martin Lagonda of North America, Inc.; Ferrari North America, Inc.; Hyundai Motor America. Inc.; Isuzu Motors America, Inc.; Kia Motors America, Inc.; Maserati North America, Inc.; Mitsubishi Motors North America, Inc.; Nissan North America, Inc.; Peugeot Motors of America, Inc.; Societe Anonyme Des Usines Renault; Subaru of America, Inc.; and Toyota Motor North America, Inc. AIAM also represents original equipment suppliers and other automotive-related trade associations. AIAM members have invested over $20 billion in new production and distribution capacity in the United States, creating tens of thousands of high-skill, high-wage jobs across the country in manufacturing, supplier industries, ports, distribution centers, headquarters, R&D centers, and automobile dealerships.

I have been in my current job with AIAM since the spring of 1995. Prior to that, I worked in the U.S. Environmental Protection Agency's motor vehicle emissions program for fifteen years and for the State of Virginia's air pollution control program for about ten years. I grew up with an automotive trades background. Both my father and my grandfather were shop owners and technicians for many years. I grew up handing them tools and later using the tools myself.

The Task Force is a completely voluntary effort. We collect no dues and have no support organization. NASTF itself takes no positions on issues. I have been asked to brief the subcommittee today on the Task Force and its activities. Any opinions that may be expressed are my own and not necessarily those of AIAM member companies.

In my presentation today, I will briefly describe who is involved in the National Automotive Service Task Force, what activities are under way, and what progress has been made and continues to be made. After hearing my statement, I hope you will agree that the Task Force is the proper venue for addressing service issues, and that further legislation or regulation in this area is unnecessary and in fact may even prove counter-productive.

To begin, I would point out that vehicle manufacturers consider the automotive service industry their partner in providing vehicle service and repairs to their mutual customers, the driving public. Moreover, automakers do not intentionally withhold service information from the auto service industry. To do so would be contrary to their best interests. Automakers want their customers to have a positive ownership experience, which logically includes the ability to obtain effective service no matter where or when their vehicles need maintenance. Automakers have every incentive to make sure that the auto service industry has the information, training, and tools needed to maintain and repair vehicles. Historically, 70-80 percent of vehicle service and repairs are performed in non-dealer shops. This level has been constant for many years and is not expected to change.

During the past decade, the automakers have had to address the challenge of managing a technology explosion and the growing volume of information needed to maintain and repair more complex, modern vehicles. This necessitated changes in both communications channels and techniques. As these changes have occurred, some service providers have experienced difficulty in obtaining the necessary information. For the most part, however, these difficulties have involved questions about *where and how* to access the information rather than its actual availability.

The National Automotive Service Task Force

The origin of the National Automotive Service Task Force dates back to 1999 when the Arizona legislature was considering a vehicle service information bill. During 1999 and 2000, the automakers and the Arizona auto service industry cooperatively investigated allegations of manufacturers withholding information. It soon became apparent that the real issue for shops and technicians was accessibility, that is, knowing where to get the information and tools they need. What also became clear was the necessity for a continuing forum for dialogue between parties on these issues at the national level. Thus, in November 2000 the National Automotive Service Task Force was established. The mission of the Task Force is to facilitate the prompt identification and correction of gaps in the availability and accessibility of automotive service information, training, diagnostic tools and equipment, and communications to automotive service professionals.

At the outset, the Task Force recognized three basic realities. First, despite the best efforts of everyone involved, some gaps in service information, training, and tools are inevitable. Second, the rapid pace of changes in vehicle technology, which will clearly continue, exacerbates this problem. Third, a continuing forum for open communication and cooperation is the best way to address issues.

The Task Force has made significant and sustained progress. The first issue the Task Force addressed was that of information accessibility. In May 2001, the NASTF Service Information Committee teamed with the International Automotive Technicians Network to launch an Internet website to provide a ready reference for all service technicians requiring service information and tools from automakers. This reference is updated quarterly and broadly publicized by Task Force participants.

A special feature of this site is the inclusion of a complaint form for a technician to use if he/she cannot locate the information needed to fix a vehicle. NASTF complaints can be submitted electronically by Email or by telefax. Complaints are received and monitored by the NASTF Service Information Committee. Immediately upon receipt, complaints are sent directly by Email to the auto manufacturer for prompt investigation and response. Manufacturers respond directly to the company or individual that submitted the complaint. As part of the process, complainants are

notified that the complaint has been received and forwarded to the manufacturer, and that they can expect a reply directly from the manufacturer.

From January through December 2003, NASTF received 88 complaints involving 17 manufacturers. From January through September 20, 2004, NASTF has received 33 complaints involving 15 manufacturers. Only two very recent complaints have not received a response.

In addition to NASTF complaints, individual automakers report that they occasionally receive suggestions from their website users about ways to improve content in their service documents or navigation of the websites. Manufacturers use such feedback to continually improve their services.

In July 2002 Senator Dorgan held a subcommittee hearing on service technology issues. After hearing the concerns raised by all parties, Senator Dorgan challenged the automakers to work cooperatively with the auto service industry to address any service technology issues. We took that challenge very seriously and within a few weeks were able to get all manufacturers to agree to make all service, tool, and training information available within a short time frame. By March 2003, all the automakers had launched Internet service websites, available 24 hours a day, 7 days a week, where anyone can access service and training information as well as obtain information for purchasing factory diagnostic tools. To facilitate the access to these websites, the NASTF website www.nastf.org contains links to all the automakers' websites. Many other NASTF participants have included links on their own websites, too. The access charges are minimal. Technicians can have immediate access to practically any of these websites for a period of 24 to 72 hours at a charge of $10 to $20. Frequent users have the option of subscribing monthly or annually. The availability of this electronic information is also a valuable resource for companies that are in the automotive information processing business. Many independent shops rely on such third party information providers as a primary source of service information and the progress of the NASTF has helped to facilitate this.

The success of the Task Force over the past four years is due to the participation of a wide range of parties. We are fortunate to have a "Who's Who" of auto service organizations participating, including the Automotive Service Association, the Automotive Aftermarket Industry Association, the Automotive Service Councils of California, the Society of Automotive Engineers, the Alliance of Automotive Service Providers, the International Automotive Technicians Network, and the Equipment & Tool Institute, to name just a few. Currently over 100 organizations participate in the Task Force, and participation is growing. The complete list of participants and other information is available at the Task Force website and is attached to my written statement.

These are just a few examples of the progress that is being made in the Task Force. In addition to the Service Information Committee, the other NASTF committees include the following:

- The Training Committee, which focuses on ensuring that all technicians have access to factory equivalent training;
- The Equipment and Tool Committee, which focuses on improving the availability of generic tools for both dealer and non-dealer shops;
- The Communications Committee, which focuses on getting information out to shops and technicians about the Task Force project, how to obtain the tools and service information they need, the progress the Task Force is making, how to get involved and provide input, and how they can otherwise help; and
- The new Vehicle Security Committee, which was recently formed to address gaps in access to vehicle security information by automotive security professionals.

The central question being considered today is whether technology is locking out the consumer and independent shops. I believe just the opposite is true. We are using Internet and E-business technology to provide needed service information, training, and tools to anyone who needs it much quicker, and for far less cost, than ever before. The NASTF process also ensures a forum for identifying and addressing problems. I am confident that working cooperatively within the NASTF process, we can continue to be successful in bringing together the talents and resources of the stakeholders to address service technology issues.

In conclusion, the automakers are completely committed to the National Automotive Service Task Force. We believe this Task Force is the proper venue for continuing to address service technology issues, and that it is making significant and sustained progress in improving the availability and accessibility of information, training, and tools to automotive service professionals. Therefore, we believe legislation in this area is not only unnecessary, but potentially counter-productive.

Again, thank you for the opportunity to address the Subcommittee on this important issue.

Mr. STEARNS. I thank the gentleman.

Thank you for patience, Ms. Cardwell, and we appreciate your opening statement.

STATEMENT OF LYNNE CARDWELL, CHIEF EXECUTIVE OFFICER, CAR CARE CENTER, ON BEHALF OF COALITION FOR AUTOMOTIVE REPAIR EQUALITY, AUTOMOTIVE AFTERMARKET INDUSTRY ASSOCIATION AND CARQUEST TECH-NET PROFESSIONAL AUTO SERVICE CENTER

Ms. CARDWELL. Thank you, Mr. Chairman and members of the subcommittee for the opportunity.

I will be brief. I am mindful that the time is running and so many of many points have been so well covered by the gentleman with the video down at the end. There are countless examples of technicians not being able to actually drill down to the problem.

But as you know, my name is Lynne Cardwell and I have been in the vehicle automotive repair business for 18 years. And I am a lady shop owner. I did not end up there looking for that. I ended up because my husband had a very serious car accident and his spine was crushed and I needed to come in and hold the thing together. And it worked out so beautifully that we were able to stay on, and we have grown to one of the largest independent and most reputable, I think, shops in Sacramento, California.

We have an 18 bay shop. It's a large facility. It is about the size of a small dealership. We do not sell new cars or used cars, but we just work on them. And as a general repair shop, we work on almost every make and model; all of the domestics, most all of the Asians and some of the Europeans.

But today I am here. I am a member of the Automotive Service Councils of California and they do have 1500 independently owned service centers, very much like my own. I have also been asked to speak on behalf of the Automotive Aftermarket Industry Association, and they have 4400 member companies and affiliates who make and market equipment and materials, supplies and services. And they have over 45,000 outlets and shops.

And as a CARQUEST Tech-Net Professional Auto Service Center myself, I have also been asked to speak on their behalf. There are 3700 of those centers independently owned across the country.

And the Coalition for Automotive Repair Equality also asked to have me speak on behalf of them. And they represent aftermarket suppliers that we buy from all over the Nation.

But, of course, primarily I'm here to speak on behalf of our own business, because we absolutely cannot survive without complete and consistent service information.

We do have a very high standard for the training that we require of our own technicians. We are an ASE Blue Seal facility, there are only three of those Blue Seal facilities in Sacramento.

We are also a State certified Gold Shield smog station and a State certified small business. We are Tech-Net Professional Auto Service Center, as I said. And we're also AAA approved auto repair facility.

We have 13 employees; all of our technicians save one are ASE Master certified technicians with a L/1 certificate. Most all of them are smog licensed as well.

We process probably 5,300 cars in a year. We do about 20 a day. And each technician is required to complete at least three advanced courses per year. And our shop is very well equipped with the latest diagnostic equipment, the ones that we can lay our hands on.

But times have really changed for us in the auto service industry. So much of that has been already said, I will not go into that too much. But the scopes and scanners and hand tools that used to be our stock in trade really now what we are needing so desperately on a consistent basis is the electronically transmitted repair information, and that has become our most important tool. And if we cannot get that, it is not an overstatement to say that we are out of business. Maybe not today or next week, but eventually and very soon within a matter of 2 or 3 years.

Every time we send a customer to a dealer because we do not have repair information for their vehicles, we lose credibility with that customer.

And the other issue that has not been brought up today, which I think is a huge concern to anyone in the aftermarket, is that good technicians will not stay where they cannot get the kind of information on a consistent basis that they need to do their jobs properly. I know that from personal experience. I lost one very good technician who was with us 12 years. And he left to go to a dealer because the service information he knew from personal experience was more accessible there.

According to a poll conducted by the Tarrance Group this summer 92 percent of auto service retailers favor the passage of this legislation. And interestingly enough, 93 percent of ASA member shops favor this legislation.

The Motor Vehicle Owners' Right to Repair Act would ensure that motorists retain the freedom to choose how and by whom their vehicles are maintained. Without that, car makers begin to achieve a virtual monopoly. I am sure no ne of us want that. They are not probably wanting a monopoly. We want a level playing field, really.

Now we have just what the car makers feel like giving us today. The word that concerns me here is "voluntary." I keep voluntary, voluntary. And while we are very appreciative of the efforts that have been made to date to provide this voluntarily, without a bill there is no force of law behind that bill, there is no way to enforce it. And that is a very, very crucial point that we must not overlook in discussing this bill.

I am just about finished. I will try to be real fast.

Mr. STEARNS. Sure.

Ms. CARDWELL. If we were to subscribe to just the top 21 auto makers' websites, it would cost a small job, any shop, $37,000 a year. And that is prohibitive for most small businesses. And, of course, the specialized scan tools are extra on top of that.

So with regard to the tools themselves, there is a copy of a GM letter in your packet there. I think that explains GM's intention to crank up the cost of their data stream information which they feel has been severely under valued, I think that is their terminology, raising the price to our tool suppliers from which we buy our tools from $10,000 to $50,000. That is a 500 percent increase. And I think that is unconscionable.

If they succeed in this and other manufacturers follow suit, the tools the diagnostic capabilities, we need to stay competitive with dealers, may be completely out of our reach.

So now we have a statement of intent by the auto makers. And while we appreciate the attitude and the helpful beginnings that that represents, it still is entirely on their terms and with no force of law behind it, it is impossible to enforce it. So they say that we should just trust them to release the service information voluntary; there is that word again "voluntary." But if this was really their plan to voluntarily release all the information and make it a level playing field, why are they so opposed to this bill which does that, except that it provides enforcement.

I think that is probably the real reason for the objection is that it does provide within an ironclad enforcement mechanism under the Federal Trade Commission to make sure that all parties are carrying out their obligations to the motoring public. This feature is notably absent in everyone of the car company's paper promises. So I respectfully ask the subcommittee to give its full support to H.R. 2735 and let us continue to serve our long time customers, and at the same time support ourselves and our families.

Thank you.

[The prepared statement of Lynne Cardwell follows:]

Testimony by Lynne Cardwell before the

Subcommittee on Commerce Trade and Consumer Protection

House Energy and Commerce Committee

September 22, 2004

A. **Introduction.** Thank you, Mr. Chairman and Members of the Subcommittee, for the opportunity to speak briefly about the "Motor Vehicle Owner's Right to Repair Act", HR 2735. My name is Lynne Cardwell, and I have been in the vehicle repair business for 18 years. Today, I'm here on behalf of:

1. the **Automotive Aftermarket Industry Association (AAIA)** with over 4,400 member companies, and

2. the **Automotive Service Councils of California (ASCCA),** with over 1,500 independently owned member shops across the state, and

3. the **CARQUEST Tech-Net Professional Auto Service network** of 3,700 member shops in the USA, and

4. the **Coalition for Automotive Repair Equality (CARE),** representing aftermarket suppliers nationwide, and

5. *and* **on behalf of our own business**--because we absolutely cannot survive without complete and consistent service information

B. **Business background:**

1. I came to Car Care Center after my husband's spine was crushed in a car accident in 1986, and at his request I stayed on as owner and CEO after that. We've grown to become one of the largest and most reputable independent auto service centers in Sacramento, California;

2. Our Automotive Service Excellence (ASE) Blue Seal facility is also a state certified Gold Shield smog station, we're a state Certified Small Business, Tech-Net Professional Auto Service center, and AAA Approved Auto Repair facility;

3. We have 13 employees; all our technicians are ASE Certified and most are ASE Certified *Master* Technicians. They're each required to complete at least 3 advanced courses a year, and our shop is well-equipped with the latest diagnostic tools;

4. Like most general repair facilities, we service all domestic, most Asian, and some European makes

C. Times have changed for us in the auto service industry. Scopes, scanners and hand tools used to be our stock in trade. Now, electronically transmitted repair information has become our most important "tool". If we can't get that, we really can't stay in business.

