

February 13, 2017

The Honorable Elaine Chao
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

The Honorable Mark Sandy
Acting Director
Office of Management and Budget
725 17th Street, N.W.
Washington, D.C. 20503

Dear Secretary Chao and Acting Director Sandy,

On January 20, 2017, White House Chief of Staff Reince Priebus issued a memorandum for the heads of executive departments and agencies relaying the President's plan for managing the Federal regulatory process. In accordance with this directive, the Consumer Technology Association respectfully asks the Department of Transportation and the Office of Management and Budget to carefully review the proposed Driver Distraction Guidelines for Portable and Aftermarket Devices (the "Phase 2 Guidelines"), Docket No. NHTSA 2013-0137, issued by the National Highway Traffic Safety Administration ("NHTSA") on December 5, 2016.

As the principal U.S. trade association representing the consumer technology industry, CTA shares NHTSA's concerns about the hazards of distracted driving. However, we believe that the Phase 2 Guidelines take the wrong approach to this important issue, both in substance and by impermissibly reaching beyond NHTSA's statutory authority under the National Traffic and Motor Vehicle Safety Act. As I explained in my testimony on February 1, 2017 before the Senate Commerce Committee hearing on Reducing Unnecessary Regulatory Burdens, "NHTSA does not have the authority to dictate the design of smartphone apps and other devices used in cars – its legal jurisdiction begins and ends with motor vehicle equipment. This regulatory overreach could thwart innovative safety solutions from ever coming to market. NHTSA's regulatory premise is dangerously expansive, representing the worst of government overreach." NHTSA's authority to issue these guidelines has also been disputed by the Chairmen of the House Transportation and Infrastructure Committee and the House Energy and Commerce Committee. I have included their letters to NHTSA on this topic for your review.

The January 20, 2017 memo from the White House Chief of Staff calls for a halt in all pending regulations in order to afford the new administration the opportunity to review them. Specifically, the memo states that “for those regulations that raise substantial questions of law or policy, agencies should notify the OMB Director and take further appropriate action in consultation with the OMB Director.” The memo further explains the applicability of this memo not only to “regulation” but also to any “guidance document” and “covers any agency statement of general applicability and future effect that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue.”

CTA believes that the proposed Phase 2 Guidelines raise substantial questions of law and policy that merit a careful review by the agency and OMB Director. While NHTSA maintains that the proposed guidelines would be voluntary and nonbinding, in practice they could have a sweeping effect on the multibillion dollar market for mobile devices and apps. Given the magnitude of the effect that the Phase 2 Guidelines would have on participants across the mobile device ecosystem – as well as on the American public more broadly – we believe it is essential that this guidance project initiated under the last Administration receive a complete *de novo* review by the Trump Administration. This would also be consistent with the commitment to review all outstanding Department of Transportation notices of proposed rulemaking that Secretary Chao made in connection with her confirmation hearings before the Senate Committee on Commerce, Science and Transportation.

I have attached our comments as submitted to NHTSA to provide additional information regarding our concerns with the regulatory impact of the guidelines and lack of authority for NHTSA to issue them. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Shapiro". The signature is fluid and cursive, with the first name "Gary" being more prominent and the last name "Shapiro" following in a similar style.

Gary Shapiro
President and CEO

February 3, 2017

BY ELECTRONIC SUBMISSION

Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Avenue, SE
West Building Ground Floor, Room W12-140
Washington, DC 20590-0001

Re: **Request for Comment on Visual-Manual NHTSA Driver Distraction
Guidelines for Portable and Aftermarket Devices
Docket No. NHTSA 2013-0137**

Dear Sir or Madam:

The Consumer Technology Association (“CTA”)¹ respectfully submits these comments on the proposed Driver Distraction Guidelines for Portable and Aftermarket Devices (the “Phase 2 Guidelines”) issued by the National Highway Traffic Safety Administration (“NHTSA”).²

As the principal U.S. trade association representing the consumer technology industry, CTA shares NHTSA’s concerns about the hazards of distracted driving. We firmly believe that driving while distracted is unsafe and unacceptable. For that reason, we have led industry efforts to address the driver distraction issues associated with portable and aftermarket devices (“PADs”). We have also supported industry initiatives to raise awareness about the dangers of distracted driving, as well as common-sense legislative measures to ban texting while driving and place strict limits on the use of electronics by novice drivers. The research cited by NHTSA in the proposed guidelines shows the dramatic effect that strict laws and vigilant enforcement can have in addressing the behavioral aspects of distracted driving.³

These experiences, and the related experiences of our member companies that are active in this area, lead us to agree with NHTSA’s assessment that distracted driving is a

¹ CTA is the trade association representing the \$287 billion U.S. consumer technology industry. More than 2,200 companies—80 percent are small businesses and startups; others are among the world’s best known brands—enjoy the benefits of CTA membership, including policy advocacy, market research, technical education, industry promotion, standards development, and the fostering of business and strategic relationships.

² Visual-Manual NHTSA Driver Distraction Guidelines for Portable and Aftermarket Devices, 81 Fed. Reg. 87656 (Dec. 5, 2016) [hereinafter “Phase 2 Guidelines”].

³ *Id.* at 87666 (noting an approximate one-third decline in hand-held cell phone use while driving as a result of high-visibility enforcement efforts in California and Delaware).

complex problem that requires a multipronged solution.⁴ We also agree that technology can play an important—and perhaps essential—role in this solution. The intersection of the consumer technology and motor vehicle industries is a point of rapid innovation, particularly with respect to advances in safety for drivers and vehicles. The risk of distracted driving may one day entirely be eliminated by increasingly automated vehicles and, ultimately, self-driving cars.

However, we believe that the proposed Phase 2 Guidelines take the wrong approach to technology, both in substance and by impermissibly reaching beyond NHTSA's statutory authority under the National Traffic and Motor Vehicle Safety Act (the "Safety Act"). The prescriptive technology recommendations set forth in the proposed guidelines are simply unworkable in today's mobile ecosystem. Focusing attention on a narrow set of technologies would disrupt the cycle of open innovation that enables significant advances in vehicle safety. These considerations aside, PADs and associated software and apps that are not substantially related to the safe operation and maintenance of a motor vehicle fall outside of NHTSA's jurisdiction under the Safety Act. The agency clearly lacks the authority to issue the Phase 2 Guidelines with respect to these products.

