

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.

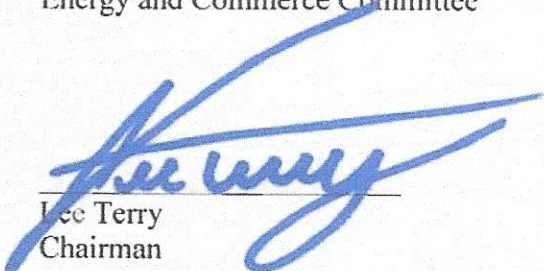
Sincerely,



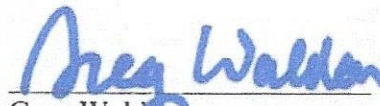
Fred Upton
Chairman
Energy and Commerce Committee



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
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