

**Before the
FEDERAL HIGHWAY ADMINISTRATION
Washington, D.C. 20590**

In the Matter of)	
)	Docket No. FHWA-2017-0049
Request for Information on)	
Automated Driving Systems)	83 Fed. Reg. 2719
)	

**COMMENTS OF
THE COMPETITIVE ENTERPRISE INSTITUTE**

March 5, 2018

Prepared by:

Marc Scribner

Senior Fellow

Competitive Enterprise Institute

1310 L Street N.W., 7th Floor

Washington, D.C. 20005

(202) 331-1010

marc.scribner@cei.org

Introduction

On behalf of the Competitive Enterprise Institute (“CEI”), I respectfully submit these comments in response to the Federal Highway Administration’s (“FHWA”) Request for Information on Automated Driving Systems (“RFI”).¹

CEI is a nonprofit, nonpartisan public interest organization that focuses on regulatory policy from a pro-market perspective.² CEI previously submitted comments to the National Highway Traffic Safety Administration (“NHTSA”) in response to its Request for Comments on the Federal Automated Vehicles Policy in September 2016,³ and again submitted comments to NHTSA in response to its Request for Comments on the Automated Driving Systems: A Vision for Safety in September 2017.⁴ CEI’s Scribner appeared on a discussion panel at NHTSA’s December 12, 2016, Federal Automated Vehicles Policy Public Meeting.⁵

Our comments are structured to correspond to the numbered questions posed in the RFI regarding automated driving systems (“ADS”).

RFI Responses

3. How does the state of good repair (e.g., pavement and road markings quality) impact ADS, including technology or safety costs, if at all?⁶

ADS depend on resident sensors to detect and classify lane markings, road signs, and traffic signals. Subpar roadway infrastructure has been documented to reduce the

-
1. Request for Information on Automated Driving Systems, *Notice*, FHWA-2017-0049, 83 Fed. Reg. 2719 (Jan. 18, 2018) [hereinafter RFI].
 2. See About CEI, <https://cei.org/about-cei> (last visited Feb. 27, 2017).
 3. Comments of the Competitive Enterprise Institute, R Street Institute, & TechFreedom on the Federal Automated Vehicles Policy, *Notice*, NHTSA-2016-0090, 81 Fed. Reg. 65703 (Sep. 23, 2016), available at <https://www.regulations.gov/document?D=NHTSA-2016-0090-1000> [hereinafter Comments of CEI et al. 2016].
 4. Comments of the Competitive Enterprise Institute and R Street Institute on the Automated Driving Systems: A Vision for Safety, *Notice*, NHTSA-2017-0082, 82 Fed. Reg. 43321 (Sep. 15, 2017), available at <https://www.regulations.gov/document?D=NHTSA-2017-0082-2810> [hereinafter Comments of CEI et al. 2017].
 5. Transcript of the National Highway Traffic Safety Administration’s Federal Automated Vehicles Policy Public Meeting, Arlington, Va. (Dec. 12, 2016), available at <https://www.regulations.gov/document?D=NHTSA-2016-0090-1130>.
 6. RFI, *supra* note 1, at 2720.

reliability of ADS.⁷ As such, it is critical that officials prioritize maintenance and a state of good repair.

4. How should FHWA engage with industry and automation technology developers to understand potential infrastructure requirements? Are there specific issues that FHWA should engage with industry directly?⁸

FHWA should understand that industry requests for infrastructure services vary widely. Most ADS developers are assuming that nationwide connected vehicle infrastructure will not be publicly provided due to fiscal and regulatory challenges and/or would be undesirable even if such a nationwide network was deployed due to cybersecurity and technology lock-in risks.

In particular, many leading ADS developers oppose a proposed federal mandate on vehicle-to-vehicle (“V2V”) communications technology as contemplated by NHTSA, which also suggested the reliance on a single communications protocol known as dedicated short-range communications (“DSRC”).⁹ Any future work of FHWA on ADS-related physical and digital infrastructure should ensure a technology-neutral playing field to promote ongoing technological innovation in ADS, and the resulting safety and mobility benefits, which would naturally preclude the adoption of a technology-specific approach such as mandated V2V-DSRC.

5. What is the role of digital infrastructure and data in enabling needed information exchange between ADS and roadside infrastructure? What types of data transmission between ADS and roadside infrastructure could enhance safe and efficient ADS operations? What type of infrastructure and operations data, if available, would help accelerate safe and efficient deployment of the ADS on our Nation’s public roadways? How might the interface between ADS and digital infrastructure best be defined to

7. Alexandria Sage, *Where’s the lane? Self-driving cars confused by shabby U.S. roadways*, REUTERS (Mar. 31, 2016), <https://www.reuters.com/article/us-autos-autonomous-infrastructure-insig/wheres-the-lane-self-driving-cars-confused-by-shabby-u-s-roadways-idUSKCN0WX131>.

8. RFI, *supra* note 1, at 2720.

9. *See, e.g.*, Comments of Waymo LLC on Federal Motor Vehicle Safety Standards: V2V Communications, *Notice of Proposed Rulemaking*, NHTSA-2016-0126, 82 Fed. Reg. 3854 (Jan. 12, 2017), *available at* <https://www.regulations.gov/document?D=NHTSA-2016-0126-0465>; Comments of Tesla, Inc., on Federal Motor Vehicle Safety Standards: V2V Communications, *available at* <https://www.regulations.gov/document?D=NHTSA-2016-0126-0302>; Comments of Mercedes-Benz USA, LLC, on Federal Motor Vehicle Safety Standards: V2V Communications, *available at* <https://www.regulations.gov/document?D=NHTSA-2016-0126-0266>; Comments of BMW of North America, LLC, on Federal Motor Vehicle Safety Standards: V2V Communications, *available at* <https://www.regulations.gov/document?D=NHTSA-2016-0126-0369>; *and* Comments of the 5G Automotive Association on Federal Motor Vehicle Safety Standards: V2V Communications, *available at* <https://www.regulations.gov/document?D=NHTSA-2016-0126-0390>.

facilitate nationwide interoperability while still maximizing flexibility and cost effectiveness for ADS technology developers and transportation agencies and minimizing threats to cybersecurity or privacy?¹⁰

Vehicle-to-everything (“V2X”) communications may become increasingly important over time. However, the future is uncertain and recent federal efforts to mandate V2V and DSRC have failed to adequately account for expected future wireless innovations, particularly with respect to 5G mobile networks. These future innovations will likely offer superior service for lower deployment and operating costs.

But, as noted above, many ADS developers view government-directed initiatives on V2V, DSRC, and V2X with great skepticism, fearing technological lock-in that could result from a nationwide regulatory mandate of, as they believe, flawed and obsolete communications technologies. As such, FHWA should partner with industry and transportation agencies to develop, at most, technology-neutral, voluntary guidance for public and private stakeholders.

Conclusion

We appreciate the opportunity to submit comments to FHWA in this matter and look forward to further participation.

Respectfully Submitted,

Marc Scribner
Senior Fellow
Competitive Enterprise Institute

10. RFI, *supra* note 1, at 2720.