



June 26, 2017

**U.S. House of Representatives
Committee on Energy and Commerce
Digital Commerce and Consumer Protection Subcommittee
2125 Rayburn House Office Building
Washington, D.C. 20515**

RE: Draft autonomous vehicle legislation

Dear Committee Staff,

Thank you for the opportunity to comment on this draft autonomous vehicle legislation, as circulated by the Digital Commerce and Consumer Protection Subcommittee of the Energy and Commerce Committee.

Preemption

1. Support - *LEAD'R (Let NHTSA Enforce Autonomous Vehicle Driving Regulations) Act*

State and local regulations that attempt to regulate the design, construction, mechanical systems, software systems or communications systems employed by autonomous vehicles can and should be preempted by the federal government. On that basis, the LEAD'R Act is eminently sensible. We believe firmly that this model of preemption should be the centerpiece of any package of autonomous vehicle legislation, as it is the single most important bill in this collection.

As a technical matter, the division of responsibility between the states and federal government set out in this bill is precisely what we would recommend. Furthermore, we thank the committee for accepting our suggestions to strengthen this preemption language by allowing the National Highway Traffic Safety Administration (NHTSA) to challenge states' constructive regulation of the design, construction, mechanical systems, software systems or communications systems of autonomous vehicles via their registration authority.¹ However,

¹ California Senate Bill 802 (Skinner), as introduced, is the ideal exemplar of such an approach. See: http://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=201720180SB802

there are still important areas of preemption left unaddressed by this otherwise excellent effort.

A. Safety-related data collection

One of those areas is safety-related data collection. This practice is problematic for two reasons. First, allowing every state to set and collect data based on bespoke reporting standards for autonomous vehicles risks creation of a patchwork of regulations that the other areas of preemption wisely avoid.

Take, for instance, the California Department of Motor Vehicles' disengagement report requirement.² We believe that, regardless of the merits of collecting this particular data, the lack of consistency across state lines undermines the practical value of the information California is collecting. Companies can easily shift more hazardous highly autonomous vehicle (HAV) testing to neighboring states in an attempt to modify their safety numbers in California.

Second, we believe that when states collect information pertaining to vehicle safety, they stray perilously near to areas of clear federal concern. At bottom, the question must be asked what states like California intend to do with disengagement and accident information if not to oversee some safety-related element of the vehicles' operations. Beyond the information necessary for state law-enforcement functions, we believe safety would be better served if NHTSA standardized data-reporting requirements across the country. Doing so would give manufacturers greater clarity concerning exactly what is expected of them.

B. Local monopoly regimes

The other important preemption area not addressed in the LEAD'R Act concerns local monopoly regimes. There is a danger that, as autonomous fleets are rolled out, cities may seek exclusive licensing agreements with a specific HAV manufacturer, developer, fleet operator or holding company. Our fear is that their goal would be to establish preferential treatment for certain operators, reminiscent of monopolistic taxi services.

For instance, an original equipment manufacturer (OEM) may ask a small municipality for exclusive operating rights in exchange for priority deployment. Deals like this would establish barriers that could undermine the HAV market's competitiveness, leading to less innovation and higher prices for consumers in the long run. Toward that end, we believe there is a

² Section 227.46. See: https://www.dmv.ca.gov/portal/wcm/connect/d48f347b-8815-458e-9df2-5ded9f208e9e/adopted_txt.pdf?MOD=AJPERES

compelling case for the federal government to direct the Federal Trade Commission (FTC) to scrutinize these types of arrangements as they arise.

This issue is best addressed in separate legislation, distinct from the LEAD'R Act, since it pertains to the FTC, rather than NHTSA. We recommend creation of a separate bill called the "ALMAT Act," as described below:

ALMAT (Avoiding Local Monopolies in Autonomous Transportation) Act: Directs the Federal Trade Commission to scrutinize States and/or political subdivisions of a State under Section 5 of its authority if a State and/or political subdivision of a State seeks to establish, or establishes, an exclusive operating agreement with any particular HAV manufacturer, developer, fleet operator, or holding company that unreasonably restricts the ability of other market participants to operate within that State or subdivision thereof.

