



February 3, 2017

BY ELECTRONIC SUBMISSION

Dr. Chris Monk
U.S. Department of Transportation
National Highway Traffic Safety Administration
1200 New Jersey Avenue SE
Washington, DC 20590

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

Dear Dr. Monk:

CTIA¹ respectfully submits these comments on the National Highway Traffic Safety Administration's ("NHTSA" or the "Agency") proposed Visual-Manual Driver Distraction Guidelines for Portable and Aftermarket Devices (the "Proposed Guidelines").²

I. Introduction and Overview

The wireless industry, including carriers, device manufacturers and application developers, provides connectivity technologies that make driving safer and more efficient. CTIA and its member companies support continued innovation encouraging drivers to avoid all distractions, whether they arise from interacting with mobile or embedded devices, or from other activities. The wireless industry has long recognized the importance of maintaining attention on the driving task as new technologies proliferate.

¹ CTIA-The Wireless Association® (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to live a 21st century connected life. The association's members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry's voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry's leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

² See *Request for Public Comments on Visual-Manual NHTSA Driver Distraction Guidelines for Portable and Aftermarket Devices, Docket No. NHTSA-2016-0040*, 81 Fed. Reg. 87656 (Dec. 5, 2016).



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For example, the wireless industry has been committed to driver education and awareness of the risks of distracted driving since at least 1999, when it launched a multimedia safe driving campaign. CTIA partnered with the National Safety Council for the "On the Road, Off the Phone" initiative³, which was directed toward parents and younger drivers and focused on the dangers of texting while driving. Most recently, the CTIA Wireless Foundation™ established the Drive Smart campaign, enlisting teen drivers to develop digital shorts that discourage their peers from distracted driving.⁴

We appreciate NHTSA's intent to address emerging issues posed by connected and autonomous vehicles. We also appreciate the Agency's engagement of industry to explore how to focus driver attention in light of proliferating technology. However, the Proposed Guidelines suffer from a variety of deficiencies making them ineffective for accomplishing the goal of minimizing distraction from mobile devices. NHTSA's expression of authority in the Proposed Guidelines over mobile devices and software is limited by relevant federal law, as described in Section II herein. The Proposed Guidelines recommend implementation of pairing and Driver Mode elements that, as described in Section III herein, impose significant design revision costs on device manufacturers, mobile operating systems and mobile software developers. In light of the ever-evolving nature of driver/electronics interfaces, we request that NHTSA withdraw the Proposed Guidelines and re-establish an approach to distracted driving that concentrates on public outreach and industry input across the communications and automotive industries.

II. NHTSA lacks authority to issue the Proposed Guidelines, which may cause regulatory compliance conflict.

The National Traffic and Motor Vehicle Safety Act (the "Safety Act") extends NHTSA authority to reduce traffic accidents through prescription of safety standards for motor vehicles and motor vehicle equipment, and through "needed safety research and development."⁵ The Agency concludes that the Proposed Guidelines "are an effective way of expressing NHTSA's research conclusions."⁶ While we acknowledge NHTSA's expertise over motor vehicle safety and agree that manual use of mobile devices while driving increases crash risk, we respectfully disagree that the Proposed Guidelines would

³ See <http://www.howcast.com/videos/259336-Protecting-Teens-From-Distracted-Driving/>.

⁴ See <http://www.wirelessfoundation.org/initiatives/safety/drive-smart-now>.

⁵ National Traffic and Motor Vehicle Safety Act of 1966, as amended, 49 U.S.C. 30101 *et seq.*

⁶ Proposed Guidelines at 87678.



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be an effective method of addressing the Agency's research conclusions about the consequences of distraction from mobile devices. Further, the Agency's authority does not extend to mobile device and software not embedded in the motor vehicle, the use of which is typically governed by state traffic safety laws. Further, the Proposed Guidelines create the potential for overlap with other relevant federal regulations governing mobile devices and software. Finally, the Proposed Guideline's estimated time for conformance is burdensome in light of its significant design recommendations necessitating device, component and software updates.

