

CLIENT MEMORANDUM

Federal Communications Commission Adopts Rules to Facilitate Development of Self-Driving Vehicles

July 20, 2017

AUTHORS

Renee R. Gregory | **Daniel K. Alvarez** | **Stephanie B. Power**

The transportation landscape is rapidly evolving, as technology, telecommunications, and transportation converge. The pursuit of connected and self-driving vehicle technologies has transformative legal, policy, and business implications for the personal, commercial, and public transportation industries, as well as related industries such as insurance, urban planning, construction, and civil engineering. Recent action by the Federal Communications Commission (FCC) to increase the amount of spectrum available for vehicular radars highlights the central role that federal agencies are playing – and will continue to play – in the development and deployment of next-generation transportation technologies.

FCC's Role in Next-Generation Transportation

The FCC is one of a number of federal entities that plays an important role in the development of Advanced Driver Assistance Systems (ADAS), self-driving capabilities, and connected mobility solutions for personal and commercial vehicles. The agency has numerous ongoing regulatory proceedings that have important implications for wireless connectivity generally, and transportation specifically, as individuals and industries demand more information and services regardless of where they are.

As part of its overall mission to oversee the use of spectrum, the invisible airways over which information flows to televisions, mobile devices, wireless speakers, baby monitors, fitness trackers, and vehicles, among many other things,

Federal Communications Commission Adopts Rules to Facilitate Development of Self-Driving Vehicles

Continued

the FCC has a significant role to play in enabling and regulating transportation-related wireless technologies. These technologies include vehicular radars; GPS; vehicle-to-vehicle (V2V) and vehicle-to-infrastructure (V2I) communications; and in-car connectivity from both satellite and terrestrial sources. These wireless connections enable everything from safety and mobility applications, to software updates, to in-car entertainment, business, and commerce.

FCC Vehicular Radar Rules

The FCC's recent decision to increase the amount of spectrum available for vehicular radars will accommodate both existing and newer generations of radar systems to improve safety and mobility for consumers and businesses. Specifically, at its monthly meeting on July 13, the FCC voted to approve [new rules](#) that will make available a large segment of spectrum, the 76-81 GHz band, under revised, consolidated rules, to enable both existing long-range (LRR) and new, more accurate, short-range (SRR) vehicular radars.

While this decision was not particularly controversial or groundbreaking, it is clear evidence of the FCC's critical role in enabling next-generation transportation solutions. These rule changes were widely supported by the auto industry, and will help automakers integrate their vehicular radar applications and support safety features such as forward-looking object detection and avoidance, collision warning and mitigation, lane change assistance, adaptive cruise control, blind-spot detection, parking aid systems, and pedestrian protection for both today's vehicles and future self-driving vehicles. The changes are also consistent with international standards.

The FCC also consolidated the technical rules governing vehicular radar operations in the 76-81 GHz band under a license-by-rule framework. This regulatory treatment protects LRRs and SRRs from interference. The FCC will also phase out radar operations from some lower-frequency spectrum bands that are not heavily used. The new rules will take effect 30 days after they are published in the Federal Register.

Additional Federal and State Authority and Activity

The FCC is not the only federal agency with an eye on emerging transportation technologies. The Department of Transportation (DOT), the National Highway Traffic Safety Administration (NHTSA), and the Federal Trade Commission (FTC) also play a significant role in developing policies and rules that will govern next-generation transportation. For instance:

- Earlier this summer, DOT Secretary Chao announced that DOT is working to update its [Federal Automated Vehicles Policy](#), first released in the fall of 2016. This voluntary policy lays out a framework for accelerating the safe development and deployment of self-driving vehicles.
- NHTSA is generally tasked by Congress with issuing Federal Motor Vehicle Safety Standards (FMVSS), with which motor vehicle manufacturers must comply. NHTSA also has limited authority to exempt vehicles from FMVSS requirements. To date, there have not been any proposed FMVSS regulations directed specifically at self-driving cars, but existing FMVSS requirements in some cases may conflict with self-driving car design. Late

Federal Communications Commission Adopts Rules to Facilitate Development of Self-Driving Vehicles

Continued

last year, NHTSA did [propose a regulation](#) that would require new light vehicles to be capable of sending and receiving V2V communications messages for safety-related purposes.

- The FTC has taken an interest in the consumer protection aspects of next-generation transportation. For instance, earlier this summer, it held a widely-attended [public workshop](#) in Washington, D.C., to examine the consumer privacy and security issues posed by automated and connected vehicles.

Congress has shown great interest in supporting the deployment of connected and self-driving cars, holding multiple hearings on the topic. [More than a dozen related bills](#) have been introduced in the House Energy & Commerce Committee, and on July 19, the Subcommittee on Digital Commerce and Consumer Protection [approved draft legislation](#) that would clarify the respective roles of the federal government and states, and encourage testing, development, and deployment. The Senate Commerce, Science, and Transportation Committee leadership has released [bipartisan principles](#) for self-driving vehicles legislation. Legislative activity is likely to continue.

States also have been active, with state legislatures across the country considering and adopting legislation designed to advance the development and deployment of self-driving vehicles in their states, while protecting consumers' safety.

Future Developments

Federal and state regulators are likely to maintain their keen interest in next-generation transportation issues, which will greatly affect multiple sectors of the economy. Willkie Farr & Gallagher attorneys have experience and relationships with important federal regulators, including the FCC, DOT, NHTSA, FTC, and Congress. We can help you navigate legislative and regulatory processes, and assess laws, regulations, policies, and business practices as the transportation industry dramatically evolves.

If you have any questions regarding this memorandum, please contact Renee R. Gregory (202-303-1104, rgregory@willkie.com), Daniel K. Alvarez (202-303-1125, dalvarez@willkie.com), Stephanie B. Power (202-303-1249, spower@willkie.com) or the Willkie attorney with whom you regularly work.

Willkie Farr & Gallagher LLP is an international law firm with offices in New York, Washington, Houston, Paris, London, Frankfurt, Brussels, Milan and Rome. The firm is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our fax number is (212) 728-8111. Our website is located at www.willkie.com.

July 20, 2017

Copyright © 2017 Willkie Farr & Gallagher LLP.

This memorandum is provided by Willkie Farr & Gallagher LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum may be considered advertising under applicable state laws.

WILLKIE FARR & GALLAGHER_{LLP}