Accordingly, we urge NHTSA to abide by the statutory limits of its jurisdiction and withdraw the proposed guidelines. Withdrawal is especially appropriate in light of the transition in presidential administrations that occurred during the comment period. On January 20, 2017, White House Chief of Staff Reince Priebus instructed all federal agencies to withdraw or delay the effective date of pending regulatory projects—including guidance projects—to allow time for review by the incoming Trump administration.⁵ Withdrawal would provide the new Secretary of Transportation, NHTSA Administrator, and other Trump administration officials with an opportunity to consider whether the Phase 2 Guidelines as currently conceived align with their policy priorities.

At the same time, we understand and appreciate NHTSA's interest in responding to the safety issues posed by distracted driving. As discussed in greater detail below, the agency has a tried-and-tested framework for addressing vehicle safety issues related to driver behavior, anchored in the enactment of state legal restrictions, driver education, and strict law enforcement. These actions do not present the substantive or jurisdictional issues that are the source of our concerns about the proposed Phase 2 Guidelines. Moreover, unlike the unproven technologies set forth in the proposed guidelines, each of these initiatives has a demonstrated track record of effectiveness in addressing distracted driving. We encourage the agency not to "reinvent the wheel," so to speak, and instead redouble its efforts to address driver distraction within this proven framework.

1. NHTSA Has a Proven Framework to Address Vehicle Safety Issues Related to Driver Behavior That Can Be an Equally Effective Response to Distracted Driving

Over the years, NHTSA's efforts to address vehicle safety issues associated with driver behavior have coalesced around a common policy framework. As summarized in an article in the *Annals of Advances in Automotive Medicine*, that framework comes down to the "three E's": "Enactment (of a law), Education (of the public about a safety hazard), and Enforcement (of the laws)."⁶ State and federal policy actions consistent with the "three E's" have been tremendously

⁴ *Id.* at 87678.

⁵ Memorandum for the Heads of Executive Departments and Agencies; Regulatory Freeze Pending Review, 82 Fed. Reg. 8346 (Jan. 24, 2017).

⁶ Catherine Chase, *U.S. State and Federal Laws Targeting Distracted Driving*, 58 ANNALS OF ADVANCES IN AUTO. MED. 84, 87 (Mar. 31, 2014).

impactful to increasing the utilization of seat belts and curbing the incidence of drunk driving, among other safety advances.⁷

The “three E’s” can be just as effective in addressing the safety issues posed by distracted driving. To start with the first “E,” the overwhelming majority of states have enacted laws governing the use of mobile devices while driving.⁸ States continue to revise and strengthen these laws in response to new developments.⁹ Education about these laws and the hazards of distracted driving has been a collaborative effort among states, the federal government, and industry.¹⁰ Together with several of our member companies, CTA has been pleased to support many of these public awareness initiatives. We believe that they have been an effective complement to the legal restrictions enacted by the states. As the National Safety Council has concluded with respect to distracted driving, “[w]hen laws are enacted, they must be reinforced with highly-visible public education that explains the dangers and warns of active enforcement of laws.”¹¹

The third “E”—enforcement—is where we see the greatest potential to achieve a meaningful reduction in the incidence of distracted driving. The evidence testifying to the efficacy of strict enforcement is compelling. As described in the proposed guidelines, NHTSA’s high-visibility enforcement programs in California and Delaware achieved an approximate one-third reduction in observed hand-held cellphone use by drivers.¹² Research has suggested that similar efforts can be effective in curbing texting while driving.¹³

Of course, high-visibility enforcement efforts can be costly. That is the reason why the section 405 grant program enacted as part of the Moving Ahead for Progress in the 21st Century Act (“MAP-21”) is a critically important part of the federal response to distracted driving. This program provides funding, predicated on the enactment of a rigorous state distracted driving law, to support efforts with respect to education and enforcement.¹⁴ Given the compelling evidence that the “three E’s” can help reduce the incidence of distracted driving, the recent expansion of eligibility for the grant program is a move in the right direction that appears to have generated additional interest and participation.¹⁵ NHTSA should continue its efforts to interest states in the section 405 program and ensure that it remains responsive to state needs in this area.

⁷ *Id.*

⁸ See National Conference of State Legislatures, Cellular Phone Use and Texting While Driving Laws (Mar. 10, 2016), <http://www.ncsl.org/research/transportation/cellular-phone-use-and-texting-while-driving-laws.aspx>.

⁹ See, e.g., Jonah Engel Bromwich, *Can a Law Stop Distracted Driving? California Hopes to Find Out*, N.Y. TIMES (Jan. 5, 2017), <https://www.nytimes.com/2017/01/05/us/cell-phone-while-driving-laws.html>.

¹⁰ See Phase 2 Guidelines, at 87666–67.

¹¹ National Safety Council, *Distracted Driving: Leading Safety into the Future* 4 (2013), <http://www.nsc.org/DistractedDrivingDocuments/CPK/Safety-Agenda-Distracted-White-Paper.pdf>.

¹² See Phase 2 Guidelines, at 87666.

¹³ See, e.g., LINDA COSGROVE, NEIL CHAUDHARY & IAN REAGAN, NAT’L HIGHWAY TRAFFIC SAFETY ADMIN., DOT HS 811 845, FOUR HIGH-VISIBILITY ENFORCEMENT DEMONSTRATION WAVES IN CONNECTICUT AND NEW YORK REDUCE HAND-HELD PHONE USE 1 (2011) <https://www.distraction.gov/downloads/pdfs/traffic-safety-facts-research-note-07-2011.pdf> (noting that “drivers who were texting while driving declined 72% in Hartford . . . and 32% in Syracuse” during high-visibility enforcement campaign); Alva Ferdinand et al., *Impact of Texting Laws on Motor Vehicular Fatalities in the United States*, 104 J. PUB. HEALTH 1370 (Aug. 2014) (noting that “primarily enforced laws banning all drivers from texting were significantly associated with a 3% reduction in traffic fatalities in all age groups”).

¹⁴ See 23 C.F.R. §§ 1200.24; 1300.24.

¹⁵ See 23 C.F.R. §§ 1300.24 (describing qualifications for special distracted driving grants in fiscal years 2017 and 2018); NHTSA, FY 2017 Grant Funding Table, <https://www.nhtsa.gov/highway-safety-grants-program/fy-2017-grant-funding-table>.

The broader point is that NHTSA already has a time-tested and effective approach to addressing vehicle safety issues related to driver behavior. We strongly believe that efforts concentrated around the “three E’s” have the greatest potential to achieve meaningful reductions in the incidence of distracted driving. Actions that depart from this framework, like the proposed guidelines, run the risk of detracting from stakeholder focus—without any evidence that they will be as or more effective than an approach that has demonstrated the ability to adapt to evolving needs and challenges.