1. We lose our customers' confidence every time we have to admit we don't have repair information for their vehicles so that we need to send them to the new car dealer;

2. Good technicians just won't stay where they can't get the information they need to do their jobs properly;

3. According to a poll conducted by the Tarrance Group (copy submitted for the record) this summer, 92% of auto service retailers favor passage of this legislation, including 93% of Automotive Service Association members.

D. The Motor Vehicle Owner's Right to Repair Act would ensure that motorists retain the right to choose how, and by whom, their vehicles are maintained. Without it, car makers will gain a virtual monopoly.

1. Now we have only what the car makers feel like giving us today. Going onto the OEM websites is like going into the catacombs without a flashlight —you may or may not find what you're looking for but it's going to be time-consuming either way. It isn't a cheap trip either. According to C.A.R.E., subscribing to just the top 21 automakers' websites would cost over $37,000 a year. That's prohibitive for most small businesses. And the specialized scan tools are extra.

2. Some manufacturers are now trying to use their licensing agreements with our tool suppliers (copy of GM letter submitted for the record) to crank up the cost of data stream information, for example from $10,000 to $50,000. This is information we need to stay competitive. If they succeed in this and other manufacturers follow suit, the tools and diagnostic capabilities we need to stay competitive with dealers may be completely out of our reach.

3. Now we have only this gentlemen's agreement or Statement of Intent by the automakers. It is entirely on their terms—it has no force of law behind it, which makes it virtually unenforceable;

4. The car makers, our competitors by the way, say we should just trust them to release this service information voluntarily—but if this were really their plan, why are they so opposed t this Bill?

E. I think it might be because The Right to Repair Act actually has within it an iron-clad enforcement mechanism under the Federal Trade Commission to make sure all the parties carry out their obligations to the motoring public. This feature is notably absent from every one of the car companies' paper promises. The risk is great for all of us—small businesses and consumers alike.

I respectfully ask this Subcommittee to give its full support to HR2735, and let us continue to serve our long-time customers and at the same time support ourselves and our families.

A Survey among Automotive Aftermarket Retailers

July 28-August 12, 2004

for

Automotive Aftermarket Coalition

THE TARRANCE GROUP

July 28-August 12, 2004 / N=801 Auto Aftermarket Retail Decision Makers/ ±3.5% M.O.E.

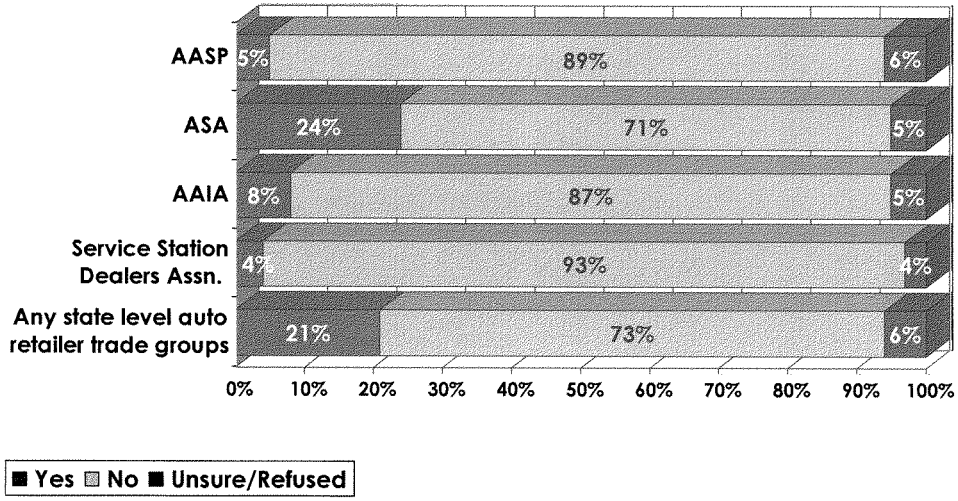
A National Survey of Auto Aftermarket Retail Decision Makers for the Automotive Aftermarket Coalition

#9435

THE TARRANCE GROUP

July 28-August 12, 2004 / N=801 Auto Aftermarket Retail Decision Makers/ ±3.5% M.O.E.

For each one, please tell me whether or not your business belongs to this organization.



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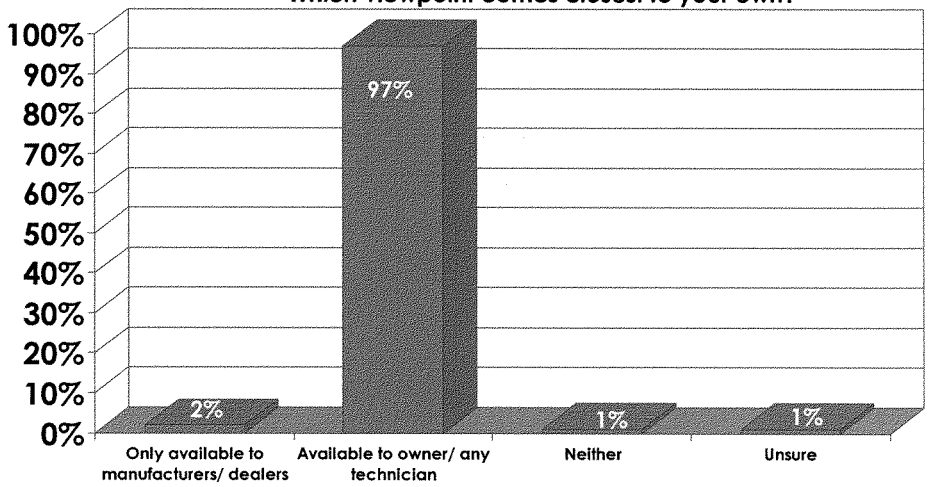
THE TARRANCE GROUP

July 28-August 12, 2004 / N=801 Auto Aftermarket Retail Decision Makers/ ±3.5% M.O.E.

Some people say that only automobile manufacturers and their dealers should have access to the information stored in the computer about mechanical problems and the repairs needed. Other people say that all vehicle repair information stored in the vehicle's computer should not only be accessible to the manufacturer and their dealers, but also be made available to the owner and the automotive technician of the owner's choice.

Which viewpoint comes closest to your own?



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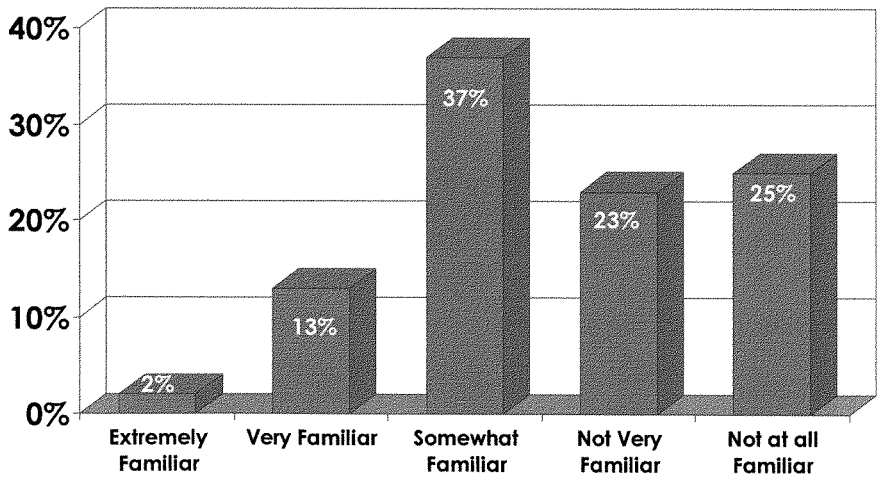
THE TARRANCE GROUP

July 28-August 12, 2004 / N=801 Auto Aftermarket Retail Decision Makers/ ±3.5% M.O.E.

As you may already know, legislation called The Motor Vehicle Owners' Right to Repair Act has been introduced in the United States House of Representatives this year. How familiar would you say you are with this legislation?

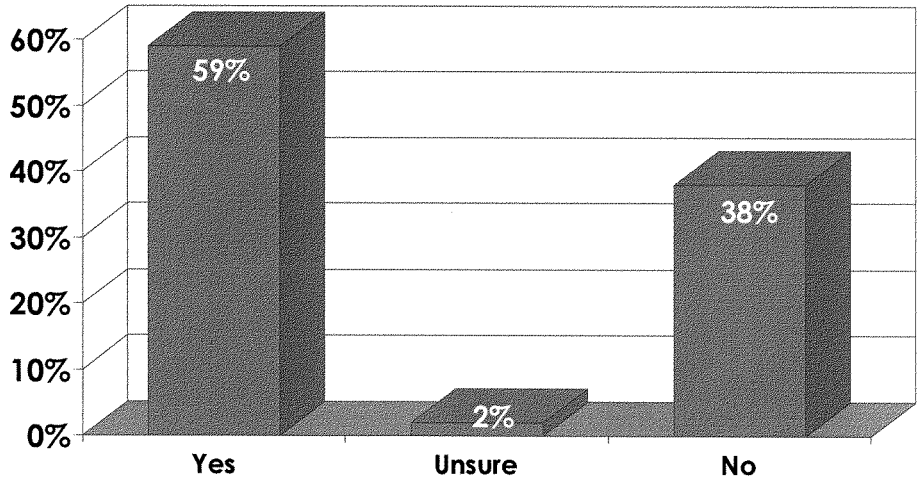


Q7

THE TARRANCE GROUP

July 28-August 12, 2004 / N=801 Auto Aftermarket Retail Decision Makers/ ±3.5% M.O.E.

Many independent automotive service and repair businesses have had difficulty obtaining accurate and timely repair information and tools from the automobile manufacturers, especially on newer cars. Has your business ever experienced problems in getting access to the repair information or tools necessary to service and repair vehicles?



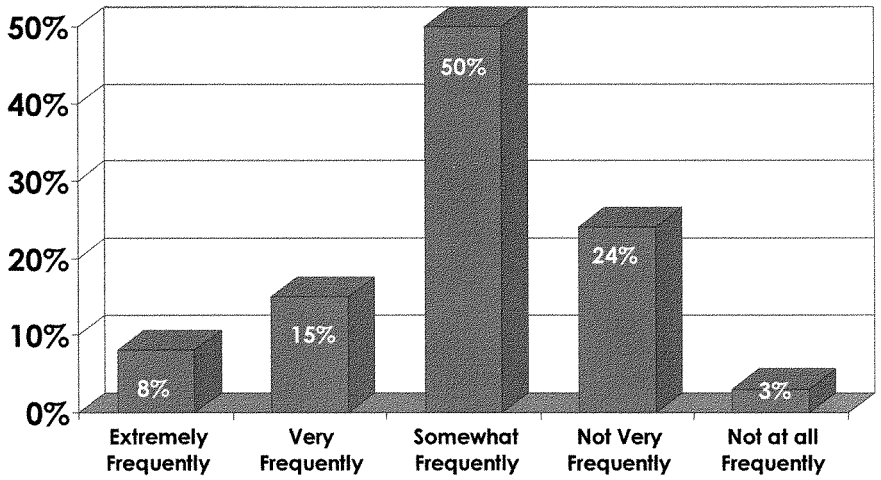
Q8

THE TARRANCE GROUP

July 28-August 12, 2004 / N=801 Auto Aftermarket Retail Decision Makers/ ±3.5% M.O.E.

How often does your business experience problems in getting access to this repair information?

(Among those who have had this problem)

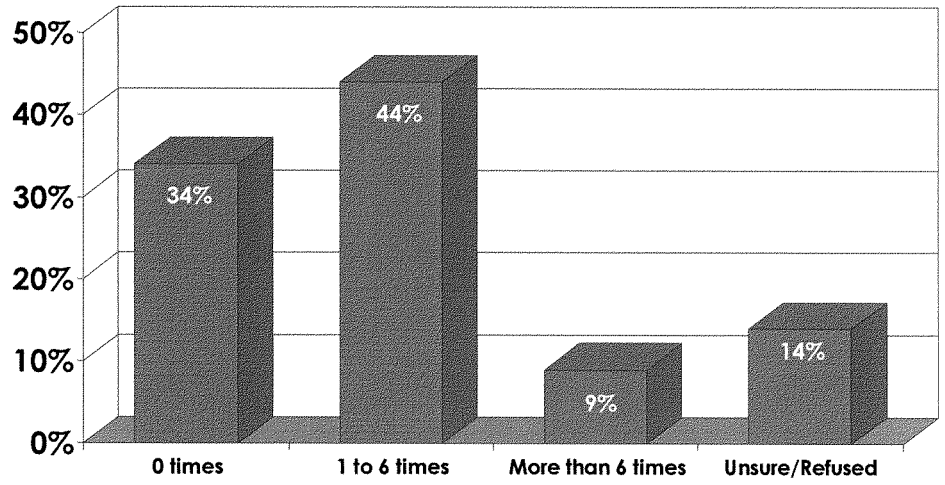


Q9

THE TARRANCE GROUP

July 28-August 12, 2004 / N=801 Auto Aftermarket Retail Decision Makers/ ±3.5% M.O.E.

How many times per month have you been forced to send a vehicle to a franchised dealer for repairs that you cannot do because of the lack of information and tools from the manufacturer?



