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National Highway Traffic Safety Administration
1200 New Jersey Avenue SE
Washington, D.C. 20590

RE: Comments on Petition from Ford for Temporary Exemption from Various Requirements of the Federal Motor Vehicle Safety Standards for an Automated Driving System-Equipped Vehicle, Docket No. NHTSA-2022-0066

To the National Highway Traffic Safety Administration:

Disability Rights California (DRC) thanks NHTSA for the opportunity to comment on Ford's petition for temporary exemption from certain safety standards for its ADS-equipped vehicle. DRC is a non-profit agency established under federal law to advocate for the rights of people with disabilities.¹ We appreciate NHTSA's attention to accessibility in its consideration of Ford's petition, and we hope these comments assist NHTSA in reaching a decision. We submit these comments in response to the questions NHTSA poses in paragraph 15 of the Statement on Terms:

15. How should NHTSA consider accessibility in applying appropriate conditions to an exemption if it were granted? As noted above, many

¹ Disability Rights California provides services pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 15001, PL 106-402; the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. § 10801, PL 106-310; the Rehabilitation Act, 29 U.S.C. § 794e, PL 106-402; the Assistive Technology Act, 29 U.S.C. § 3011,3012, PL 105-394; the Ticket to Work and Work Incentives Improvement Act, 42 U.S.C. § 1320b-20, PL 106-170; the Children's Health Act of 2000, 42 U.S.C. § 300d-53, PL 106-310; and the Help America Vote Act of 2002, 42 U.S.C. § 15461-62, PL 107-252; as well as under California Welfare and Institutions Code §§ 4900 et seq. ([Return to Main Document](#))

proponents of ADS technology often claim that ADS-equipped vehicles could help advance greater transportation accessibility for persons with disabilities. Should NHTSA impose conditions on grants of part 555 exemptions to learn more about specific actions that manufacturers and operators of ADS-equipped exempted vehicles are planning, or have taken, to further the attainment of accessibility and equity goals? Should NHTSA seek information from manufacturers granted an exemption as to how they ensure that their ride-hailing services comply with any applicable Americans with Disabilities Act (ADA) requirements, how many vehicles would be wheelchair accessible, how they reach people with disabilities to offer access to ride sharing services, or whether the exempt vehicles provide other accommodations for individuals with disabilities, such as communication and/or human-machine interface (HMI) features designed for individuals with sensory disabilities (such as sight or hearing) or cognitive disabilities? Should NHTSA require grantees to report on efforts, such as research or community outreach, that the manufacturer is planning, or has taken, to increase the likelihood that accessibility goals will be met? Comments are requested on whether there is other information related to accessibility that NHTSA should require from an entity when granting its petition.

In short, DRC's response to these questions is "yes." If Ford contends that an exemption of certain safety standards serves the public interest because it expands access to transportation for people with disabilities, then it is reasonable for NHTSA to condition its grant of an exemption on a requirement that Ford's vehicle be accessible to people with disabilities. NHTSA should not grant any exemptions to federal safety standards for vehicles that are inaccessible to people with disabilities.

I. NHTSA should require Ford to provide more information about the accessibility features of its self-driving vehicle to determine whether the vehicle is safe for riders with disabilities.

Ford's redacted petition addresses transportation access for people with disabilities with a single sentence: "As they reach scale, self-driving vehicles have the potential to transform society in [sic] through enhanced

safety, improved congestion, and improved mobility for everyone (including underserved populations such as the elderly and people with disabilities).”² This single sentence does not provide enough information to determine whether Ford’s vehicle would be accessible and safe for riders with disabilities.