2. Prescriptive Technology Recommendations Do Not Offer the Flexibility That is Essential to Foster New Safety Innovations

The proposed guidelines would step wholly outside the proven framework of the “three E’s” to recommend two technologies to limit device functionality while driving: pairing and “Driver Mode.”¹⁶ The description of each option is highly detailed and specific.¹⁷ While CTA believes that technology solutions can and should be an important complement to education and enforcement efforts, we have practical concerns about the prescriptive approach that NHTSA has selected. Moreover, we fear that such detailed and specific technology recommendations could have a chilling effect on industry efforts to advance vehicle safety. Our experience with the consumer technology industry has shown that flexibility is essential to fostering the cycle of open innovation that has enabled significant safety advances to date and can continue to do so moving forward.

a. NHTSA’s Prescriptive Technology Recommendations Would Be Unworkable Given the Scale and Diversity of Today’s Mobile Ecosystem

Flexibility is particularly important in the mobile device context. The user experience for today’s mobile devices is shaped by a large and diverse number of industry participants, including hardware manufacturers, operating system providers, software developers, wireless carriers, and many others. No single one of these participants has the ability to control the user experience from end to end. Along with the fact that many PADs are designed for use in a variety of driving and non-driving contexts,¹⁸ this distinguishes mobile devices from the integrated systems that were the subject of NHTSA’s Driver Distraction Guidelines for In-Vehicle Electronic Devices (the “Phase 1 Guidelines”).¹⁹ Also unlike in-vehicle electronic devices, the barriers to participation in the mobile ecosystem are low. By offering an app for download, a software developer anywhere in the world—including in many locations where observation and adherence of U.S. policy recommendations is not customary—can quickly reach millions of devices and users.

These differences illustrate why the proposed Phase 2 Guidelines would be unworkable in today’s mobile ecosystem. NHTSA optimistically “encourages all entities involved with the engineering and design of pairing technologies to jointly develop compatible and efficient processes that focus on improving the usability and ease of connecting a driver’s portable device with their in-vehicle system.”²⁰ Likewise, the proposed guidelines obliquely assign responsibility for developing Driver Mode technology to “industry stakeholders (i.e., Operating

¹⁶ *Id.* at 87682.

¹⁷ *See id.* at 87680–83.

¹⁸ *Id.* at 87659.

¹⁹ Visual-Manual NHTSA Driver Distraction Guidelines for In-Vehicle Electronic Devices, 78 Fed. Reg. 24817 (Apr. 26, 2013) [hereinafter “Phase 1 Guidelines”].

²⁰ Phase 2 Guidelines, at 87659.

System or handset makers).²¹ However, both tasks are much easier said than done in an environment in which no single entity has control over the entire user experience. Even the providers of mobile device operating systems may have a limited ability to govern the precise functionality of the software installed on their platforms, as well as the ways in which users choose to interact with that software.²² Given these challenges, it is noteworthy that the proposed guidelines are largely silent as to how industry participants would actually allocate responsibility for developing, implementing, and testing the recommended technologies. While this silence may be an attempt to offer flexibility to the industry, it may also implicitly recognize the substantial—and perhaps insurmountable—complexity and burden of the coordination that would be needed to fully implement NHTSA’s recommendations.

The testing protocols outlined in the proposed guidelines highlight just one example of this coordination challenge. In order to distinguish the visual-manual secondary tasks that should be “locked out” while driving, NHTSA suggests two approaches to task acceptance testing: eye glance measurement using a driving simulator and occlusion testing.²³ As of June 2016, there were over two million apps available for download on Apple’s App Store alone.²⁴ Given this volume, it would be impossible for hardware manufacturers, operating system providers, or wireless carriers to distinguish the apps and features intended for use while driving and test the compliance of the varied and diverse functions associated with each app—even if they were able to decide among themselves how to allocate the substantial costs of this exercise. Software developers, on the other hand, may have little reason to expect that their products could be used in a motor vehicle while driving and even less familiarity with U.S. motor vehicle policy and testing protocols. Blanket solutions to the testing problem—such as “locking out” all apps that have not been tested—could risk restricting important safety functions and lead to nonadherence by users. This last point is crucial because user adherence is essential to realizing the safety benefits of technology. As described in greater detail below, by threatening to limit device functionality beyond user expectations, the proposed Phase 2 Guidelines could erode vehicle safety rather than improve it.

The quantity and diversity of participants in the mobile device ecosystem, as well as their different roles and responsibilities with respect to the user experience, require more flexibility. Rather than pursuing “one-size-fits-all” technology prescriptions that may entail significant implementation challenges, we believe that NHTSA should encourage every industry participant to develop the technology solutions to driver distraction that are the most practical and effective for their segment of the industry.

b. The Proposed Guidelines Endorse Nascent Technologies That Could Evolve to Have Unforeseen Consequences

Flexibility is also important because the technologies described in the proposed guidelines are still in the early stages of development and may evolve in ways that interfere with emerging industries like ridesharing. Both pairing and Driver Mode entail significant technical

²¹ *Id.*

²² To cite a further example referenced by CTIA–The Wireless Association in this proceeding, “wireless carriers have no ability to ensure that prescriptive approaches will be incorporated into devices and apps, nor can they even ensure that such approaches work with all devices and operating systems. Comments of CTIA–The Wireless Association to Visual-Manual NHTSA Driver Distraction Guidelines for Portable and Aftermarket Electronic Devices (May 12, 2014), at 3.

²³ Phase 2 Guidelines, at 87683.

²⁴ See *Number of Apps Available in Leading App Stores as of June 2016*, STATISTA.COM, <https://www.statista.com/statistics/276623/number-of-apps-available-in-leading-app-stores/>.

complexity and require additional testing and refinement before they are ready for wider deployment to consumers. These technical challenges are particularly severe with respect to Driver Mode. Although the name invites comparison to the widely deployed “Airplane Mode” feature for mobile devices, Driver Mode would be much more complex as conceived by NHTSA. Rather than simply cut off cell service (like Airplane Mode), it would instruct each app to function in certain specified ways—a result that may be difficult to achieve in practice, as indicated by the discussion above.

Given the possibility that these technical challenges will not be resolved within NHTSA’s contemplated 16-month timeframe for adoption, it is inappropriate for the agency to distinguish pairing and Driver Mode as the recommended focus of industry efforts in this area. Rather, these technologies should be presented as two of many options that consumers may select, at a time when they have been sufficiently proven for wider deployment.