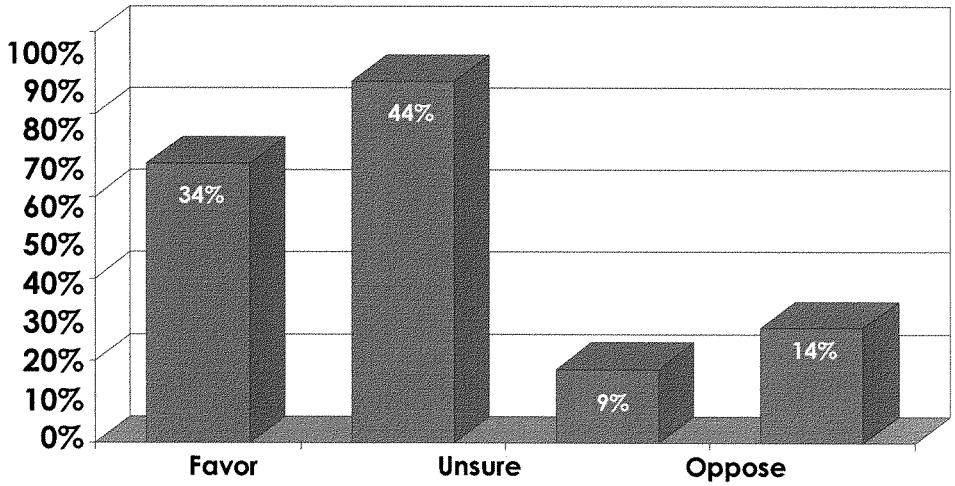
Q10

THE TARRANCE GROUP

July 28-August 12, 2004 / N=801 Auto Aftermarket Retail Decision Makers/ ±3.5% M.O.E.

Now, thinking again about The Motor Vehicle Owner's Right to Repair Act. This legislation would help correct the problem being experienced by automotive repair businesses by requiring motor vehicle manufacturers to provide vehicle owners & repair facilities the information necessary to diagnose, service, or repair vehicles. Motor vehicle manufacturers would be allowed to protect their trade secrets, but owners & repair facilities could not be deprived of needed repair information.

With this in mind, would you favor or oppose passage of The Motor Vehicles Right to Repair Act?

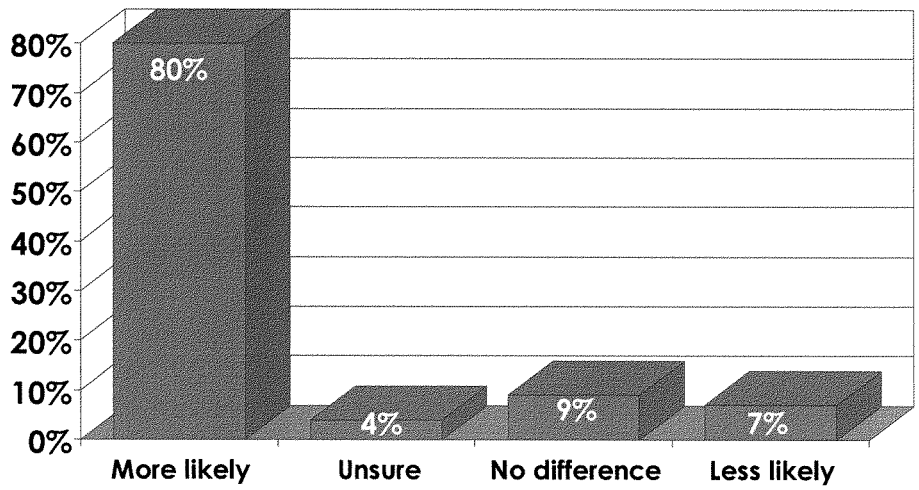


Q11

THE TARRANCE GROUP

July 28-August 12, 2004 / N=801 Auto Aftermarket Retail Decision Makers/ ±3.5% M.O.E.

Would you be more or less likely to vote for a candidate for Congress if you knew that he or she was in favor of the Motor Vehicle Owner's Right to Repair Act?



Q12

THE TARRANCE GROUP

EXECUTIVE SUMMARY

To: **Interested Parties**
From: **The Tarrance Group and Lake Snell Perry & Associates**
Subject: **Key findings from a survey of Automotive Aftermarket Retailers**[1]

- There is overwhelming support among Automotive Aftermarket Retailers for the Right to Repair Act. More than nine-in-ten (92%) respondents favor passage of this legislation, including 79% who "strongly" favor its passage.

- This overwhelming level of support is consistent among Alliance of Automotive Service Providers members (98%), Automotive Service Association members (93%), Automotive Aftermarket Industry Association members (94%), and members of state level automotive retailer trade groups (92%).

- In addition, eight-in-ten (80%) Automotive Aftermarket Retailers indicate that they would be more likely to vote for a candidate for Congress if they knew that candidate supported passage of the Right to Repair Act.

- This overwhelming support for this legislation among Automotive Aftermarket Retailers is driven in part by the fact that this legislation seeks to support the views of these retailers. When presented with two opposing viewpoints regarding access to the computer diagnostic system of cars, 97% of respondents select the view that this information should be available to car owners and the technicians of their choice.

- Support for this legislation is also driven by the problems these retailers currently face. A majority (59%) of these retailers have had problems getting access to repair information or needed tools necessary for repairs. Nearly one-quarter (24%) of this sub-group reports that they have these types of problems either "extremely" or "very" frequently.

- In addition, more than six-in-ten (67%) Aftermarket Automotive Retailers report that they have been forced to send at least one vehicle to a franchised dealer for repairs that they could not perform due to lack of information and tools from the manufacturer.

- *The bottom line...* The Right to Repair Act has overwhelming and intense support among Aftermarket Automotive Retailers.

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[1] All respondents interviewed in this study were part of an N=801 national sample based on information regarding Aftermarket Retailers nationwide. The confidence interval associated with a sample of this type is such that 95% of the time results will be within ± 3.5% of the "true values" where "true values" refer to the results obtained if it were possible to interview every Aftermarket owner or manager on the listed sample provided by the Automotive Aftermarket Coalition.

SURVEY OVERVIEW

The Tarrance Group is pleased to present the results of this survey to Automotive Aftermarket Coalition. This section outlines the research techniques used in gathering the information presented in this report. The project director for this study was Ed Goeas. General staff support was provided by Brian Nienaber, Laura Osuna, Chris Hardisty, and Casey Gulley. This report contains the results of a telephone survey of N=800 owners or managers of Automotive Aftermarket businesses. Responses to this survey were gathered July 28-August 12, 2004.

All respondents interviewed in this study were part of a national sample based on information regarding Aftermarket Retailers nationwide. The confidence interval associated with a sample of this type is such that 95% of the time results will be within ± 3.5% of the "true values" where "true values" refer to the results obtained if it were possible to interview every Aftermarket owner or manager on the listed sample provided by the Automotive Aftermarket Coalition.

Interviewing was conducted by The Tarrance Group personnel working from the company's telephone bank facility in Houston, Texas. Each interview lasted approximately six (6) minutes. Editing, coding and computer processing of the data was done at the Alexandria, Virginia office of The Tarrance Group. The computer tabulations were produced by SPSS for Windows, a statistical software package copyrighted by SPSS, Inc.

National Survey of Auto Aftermarket Retailers
FINAL

Study # 9844
The Tarrance Group, Inc.
N = 800 Auto Aftermarket Retail Decision Makers
Field Dates: July 28-August 12, 2004

Hello, I'm _____ of The Tarrance Group, a national public affairs research firm calling on behalf of the Automotive Aftermarket Coalition with a survey regarding the automotive aftermarket businesses. May I please speak with someone who is an owner or manager of this business?

IF "YES", THEN:

Hello, I'm _____ of The Tarrance Group, a national public affairs research firm calling with a survey for automotive aftermarket businesses about federal legislation that will impact your business. This survey will take approximately FIVE minutes of your time, **and I want to assure you that your responses are completely confidential and will be used for summary analysis only.** May we begin the survey now?

IF "YES", CONTINUE TO Q1

IF "NO, THIS IS NOT A CONVENIENT TIME", ASK:

Is there a better time I might call you back either later today or tomorrow?
(Schedule a callback and make a notation on the sample sheet) _____

IF "NO, I DO NOT WANT TO PARTICIPATE AT ALL", SAY:

Thank you for your time.

*** = Less than .5%**

To begin, I would like to read you a list of industry organizations that some automotive aftermarket businesses might belong to. For each one, please tell me whether or not your business belongs to this organization. Here is the first one…
(RANDOMIZE)

		YES	NO	UNSURE/ REFUSED **(DNR)**
1.	AASP – Alliance of Automotive Service Providers	5%	89%	6%
2.	ASA – Automotive Service Association	24%	71%	5%
3.	AAIA – Automotive Aftermarket Industry Association	8%	87%	5%
4.	Service Station Dealers Association	4%	93%	4%
5.	Any state level automotive retailer trade groups	21%	73%	6%

(END ROTATION)

As you may know, government regulations require that all 1996 and newer cars are equipped with a computer system that alerts the owner of the vehicle to a mechanical problem. The computer system also helps automotive technicians diagnose and repair the problem.

Now I'd like to read you two viewpoints. Please tell me which one comes closest to your own.
(READ & ROTATE ALTERNATIVES)

6. Some people say/ Other people say that only automobile manufacturers and their dealers should have access to the information stored in the computer about mechanical problems and the repairs needed.

   Other people say/ Some people say that all vehicle repair information stored in the vehicle's computer should not only be accessible to the manufacturer and their dealers, but also be made available to the owner and the automotive technician of the owner's choice.

"Which viewpoint comes closest to your own?"

Only available to manufacturers/dealers.... 2%
Available to owner/any technician..... 97%
BOTH EQUALLY **(DNR)** .....*
NEITHER **(DNR)** 1%
UNSURE **(DNR)**..... 1%

7. As you may already know, legislation called The Motor Vehicle Owners' Right to Repair Act has been introduced in the United States House of Representatives this year. How familiar would you say you are with this legislation? Would you say you are...**(ROTATE TOP TO BOTTOM, BOTTOM TO TOP)**

Extremely familiar	2%
Very familiar	13%
Somewhat familiar	37%
Not very familiar	23%
Not at all familiar	25%
UNSURE/REFUSED **(DNR)**	*

And,

8. Many independent automotive service and repair businesses have had difficulty obtaining accurate and timely repair information and tools from the automobile manufacturers especially on newer cars. Has your business ever experienced problems in getting access to the repair information or tools necessary to service and repair vehicles?

Yes	59%
No	38%
UNSURE/REFUSED **(DNR)**	2%

IF "YES" IN Q8, THEN ASK:

9. How often does your business experience problems in getting access to this repair information? Would you say these problems occur...**(ROTATE TOP TO BOTTOM, BOTTOM TO TOP)**

Extremely frequently	8%
Very frequently	15%
Somewhat frequently	50%
Not very frequently	24%
Not at all frequently	3%
UNSURE/REFUSED **(DNR)**	*

ASK OF EVERYONE:

10. How many times per month have you been forced to send a vehicle to a franchised dealer for repairs that you cannot do because of the lack of information and tools from the manufacturer?

Zero times	34%
1 to 6 times	44%
More than 6 times	9%
Unsure/Refused	14%

Now, thinking again about The Motor Vehicle Owner's Right to Repair Act. This legislation would help correct the problem being experienced by automotive repair businesses by requiring motor vehicle manufacturers to provide vehicle owners and repair facilities, the information necessary to diagnose, service, or repair vehicles. Motor vehicle manufacturers would be allowed to protect their trade secrets, but owners and repair facilities could not be deprived of needed repair information.

11. With this in mind, would you favor or oppose passage of The Motor Vehicles Right to Repair Act?

IF CHOICE IS MADE, ASK: And would you strongly (Favor/Oppose) or somewhat (Favor/Oppose) this?	Favor/strongly ..... 79% Favor/somewhat ..... 13% UNSURE **(DNR)** ..... 2% Oppose/somewhat ..... 2% Oppose/strongly 3%

---

12. And would you be more or less likely to vote for a candidate for Congress if you knew that he or she was in favor of the Motor Vehicle Owner's Right to Repair Act?

IF CHOICE IS MADE, ASK: And is that strongly or somewhat (more likely/ less likely)?	More likely/strongly ..... 55% More likely/somewhat ..... 25% UNSURE **(DNR)** ..... 4% NO DIFFERENCE **(DNR)** ..... 9% Less likely/somewhat ..... 3% Less likely/strongly 4%

Thank you very much for participating in this survey today. Your opinions on this matter are very important. We appreciate your time, and wish you a good day.

D1.	**RECORD GENDER BY OBSERVATION**	Male ..... 87% Female 14%

D2. **RECORD STATE CODE FROM SAMPLE SHEET** _____ _____

CORRECTION – PLEASE DISREGARD PREVIOUS LETTER AND LICENSE AGREEMENT

July 21, 2004

GM Service and Parts Operations

General Motors Corporatic
Service Operations
30501 Van Dyke Avenue
Warren, Michigan 48090-9

Subject: GM Data Stream License Agreement

The purpose of this letter is to provide you with information in regards to the changes in the 2004 GM Data Stream Information License Agreement, to provide you with a copy of the agreement and to supply you with contact information if you have any questions.

Over the last 18 months, General Motors contracted an independent company to conduct market research to evaluate all aspects of GM's Service Information Licensing activity. This company performed a market assessment, personal interviews, and a complete product review. At the conclusion of this evaluation, it was determined that GM's Data Stream Information is undervalued.

Also, GM is currently reviewing the quality and timeliness of Data Stream Information and is developing an action plan to improve service to the licensee. One such improvement will be providing data stream releases significantly earlier than the current July release. Our plans include an initial release of available 2005 model year data stream information late in the fourth quarter of 2004, with subsequent releases during the first and second quarters of 2005.

Therefore, this new agreement will include *two* (2) model years of data stream files. In addition, body and chassis Type III (bi-directional) files will be available for an additional cost for most body and chassis controllers.

CORRECTION – PLEASE DISREGARD PREVIOUS LETTER AND LICENSE AGREEMENT

Effective July 1, 2004 the new license fee for GM Data Stream Information is as follows:

$30,000.00 non-refundable licensing fee for:

- Type I and Type III(bi-directional) data stream information for **emission related diagnostic procedures**, including engine, transmission, and transaxle control modules (Powertrain) for the 2004 and 2005 model years.

$20,000.00 non-refundable licensing fee for:

- Type I data stream information, diagnostic procedures for most Body, Chassis and Networking control modules for 2004 & 2005 model years. **And Type III (bi-directional)** data stream information, diagnostic procedures for most **Body, Chassis and Networking** control modules for the 1996-2004 model years and the 2005 model year. **Please note that body and chassis data files are only available if you are licensed to receive Powertrain files.**

Enclosed, please find the subject agreement. You are encouraged to review this document carefully. Sign, date, and return **both copies** of the agreement along with your check in the amount of $50,000.00 (US CURRENCY) payable to "SPX Corporation - Service Solutions" and return it using the enclosed preaddressed UPS envelope.