The rest of Ford’s petition is equally vague as to the accessibility of the vehicle and whether Ford has considered the unique safety needs of disabled riders. For example, Ford’s petition explains that when the ADS detects a malfunction that affects the system’s ability to complete a dynamic driving task, it will perform a “fallback maneuver.”³ Ford categorizes these maneuvers into three levels: 1) the vehicle completes the trip in progress and is scheduled for service; 2) the vehicle finds a “suitable parking location” or pulls over to the shoulder; or 3) the vehicle comes to a controlled stop “in path.”⁴ The petition does not explain whether the vehicle considers the mobility needs of its passenger when determining what a “suitable parking location” is (i.e., whether someone using a wheelchair or other mobility device could safely exit the vehicle at the parking location). Similarly, the petition does not explain how the vehicle will communicate to a passenger with a sensory disability that it is engaging in a fallback maneuver. This could lead to a situation where a blind rider thinks they have reached their destination and attempts to exit the vehicle, not knowing that the vehicle is executing a level 2 or 3 fallback maneuver in a location other than the intended destination.

Given the lack of information in Ford’s petition about accessibility, it would be unreasonable to conclude that an exemption serves the public interest. We urge NHTSA to require Ford to provide more information about the accessibility of its vehicle to determine whether it is safe for riders with sensory, mobility, and cognitive disabilities.

² Page 4 of Petition under 49 C.F.R. Part 555.6(d) to facilitate the deployment of a vehicle whose overall level of safety or impact protection is at least equal to that of a nonexempted vehicle (“Petition”). [\(Return to Main Document\)](#)

³ Page 7 of Petition. [\(Return to Main Document\)](#)

⁴ Page 8 of Petition. [\(Return to Main Document\)](#)

II. **NHTSA should require Ford to explain how it will ensure that its planned services will comply with the ADA and promote accessibility and equity for the disability community.**

The development of ADS-equipped vehicles, particularly in connection with ride-hailing services, has raised questions about the applicability of the ADA and other anti-discrimination laws to new technologies. Ford's proposed deployment of AVs in a ride-hailing service makes it a private entity engaged in the operation of a demand responsive public transportation system, and therefore subject to Title III of the ADA. This is consistent with the stated purpose of the ADA: to eliminate discrimination against people with disabilities.⁵

When Congress passed the ADA, it delegated authority to the Department of Transportation to issue regulations that effectuate the ADA's provisions on public transportation.⁶ It is within the scope of Congressional intent for NHTSA to use its regulatory authority to seek information about the intended use of ADS technology to confirm that it does not unlawfully discriminate against people with disabilities. The language of the ADA is clear that Congress intended to establish "clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;" to ensure that the federal government "plays a central role" in enforcing those standards; and to "invoke the sweep of congressional authority," including the power to regulate interstate commerce, to address the major areas of discrimination that people with disabilities face in their daily lives.⁷

Accordingly, NHTSA should require Ford to provide the following information:

- Whether it plans to produce a wheelchair-accessible self-driving vehicle and, if so, how many and what specific features those vehicles will include;

⁵ 42 U.S.C. section 12101(b)(1). ([Return to Main Document](#))

⁶ 42 U.S.C. section 12149(a). ([Return to Main Document](#))

⁷ 42 U.S.C. section 12101(b)(1)-(4). ([Return to Main Document](#))

- What type of platform (e.g., website, mobile app) it plans to use to put its vehicles into the stream of commerce and what steps it will take to ensure the platform is accessible to consumers with disabilities;
- What metrics it will use to determine whether people with disabilities have equal access to its services;
- Whether it will appoint a designated accessibility coordinator and, if so, how members of the public can reach the coordinator to resolve accessibility complaints;
- Whether it will have an internal complaint process to resolve disputes involving alleged disability discrimination; and
- How it will track accessibility issues as they arise.

All of this information is necessary for NHTSA to properly evaluate whether an exemption is in the public interest because it will improve transportation access for people with disabilities.