More time is also needed to study the impact of pairing and Driver Mode on the growing ridesharing industry, which relies on mobile devices and apps. Ridesharing services have transformed mobility for millions of Americans and have powered significant economic and employment growth. These achievements could be curtailed if the functionality of mobile devices and apps is inappropriately restricted. The proposed guidelines could also impede emerging safety technologies that utilize mobile devices as part of vehicle-to-infrastructure (“V2I”) communications systems.²⁵ Again, a less-prescriptive approach would offer more flexibility to accommodate these emerging industries and technologies.

Finally, we are concerned that NHTSA may not have considered the “real world” response from drivers to widespread deployment of pairing and Driver Mode. Mobile devices are an inescapable feature of the digital age, and users have become accustomed to accessing a wide array of mobile apps and features no matter where they go. We are pleased that the pairing solutions already on the market have in some situations helped make the use of this technology safer in the vehicle context, as reflected by the lower safety critical event (“SCE”) risk associated with the use of integrated communications technologies.²⁶ However, if device functionality is further restricted as contemplated by the proposed pairing and Driver Mode technologies, we fear that some drivers will choose not to pair their devices or activate Driver Mode, or alternatively seek ways to evade automatic activation of these technologies, in order to preserve access to the apps and features that they have come to expect. Doing so may have an adverse effect on safety if drivers intentionally avoid currently available technologies. This exemplifies the potential unintended consequences that may result from the Phase 2 Guidelines and underscores the benefits of a flexible approach that fosters the development of a range of innovative options to enhance safety while driving.

c. NHTSA’s Prescriptive Technology Recommendations Would Disrupt the Open Innovation That is Enabling Significant Advances in Vehicle Safety

As noted above, the convergence between motor vehicles and technology is enabling significant advances in motor vehicle safety. However, by focusing the industry’s attention on just two technologies to address distracted driving—pairing and Driver Mode—we are concerned that the Phase 2 Guidelines will slow, if not completely halt, the development of new and potentially more effective solutions.

²⁵ See Paul Page, *States Wire up Roads as Cars Get Smarter*, WALL ST. J. (Jan. 2, 2017), <http://www.wsj.com/articles/states-wire-up-roads-as-cars-get-smarter-1483390782>.

²⁶ See Phase 2 Guidelines, at 87664–65.

i. Voluntary Guidelines Exert a Powerful Influence on Industry Behavior, Making Them a De Facto Form of Regulation

NHTSA maintains that the proposed guidelines “are voluntary and nonbinding, they will not require action of any kind, and for that reason they will not confer benefits or impose costs.”²⁷ While this may be true in a technical sense, in practice, the existence of federal guidelines creates tremendous pressure for industry to adhere to them. NHTSA’s intention to monitor compliance with the guidelines²⁸ may be a particular source of pressure for industry to adhere, rather than risk the appearance of disagreement with or disregard for the agency’s perspective.

The active litigation environment surrounding the use of mobile devices in vehicles could provide another incentive for adoption of the proposed guidelines. In recent years, several plaintiffs have filed suit against various participants in the mobile device ecosystem, alleging their contribution to accidents caused by distracted driving.²⁹ Despite the serious concerns raised above about the implementation challenges and readiness of pairing and Driver Mode, there is a possibility that the Phase 2 Guidelines could be seen as setting an industry standard in this area that could become a factor in these kinds of cases and exert additional pressure for industry to adopt NHTSA’s recommendations. We urge NHTSA to clarify that setting such a standard was not the intent of this guidance project and that the Phase 2 Guidelines, if finalized, are not meant to be used as such.

Even with this clarification, it remains the case that all agency pronouncements have the power to induce or coerce industry action; if they did not, then there would be no point to developing guidelines in the first place. Indeed, if NHTSA did not expect at least some level of compliance with the guidelines, the agency would not have suggested a timetable for adoption of its recommendations (a timetable that, as discussed above, may not even be reflective of the actual development status of the technology needed to implement the proposed guidelines).³⁰ We encourage NHTSA to view the benefits and costs of the proposed guidelines in light of their likely practical effect on industry, rather than in the abstract terms that distinguish voluntary guidelines from formal rulemaking.

ii. The Phase 2 Guidelines Will Lead Industry to Focus Attention on a Narrow Range of Technologies, Hindering Open Innovation

Through their potential to exert a profound influence on industry behavior, the Phase 2 Guidelines threaten to interfere with the dynamics of open competition and technology neutrality that have propelled the development of innovative technologies to address distracted driving. CTA member companies have led the way to create driver-assist technologies and apps that reduce or eliminate distractions such as drowsiness, in-car adjustments, or texting while driving. Other innovations like Bluetooth solutions and do-not-disturb apps are available to assist in

²⁷ Phase 2 Guidelines, at 87659.

²⁸ *Id.* at 87668.

²⁹ See, e.g., Katie Rogers, *Snapchat at 107 M.P.H.? Lawsuit Blames Teenager (and Snapchat)*, N.Y. TIMES (May 3, 2016), <https://www.nytimes.com/2016/05/04/us/snapchat-speeding-teenager-crash-lawsuit.html>; Chris Morran, *Parents of Child Killed by Distracted Driver Sue Apple for Not Blocking FaceTime While Driving*, CONSUMERIST (Dec. 29, 2016), <https://consumerist.com/2016/12/29/parents-of-child-killed-by-distracted-driver-sue-apple-for-not-blocking-facetime-while-driving/>.

³⁰ *Id.* at 87677.

initiating corrective actions when drivers lose focus. Looking ahead, automated and self-driving vehicles hold even greater potential as a solution for distracted driving.

Notwithstanding the diverse array of technologies under development and already on the market, the proposed guidelines would elevate pairing and Driver Mode as the recommended focus of industry efforts in this area—discouraging investment in novel technologies that may hold the key to significant advances in safety. This effect of creating “winners” and “losers” could chill the innovation and competition that power new research and discovery. CTA believes that technology development should be driven by entrepreneurs and innovators, not by regulators.