Upon receipt of **both copies** of the signed agreement and your check, GM will execute its portion of the agreement and return a copy for your files.

Should you only desire an Agreement for Powertrain Data Stream, or if you have any other questions regarding this agreement please contact Dante Williams, GM Licensing Coordinator, at 586-578-7315 or by e-mail at dante.williams@servicesolutions.spx.com

Sincerely,

Robert A. Brown, Jr

Robert A. Brown, Jr
Manager - Service Legislation & Licensing
GM Service and Parts Operations

General Motors Data Stream Information License Agreement with

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LICENSE AGREEMENT FOR THE USE OF GENERAL MOTORS DATA STREAM INFORMATION

This License Agreement ("AGREEMENT") is entered into by and between General Motors Corporation ("GM"), a Delaware corporation, acting through its Service and Parts Operations having a place of business at 30501 Van Dyke Avenue, Mail Code 480-204-001, Warren, MI 48090-9008

RECITALS

WHEREAS, GM owns all right, title and interest in Data Stream Information for current General Motors North American vehicles, including all copyright, trade secret and other proprietary rights, and LICENSEE desires to obtain license rights to such Data Stream Information for the development, manufacture and sale of diagnostic service tools;

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties agree:

I. LICENSE GRANT

1.1 License. Subject to the terms of this AGREEMENT, GM grants to LICENSEE a non-exclusive, non-transferable license solely for the development, manufacture and sale of diagnostic service tools ("LICENSED PRODUCTS") utilizing the Data Stream Information detailed in EXHIBIT A. Any other use is strictly prohibited.

1.2 Marketing Territory. LICENSEE may manufacture and sell the LICENSED PRODUCTS worldwide.

II. LICENSING FEE AND PAYMENTS

2.1 License Fee. LICENSEE agrees to pay GM a non-refundable annual license fee ("LICENSE FEE") as set forth in EXHIBIT A.

2.2 Payment. The annual LICENSE FEE shall be paid by check, in United States currency, made payable to:

SPX Service Solutions
GM Licensing Program
28635 Mound Rd
Warren, MI 48092-3499

III. TERM

3.1 Effective Date and Term. This AGREEMENT shall become effective, with the effective date being retroactive to and defined herein as, July 1, 2004, upon its full execution by both parties and GM's receipt of the LICENSE FEE. This AGREEMENT shall continue for a Term of one (1) year ("LICENSE TERM"), unless sooner terminated pursuant to this AGREEMENT.

IV. WARRANTY, INDEMNIFICATION AND OWNERSHIP

4.1 Compliance With Laws. The Licenses granted herein are conditioned upon LICENSEE'S complete compliance with all federal, state, and local laws, regulations, and rules, including (without limitation) all trademark, patent, and copyright laws of the United States, as well as all California Air Resource Board (CARB) and U.S. Environmental Protection Agency (EPA) laws pertaining to the dissemination of emission-related service information, applicable to the subject matter of this AGREEMENT.

4.2 Warranty. GM WARRANTS THAT IT HAS THE RIGHT TO LICENSE THIS INFORMATION TO LICENSEE. NO OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE MADE WITH RESPECT TO THE INFORMATION INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

4.3 Indemnification of GM. LICENSEE agrees to hold harmless, defend, and indemnify GM, its officers, directors and employees against any and all claims, demands, causes of action, penalties or damages (including reasonable attorney's fees) arising out of or in connection with: (i) use of the Data Stream Information, (ii) the design, manufacture, distribution and sale of the LICENSED PRODUCTS fees), or (iii) LICENSEE'S failure to comply with any CARB or EPA regulations or rules pertaining to the dissemination of emission-related service information.

4.4 Goodwill and Ownership. LICENSEE acknowledges that the Data Stream Information and all associated copyrights, trade secrets and other proprietary rights and all right, title and ownership therein and the goodwill pertaining thereto belong exclusively to GM. Moreover, LICENSEE will not, during the term of this AGREEMENT or thereafter, attack the validity of GM's proprietary rights in the Data Stream Information.

4.5 Confidentiality. LICENSEE acknowledges that the Data Stream Information provided in accordance with this AGREEMENT is confidential and any intellectual and industrial property rights of whatever nature in the Data Stream Information are and shall remain the property of GM and nothing in this AGREEMENT shall be deemed to convey to LICENSEE any right, title or interest in or to the same. Accordingly, during the term of this AGREEMENT and thereafter, LICENSEE will maintain the Data Stream Information in strict confidence and will not use, disclose or otherwise communicate to any third party information about either the specific terms and provisions of this AGREEMENT or any proprietary information or materials delivered to the LICENSEE pursuant to this AGREEMENT, including but not limited to, the Data Stream Information. During the term of this AGREEMENT, LICENSEE will only disclose the Data Stream Information to its directors and employees with a need to know and only to the extent bona fide necessary.

V. TERMINATION

5.1 Material Breach. In the event a party materially breaches this AGREEMENT and does not cure such breach within thirty (30) days after notice thereof from the other party specifying such breach, then, and in addition to all other rights and remedies which the other party may have in law or in equity, the other party may, at its option, terminate this AGREEMENT by notice thereof in writing specifying the reason for such termination and a termination date. Such termination shall become effective on the date of termination set forth in the notice of termination, but in no event earlier than thirty (30) days from the date of mailing thereof.

5.2 Insolvency or Bankruptcy. If LICENSEE files a petition in bankruptcy or is adjudicated a bankrupt, or if a petition in bankruptcy is filed against LICENSEE, or if LICENSEE becomes insolvent, makes an assignment for the benefit of its creditors or an arrangement pursuant to any bankruptcy law, discontinues all or a significant portion of its business, or has a receiver appointed for it or its business, then this AGREEMENT shall automatically terminate without any notice being necessary.

5.3 Effect of Termination or Expiration. Upon expiration or termination of this AGREEMENT, all rights granted to LICENSEE hereunder shall revert to GM, and LICENSEE shall refrain from producing LICENSED PRODUCTS utilizing the Data Stream Information. LICENSEE will return to GM all Data Stream Information and other proprietary information provided to it by GM pursuant to this AGREEMENT. Furthermore, LICENSEE agrees and understands that its obligations under the Confidentiality provisions of Article 4.5 remain in effect after expiration or termination of this AGREEMENT.

5.4 Disposal of Inventory. Unless LICENSEE applies for, and is granted a new AGREEMENT, LICENSEE may not produce the LICENSED PRODUCTS embodying the Data Stream Information upon expiration or termination of this AGREEMENT, but LICENSEE may dispose of any existing inventory of LICENSED PRODUCTS for one (1) year thereafter provided: (a) termination is not due to a failure to comply with the "Compliance With Laws" (Section 4.1) provision of this AGREEMENT, and (b) LICENSEE notifies GM in writing, at least thirty (30) days before expiration or, in the event of termination, ten (10) days after termination is effective, of the quantity and description of the LICENSED PRODUCTS then in inventory which LICENSEE desires to dispose of ("DISPOSAL INVENTORY"). GM shall have the right, upon reasonable advance notice, to conduct a physical inventory or take other reasonable means to verify the accuracy of the DISPOSAL INVENTORY.

VI. MISCELLANEOUS PROVISIONS

6.1 Governing Law. This AGREEMENT shall be governed by and construed in accordance with the laws of the State of Michigan, and each party agrees to submit to the jurisdiction and venue of the applicable courts therein.

6.2 Non-Assignment. This AGREEMENT and the Licenses granted therein are personal to LICENSEE and may not be assigned or otherwise transferred by LICENSEE without the prior written consent of GM, which consent shall not be unreasonably withheld. Any attempted assignment or transfer without such consent shall be void and shall automatically terminate all rights of the LICENSEE under this AGREEMENT.

6.3 Notices and Written Communications. All notices, payment of fees, or other communications required or permitted under this AGREEMENT shall be in writing and deemed given when sent by certified or registered mail and addressed to the respective party hereto as follows:

LICENSEE:

GM: GM Licensing Program
GM Licensing Coordinator
28635 Mound Rd
Warren, MI 48092

6.4 Relationship of the Parties. LICENSEE is an independent contractor, and nothing in this AGREEMENT shall constitute or be construed to create a partnership, joint venture, or any other agency or employment relationship between the parties. Neither party is authorized to enter into any agreement on behalf of, assume any obligation for, or otherwise bind the other party financially or otherwise.

6.5 Entire Agreement and Non-waiver. This AGREEMENT is the entire agreement and understanding between the parties relating to the specific subject matter hereof, and cancels and supersedes all prior written or oral agreements, arrangements, and understandings between the parties relating to the specific subject matter hereof. This AGREEMENT may be amended or modified only by an express writing signed and dated by both parties.

6.6 Severability and Headings. The provisions of this AGREEMENT shall be severable and if any AGREEMENT provision shall be held or declared illegal, invalid, or unenforceable, then it shall not effect any other AGREEMENT provision or the interpretation, effect, or enforceability of this AGREEMENT. The headings in this AGREEMENT are used for convenience only and shall not be construed as a part of the AGREEMENT or impact the meaning, interpretation, or effect thereof.

The parties hereto indicate their understanding of and full agreement with all the foregoing by its duly authorized representatives' signature below.

GENERAL MOTORS CORPORATION
Service and Parts Operations

By: _____

Robert A. Brown, Jr.
Manager, Service Legislation & Licensing

Date: _____

LICENSEE:

By: _____

Name: _____

Title: _____

Date: _____

LICENSE AGREEMENT EXHIBIT A

LICENSEE:

GM LICENSED INFORMATION

Data Stream information that will be provided to tool manufacturers are the definitions of electronic messages that are transmitted between a test tool and the vehicle to perform diagnostic procedures. This includes two basic types of messages:

- Type I and Type III(bi-directional) data stream information for **emission related diagnostic procedures**, including engine, transmission, and transaxle control modules (Powertrain) for the 2004 and 2005 model years.

- Type I data stream information, diagnostic procedures for most Body, Chassis and Networking control modules for 2004 & 2005 model years. **And Type III (bi-directional)** data stream information, diagnostic procedures for most **Body, Chassis and Networking** control modules for the **1996-2004** model years and the **2005** model year.

ANNUAL LICENSE FEE

Total License Fee = Fifty Thousand Dollars ($50,000.00) US Currency

Mr. STEARNS. Thank you very much.

I ask unanimous consent that we let the chairman of the full committee have his opening statement. It is bill that we are talking about, so I think it is appropriate and affirmative. So without unanimous consent, I so offer Mr. Barton.

Ms. SCHAKOWSKY. Mr. Chairman, if I could.

Mr. STEARNS. Yes.

Ms. SCHAKOWSKY. Just say in accordance with the tradition and the rules of this committee, I happily ask the chairman of the committee to be allowed to make an opening.

Mr. STEARNS. And I appreciate your affirmative action here and your spirit.

Mr. Barton, you are working with those high flattery comments from the other side.

Chairman BARTON. Well, I appreciate Ms. Schakowsky's generosity. If it really is a problem, I do not have to be recognized by unanimous consent. I am willing to be recognized to ask the first 5 minute rounds of questioning.

Mr. STEARNS. You have been recognized, Mr. Chairman, and you are speaking on your time.

Chairman BARTON. All right. Well, I am not going to regurgitate my opening statement, which was put into the record. But I am generally going to make a statement and then ask one question.

I have been involved in this issue for the last 3 years when some of my individual car repair shops in Texas came to me and talked about the difficulty of getting information to repair their newer model cars because of all the computer diagnostics that were required.

The gentleman down at the end of the table, Mr. Dave Scaler, came to my office earlier this year, hooked up his laptop computer and ran me through a real time demonstration of his attempt to get some information about a particular part for a particular car that if I recollect properly, was currently in his repair shop in New Jersey and he needed to repair, and he could not do it. And he had gotten all the required—he had paid all the fees and gotten all the passwords. He had done everything that he could do and he spent about 15 minutes in my office going through the various screens and ended up not getting the information.

And the Automobile Manufacturers Task Force that has been working with the repair shops and the auto repair parts groups admits that on average it takes somewhere between 8 to 15 days to get this information or get the parts. I do not know many people that are going to wait eight to 15 days. I guess if you absolutely have to, you will. But most of us, we take our car into a shop, we expect that day or the next day or maybe 2 or 3 days depending on the backlog, our car is going to be repaired.

And, as I said, I have been involved in this for the last 3 years. And the purpose of this hearing is not to generate enthusiasm for the bill that I have sponsored, 2735 which I appreciate all the stickers out in the audience. But this is not a legislative hearing on a particular bill. This is one last attempt to get the manufacturing community to work with the repair community to solve this problem.

You know, I did not hear the opening statements and I have read the testimony, although I have not gotten to hear, but from what Mr. Bass told me when he was here, about the half of the group were patting me on the back and about half the group were kicking me in the bottom which means that I am probably right on point. You know, the bill is about what it ought to be and we do not want to have to engage in a legislative process. We would rather solve this through voluntary means. But the facts are the facts.

And my good friends on the automobile manufacturing side, some of you have dragged your feet and you have made a system that even when the people like Ms. Cardwell who has a very large shop pays the fees, buys the equipment, it is very very difficult to get this information.

Nobody wants proprietary information. My God, what would they do with it if they had it? General Motors spends billions of dollars to design some of this equipment in these new models or Ford or Chrysler or Toyota or Mercedes; pick your manufacturer. No repair shop in Sacramento, California is going to have $5 to $10 billion if they got proprietary information to use it. That's ludicrous on the face of it.

All these folks want is the ability for people that do not buy new cars and do not have them under warranty that buy used cars and have to go to the independents to get their cars repaired because they cannot afford a new car that is under warranty or go to certified dealer and pay the higher labor costs and all of that. They just want the ability to take their car in and have it repaired and inspected and looked at in a reasonable time period at reasonable cost. And if we can do that by voluntary means, so be it. But if we cannot do it by voluntary means, the votes are here in this committee and the floor of the House and I think on the Senate to pass this bill or something similar to it in the very near future and make it mandatory.

So my question is to the manufacturing representatives what is it going to take to get a system that does not just look good on paper, but actually works in a real time basis that people like Mr. Scaler can actually use it after they paid the right fees and all of that to get the information, to get the parts to repair the cars in the independent shops?