The pairing and Driver Mode recommendations described in the Proposed Guidelines represent the Agency's conclusions about how to address its research findings that show an increased crash risk associated with manual use of portable devices while driving.⁷ CTIA agrees that such use is unsafe, but we are concerned that the recommendations are not the most effective method of addressing this increased risk, as required by the Safety Act. The Proposed Guidelines reflect a static view of mobile device and software design and interaction with both embedded electronics and users. If finalized, the Proposed Guidelines could freeze innovation and create an environment in which technology and automotive stakeholders focus on automatic pairing and Driver Mode as the end goals of product development, instead of a more comprehensive goal of leveraging connectivity to maintain and improve driver focus. As described in Section IV herein, the evolving nature of these design and interaction elements require a more cooperative approach among the Agency and the communications and automotive industries that allows for Agency recommendations to account for changing technologies.

The Agency's authority to issue safety standards extends to motor vehicles and motor vehicle equipment. The statutory definition of motor vehicle equipment extends, in relevant part, to "(A) any system, part, or component of a motor vehicle as originally manufactured; [and] (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."⁸ Mobile devices and software do not fit within this definition of an "accessory" under the Safety Act. Mobile devices and software do not meet the statutory definition of motor vehicle equipment. As a practical matter, this is consistent with the Agency's lack of authority over other significant causes of distraction,

⁷ See *id.* at 87663.

⁸ 49 U.S.C. § 30102(a)(7) (emphasis added).



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whether through other objects like food, drink or outside reading material, or through behaviors.

State traffic safety laws address driver distraction from a law enforcement perspective, either by prohibiting manual usage of a mobile device while driving, or by restricting such use by certain categories of drivers such as novice or commercial drivers. In the face of mobile device and software changes, some states are considering an updated approach that reflects the pervasive nature of electronics and other driver interactions.⁹ Since 2007, the CTIA Board of Directors has supported state and municipal laws prohibiting manual operation of a mobile device while driving. Unlike the Proposed Guidelines, these state laws are technology-neutral, do not prescribe specific design elements, and represent a straightforward approach discouraging device-based distractions. The Proposed Guidelines would create unnecessary and confusing overlap with respect to this area already addressed by state and local law enforcement.

The Proposed Guidelines could conflict with relevant privacy and data security regimes applicable to the mobile ecosystem. They complicate compliance with privacy restrictions on sharing customers' data by potentially exposing mobile device or software data to embedded electronics systems, engendering consumer confusion when considered against the Federal Communication Commission's ("FCC") requirement that Internet service providers notify customers when they share personal information with other entities.¹⁰ Wireless service, devices and software are subject to numerous consumer privacy regulations, including but not limited to FCC broadband privacy requirements and Federal Trade Commission ("FTC") data use and access prescriptions. These regimes and others include a common objective of providing consumers with notice and choice regarding the use and sharing of their data. The Proposed Guidelines recommend pairing mobile devices and software with embedded electronics automatically or via the fewest steps possible.¹¹ To the extent that the automatic pairing recommendation does not include a mechanism to provide consumers with notice and choice regarding

⁹ For example, the Oregon Department of Transportation established a Distracted Driving Task Force to update the state's hands-free device usage requirement to reflect use of wireless devices for activities other than talking and texting. CTIA was a member of this task force, which recommended legislative amendments for consideration in the current state legislative sessions. See <https://www.oregon.gov/ODOT/COMM/Pages/Distracted-Driving-Task-Force.aspx>.

¹⁰ See "FCC Releases Rules to Protect Broadband Consumer Privacy" Fact Sheet, available at: https://apps.fcc.gov/edocs_public/attachmatch/DOC-341938A1.pdf.

¹¹ See Proposed Guidelines at 87673.