The consequences of NHTSA’s prescriptive approach could be exacerbated as the technologies described in the proposed guidelines are superseded by newer solutions. Although the Phase 1 Guidelines indicated NHTSA’s intention to update its guidance in this area “as needed in response to new information,”³¹ the fact remains that the process of developing formal guidelines is extremely time-consuming. Indeed, NHTSA’s work in this area predates the issuance of the proposed Phase 1 Guidelines in February 2012—more than four years before the issuance of the proposed Phase 2 Guidelines. As a result, there is a real risk that NHTSA’s guidelines will not keep pace with innovation and emerging best practices. In the meantime, industry will struggle with the conflicting pressure to abide by the guidelines that NHTSA has identified and pursue the adoption of newer and more effective technology solutions. The only way to avoid this result is to avoid prescriptive guidelines in favor of a more flexible approach.

3. NHTSA Lacks Statutory Authority to Issue the Phase 2 Guidelines

The serious substantive concerns outlined above belie a more fundamental point: NHTSA lacks the statutory authority to adopt the Phase 2 Guidelines with respect to PADs and associated software and apps that are not substantially related to the safe operation and maintenance of a motor vehicle. This is a view that we and others in the technology industry have advanced to the agency several times, in a variety of contexts.³² It bears repeating because of the detrimental consequences of regulatory overreach for competition and innovation.

NHTSA attempts to locate a source of authority to issue the Phase 2 Guidelines in the agency’s general mandate to reduce traffic accidents, and its specific authority to research motor vehicle safety issues.³³ However, framing the proposed guidelines as “research conclusions” does not change the fact that they are, in substance if not in form, akin to motor vehicle safety standards for PADs and associated software that NHTSA lacks authority to issue under the Safety Act. Moreover, if carried to its logical conclusion, this exercise of NHTSA’s “research” power would provide the agency with plenary authority to make policy with respect to everything that might tangentially affect motor vehicle safety—including a vast array of items that are far beyond the agency’s expertise. We strongly believe that Congress did not intend either the Safety Act or the Highway Safety Act to be read in this expansive way.

³¹ See Phase 1 Guidelines, at 24822.

³² See, e.g., Consumer Technology Association, Response to Request for Public Comments on NHTSA Enforcement Guidance Bulletin 2016-02: Safety Related Defects and Emerging Automotive Technologies (May 2, 2016); Consumer Electronics Association (now CTA), Comments on Federal Motor Vehicle Safety Standards: Vehicle-to-Vehicle (V2V) Communications, Docket No. NHTSA-2014-0022 (Oct. 20, 2014).

³³ See Phase 2 Guidelines, at 87678.

a. NHTSA Lacks Authority to Issue Guidelines Covering Products Over Which It Has No Authority to Issue Binding Motor Vehicle Safety Standards

As described in section 1(c) above, a variety of factors would likely lead industry participants to adhere to NHTSA's recommendations. Consequently, the ultimate effect of the Phase 2 Guidelines would resemble that of new Federal Motor Vehicle Safety Standards ("Safety Standards") for PADs and associated software. However, under the agency's longstanding interpretation of its own enabling statute, as well as the plain language of the statute, its authority to prescribe standards does not extend to these products if they are not substantially related to safe vehicle operation or maintenance. This constraint applies with equal force to formal regulations as well as agency guidance.

i. *Mobile Phones and Similar PADs Do Not Meet the Definition of "Motor Vehicle Equipment" Under the Safety Act*

The Safety Act authorizes NHTSA "to prescribe motor vehicle safety standards for motor vehicles and motor vehicle equipment."³⁴ The statute defines the term "motor vehicle equipment" with specificity to include:

- (A) any system, part, or component of a motor vehicle as originally manufactured;
- (B) any similar part or component manufactured or sold for replacement or improvement of a system, part, or component, or as an accessory or addition to a motor vehicle; or
- (C) any device or an article or apparel, including a motorcycle helmet and excluding medicine or eyeglasses prescribed by a licensed practitioner, that—
 - (i) is not a system, part, or component of a motor vehicle; and
 - (ii) is manufactured, sold, delivered, or offered to be sold for use on public streets, roads, and highways with the apparent purpose of safeguarding users of motor vehicles against risk of accident, injury, or death.³⁵

To the extent that they are not employed in vehicle operation or control, PADs do not fit into any of these categories. They clearly do not meet the "original equipment" requirement of subsection (A). Nor do they demonstrate the requisite "similarity" under subsection (B). NHTSA uses a two-part test for this prong of the "motor vehicle equipment" definition. The first part of the test is whether "a substantial portion of the expected uses of a product is related to the operation or maintenance of motor vehicles."³⁶ The second part of the test is whether "the product is purchased or otherwise acquired, and principally used, by ordinary users of motor vehicles."³⁷

In a 2007 interpretive letter, NHTSA applied this test to determine that it lacked authority with respect to cell phones, one of the categories of PADs addressed by the proposed guidelines. NHTSA concluded that "a substantial portion of the expected uses of a cell phone *would not be related to the operation or maintenance of motor vehicles.*"³⁸ This conclusion applies equally to smart phones, tablets, wearable technology, and other similar portable electronic devices that lack a nexus to motor vehicle operation and maintenance.

The proposed guidelines all but confirm this lack of nexus, indicating that the Phase 2 Guidelines would not apply to the "driving-related tasks that are performed by the driver as part

³⁴ 49 U.S.C. § 30101(1).

³⁵ 49 U.S.C. § 30102(a)(8).

³⁶ See Interpretive Letter from Anthony Cooke, Chief Counsel, NHTSA, to Tab Hauser, HASCO Components International Corp. (Dec. 18, 2006).

³⁷ *Id.*

³⁸ Interpretive Letter from Anthony Cooke, Chief Counsel, NHTSA, to Ashley Alley, Office of General Counsel, General Accounting Office (2007) (emphasis added).

of the safe operation and control of the vehicle.”³⁹ Thus, by NHTSA’s own admission, the proposed guidelines represent an attempt to prescribe policy with respect to devices that are not substantially related to vehicle operation or maintenance. The plain language of the Safety Act does not provide authority for the agency to do so.

ii. NHTSA Likewise Lacks Authority Over Mobile Software and Apps

NHTSA faces additional hurdles to exercise authority with respect to software and apps that are not substantially related to the safe operation and maintenance of a motor vehicle. To qualify as an “accessory” under subsection (B) of the definition of “motor vehicle equipment,” and hence to be within the definition of “motor vehicle equipment,” such software would have to be (1) similar to an “originally manufactured[,]” motor vehicle part or component, and (2) a “part or component manufactured or sold . . . as an accessory. . . to a motor vehicle.”⁴⁰ Thus, under this provision of the Safety Act, NHTSA’s authority only extends to physical things: “parts” or “components,” and physical items that are similar to manufactured motor vehicle part or component.⁴¹