So I would ask that to—I guess we would start with—I would try to Mr. Dana. How about Mr. Dana? Not to pick on you, but——

Mr. DANA. Feel free to pick on me, Representative Barton.

I would like to be able to tell you that in fact we do make all of our information available today in an agreement with the ASA as we talked in previous hearing with your committee. We are making all that information available. In fact, let me point out one——

Chairman BARTON. So you dispute this 8 to 15 days?

Mr. DANA. Yes, sir I do. These websites are available 24 hours a day, 7 days a week. You can access them anytime, and you can access them for either a short period of time for a relatively inexpensive price or you get an annual subscription for a higher price.

Chairman BARTON. Mr. Scaler, do you want to respond to that?

Mr. SCALER. It is our opinion, obviously, that that is not correct. And unfortunately most of the statements that are made that way

are traditionally done by people that are not on the technical level that need to drill down to get the car done. Traditionally that is where on the surface it looks okay, but it has been our experience that the technical end is where that falls short.

Chairman BARTON. I have used more than my time. I will have some questions for the record. But I think you get my point. I want a voluntary solution and I want the manufacturers to work with the repair people so that we get this done so that it actually works in the real world and not just on paper.

With that, Mr. Chairman, I yield.

Mr. STEARNS. I thank the Chairman.

I will start with the opening questions, and Ms. Cardwell, I cannot resist and this is really a compliment to you. If your mother told you when you were 12 years old that you would grow up to be a CEO of a car care center, I do not think you would have ever believed it, would you?

Ms. CARDWELL. And she would not have believed it.

Mr. STEARNS. Yes.

Ms. CARDWELL. Nor would I.

Mr. STEARNS. No. I know.

Ms. CARDWELL. All of my friends told me when I went to work there, I cannot even picture you there. But things went well.

Mr. STEARNS. I am going to ask you a question, and Mr. Scaler when I looked at this issue about the same time Mr. Barton did, the Chairman, the question came up why has not one of the 50 States passed laws? I mean, if this is such a serious problem across the United States, why have not one of the States passed laws to do just what 2735? Why is the Federal the first person to ask it? Is it because you have been frustrated and you cannot get any States? And is it possible when you went to the State legislatures there was not enough justification, you could not convince State legislature? Because as I understand, you folks have tried on a State level, particularly California.

So I will start with you and then Mr. Scaler, you might want to talk about that or anyone else, Mr. Donovan. So go ahead.

Ms. CARDWELL. Yes. Thank you.

I was privileged and they would not have been able to keep me home from testifying on SBL1146 in California, which was limited only to emissions equipment.

Mr. STEARNS. Right.

Ms. CARDWELL. And that was federally mandated.

Mr. STEARNS. Right.

Ms. CARDWELL. But frankly it was not having. The system was not working. And in that way it is a perfect——

Mr. STEARNS. In that case it was probably a more powerful argument than ever before.

Ms. CARDWELL. Absolutely. Absolutely.

Mr. STEARNS. Yes. But yet you could not pass it on the State level?

Ms. CARDWELL. We did.

Mr. STEARNS. You did pass it?

Ms. CARDWELL. We succeeded.

Mr. STEARNS. Okay.

Ms. CARDWELL. Yes, we did.

Mr. STEARNS. Has it passed in any other States?

Ms. CARDWELL. I do not know that any other State has done that, but they are looking at it.

Mr. STEARNS. Mr. Donovan, do you know? No? Okay. Okay.

Mr. Scaler then?

Mr. SCALER. The only other one that I am familiar with was Arizona.

Mr. STEARNS. Okay.

Mr. SCALER. Lost by two votes, I believe.

Mr. STEARNS. Okay. Okay.

Mr. SCALER. But beyond that I am not qualified to tell you.

Mr. STEARNS. Well, I am just, you know, trying—because generally when we are up here at the Federal level, this is made to—it has been a battle in the States and sometimes they want the State preemption because they say we need one bill because there is 50 different State laws.

And the other thing is if this is such a problem, why has not the association or anybody sued the automotive manufacturers? It seems like the courts could solve this problem, too. I am just taking the devil's advocate from the standpoint up here we are looking at another Federal piece of legislation that is going to impact everybody.

Yes?

Ms. CARDWELL. Because I am a shop owner, I am not a lobbyist or a paid professional and here I did not actually realize, but I understand that the EPA did adopt that on the Federal level——

Mr. STEARNS. Oh, they did?

Ms. CARDWELL. [continuing] SBL46 was passed.

Mr. STEARNS. Mr. Dana, you know you have heard what these folks have said. And you have heard what the Chairman said. I mean, it seems to me that it would be very easy to design easy access to these onboard diagnostic systems. I mean, that would be the first step. Perhaps a USB port, something like computers. Something very easy. It is not so complicated so that the average person could go in and quickly repair a car on weekends.

By golly, I ran a small business. If I had to wait 4 or 5 hours to get information, I could not survive every automotive repair to go in and do that website. I mean, Mr. Scaler is doing yeoman service to go through and take the time. And all these small businesses have to do it, and Ms. Cardwell's business. I mean, that is outrageous that they have to spend so much time finding this information; make the call, do the fax, do the email. I mean, you know you cannot run a business and make any money in America. So I mean why does not the Alliance work as a first big step to make this a USB port, simple, just bingo we got it all?

Mr. DANA. Well, let me explain if I can, Mr. Chairman.

Mr. STEARNS. Just short, please.

Mr. DANA. There is a standardized connector on all cars that we worked carefully with other parties to make sure to design it properly so an OBD tool can be inserted into that port.

Mr. STEARNS. Yes.

Mr. DANA. And you can read up problems to fix the car.

Mr. STEARNS. Yes. But then you get this thing that says unidentified code is needed.

Mr. DANA. No, you do not, Mr. Chairman.

Mr. STEARNS. Well, I mean that is what he said. He says he could not get the code so he has got to go on the Internet.

Mr. DANA. Can I explain the Dodge problem that Mr. Scaler brought up?

Mr. STEARNS. Well, I would like to keep it general. I mean, we have heard enough cases here, and we have even heard from the Chairman in his office. I mean, it seems like you folks could eliminate this problem, just reach out and make it easier for them.

Mr. DANA. We have eliminated the problem. All service information from all auto manufacturers is available on websites today 24 hours a day, 7 days a week. You can subscribe to it for a short period of time, which is to repair a vehicle for about $20 or you can do an annual subscription.

It is my understanding that the independent repair shops today rely pretty much as they did in the past on ALLDATA and Mitchells and other service providers who provide them general information on repairing most cars. If they cannot find the information they need in those manuals or those websites, they have the ability to go to the websites of the manufacturers for $20 or less to access information they need from that manufacturer's website.

Mr. STEARNS. Okay. Mr. Dana, you heard Mr. Haas say, and I think you said this, states that the complaints filed with NASTF this year have an average response time of 15 days. I think that is what you said. Is that equivalent to response time for franchise dealership? How does 15 days help a consumer with a car problem? Goodness gracious. I mean, how is anybody not have their car for 15 days? Does that make sense, that question? It is for you.

Mr. HAAS. Well, I think it makes perfect sense and it is not simply——

Mr. STEARNS. Could you go without your car for 15 days? Could you go without?

Mr. HAAS. No, I would not go without my car for 15 days.

Mr. STEARNS. Okay. So——

Mr. HAAS. And I do not think that people are going without their cars for 15 days. I think——

Mr. STEARNS. But you said in your opening statement that the average response time is 15 days.

Mr. HAAS. That is a response to a complaint.

Mr. STEARNS. Yes.

Mr. HAAS. So in other words when Mr. Scaler would submit a complaint to NASTF the average response time, and I think the correct number is 8 days, but I think the average response time is 8 days for the manufacturer to respond to that complaint. That does not mean necessarily that it took him 8 days to give him that information.

I mean, I can also give you examples of manufacturers that have responded to complaints within 30 minutes.

Mr. STEARNS. No, I know. But you said——

Mr. HAAS. But the point is——

Mr. STEARNS. I am using your words which you said the average response time is 15 days. At least we got that from your statement.

Mr. HAAS. Yes. Right.

Mr. STEARNS. Those are not my words, those are your words.

Mr. HAAS. That is correct.

Mr. STEARNS. I mean, it seems like your case has got to fall and rise just on what you have said. And if 15 days is the average complaint, then the question is why and what can be done? And I guess another question is is this same franchise dealers having to wait 15 days? Probably not. But Jimmie's Car Garage is going to have to wait 15 days. So I think a lot of this hearing comes down to just your little statement there.

Mr. HAAS. Well, Mr. Chairman, I cannot answer how long a franchise dealers would wait for a complaint that would be submitted. I have no idea.

Mr. STEARNS. Yes.

Mr. HAAS. I think there are a couple of things that are real important here. Is that one manufacturers are doing a better job than they have when we started. That time of them responding to a complaint is shorter today than it was back in 2000 when we started the process. So they are improving. That is progress. Okay.

And I think the important point is that once an issue is identified with service information in a manufacturer's website and a complaint is initiated and it is responded to, that problem is solved. We do not have to go back for the next shop or the next consumer or the next vehicle owner and have that same problem where that information is still nonexistent. So they are solving problems.

Mr. STEARNS. My time has expired.

The gentlelady, Ms. Schakowsky.

Ms. SCHAKOWSKY. I have to admit to all of you, I am really confused by what is the problem here. Because I am hearing real life examples, I presume, about the inability to get information from some people who run independent auto repair shops. And then I am hearing that no, that simply is not the case, in my experience it really has not happened. And then I am hearing, I want to follow up on the Chairman's comments, that well it can take—yes, the information is there but it can take up to 15 days, maybe it is just 8 days. That seems to me an unreasonable time.

I imagine that complaints are filed when you cannot get information. And so the result of that delay would be that someone is not getting the information to repair their car.

I was also impressed with what Mr. Donovan said; this notion of the right of car owners to own the information generated by their automobiles. Do I really own my car when I pay it off if I do not have the right to the information to keep that car running? I am not talking even about dealers now. Do I as an owner own my car if I do not have that basic information?

And finally, the confusing part that if there is not a problem, if the information is accessible, then what would be the harm in having legislation that would say that that information must be given? I mean, if that is already happening and everybody is all on the same page—oh, and let me ad one ore thing, Mr. Haas. You said that the people who oppose this legislation are not here because they are home working.

Now, I look around this room. I do not know anybody here, but I have to assume that they are not a bunch of slackers. That they have come here, probably at either their own business costs or out of their own pockets to say that they are for this legislation and

that they are hard working entrepreneurs much as those of you who oppose this legislation say that you represent.

So I am trying to understand this division among those of you in the business and where the truth lies. Nobody seems to be willing to say that independent technicians do not have the right to this information. Everyone seems to agree with that. The disagreement is over whether or not that information is really available. That seems like an empirical answer ought to be available.

What am I missing here? I am going to let Mr. Scaler and Mr. Haas gives their views, and then anyone else can chime in.

Mr. SCALER. I think essentially what you are hearing is the fact of the matter is when the complaints go in, the resolution or viewed resolution is that the manufacturers responds to the complainant. Now, no one really knows, particularly on that side, if it was really resolved. They just know that the manufacturer said they have taken care of it.

And in my case, and virtually every time I have complained to the manufacturer I have direct examples, many others, that it was not resolved or it was resolved in a way that I couldn't do anything about it. In one case I was told that I could have the equipment if I can ship the container over from Europe because the two in Indiana were slatted for dealership and not allowed for me. So, you know, at that point and in this particular case, it was 70 days that I waited. Then, you know, it becomes a point of it is almost——

Ms. SCHAKOWSKY. But that complaint would be viewed as resolved?

Mr. SCALER. Resolved because the manufacturer contacted me with a resolution.

Ms. SCHAKOWSKY. I see.

Mr. SCALER. Of course, it was not practical in any form. But at that point, you know, we have tried everything and at some point you cry uncle. And certainly the average technician does not go through most of the times that I go back and back again. I just happened to be a little more relentless at that. The average technician just says well I guess so——

Ms. SCHAKOWSKY. Well explain to me then, Mr. Scaler, why is it that some people who seem to be in the same business as others are saying we do not need this legislation?

Mr. SCALER. Quite frankly I feel it is because they do not fix cars. They used to fix cars. They no longer do. They have the same credentials as me, but when we have to do the job.

When we submit a complaint or when I submit a complaint, I expect someone to be there going well first of all, it is probably legitimate if it is from me because I have some history here. And second, I was hoping that someone was actually trying to get it.

In all the cases, in the example I showed you today, I was just told that it wasn't there. And I was convinced by all the parties, no one actually even checked, nobody tried to click a couple of clicks to see if I had. And it was just as long as they responded, then it was okay. And still not resolved.

Mr. DANA. Representative Schakowsky, could I answer that question for you?

Ms. SCHAKOWSKY. Okay. Sure.

Mr. DANA. Today other deals and independent repair shops have access to the same vehicle information, service information tools, diagnostic equipment. That is the fact of the matter.

One of the issues—and we are not perfect, okay?

Ms. SCHAKOWSKY. Well, wait a minute. But that is not—I know you keep saying that and I keep hearing that, but we are given examples where they did not have access to that information.

Mr. DANA. Let me give you an example. Mr. Scaler brought up an issue, okay. We are not perfect. We have thousands and thousands of pages of service information that changes every year, and we have made some errors.

Ms. SCHAKOWSKY. Yes, but wait a minute. Errors, but he was told repeatedly that the information was available online and then he needed to get a PIN number. I mean, I suspect that there are others who could give many other examples. I am not saying that you should be perfect. But it seems as if this information is not routinely available in the same way it is to dealers. You are saying that is just not true?

Mr. DANA. And I respond particularly in the case you are mentioning. In the case of the PIN number with a Dodge car that he mentioned. DaimlerChrysler was aware of the issue and is correcting it, okay. It was in fact a problem. DaimlerChrysler is correcting that problem. That was in fact a problem. It was an error in the software programming that did not allow the repair person to have the right code.

The PIN is available to the dealership on the website, and the PIN is given to the owner of the vehicle when he purchases it. What happened was there was a mistake. DaimlerChrysler became aware of it. Has notified EPA and ARB, because they have to do that under the rules that we operate under.

This issue could have been resolved sooner if the CARE representatives were a part of NASTF and worked through the normal complaint process and told DaimlerChrysler about this, we could have been working on it sooner than we did.

The way DaimlerChrysler found out about this problem was that they went to the website, the same website that is available to the aftermarket independent repair shops and figure out what the problem was, and they are now fixing it.