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entities that use or share data through the pairing, such automatic pairing could result in an obstacle to the common objective of transparency regarding data use and sharing. The Proposed Guidelines merely recognize that “pairing recommendations may touch on potential privacy concerns regarding the possibility of data transfer, sharing, and storage between the vehicle, device and off-board systems” and recommend that stakeholders address these concerns.¹² Should the Agency finalize guidelines that include pairing, we request that such guidelines instruct responsible parties to implement the pairing in a way that protects mobile users’ privacy and prevents unauthorized access of consumer information. Additionally, automatic pairing could conflict with Department of Homeland Security and FTC recommendations that providers balance the benefits of connectivity with the risks of breach or failure.¹³

Finally, the Proposed Guidelines’ 16-month timeframe for implementation of pairing and Driver Mode measures¹⁴ is unreasonably short in light of the issues described in Section III herein. Those measures would require significant revision to application storefront intake procedures, as well as relevant industry standards for pairing.

III. The Proposed Guidelines suffer from practical and implementation issues, reducing their effectiveness relative to existing industry initiatives to maintain driver attention.

The Proposed Guidelines recommend pairing mobile devices and software with embedded electronics automatically or via the fewest steps possible.¹⁵ Pairing implicates a variety of wireless industry technical standards, including the Bluetooth® Core

¹² *Id.* at 87674.

¹³ See e.g., Department of Homeland Security “Strategic Principles for Securing the Internet of Things” Version 1.0 at 10, Nov. 15, 2016 (advising providers to “connect carefully and deliberately”), available at: https://www.dhs.gov/sites/default/files/publications/Strategic_Principles_for_Securing_the_Internet_of_Things-2016-1115-FINAL_v2-dg11.pdf ; FTC, “Start with Security: A Guide for Business,” June 2015, at 4 and 7 (recommending sensible controls on data access and implementation of network segmentation to limit risk and consequences of data breaches), available at: <https://www.ftc.gov/system/files/documents/plain-language/pdf0205-startwithsecurity.pdf> .

¹⁴ See Proposed Guidelines, 81 Fed. Reg. 87677.

¹⁵ See *id.* at 87673.



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Certification for interaction between mobile devices and other electronics.¹⁶ NHTSA should consider whether its recommendation for pairing automatically or via the fewest steps possible is consistent with relevant technical specifications. Standards-setting organizations like the Bluetooth Special Interest Group update these specifications regularly to keep pace with device and software version updates.

The Proposed Guidelines state that, when not paired with embedded electronics, mobile devices and software “should include a Driver Mode that is developed by industry stakeholders.”¹⁷ There are hundreds of mobile devices and tens of thousands of mobile apps in the marketplace today. The Driver Mode described in the Proposed Guidelines will require complex and costly implementation measures across all these devices and apps, some of which will be redundant with mobile operating system drive version features (like Apple CarPlay and Android Auto), especially as those operating systems integrate with embedded electronics.

IV. In light of the ever-expanding array of existing tools and features to maintain driver attention, NHTSA should withdraw the Proposed Guidelines and convene industry stakeholders for a more holistic and future-proof approach to design.

Device manufacturers, operating systems and software developers work in a dynamic space that provides new ways to leverage data, analytics and human/machine interfaces in a way that focuses driver attention on the road and away from distractions, regardless of their source. In contrast, the Proposed Guidelines offer a static set of design recommendations likely to be outdated as soon as NHTSA finalizes them. Convergence between the wireless and automotive industries is accelerating through partnerships that make driving safer and more efficient. We respectfully request that the Agency withdraw the Proposed Guidelines and gather both industries to discuss how these new tools allow for long-term design approaches that accomplish those goals.

¹⁶ For more information about the Bluetooth Special Interest Group and its Core Specification, see <https://www.bluetooth.com/specifications/bluetooth-core-specification> .

¹⁷ Proposed Guidelines at 87659.



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Respectfully submitted,

CTIA

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