Subsection (C) of the “motor vehicle equipment” definition presents a similar challenge. This provision provides NHTSA with authority to regulate devices, articles, or apparel created or sold for safety-related purposes. First, the customary definitions of device, article, and apparel denote tangible items and would not apply to software or mobile apps. Second, the legislative history of this subsection demonstrates that Congress intended the subsection to apply to a number of tangible, vehicle safety-related items such as motorcycle helmets and goggles, tire repair equipment, and vehicle safety testing equipment that might not otherwise be covered under the definition of motor vehicle equipment.⁴²

Taken together, these considerations mean that the definition of an “accessory” cannot be stretched to encompass intangible software and apps. Although we acknowledge that software is often a component of integrated vehicle systems, and thus could fall under NHTSA’s jurisdiction under different provisions of the Safety Act, the agency lacks the basis to assert authority over software and apps that are not integrated into a motor vehicle or otherwise related to its safe operation and maintenance.

iii. NHTSA’s Lack of Statutory Authority to Issue Motor Vehicle Safety Standards with Respect to PADs and Associated Software Precludes it from Adopting Guidelines with Respect to These Products

The foregoing analysis shows that NHTSA would lack authority to issue a motor vehicle safety standard with respect to PADs and associated software and apps that are not substantially related to the safe operation and maintenance of a motor vehicle. And yet, in everything but name and administrative enforceability, the Phase 2 Guidelines would resemble such a standard. Like formal regulations, the proposed guidelines are being developed pursuant to a notice-and-comment process, carry a deadline for compliance, and would be subject to NHTSA’s monitoring for conformance. More importantly, like motor vehicle safety standards, the proposed guidelines are clearly being adopted by the agency to induce action on the part of

³⁹ Phase 2 Guidelines, at 87680.

⁴⁰ 49 U.S.C. § 30102(a)(8).

⁴¹ Furthermore, all Safety Standards currently in force apply to a specific, *physical* motor vehicle system, part, or component, and none purports to regulate stand-alone software that does not operate in conjunction with a physical motor vehicle part. See, e.g., Safety Standards, codified at 49 C.F.R. § 571.101, *et seq.*

⁴² S. Rep. 91-559, at *3135, 1970 U.S.C.C.A.N. 3130 (May 11, 1970).

hardware manufacturers, operating system providers, software developers, wireless carriers, and others in the mobile device industry.

NHTSA's decision to characterize standards as nonbinding "guidelines" cannot create authority where there otherwise would be none. A federal agency "literally has no power to act . . . unless and until Congress confers power upon it."⁴³ Further, "agency authority may not be lightly presumed."⁴⁴ The absence of specific congressional direction does not create a presumption of agency authority to act.⁴⁵ Here, Congress has granted NHTSA authority to issue motor vehicle safety standards for a limited set of products: motor vehicles and motor vehicle equipment. As described above, PADs and associated software and apps that are not substantially related to the safe operation and maintenance of a motor vehicle do not fall into either category. NHTSA's framing of the Phase 2 Guidelines as "voluntary" and "nonbinding" does not negate the fundamental statutory limitations on the permissible scope of the agency's activities.⁴⁶

Nor can the rule of construction enacted as part of the Fixing America's Surface Transportation ("FAST") Act and cited by NHTSA in the proposed guidelines support the agency's use of guidelines in this manner.⁴⁷ The opening words of this provision—"nothing in this subsection"—clearly indicate that its effect is limited to the preceding subsection, which relates to the enforceability of guidelines issued by NHTSA.⁴⁸ Thus, it cannot be read as an affirmation of any general authority of NHTSA to issue guidelines.

b. NHTSA's Authority to Conduct Research Cannot Support the Issuance of Guidelines on Subjects Otherwise Beyond the Agency's Jurisdiction

For the most part, the proposed guidelines avoid discussion of the jurisdictional limitations on NHTSA's authority to prescribe motor vehicle safety standards.⁴⁹ Rather, the agency describes the Phase 2 Guidelines as "an effective way of expressing NHTSA's research conclusions" in furtherance of its statutory obligation to conduct general research into motor vehicle safety matters.⁵⁰ There is little support for this extension of the agency's research authority to cover policy activities with respect to products over which it has no ability to issue binding standards. Such an expansive reading of NHTSA's research authority would dismantle virtually all limits on the agency's jurisdiction.

⁴³ *Am. Library Ass'n v. FCC*, 406 F.3d 689, 698 (D.C. Cir. 2005) (quoting *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986)).

⁴⁴ *Michigan v. EPA*, 268 F.3d 1075, 1082 (D.C. Cir. 2001).

⁴⁵ *Id.* ("Were courts to presume a delegation of power absent an express withholding of such power, agencies would enjoy virtually limitless hegemony, a result plainly out of keeping with *Chevron* and quite likely with the Constitution as well.") (quoting *Ethyl Corp. v. EPA*, 51 F.3d 1053, 1060 (D.C. Cir.1995)).

⁴⁶ See *Ry. Labor Execs.' Assoc. v. Nat'l Mediation Bd.*, 29 F.3d 655, 670 (D.C. Cir. 1994) (rejecting the assertion that an agency "possesses plenary authority to act within a given area simply because Congress has endowed it with some authority to act in that area").

⁴⁷ See Phase 2 Guidelines, at 87678 (citing Pub. L. No. 114-94 § 24406(2) (2015) ("Rule of construction.—Nothing in this subsection shall be construed to confer any authority upon or negate any authority of the Secretary to issue guidelines under this chapter.")).

⁴⁸ See Pub. L. No. 114-94 § 24406(1) (2015).

⁴⁹ NHTSA concedes that it has authority to "regulate" PADs and associated software "to the extent these technologies function as "motor vehicle equipment" as defined by the Vehicle Safety Act." Phase 2 Guidelines, at 87678 n.90. However, CTA maintains that the distinction between "regulation" and other policy activities is without a difference and that the proposed guidelines represent an impermissible attempt to make policy with respect to products that do not constitute "motor vehicle equipment."