Mr. STEARNS. All right. The gentleman from Michigan.

Mr. UPTON. Well, thank you, Mr. Chairman.

As I listen, I appreciate the testimony, I appreciate the hearing as well. And I got to say that my dad was once in charge of service for a Fortune 100 company. And one of the things that his team did was develop the 800 number. They did it. And I know that when I call that 800 number for service as a consumer, I get a certain individual and I can ask questions and be directed to the closest repair shop. And I also know that there is another number that I sometimes ask for that the mechanics can use themselves. I think you can more detailed information and specifically to apply for parts and how to install those if they need to do it.

And 1 day next week I am intending to take my Trail Blazer to my favorite mechanic in St. Joe, Michigan. I have been going for decades to a place called All American Shell, and they do a good

job. And I have put hundreds of thousands of miles on my vehicles in the decades that I have been taking my car there.

And I am going to ask the mechanic on Monday if they have ever had a problem, and I will report back what his answer was. I got an unsolicited fax a little bit earlier this morning saying from Dr. Dan's Service Station in Kalamazoo, Michigan, pretty big operation. He's on Stadium, which is the major road in Kalamazoo. And it says business owners for 20 years—as business owners for 20 years we have made some agreements with the auto makers to make available through the Internet and other sources the information we need to repair the newer cars. I feel we should give this a try before we start to change the laws on this subject.

My bet is that my mechanic on Monday will tell me the same thing. And, again, I will report his answer. But as I listen to Mr. Scaler's comments and I walk through the review of your testimony, I am surprised that a dealer—I believe that was a what? Was it Volvo. What was the brand?

Mr. SCALER. BMW.

Mr. UPTON. BMW. I am surprised that a manufacturer of that size would not have someone available to walk someone who is a professional—you versus me—through the process of how to fix that car. And I guess I need to ask Mr. Dana as you say that your service information is on websites 24/7 for less than $20. You think you have a pretty good system in place. Why is it that someone like Mr. Scaler, who I think everyone could identify with the description that he provided, why could not someone like that get that provided under the system that is in place now under a voluntary agreement? And I presume that BMW is a member of the auto Alliance, are they not?

Mr. DANA. Yes. He should be able to get access to that information, Mr. Upton. Let me point out something. One thing about——

Mr. UPTON [presiding]. Well, hold on 1 second.

When you, Mr. Scaler, when you described your situation in Mr. Barton's office, how long ago was that? This year, last year, 2 years ago?

Mr. SCALER. This year.

Mr. UPTON. This year. Okay. All right.

Mr. Dana?

Mr. DANA. What we are hearing about in this hearing are one or two problems that exist, not about the millions of repairs that are done everyday, every year to fix cars properly. You can always one or two faults in any system. But the real important story here is that most independent repair shops, dealerships, everybody who repairs cars has better access to information today than they had in the past, can get the information they need to repair cars properly. But pointing out the one or two problems is the purpose of the NASTF. That is why we have the complaint form. That is how we can make sure that we fix all the problems that exist.

But keep in mind that——

Mr. UPTON. How many complaints usually come in the course of a month?

Mr. DANA. John's testimony had that in.

Mr. HAAS. Last year there were 88. To date this year we have had 33.

Mr. UPTON. Thirty-three complaints out of hundreds of thousands?

Mr. HAAS. Right. Actually millions.

Mr. DANA. Millions.

Mr. UPTON. Millions. I guess it goes back to the old saying that is popular in our family: Was you always perfect? That's a pretty decent record.

Mr. Donovan?

Mr. DONOVAN. Thank you for recognizing me, Congressman.

If I may just address it. I think that some of the problem is that the facilities in the industries have done as Mr. Seyfer have identified and said that we know that there are a certain amount of vehicles we cannot do. We take them to the dealership for the customer to eliminate the inconvenience. But our concern is the bottom line is who ends up paying for that? The consumer is the one that ends up paying for it for the cost in many cases.

At some point Mr. Scaler had talked about all the hours and hours to find the problem. There is a cost associated with that. Some of it is eaten by Mr. Scaler and Mr. Seyfer, some of it goes to the individual customer. And that is our concern as we move forward.

Mr. UPTON. Well, I know my time has expired, so I yield back.

Mr. STEARNS. The gentleman from Michigan, Mr. Dingell.

Mr. DINGELL. Mr. Donovan, in the situation that you have just been describing to my colleague, you are not alleging that there is a failure on the part of either the dealer or the manufacturer to make the information that is needed by the independent repairman available to that independent repairman, are you?

Mr. DONOVAN. I am not making that suggestion. I think that was already made by both Mr. Seyfer and——

Mr. DINGELL. You are not making it today? You are not making that suggestion?

Mr. DONOVAN. Yes. The information as I said in my opening statement, that information we have come a long way in the last couple of years. There is a lot more information available today. The problem that we do have is that the information is costly, it is difficult to manage on the Internet as well.

Mr. DINGELL. Now, Mr. Scaler, how many complaints have you filed with NASTF?

Mr. SCALER. The complaints that I have I will be happy to share with you?

Mr. DINGELL. How many?

Mr. SCALER. Realistically, I have had three complaints.

Mr. DINGELL. Over what period of time?

Mr. SCALER. Over a 3-month period of time. One complaint, which I just shared with you, another complaint which I waited 70 days for the response which I can also share with you. And at that point got——

Mr. DINGELL. So you had three complaints. This was three complaints out of what size universe of transactions?

Mr. SCALER. But, no, you do not understand something here.

Mr. DINGELL. No. You have a lot of transactions, you file three complaints. How many transactions were the geneses of those three complaints?

Mr. SCALER. Probably a better way to——

Mr. DINGELL. Fifty thousand?

Mr. SCALER. [continuing] put that——

Mr. DINGELL. Ten thousand?

Mr. SCALER. Certainly. Because in the case of Chrysler and this example, that is every Chrysler product we work on.

Mr. DINGELL. Okay.

Mr. SCALER. So that we continuously, we do not go back over and over. And in the case of BMW, it is every BMW that comes into the store.

Mr. DINGELL. Well, three out of all the cases that you dealt with, is that right? Three?

Thank you.

Now, gentlemen—this question to Ms. Cardwell. You are aware of the fact that the FTC has authority over restraint of trade, unfair and deceptive acts in commerce and also violations of the antitrust laws, are you not?

Ms. CARDWELL. I understand that.

Mr. DINGELL. Have you made any complaints or has anyone at the table made any complaints to the FTC about the situation to which you complain today?

Ms. CARDWELL. Well, I think that it is inexperience on most of our parts as shop owners as to how to make the complaint process work for you. I understand NASTF has a process. But the average—all of my technicians decide very quickly when they get onto a website, OEM or otherwise, as to whether they can drill down in a fairly effective way to get the information. It takes them a heartbeat.

Mr. DINGELL. So what you are telling me is that no one at this table has filed a complaint with the FTC over these matters?

Ms. CARDWELL. That's true as far as I have not made a complaint, no.

Mr. DINGELL. Now this to all the panelists here, and I would appreciate a yes or no or I do not know.

To the best of your knowledge the FTC—really does the FTC have any expertise in defining what a trade secret is or in determining what information qualifies as a trade secret?

Would you answer yes or no or you don't know, starting with Mr. Scaler and going through Mr. Haas?

Mr. SCALER. I do not know that.

Mr. DINGELL. Sir?

Mr. HAAS. I do not know that.

Mr. DONOVAN. Do not know.

Mr. DANA. From my reading would indicate no.

Mr. DINGELL. Sir?

Mr. CABANISS. I don't know, sir.

Mr. DINGELL. Ms. Cardwell?

Ms. CARDWELL. No, sir I do not know.

Mr. DINGELL. Okay. Are you aware, and again yes or no, that H.R. 2735 would weaken existing laws that protect trade secrets of American manufacturers by instituting new processes within the FTC? Is your answer yes or no, Mr. Scaler, and then going across or you do not know?

Mr. SCALER. I do not know.

Mr. HAAS. Yes.

Mr. DONOVAN. I don't know.

Mr. SEYFER. Yes.

Mr. MERRILL. I do not know.

Mr. DANA. We have our expert attorney here to answer questions, if that is appropriate for you, sir.

Mr. DINGELL. Okay. Sir?

Mr. STEARNS. You certainly can use your counsel to advise you and then you could answer for the ranking member.

Mr. DINGELL. I will be happy to have the answers later if you wish.

Mr. CABANISS. Yes, it would.

Mr. DINGELL. And, ma'am?

Ms. CARDWELL. My reading of the bill it would not.

Mr. DINGELL. Okay. Mr. Chairman, those are the questions I have. I thank you.

Mr. STEARNS. I thank the member.

Gentlelady from California, Ms. Bono.

Ms. BONO. Thank you, Mr. Chairman, very much. And thank all of our panelists for your time today.

And, Mr. Chairman, we appreciate the sun tan we are getting from these extremely bright lights.

Mr. STEARNS. I apologize for the heat here. We have asked—the maintenance people came up and they said the thermostat is set at 50 degrees. So that is all we can do.

Ms. BONO. I would just like to sort of restate some of what my colleagues have said. I think, too, this is a little bit confusing for the most part. But I was encouraged to hear Chairman Barton talk about a voluntary system as it currently is. And I think we in Washington feel is if we offer legislation, you will hear our footsteps and make sure you are doing the right thing. And that we will not need to enact the legislation.

On the presentation that the first panelist Mr. Scaler did, I think I am a little bit—what I see here is something that we are plagued with as Americans any longer, and that is the wonderful world of the Internet.

All you have to say to tech support to anybody longer, and we all shutter, because we know it is a 45 minute wait. You go to a website any longer, you cannot find a telephone number. Nobody is going to be willing to help you. As Chairman Upton said, is there a number at the end of the day that you can call.

When you said that you went to the website, everything was right with the diagnostic on the Chrysler. You got to the final webpage that asked you for the PIN number. And I think you did say in your testimony, but where would that PIN be found?

Mr. SCALER. Let me clarify. That PIN number is found in the tool. So in order to complete that repair, I needed to have a subscription to the website, I needed to own the factory tool which is approximately $8,000 depending on how it is equipped.

Ms. BONO. And does the legislation that is being under consideration, does that address that specifically?

Mr. SCALER. It does, because it would allow me to get that number, which currently I cannot get. And there is many numbers like

that which is the final step of the repair that do not allow the repair to get completed.

Ms. BONO. Well, could this be a simple fix of the manufacturer that it is a little bit of a reverse that the PIN belongs with the hardware or whatever—I do not remember what it is in this case. It is a gasoline engine controller.

Mr. SCALER. In other words, when we replace the engine's computer, the final step is to put in the PIN number otherwise the vehicle will not start. Without that PIN, we have to tow the car away.

Ms. BONO. But that PIN should be on your side of the equation, not on the——

Mr. SCALER. That is correct. How we get that currently, just so you know, is negotiation with the dealer parts center. And depending on that, determines our success in getting the PIN.

Ms. BONO. On the BMW PowerPoint here you have, it seems to me as I am trying to follow out, you move from in full disclosure—my brother is a mechanical engineer with the automotive industry, and some of this I have heard complaints of around the dinner table.

But you ask to the P coding, you move to the next website and it was a 320-3I and then it says M52 I guess was the model number coop. But the next page you went to an M73. Is that an error or is that a confusing website that took you from the M52 to M73 or are they one in the same?

Mr. SCALER. No. Those are chassis numbers. And one things that shows is all the pages. What that particular section represents was the amount of times I went back suggesting it was not there and the amount of times that the response was yes it is.

And, of course, the final response only copied to me was well, you were right.

Ms. BONO. Except that the jump from the M52 to the M73 seems like perhaps a little—could that be input error when you were searching the information?

Mr. SCALER. No. It was not a matter of the wrong chassis number. It was a matter of showing the extent that I went to to try to find any repair information for that code.

Ms. BONO. But if you are trying to find the repair information and you tell it is an M52 and an M73 comes up, could that not be a problem?

Mr. SCALER. Yes, that would be a problem. But that was not the case and is not the case.

Ms. BONO. Well, that is how it indicates to me under your PowerPoint.

My confusion is, is again if it can be voluntary because I fully understand with everybody's consideration would like to see exactly what we are all trying to achieve here. But first and foremost is this just the lack of the true inter-operability of a human being with solely numbers on the Internet, can you pick up the phone and call somebody and get the answer? And if we can achieve it in that way, it seems to me with a voluntary system maybe we could go a long ways. But I think when you say you called—I forgot whether you said BMW and you pointed out there was an error on

the website and they did correct it, to me that is a little bit encouraging as well.

Mr. SCALER. You did see, though, that ultimately it is not corrected. Just so you know that the $20 number you could not achieve that task for $20. And I think that is important. So that there is a significant difference. And what I think is important there is the fact that, again, it was four times. Now, quite frankly you know in that particular case I was very diligent. But once they come back and once I knew that no one on the other side was checking this, auditing it other than myself, then I realized that the response was always going to be the same. And it is the response we are hearing today, is that everything is there.

Ms. BONO. I believe I am over my time.

So thank you, Mr. Chairman.

Thank you.

Mr. STEARNS. Thank the gentlelady.

Mr. Gonzalez.

Mr. GONZALEZ. Thank you very much, Mr. Chairman.

About a month and a half ago I had a meeting with members of the Texas branch of the Automotive Aftermarket Industry, and of course it is an interesting group because some are parts, obviously they deal it parts, the others are actually the repair person. And then you had another contingent that just basically work on parts; like what we refer to as the machinists and such. There was not really any agreement as to the need for this legislation. They pointed it out to me and they were telling me about. It looked like an attractive proposition at first blush, especially since someone by the name of Barton happens to be the sponsor. But I asked what is the need. Because the last thing that we really want to do, contrary to popular belief, is really pass something that is not necessary. And I think this is what this hearing today is all about, is information gathering and trying to get that message out.

What I asked the members at that meeting was supply me with specific instances of individuals who have encountered problems in not having access to information to repair a consumer's automobile. Now I know they are busy and they have not gotten back to me and maybe they will. But I just have not hear anything. And there was disagreement as to the real need.

I am going to break up my questions quickly, because we only get 5 minutes. But it is an important issue.

You know, we all love cars. They got to get repaired. Consumers would like to have choice, this is what it is all about, it is about competition and so on.

I guess the first question is for Mr. Donovan. A dealer and a manufacturer have a special relations, would you not agree?

Mr. DONOVAN. Yes.