Additionally, DRC also encourages NHTSA to specify what it means by “accessibility” in the context of ADS-equipped vehicles. In our transportation work, we often see public entities and private companies use the phrase “accessible transportation” to mean that a particular mode of transportation is easy to use by the general public. But in the context of disability rights, “accessible transportation” is more specific. For the disability community, transportation is “accessible” when the vehicle and its surrounding infrastructure can physically accommodate people with disabilities, and when the system in which the vehicle operates is free from programmatic barriers that would otherwise exclude people with disabilities. Ambiguity over the word “accessible” has at times led to disability advocates and transportation providers speaking past one another. For clarity, we urge NHTSA to initiate a rulemaking proceeding on what “accessibility” for people with disabilities means in the context of ADS-equipped vehicles. Prior comments from the disability community⁸ may provide a helpful starting point for this process.

⁸ See, e.g., Consortium for Citizens with Disabilities Transportation Task Force Autonomous Vehicle Principles, updated May 2022, available at: <https://www.c-c-d.org/fichiers/CCD-Transpo-TF-AV-Principles-May-2022.pdf>; and comments submitted by the Consortium for Citizens with Disabilities and the National Disability Rights

III. NHTSA should require Ford to report on its outreach and stakeholder engagement activities.

Section IV of Ford’s redacted petition states that Ford will “work with stakeholders across the industry on rulemaking efforts during the exemption period, with the intention of supporting NHTSA’s updates to FMVSS and/or development of new regulations for governing ADS operation.”⁹ The petition does not provide any information about what stakeholder collaboration Ford has already engaged in or who Ford considers “stakeholders” for future engagement. NHTSA should require Ford to provide more information on its past and planned stakeholder engagement, including:

- How it selected the specific stakeholders to engage;
- How often and in what manner it communicated with stakeholders;
- What feedback it received from stakeholders and how it responded to that feedback; and
- How it plans to solicit and use further feedback.

NHTSA should also consider imposing specific requirements on future stakeholder engagement to ensure that the process is inclusive and equitable:

- Ensure that the stakeholder group includes a wide cross-section of the disability community and multiply marginalized communities;
- Make most, if not all, stakeholder engagement meetings open to the general public;
- Develop a strategic plan for accessibility and make the plan available for public comment; and
- Identify tangible goals for achieving maximum accessibility and a timeline for implementation.

If NHTSA decides to require outreach and engagement to the disability community as a condition of a part 555 exemption, it may be helpful to

Network to NHTSA on Occupant Protection for Automated Driving Systems, Docket No. NHTSA-2020-0014. ([Return to Main Document](#))

⁹ Page 25 of Petition. ([Return to Main Document](#))

review the comments submitted by disability advocates on that topic in the California Public Utilities Commission's rulemaking proceeding to implement the TNC Access for All Act.¹⁰ Providing a framework for outreach and engagement helps ensure that the process is meaningful and inclusive.

IV. Conclusion

We thank NHTSA again for soliciting public comments on the accessibility considerations that arise from Ford's petition. We urge NHTSA not to grant any exemptions to federal safety standards unless Ford can establish that its vehicle is accessible to people with disabilities. We agree with Ford that self-driving vehicles have the potential to expand transportation options for people with disabilities—but only if the vehicle itself is physically accessible to people with all types of disabilities, and if the system in which the vehicle operates provides equal access to the disability community.

There is nothing about ADS technology itself that guarantees accessibility. But, with careful planning, ADS-equipped vehicles can provide new and better transportation options for people with disabilities. We hope our comments aid NHTSA and Ford in the pursuit of that goal.

Sincerely,

Zeenat Hassan
Staff Attorney II

Autumn Elliott
Litigation Counsel

¹⁰ See Proposals on Track 5B Scoping Memo Questions from Disability Rights Education and Defense Fund, Disability Rights California, and the Center for Accessible Technology, available at: <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M471/K485/471485577.PDF>. The TNC Access for All Act was passed by the California Legislature as SB 1376 (Hill, 2018). Its purpose is to ensure that TNCs provide non-discriminatory access to their services to people with disabilities, including people who use wheelchairs and need a wheelchair-accessible vehicle. CPUC proceeding R. 19-02-012 implements the requirements of SB 1376. ([Return to Main Document](#))