⁵⁰ Phase 2 Guidelines, at 87678.

i. NHTSA's Research Authority Extends to Testing and Experimentation Activities Only, Not the Formulation of Prescriptive Guidelines

To begin, there is an inherent difference between “research conclusions,” which are meant to report the results of investigation and study, and “guidelines,” which are meant to induce or coerce industry action. Congress appears to have had the former, more customary, understanding of “research” in mind when framing the statutory provisions that NHTSA relies upon for its authority to issue the Phase 2 Guidelines. This is especially true with respect to the provisions NHTSA cites from the Safety Act.⁵¹ In addition to the general authorizations cited by NHTSA in the proposed guidelines, Congress included an illustrative list of activities that may be undertaken in connection with the agency’s research programs:

- (1) promote, support, and advance the education and training of motor vehicle safety staff of the National Highway Traffic Safety Administration in motor vehicle safety research programs and activities, including using program funds for planning, implementing, conducting, and presenting results of program activities, and for related expenses;
- (2) obtain experimental and other motor vehicles and motor vehicle equipment for research or testing;
- (3)(A) use any test motor vehicles and motor vehicle equipment suitable for continued use, as determined by the Secretary to assist in carrying out this chapter or any other chapter of this title; or (B) sell or otherwise dispose of test motor vehicles and motor vehicle equipment and use the resulting proceeds to carry out this chapter;
- (4) award grants to States and local governments, interstate authorities, and nonprofit institutions;
- (5) enter into cooperative agreements, collaborative research, or contracts with Federal agencies, interstate authorities, State and local governments, other public entities, private organizations and persons, nonprofit institutions, colleges and universities, consumer advocacy groups, corporations, partnerships, sole proprietorships, trade associations, Federal laboratories (including government-owned, government-operated laboratories and government-owned, contractor-operated laboratories), and research organizations; and
- (6) in coordination with Department 1 of State, enter into cooperative agreements and collaborative research and development agreements with foreign governments.⁵²

Although this list admittedly does not define the limits of NHTSA’s research authority, it is indicative of the kinds of activities that Congress contemplated the agency would carry out in exercising this authority. Notably, none of the enumerated activities approximates the development or issuance of guidelines for industry behavior. Rather, the listed activities are largely concerned with testing and experimentation activities. Using NHTSA’s research authority to justify issuing guidelines that are wholly unrelated to testing and experimentation thus appears to contravene congressional intent for the exercise of this authority.

Moreover, a gap exists between “encapsulating and publishing research results” and formulating “recommendations, best practices, or guidelines.”⁵³ Although NHTSA claims it is publishing its research conclusions, it has few research conclusions to publish. It has not published research with regard to the effect of its proposed guidelines or their technical feasibility. Similarly, we are not aware that NHTSA has conducted any research evaluating the effects of the Phase 1 Guidelines. Given the many similarities between Phase 1 and Phase 2, such research would be highly probative to evaluating the effects of and necessity for the Phase 2 Guidelines. If NHTSA does not know the likely effects of its proposed guidelines, only a disingenuous application of research authority would suggest a premature release of guidelines masked as mere research. Instead, NHTSA should conduct sufficient research to establish their

⁵¹ See *id.* (citing 49 U.S.C. §§ 30181-2).

⁵² 49 U.S.C. § 30182(b).

⁵³ Phase 2 Guidelines, at 87678.

likely effects. In fact, in the example NHTSA cites to demonstrate that broadening the meaning of research authority is “not novel,” NHTSA did just that. When NHTSA’s research failed to yield conclusive findings regarding the effects of allowing the removal of Enhanced Seatbelt Reminder Systems on public acceptance and safe seat belt use, NHTSA acknowledged that it “did not know the effects of this option” and responsibly chose to “neither endorse nor oppose it.”⁵⁴ NHTSA’s proposed Phase 2 Guidelines both overstep the agency’s authority and are inconsistent with past practice.

ii. An Expansive Reading of NHTSA’s Research Authority Would Undermine the Congressionally-Prescribed Limits on the Agency’s Jurisdiction Under the Safety Act

Furthermore, interpreting NHTSA’s research power as the agency suggests would undermine the broader architecture of the Safety Act. As noted above, the statutory authorization provided to NHTSA in the Safety Act is narrowly tailored to give the agency authority over motor vehicles and motor vehicle equipment. Congressional intent to provide this limited authority would be defeated if a general grant of authority to carry out motor vehicle safety research could somehow empower the agency to make policy with respect to items outside of its regulatory jurisdiction under the Safety Act. If Congress had intended for this result, it undoubtedly would have said so. “Congress . . . does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not hide elephants in mouseholes.”⁵⁵ Indeed, the industries in which NHTSA seeks to intervene through the Phase 2 Guidelines—involving complex global supply chains and billions of dollars in economic value—are a considerable “elephant.” Such an aggressive expansion of NHTSA’s jurisdiction must be supported by something more than the agency’s research authority.⁵⁶

To permit otherwise would represent a virtually limitless expansion of NHTSA’s authority to cover everything that might have a conceivable relationship to motor vehicle safety. In addition to departing from congressional intent, such an interpretation would open the door to problematic interpretations. For example, the use of certain prescription drugs while driving may present vehicle safety issues by making drivers drowsy. However, it would be a clear abuse of NHTSA’s authority to address the formulation of pharmaceuticals through nonbinding guidelines or otherwise to ensure that certain chemicals causing drowsiness are removed from drugs to assist in efforts to combat drowsy driving. Like PADs and associated software, pharmaceuticals clearly do not meet the definition of “motor vehicle equipment.” Thus, NHTSA’s authority to prescribe policy with respect to them is limited.

CTA acknowledges that certain mobile devices and apps now include functionality, such as navigation technology, that relates to the driving task. In addition, a large number of new and promising technology solutions designed to address distracted driving from mobile devices are currently available or in development. Indeed, CTA’s concerns about the prescriptive nature of NHTSA’s recommendations with respect to the recommendation of pairing and Driver Mode in the Phase 2 Guidelines are motivated in significant part by protecting the interests of these new

⁵⁴ Effectiveness and Acceptance of Enhanced Seat Belt Reminder Systems: Characteristics of Optimal Reminder Systems Final Report, DOT HS 811 097, § 5.4 (2009).

⁵⁵ *Whitman v. American Trucking Ass’ns, Inc.*, 531 U.S. 457, 468 (2001).