Mr. GONZALEZ. And certainly responsibilities that they have, and it is one obviously based on economics and other duties and responsibilities. Should that place a dealer in a special position available for more information, easier access? And the other thing, too, is of course their mechanics are trained by, my understanding is that they are trained on one particular product by that manufacturer. There is going to be more information. Should they enjoy any kind

of advantage as opposed to those that do not have a relationship with the manufacturer?

Mr. DONOVAN. Not at the expense of consumer's choice. We believe that the consumer should have the right to choose the repair facility that they can go to and without this, it does not give them that choice.

Mr. GONZALEZ. So whatever process the manufacturer may have so that the dealer can have easy access to the information necessary to repair the cars should be available to an individual that does not enjoy that same relationship or is basically paying for that same relationship?

Mr. DONOVAN. Keep in mind the independents are paying for it as well. And what we are asking for is full access to that information at a reasonable price so that that cost—so that the consumer vehicle can get repaired at their choice of facility and the costs associated with that to get the information is passed on at a lesser amount than is sometimes the case, as Mr. Seyfer and Mr. Scaler allege, the hours and hours that are spent trying to get these cars resolved. That obviously has to go somewhere and our fear is that too often it goes back to consumer, the cost of that.

Mr. GONZALEZ. Thank you very much for your answer.

And this one will be, I guess, to Mr. Scaler. You indicated you needed this PIN number, this information. If I am the owner of the car, and I am not sure we are talking about the same thing, Mr. Dana, that that is available to me in the glove compartment somewhere, you are my agent. Are you not authorized in my behalf to act on my behalf and use that information?

Mr. SCALER. No. In the example I used, unfortunately that was a case where we had all the information, the equipment and one of my technicians was the owner of the vehicle, and still could not get the number even though he owned the vehicle.

Mr. GONZALEZ. All right. Mr. Dana, given that same example, again I mean they are my agent. I think you have indicated that information should be available to me as the owner of the vehicle.

Mr. DANA. The owner of the vehicle gets the PIN when the car is bought new. It may be if it is a second hand car that the second owner does not know where the PIN is. But the owner of the car when it is bought new has a PIN that can be accessed, at least access that information.

Mr. GONZALEZ. I purchase the car at a later date, I do not know where the PIN information is, but I am the owner. Should I not be entitled to that information?

Mr. DANA. Again, I will point out that the problem that was brought up by Mr. Scaler is one which is a real problem. It was a software problem. It is being fixed by Chrysler. And if CARE would have been a participant in NASTF and notified us through the complaint form system we have, we would have been able to start repairing this problem sooner than we are now. It simply was a fault of the system that needed to be fixed, one of the many faults we have found, but one of the few faults we have found in millions of cars that are repaired every single year.

Mr. GONZALEZ. Back to my basic question, though. The owner of a vehicles, regardless of whether they are the first owner, the sec-

ondary owner or whatever it is, is entitled to get whatever information relating to necessary repairs of the car from the manufacturer?

Mr. DANA. Anyone can access these websites that has all the service information and diagnostic information on them.

Mr. GONZALEZ. But not based on his relationship as the owner of the car or anything like that. It's just Charlie Gonzalaz can go there and I can check out what it takes to fix an Explorer, even though I do not own an Explorer, as long as I have paid whatever fee?

Mr. DANA. Yes, that is correct.

Mr. GONZALEZ. Okay. And the other thing, Mr. Dana, why would this law expose manufacturers to some sort of sort of proprietary infringement that you have not already experienced given the wide access that you have described?

Mr. DANA. We have been dealing with this issue since 1990 and the aftermarket parts markers who are the ones really behind this bill want access to our proprietary information by which we calibrate our vehicles. This information is not necessary to properly repair a car. It is simply something that they could use to make replacement parts more cheaply than they do today.

Mr. GONZALEZ. Okay. I do not think anyone here is talking about information that it is not necessary to repair the vehicle. And I am over my time, but that is an interesting area to leave off on.

Thank you.

Mr. STEARNS. You want to continue, you want to answer, Mr. Scaler?

Mr. SCALER. No. Unfortunately, I may have to be excused.

Mr. STEARNS. Well, you're in luck. We are getting ready to close down the hearing.

Mr. SCALER. Okay.

Mr. STEARNS. I think in conclusion we finished our questions for all of you. And I thank you for your patience.

Ms. SCHAKOWSKY. If I could, Mr. Chairman?

Mr. STEARNS. Sure.

Ms. SCHAKOWSKY. Just ask, make a unanimous consent request for all members to be able to submit opening statements for the record.

Mr. STEARNS. By unanimous consent, so ordered.

We started with the hearing with the idea of how big is this problem and where is this problem. And we have attempted to do that.

I would ask Mr. Merrill, you are sitting next to Mr. Seyfer. Mr. Seyfer has indicated that he is getting all the information he needs. I think that was your question.

So, Mr. Merrill, I think you indicated that independent repair shops account for over 75 percent of the vehicles repaired in the United States. And that percentage is increasing, is it not? I mean, there are more and more people repairing automobiles. Is that fair to say as a real overview that, you know, most of the repairs are being done by these independent repair shops? Seventy-five percent are done by independent repair shops and that number is increasing. And so how big is the problem and where is it? The gentleman next to you saying that he is not having any problems and you are saying there is a whole lot of people that do not seem to have any

problem because 75 percent is being done by independent people. Is that an accurate statement?

Mr. MERRILL. Before I came I made a telephone call to a number of different shops.

Mr. STEARNS. Yes.

Mr. MERRILL. And I asked I am going to Washington, will you give some help and give me some ideas of what kind of problems you are having throughout the whole State of Maine.

Mr. STEARNS. Right.

Mr. MERRILL. And these fellows came about and they gave me explanations of what kind of problems they were having. The fact that the cost of this information, the way it is going right now, the way it is looking right now, is a small independent repair shop my size if I were to purchase information on these cars, I would not look at the yearly figure but I would look at the monthly figure. And we are looking at $3,800 just to have access to this information.

So the fact that maybe the information is available but I do not know any shop that is in our size, and there is a lot of shops across the country that are the same size shop as we have, I do not know how they are ever going to be able to afford the information.

Mr. STEARNS. Yes.

Anything you would like to add?

Mr. SEYFER. Well, I would. You do not go to those sites everyday. It is not necessary.

Mr. STEARNS. Yes.

Mr. SEYFER. Over half of my billed time—we work sort of like lawyers, we charge by the hour for diagnostic time. Over half of my billed time is in diagnostic work. We do specialize in diagnostic work. I do not need to hit a site every single day. In fact, maybe 2, 3 times a week. $20 in and out. Some of the manufacturers give you 3 days for that.

Mr. STEARNS. Yes.

Mr. SEYFER. So it is just not that significant of expense. I am already paying for ALLDATA. That is my significant information expense. And training my technician is my biggest. I spend over $150 a month per member of my staff to train them.

Mr. STEARNS. Yes.

Mr. SEYFER. That is my biggest expense.

Mr. STEARNS. Well, on that note I have given both sides an opportunity. And we try to be fair and balanced on this hearing, but it is not a legislative hearing. It is just really an oversight to see what the situation. I think it has been very valuable. I want to thank all of you for your time.

And with that, the subcommittee is adjourned.

[Whereupon, the subcommittee adjourned at 4:16 p.m.]

[Additional material submitted for the record follows:]

RETAIL INDUSTRY LEADERS ASSOCIATION
September 22, 2004

The Honorable CLIFF STEARNS
Chairman, Subcommittee on Commerce, Trade and Consumer Protection
Energy and Commerce Committee
U.S. House of Representatives
Washington, D.C.

Re: "Repairing the 21st Century Car: Is Technology Locking the Consumer Out?"

DEAR CHAIRMAN STEARNS: On behalf of the Retail Industry Leaders Association (RILA), I am writing to commend the Subcommittee for holding today's hearing entitled "Repairing the 21st Century Car: Is Technology Locking the Consumer Out?" I would like to ask that this letter be placed into the official hearing record.

The Retail Industry Leaders Association (RILA) is an alliance of the world's most successful and innovative retailer and supplier companies—the leaders of the retail industry. RILA members represent more than $1 trillion in sales annually and operate more than 100,000 stores, manufacturing facilities and distribution centers nationwide. Its member retailers and suppliers have facilities in all 50 states, as well as internationally, and employ millions of workers domestically and worldwide. Through RILA, leaders in the critical disciplines of the retail industry work together to improve their businesses and the industry as a whole. The mission of RILA is to lead and serve the most successful and innovative retailers and suppliers through the delivery of world-class education, innovation and advocacy.

We applaud you for bringing attention to this important issue through this hearing. While current automobile technology undoubtedly provides many benefits to consumers, we understand that the inaccessibility of information related to those technologies is preventing car owners from repairing and maintaining their own vehicles. It may also be preventing them from choosing their own auto mechanic or the parts needed to make repairs. Currently, only automobile manufacturers and their dealers—not independent repair shops or owners themselves—have complete access to all of this information.

We believe it is unfair to deny consumers access to information about the products they purchase. In order to make informed decisions, consumers ought to be provided with as much information as possible about the products that they wish to purchase, including information about the proper care and maintenance of automobiles. Toward that end, RILA has endorsed H.R. 2735, the Motor Vehicle Owners' Right to Repair Act, by Representative Joe Barton. This legislation will ensure that car owners and repair facilities have access to the information necessary to properly diagnose and repair vehicles.

While several RILA members are in the automobile aftermarket business—including AutoZone, Inc., AutoNation, Inc., CSK Auto Corporation, and PEP BOYS AUTO—the majority of our members do not carry auto parts. The chief reason our association has endorsed the Motor Vehicle Owners' Right to Repair Act is our commitment to improving consumer choice and access to price competitive, quality merchandise. H.R. 2735 is completely consistent with those goals, because it would give consumers who wish to repair and service their own automobiles access to the information they need to fully exercise that choice. Restricting consumer access to this vital information serves only to restrict competition and will inevitably lead to higher repair prices. It could also force drivers to forego needed repairs, leading to an increased number of inefficient and unsafe vehicles.

For these reasons, we urge both this subcommittee, and the full Energy and Commerce Committee, to move quickly to favorably report H.R. 2735—to the House before Congress adjourns for the year.

Thank you for the opportunity to submit these views on behalf of the Retail Industry Leaders Association. If you have any questions about this matter, or any other legislative issue, please contact Paul T. Kelly, Senior Vice President, Federal and State Government Affairs.

Sincerely,

SANDRA L. KENNEDY
President

PREPARED STATEMENT OF THE SERVICE STATION DEALERS OF AMERICA AND ALLIED TRADES

The Service Station Dealers of America and Allied Trades (SSDA-AT) represent over fifteen thousand independently-owned service stations and repair facilities. Over seventy-five percent of our membership consists of repair facilities. Through direct membership and with state affiliations, SSDA-AT has members in all fifty states. We want to thank the Chairman and Members of the Subcommittee for the opportunity to submit testimony for the record.

Our membership has struggled with the developments at issue here today for many years. They agree wholeheartedly that the inability to procure the information necessary to effectively and efficiently repair late-model automobiles must be remedied. We are well aware of the efforts by the National Automotive Service Task Force (NASTF) to help provide an efficient delivery of this information and you will hear detailed testimony today about the associated costs involved. Our membership

would like it known that they find these costs to be exorbitant and prohibitively expensive. To add insult to injury, allow us to provide a telling observation. Our New York affiliate has a member that is considered such an expert in auto repair that his business does sublet repairs for six different manufacturers' dealerships. These dealerships allow him into their own websites and he has discovered that there is a distinct difference in the amount and quality of information about specific diagnosis and programming when compared to the information available at the NAST sites. Much of the necessary programming information is simply not available from the NAST sites.

You will also hear testimony today about situations encountered by independent repair facilities in there attempt to perform repairs on 1994 and newer vehicles. If current trends continue, one must ask if the average consumer will be left with any choice at all in deciding where to have their vehicle serviced. As more neighborhood repair facilities have the experience of correctly diagnosing a failed part only to find it necessary to drive or tow the vehicle back the dealership for programming, they will become less and less willing to attempt these repairs. In the worst case scenarios they don't have access to the information necessary to even begin a diagnosis. These situations are compounded by the fact that virtually every system in a new vehicle today (brakes, steering, ignition, etc.) has become another opportunity to shut out the independent repair facility by withholding critical information. We believe a clear distinction can be made between what is truly proprietary and what is not. A close reading of H. R. 2735 should make it clear that this is in no way an attempt to provide parts manufacturers with patented information. It is a genuine effort to ensure that consumers are able to have a real choice when deciding where to have their vehicles repaired.

When one considers the nature of the landlord/supplier relationship that has governed service station dealers over the years in their dealings with major oil companies, we are comfortable in stating that we know what it like to exist in an inequitable relationship. The U. S. Congress has recognized in the past that these power imbalances do, in fact, exist in many industries and has responded with fair and just legislation. We believe that this disagreement between the automobile manufacturers and the independent repair facilities is a classic example of what takes place in an inequitable relationship. It has also been our experience that without the necessary oversight provided by legislation these power imbalances will continue and they will be exploited. We therefore ask for your support and passage of H. R. 2735, the Motor Vehicle Owner's Right to Repair Act.

Please contact Paul Fiore at 301-390-4405 with any questions pertaining to this testimony.

PREPARED STATEMENT OF THE TIRE INDUSTRY ASSOCIATION

Mr. Chairman, Members of the Subcommittee, on behalf of the 5,000+ members of the Tire Industry Association (TIA) thank you for the opportunity to submit testimony for the record. This hearing, "Repairing the 21st Century Car: Is Technology Locking the Consumer Out?" is very important to the automotive industry and specifically the tire industry.

TIA is an international association representing all segments of the tire industry, including those that manufacture, repair, recycle, sell, service or use new or retreaded tires, and also those suppliers or individuals who furnish equipment, material or services to the industry. The Tire Industry Association (TIA) has a history that spans more than 80 years and includes several name changes. Originally known as the National Tire Dealers & Retreaders Association (NTDRA), the organization gave birth over the years to the American Retreaders Association (ARA) and the Tire Association of North America (TANA). ARA changed its name to the International Tire & Rubber Association (ITRA) and merged with TANA in 2002 to form the current Tire Industry Association (TIA), which now represents every interest in the tire industry. The majority of TIA members are independent tire retailers who also perform automotive service. Our members have found it increasingly difficult over the years to service new vehicles due to the limited "sharing of information" from the automobile manufacturers. As new technology develops, this information is not readily disseminated outside the network of automobile dealers. This is why TIA fully supports the Vehicle Owner's Right to Repair Act (H.R. 2735/ S. 2138). The House version of the bill, introduced by Representative Joe Barton (R-TX), currently has 113 bipartisan cosponsors and we urge every Member of Congress to support this crucial legislation.