In practice, this would involve the commission's Office of Policy Planning issuing comments in support of robust competition on the related proceedings as these agreements are proposed.³ In the event that such a proposal becomes law, the commission's Bureau of Competition should bring suit to challenge the corresponding state or political subdivision's law for violating Section 5 of the Federal Trade Commission Act.⁴

Exemptions and Testing

2. Support - PAVE (Practical Autonomous Vehicle Exemptions) Act

As a general principle, it is a worthy goal to provide broader access to exemptions from Federal Motor Vehicle Safety Standards (FMVSS) for testing purposes. As such, we support the PAVE Act. Increasing the cap on exemptions will allow HAV testing to ramp up more quickly and increase consumer exposure to the technology. This would allow OEMs and developers to find bugs faster and increase public trust in the technology. It might, however, be worthwhile to consider ways to streamline the process by which a company obtains an exemption in order to

³ This would bear similarity to the FTC's advocacy filings against implementation of Certificate of Need laws and occupational-licensing requirements. See:

https://www.ftc.gov/system/files/documents/advocacy_documents/joint-statement-federal-trade-commission-antitrust-division-us-department-justice-regarding/v170006_ftc-doj_comment_on_alaska_senate_bill_re_state_con Law.pdf

⁴ This would bear similarity to the FTC's suit of N.C. State Board of Dental Examiners for unfairly keeping non-dentists out of teeth-whitening practices. See: https://www.ftc.gov/system/files/attachments/competition-policy-guidance/active_supervision_of_state_boards.pdf

reduce exemption approval wait times, which reportedly can stretch for more than a year.

3 - 5. *Support - ROAD, EXEMPT and MORE Acts*

These are great bill ideas for reasons similar to those articulated for the PAVE Act. Increasing the number, length and breadth of exemptions, as well as the scope of those eligible for exemptions, will lead to a more even playing field and open the door to innovation for those not currently working with OEMs. As such, we support the ROAD, EXEMPT and MORE Acts.

6. *Support - INFORM (Increasing Information and Notification to Foster Openness Regarding Autonomous Vehicle Matters to States) Act*

The INFORM Act is worthwhile as a method to avoid state overreach and to facilitate information sharing between federal and state regulators. As such, we support the INFORM Act.

Other

11. *Support - HAV PROMPT (Pre-Market Approval Reduces Opportunities for More People to Travel Safely) Act*

As we have detailed in our numerous comments^{5 6} to the FTC and NHTSA, pre-market approval for autonomous vehicles would be a dangerous impediment to deployment. As such, we support the HAV PROMPT Act.

12. *Support - GUARD (Guarding Automakers Against Unfair Advantages Reported in Public Documents) Act*

Given the business stakes associated with development of this new technology, NHTSA should treat testing data shared by manufacturers and developers with a high degree of care. The GUARD Act is an appropriate step to prevent data from being improvidently shared. Furthermore, we encourage preemption of weaker state data-protection regulations to ensure that testing data are held to a rigorous standard of protection across all U.S. jurisdictions.

⁵ Comments of CEI, R Street, et al. to NHTSA concerning the Federal Automated Vehicle Policy. See: <http://www.rstreet.org/wp-content/uploads/2016/12/CEI-et-al-NHTSA-FAVP-guidance-comments.pdf>

⁶ Comments of the Mercatus Center to NHTSA concerning the Federal Automated Vehicle Policy. See: <https://www.mercatus.org/system/files/mercatus-thierer-automated-vehicles-v1.pdf>

13. Support - *MEMO (Managing Government Efforts to Minimize Obstruction) Act*

Preventing overlap between spheres of regulatory authority is vital for compliance purposes. Toward that end, we support the MEMO Act.

14. Support - *DECAL (Designating Each Car's Automation Level) Act*

Because this adopts the SAE International levels of automation rather than creating a separate paradigm, we support the DECAL Act.

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