⁵⁶ *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 160 (2000) (“Congress could not have intended to delegate a decision of such economic and political significance to an agency in so cryptic a fashion.”). We note that the one example of nonbinding guidelines mentioned in the Phase 2 Guidelines to show NHTSA’s prior “research conclusions” applies to a product that unquestionably satisfies the definition of “motor vehicle equipment:” seat belts. See Phase 2 Guidelines, at 87678 n.95.

technologies. However, the mere fact that these devices and apps may have some relation to vehicle operations does not mean that NHTSA automatically has authority over them. The boundaries of the agency's jurisdiction under the Safety Act are clear. Only Congress can expand them.

c. NHTSA's Effort to Expand its Jurisdiction Could Negatively Impact Innovation in the Consumer Technology Industry

NHTSA's attempt to extend its jurisdiction over mobile devices and related software through the Phase 2 Guidelines could have significant consequences for industry efforts to address motor vehicle safety through technology. NHTSA jurisdiction would add an additional layer of regulatory oversight that could stifle innovation as companies assess the likelihood of NHTSA enforcement actions and regulatory compliance obligations, particularly the possible issuance of Safety Standards.

Moreover, NHTSA jurisdiction over mobile devices and software would create new compliance challenges for the developers of these products, which are often subject to competing regulation by multiple agencies. For instance, the Department of Homeland Security and the Department of Commerce/the National Institute of Standards and Technology have regulations relevant to cybersecurity that could implicate the mobile devices and software. Likewise, SAE International and the International Organization for Standardization (ISO) are also working to create international standards related to cybersecurity in the automotive field. By adding another layer of regulation that may overlap with other efforts in the same area, NHTSA's efforts make it less likely for companies to devote significant resources to promoting innovation in the field of automotive safety.

Finally, the Phase 2 Guidelines would reach well beyond NHTSA's traditional areas of expertise. NHTSA has had decades of experience to develop a keen understanding of motor vehicles and motor vehicle equipment, as those terms are defined in the Safety Act. However, under the expansive vision reflected in the proposed guidelines, the agency would have the influence to control the design of technology products down to the fitness tracker worn on a driver. Such a vast expansion of NHTSA's authority, if it were to happen, would have to be explicitly granted by Congress.

4. Conclusion and Requested Action

We appreciate NHTSA's continued efforts to draw attention to the hazards of distracted driving. This is an urgent problem that deserves the attention of government and stakeholders alike. However, in light of the substantive and jurisdictional concerns raised above, as well as the considerations associated with the transition to a new presidential administration, we respectfully ask NHTSA to withdraw the proposed guidelines. Given the magnitude of the effect that the Phase 2 Guidelines would have on participants across the mobile device ecosystem—as well as on the American public more broadly—we believe it is essential that this guidance project receive a complete *de novo* review by the incoming administration, including the new Secretary of Transportation and NHTSA Administrator.

We continue to believe that a more open and flexible approach to technology, coupled with the “three E's” of concerted enactment, education, and enforcement efforts with respect to strict state legal restrictions on driver behavior offer the most effective pathway to address driver distraction issues. We encourage the agency to continue to focus its attention on these measures that have already had a demonstrated effect on distracted driving, and to encourage

expansion of such efforts through utilization of the section 405 grant program. We stand ready to be a partner to NHTSA, state governments, and the industry more broadly in pursuing these initiatives. Thank you for the opportunity to provide these comments. Please do not hesitate to contact us with any questions you may have.

Sincerely,

/s/ Gary Shapiro

Gary Shapiro
President and CEO
Consumer Technology Association
1919 S Eads St
Arlington, VA 22206

/s/ Jamie Boone

Jamie Boone
Director, Government Affairs
Consumer Technology Association
1919 S Eads St
Arlington, VA 22206

/s/ Pamela Garvie

/s/ Peter Nelson

Pamela Garvie
Peter Nelson
K&L Gates LLP
1601 K Street N.W.
Washington, DC, 20006

Counsel for Consumer Technology Association

Congress of the United States
Washington, DC 20515

November 26, 2014

The Honorable Anthony Foxx
Secretary
Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Dear Secretary Foxx:

The Committee on Energy and Commerce and the Committee on Transportation and Infrastructure are concerned by the National Highway Traffic Safety Administration's (NHTSA) plan to release the Phase 2 Driver Distraction Guidelines (Guidelines) on portable and aftermarket electronic devices brought into motor vehicles by drivers or passengers. These electronic devices include smart phones, electronic tablets, and other portable communication devices.

This exercise of NHTSA's authority seems to indicate that the agency believes it is empowered to regulate any consumer electronics product used in a car. As congressional authorizers, we disagree: The activities being conducted by NHTSA in its development of the Guidelines are beyond the scope of its authority. NHTSA itself agreed with our interpretation as recently as 2007, when Chief Counsel Anthony Cooke wrote in an October 4 letter to the Government Accountability Office that NHTSA had no authority to regulate handheld cell phones, citing the fact that "there is no particular nexus between the function of a cell phone and either the operation or the maintenance of motor vehicles."

In addition to questions of its authority, we have concerns that NHTSA lacks the expertise to properly advance safety in this space. Guidelines could act as de facto regulation of industry without the expert input, transparency, and process protections that would normally accompany such activity. Indeed, NHTSA's action could limit further safety innovations and create legal uncertainty for multiple sectors of the U.S. economy.

Distracted driving is an important safety concern, and Congress has provided resources for NHTSA to assist states in a number of ways to address distracted driving. However, efforts to regulate electronic devices exceed the scope of NHTSA's authority and technical expertise. It will only serve to divert NHTSA resources away from the important work within its statutory mandate.

It is worth noting that individual states are already making tremendous progress in combating distracted driving. Forty-four states, D.C., Puerto Rico, Guam, and the U.S. Virgin Islands already ban text messaging for all drivers. All but five states of those states have primary enforcement. Of the six states with limited bans on texting while driving, four prohibit text messaging by novice drivers and three restrict school bus drivers from texting.

To fulfill its critical vehicle safety mission, we strongly encourage NHTSA to spend its time and budget on activities that are clearly within the agency's authority.

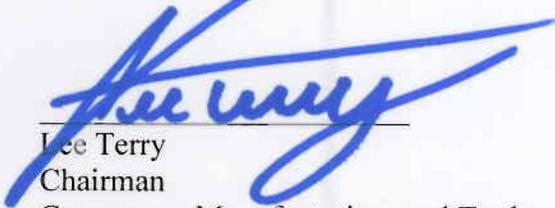
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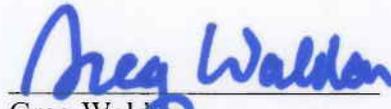
Fred Upton
Chairman
Energy and Commerce Committee



Bill Shuster
Chairman
Transportation and Infrastructure
Committee



Lee Terry
Chairman
Commerce, Manufacturing, and Trade
Subcommittee
Energy and Commerce Committee



Greg Walden
Chairman
Communications and Technology
Subcommittee
Energy and Commerce Committee