The Vehicle Owners' Right to Repair Act would mandate that the auto manufacturers—including all original equipment manufacturers (OEMs)—provide affordable

access of all vehicle service information to independent repair facilities. At this time the bill could not be more important to our members.

On September 15, just one week ago, the National Highway Traffic Safety Administration (NHTSA) issued its final Tire Pressure Monitoring System (TPMS) rule. The Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act passed as a result of the Ford/Firestone crisis in 2000 included a mandate that all new passenger vehicles be equipped with a TPMS. According to latest version of this regulation, all passenger and light truck vehicles must be equipped with a direct TPMS system by September 1, 2007. One of TIA's largest concerns with the latest TPMS ruling is that the government is ignoring the need of independent tire dealers and automotive service providers to be given the OEM information necessary to install, service, maintain, recalibrate and fix these TPMS systems. Our members will be dealing with these monitoring systems, yet there are a variety of different companies that manufacture them, and all are slightly different. TIA members will need information from the OEMs to figure out each TPMS system and that information is not always easily accessible or available. The time for passage of the Right to Repair Act has never been more important to the tire industry or more critical to our members.

We are aware of the automobile manufacturers' agreement with the Automotive Service Association (ASA), promising that repair information and tools would be forthcoming—implying that there is no need for this bill. TIA, while viewing that agreement as a step in the right direction, sees no enforcement mechanism in the agreement and therefore still fully supports the Motor Vehicle Owners' Right to Repair Act. TIA remains concerned that without the legislation, the auto manufacturers could back out of this agreement at any time, forcing the industry to start the battle all over again from the beginning. TIA is also aware that many of the auto manufacturers are putting service information on the Internet but we hear from our independent dealer members that the information is not complete and still very costly. Furthermore, some auto manufacturers never signed the ASA agreement and therefore feel no obligation to provide any information to any independent dealers.

The automobile manufacturers that signed the letter of agreement with ASA oppose passage of the Right to Repair Act. THIS MAKES NO SENSE! If these manufacturers plan to keep their end of the agreement and make information accessible and affordable to independent service providers, this legislation only backs up their commitment to the automotive service industry. The fact that these manufacturers oppose this legislation causes TIA to question their commitment to the agreement and forces us to keep supporting the legislation.

Consumers deserve the right to take their vehicle to the mechanic of choice. They should not be forced to return to auto dealerships for service because independent providers do not have access to the tools and information they need to repair a vehicle. This is another critical aspect of this legislation.

TIA urges this Committee to act on the Right to Repair Act, moving this important legislation on to the next level. TIA is committed to seeing this legislation pushed through Congress for the betterment of businesses performing automotive repair.

If you have any questions about our testimony, please contact Roy Littlefield or Becky MacDicken at 800-876-8372.

W.J. "BILLY" TAUZIN, LOUISIANA
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BUD ALBRIGHT, STAFF DIRECTOR

ONE HUNDRED EIGHTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

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October 5, 2004

The Honorable Deborah Platt Majoras
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

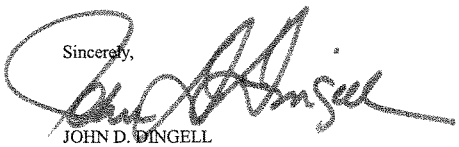
Dear Chairman Majoras:

The Subcommittee on Commerce, Trade, and Consumer Protection of the Committee on Energy and Commerce conducted a hearing on Wednesday, September 22, 2004, entitled "Repairing the 21st Century Car: Is Technology Locking the Consumer Out?" The Democratic Members of the Committee asked that the Federal Trade Commission be invited to testify at that hearing, but that request was denied. In response, the Democratic Members of the Committee have requested that at least one additional day of hearings be held regarding the same matter, pursuant to clause 2(j)(1) of Rule XI of the Rules of the U.S. House of Representatives, so that the Federal Trade Commission and perhaps other witnesses may have an opportunity to be heard.

As you know, the Subcommittee had planned to conduct a second hearing on Friday, October 8, 2004, to comply with the request under House rule XI. I have been informed, however, that the hearing has been postponed. While I remain hopeful that you will be permitted to testify during at least one additional day of hearings pursuant to the Rules of the U.S. House of Representatives, I am uncertain when that opportunity will be granted. In the interim, pursuant to the unanimous consent request made by Chairman Stearns during the September 22, 2004, hearing, please provide to the Committee the views of the Federal Trade Commission regarding H.R. 2735, "The Motor Vehicle Owners' Right to Repair Act."

Thank you for your attention to this matter. If you have any questions, please contact me or have your staff contact Jonathan Cordone, Democratic Counsel to the Committee on Energy and Commerce at (202) 226-3400.

Sincerely,



JOHN D. DINGELL
RANKING MEMBER

Attachment

cc.: The Honorable Joe Barton, Chairman
Committee on Energy and Commerce

The Honorable Cliff Stearns, Chairman
Subcommittee on Commerce, Trade, and Consumer Protection

The Honorable Janice D. Schakowsky, Ranking Member
Subcommittee on Commerce, Trade, and Consumer Protection

Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

October 8, 2004

The Honorable John D. Dingell
Ranking Member
Committee on Energy and Commerce
House of Representatives
Washington, DC 20515

Dear Congressman Dingell:

This responds to your letter of October 5, 2004, requesting the Commission's views on H.R. 2735, "The Motor Vehicle Owners' Right to Repair Act of 2003."

The FTC is a small agency with a big mission: to enhance consumer welfare and protect competition in most sectors of the economy. The FTC enforces the Federal Trade Commission Act[1] and other laws[2] that prohibit business practices that are anticompetitive, deceptive, or unfair to consumers, and seeks to do so without impeding legitimate business activity. The FTC also promotes informed consumer choice and public understanding of the competitive process. The Commission's work is critical in protecting and strengthening free and fair markets in the United States.

H.R. 2735 would require automobile manufacturers to make available to car owners and repairers the "information necessary to diagnose, service, or repair" vehicles, including all such information made available to franchised dealers. This legislation involves broad issues of the relations among automobile manufacturers, consumers, franchised dealers, and independent repair shops that have engendered substantial controversy and debate.

Auto repair is undoubtedly an important issue for U.S. consumers. U.S. consumers spend almost $200 billion annually to repair and maintain the two hundred million cars currently on the

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[1] 15 U.S.C. § 41.

[2] The agency has responsibilities under more than fifty federal laws. These include the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 *et seq.*) and other laws authorizing the National Do-Not-Call Registry; the Controlling the Assault of Non-Solicited Pornography and Marketing Act (15 U.S.C. § 7701), the Fairness to Contact Lens Consumers Act (15 U.S.C. § 7601), and the Fair and Accurate Credit Transactions Act (Pub. L. No. 108–159, 117 Stat. 1952 (Dec. 4, 2003), codified at 15 U.S.C. § 1681 *et seq.*).

road.[3] Consumers thus have a significant interest in the proper and efficient functioning of the markets involved in automobile repair and maintenance, consistent with safety and other quality standards. H.R. 2735 has a laudable goal: to ensure the competitiveness of auto service and repair aftermarkets, so that consumers have choices and can receive such services at competitive prices and quality. As a general matter, competition among repair facilities benefits consumers, and it appears that independent repair shops need certain information to be able to provide appropriate services. The bill attempts to facilitate the sharing of such information.

The Commission understands that a group of automotive trade associations has reached voluntary agreements to provide online factory service information to independent automobile repair shops. To the extent a suitable resolution can be obtained through a voluntary mechanism, it may be preferable to governmental intervention.

With respect to the legislation itself, certain complexities and ambiguities in the language of H.R. 2735, and possible unintended consequences associated with it, could create major difficulties in implementation. First, the bill contains ambiguities with respect to the scope of required information disclosure, the status of trade secrets and copyrighted or patented information, and whether the mandated disclosure must be made without charge. Apparently, the bill would require the FTC to review potentially massive quantities of documents and software and attempt to resolve highly technical and complex disputes that are beyond the agency's expertise. The breadth and complexity of this task and the potential for costly litigation arising out of disputes on these subjects pose significant difficulties for implementing this bill and risk substantial diversion of resources from other consumer protection and competition priorities.

Finally, we are concerned that the uniform rulemaking mandated in Section 6 may lack the flexibility necessary to avoid unnecessary disruption of existing markets for car repair and car repair information. Rather, a variety of formats and processes, evolving as needs and technologies change, may be more efficient and successful.

Potential Industry Solutions

The Commission understands that a sizeable group of automotive trade associations has formed a task group, the National Automotive Service Task Force, and has reached voluntary agreements for the provision of online factory service information to independent automobile repairers. The agreements are overseen and facilitated by this Task Force, which addresses specific complaints filed with it and also provides a forum for resolving broad issues of information availability. We understand that associations of affected independent repair shops have expressed conflicting views on the adequacy of this approach and the need for legislation.

Self-regulatory programs, when successful, can address issues with greater speed and more flexibility than government regulation. That may be particularly true here where the groups would have much greater familiarity with automobile technology as it evolves than the FTC's

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[3] 2003 Statistical Abstract of the U.S.

attorneys and economists. If a suitable resolution can be obtained through the Task Force or similar mechanism, it may be preferable to governmental intervention.

Significant Ambiguities in H.R. 2735

With respect to H.R. 2735 itself, the Commission is concerned about a number of unclear or unsettled issues in the legislation. First, Section 3 of the bill would require automobile manufacturers to provide to repair shops and vehicle owners, as well as the FTC, the "information necessary to diagnose, service, or repair" the manufacturer's vehicles. Such information could cover a vast and greatly varied range of subjects and materials. Further, Section 3(a) lists certain types of information included in the disclosure requirement, and one of the listed items specifies disclosure of "other information of any kind *used* to diagnose, service, repair, activate, certify, or install any motor vehicle equipment." This language appears to broaden the scope of the disclosure requirement, and it is unclear how far the requirement would extend. For example, to the extent that automobile manufacturers provide training that explains how to use diagnostic software or tools, would all such training be considered "information necessary" or "information . . . used" to diagnose, service, or repair the vehicle? These types of questions can be difficult and contentious, and the Federal Trade Commission would have no basis on which to determine the answers.

Also, some portions of the bill indicate an intention that manufacturers not be required to disclose information that constitutes "trade secrets." Section 3(a)'s statutory mandate for disclosure, however, does not create an exclusion for trade secrets.

Further, simply excluding trade secrets unambiguously from Section 3(a)'s disclosure mandate would not resolve the difficulties. Section 3(b)(1) would apparently put the FTC in the position of reviewing potentially massive amounts of highly technical information on an ongoing basis to determine whether particular information is entitled to trade secret protection. The FTC is not equipped to perform such a function. It is a law enforcement agency, not a document screening agency, and has no analogous ongoing document review responsibilities in other industries. Nor does the FTC otherwise have a governmental need for such materials as might other agencies, such as the Environmental Protection Agency (for emissions system information), or the National Highway Traffic Safety Administration (for safety-related information). In addition, even with FTC participation, genuine disputes about disclosure would surely result in litigation, which would likely embroil the FTC in extensive and costly litigation between manufacturers and repair firms over the status of the information. Resources devoted to making initial disclosure determinations and defending them would come at the expense of other consumer protection and competition programs at the FTC.

Moreover, the bill does not address potential questions about copyright or patent protections that may apply to the necessary information. Section 3(b)(2), for example, would require manufacturers to disclose to independent repair shops all information provided to franchised dealers, but it is not clear what effect this requirement would have on copyright or patent protections applicable to the information. Federal laws generally do not require companies to share proprietary information. This bill does not make clear whether information

provided to dealers that is protected by copyright or patent, or that constitutes trade secrets, would be exempt from mandatory disclosure to other repair shops. In particular, unless Section 3(b)(2) is intended to remove any trade secret protection from information provided to dealers, Section 3(b)(1), as noted, would likely entangle the FTC in a massive and highly technical document and software review program for which the FTC is not equipped.

Finally, it is unclear whether the bill requires the provision of information at no cost. Currently, it appears that automobile manufacturers may recoup the costs of developing diagnostic tools and software and other information by charging substantial sums for the information, sometimes in the thousands of dollars, to both franchised dealers and independent repair shops. As the Committee knows, automobile repair can require highly complex and continuously upgraded computer software programs, as well as other specialized tools, and the development of these diagnostic tools and software is expensive. It is unclear whether or how consumers would be affected if automobile manufacturers were not able to charge for such information. If, on the other hand, manufacturers could continue to charge for the information, the Commission might well be faced with complaints that the charges were so high as effectively to preclude independent shops and car owners from obtaining the information. Yet if the Commission were supposed to mandate "reasonable" prices, that would require price regulation, a result generally undesirable in and of itself and one requiring detailed regulatory systems as to which the Commission has no expertise.

In sum, the ambiguities of the bill would create significant controversies about what information must be disclosed as "necessary to diagnose, service, or repair a vehicle," whether information may be exempt from disclosure as a trade secret, the effect of copyright or patent protection, and whether and how much manufacturers may charge for information that must be disclosed. The FTC is not well-suited to resolve these controversies.

Concerns about Mandatory Development of Uniform Rules

Section 6 of the bill also would require the Commission to issue rules setting forth a uniform method for making the repair information available. More flexible discussions involving parties with intimate knowledge of their own needs, such as those of the current industry task force, could well lead to a variety of appropriate formats and processes for disclosure without the need for regulation setting a uniform method. Given the volume and complexity of the data in question, a one-size-fits-all approach may well introduce some costs and inefficiency to the existing processes. Any governmental intervention here would require

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great care to avoid unnecessary impact on existing markets for information about vehicle repair. We are concerned with the possibility that a mandatory, uniform approach could result in higher costs and more problems than would a more flexible, discretionary approach.

We appreciate your consideration of our views.

By direction of the Commission.

Donald S. Clark

Donald S. Clark
Secretary of the Commission

cc: The Honorable Joe Barton, Chairman
Committee on Energy and Commerce

The Honorable Cliff Stearns, Chairman
Subcommittee on Commerce, Trade, and Consumer Protection

The Honorable Janice D. Schakowsky, Ranking Member
Subcommittee on Commerce, Trade, and Consumer Protection

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