Dear Chairman Wicker, Ranking Member Cantwell, Chairman Pallone, Ranking Member Walden, Senator Thune, and Senator Peters:

On behalf of the nation’s state and local government elected and appointed officials, we appreciate the opportunity to provide preliminary comments to the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science, and Transportation as you and your staff consider federal legislation on autonomous vehicles (AVs) this Congress.

We especially appreciate your commitment to a fresh review of many policy issues that require further examination and understanding including the need to set aside provisions for additional federal preemption of state and local authorities, which our organizations believe is both unnecessary and unjustified at this time. As part of a deliberative examination process, we offer to directly bring our members—the state and local officials hosting pilot programs and who are ultimately held accountable for real-world impacts of Autonomous Vehicles (AV)—into the legislative process.

We firmly believe state and local governments are crucial to the safe adoption of AVs into our existing transportation networks with other transportation modes and users. Ultimately, implementation of a successful AV policy requires finding the appropriate balance between cooperating and delineating the respective state-local and federal responsibilities and ensuring that appropriate funding and incentives are in place for the desired outcomes. We must approach
these issues in a systematic and pragmatic manner to ensure that safety on our nation’s roadways and streets is paramount.

In offering these considerations and issues as representatives of state and local officials, we look forward to continuing to work with you, your staff, and all members of the 116th Congress.

**Federal, State and Local Roles and Access to Courts**
The regulation of motor vehicle safety, in the traditional manner (as defined in Title 49 Sections 30102 and 30111 which includes the design, construction and performance of a motor vehicle) is, and should remain, a federal obligation. However, state and local governments are the primary authority concerning operational safety, including regulating the operation of motor vehicles after such vehicles have been constructed, the operators of those motor vehicles, as well as establishing the rules of the road on how motor vehicles can be safely operated on public roadways. The federal authority cited above related to the safety aspects of the design, construction, and performance of a motor vehicle clearly does not include compliance with the traffic laws, rules of the road, or the operation of a motor vehicles of a state or political subdivision of a state.

This well-established structure for state-local and federal authority was endorsed by the Senate Committee on Commerce, Science and Transportation in its written report No. 115-187 in response to passage of S. 1885, the American Vision for Safer Transportation through Advancement of Revolutionary Technologies Act or the “AV START Act.” In the committee’s report, it noted: “The Committee understands that since it was first enacted in 1966, the National Traffic and Motor Vehicle Safety Act (Safety Act) has always contained a provision preempting States and political subdivisions of States from adopting or enforcing a standard ‘applicable to the same aspect of performance of a motor vehicle’ as a FMVSS. The term ‘performance’ in this section is intended to be consistent with NHTSA’s authority under the Safety Act as it relates to vehicle or equipment performance and is not intended to be broadened beyond NHTSA’s traditional interpretation, which excludes vehicle compliance with or the enforcement of State and local traffic laws.”

Under the proper and existing federal-state-local framework, states and local governments retain the authority not only to enforce but to originate and establish laws and regulations governing the operation of motor vehicles on a public road (be they operated by a human driver or a vehicle decision-making system). For example, the federal government can require that a vehicle be able to properly identify and observe a stop sign, but the sole authority to establish laws requiring observation of such stop sign, and the enforcement thereof will continue to reside with state and local authorities who are best suited to respond to local needs.

**Safety Evaluation Reports & Rulemakings, Including Updating Existing Standards and Setting New Standards**
Protecting public safety on the roadways is one of the fundamental roles of state and local governments. With the rapid pace of autonomous technological innovation is not being matched by corresponding vehicle safety standards or other requirements by the National Highway and Traffic Safety Administration (NHTSA), states and cities have stepped into this role in order to ensure that autonomous vehicle testing—which is aimed at improving this technology—is done
in a safe and responsible manner. Many of our members have expressed concerns that these new technologies may not be subject to appropriate safety rules or standards as they are developed and then tested or deployed on public roadways with other road users. We therefore urge the submission of a highly detailed safety evaluation report and its subsequent and timely release to the public. Such a report should neither be tied to an expansion of the existing preemptive structure nor a substitute for NHTSA’s safety oversight. We urge you to avoid the creation of a safety vacuum – the combination of a federal regulator that does not act and a perpetual prohibition on states from acting.

**Exemptions and Testing Expansion**
The discussion thus far has not made a clear distinction between the *testing* of AVs on public roads and the *deployment* of AVs on public roads, whereby consumers can acquire or access an AV through purchase, lease, and/or commercial use. Testing and deployment warrant different regulatory treatment.

Regarding testing of AVs, the safe testing of AVs in real-world environments is a critical step to ensure their eventual safe deployment. While the deployment of AVs is contingent upon meeting current federal motor vehicle safety standards (FMVSS) regulations or obtaining an exemption to FMVSS regulations, testing AVs on public roads must remain an area under state and local control. While there is a healthy appetite among states, cities, and counties to allow the testing of AVs, there are serious concerns about the public safety and operations parameters for AVs being tested. The ability to disallow, pause and confine testing is essential to gaining public trust in this new technology.

Regarding *deployment* of AVs, the general public deserves reasonable certainty that vehicles being deployed are considered safe prior to any type of wide-scale commercial deployment via lease, purchase, or ride. Due to the nature of AVs, law enforcement entities will need to know the exact volume of vehicles not conforming to FMVSS as they will be interacting with those vehicles. Previous legislation would have expanded NHTSA’s vehicle exemption powers to 100,000 vehicles from its current level of 2,500 during a 12-month period. We are very concerned that this 40-fold increase in the exemption threshold would increase potential safety risks to the public.

Therefore, continuous and frequent engagement between the federal, state, and local government and sharing of information is indispensable for all levels of government to best understand the status and safety of an AV. For example, if NHTSA were to grant an exemption from a federal motor vehicle safety standard, an immediate notification would be necessary to state and local officials, including most essentially emergency responders and law enforcement, who may have to interact with an AV. USDOT should commit to posting public notification of such exemptions or collaborate with state and local governments to establish a mechanism for immediate, direct notification of necessary state and local authorities. Notification periods must be timely given the potential variety and frequency of changing vehicle capabilities within a diverse fleet.

**Advisory Committees and Cybersecurity**
Given the important roles state and local agencies play with regard to transportation safety, we strongly encourage explicit state and local representation on any various councils and advisory
groups proposed. With respect to a cybersecurity advisory council, the sharing of threat information with state and local governments will be a critical component of preventing and mitigating security threats in AVs. Efforts across the federal government to address cybersecurity must be coordinated.

**Privacy and Crash Data, Including Reporting Requirements**
It is critical that the federal government work to establish protocols that allow data to be shared with states and local governments and with the public, when appropriate. Transparency is essential for establishing public confidence in this new technology and for fostering a culture of safety as well as assisting state and local governments in leveraging data for roadway planning and operations purposes. Further, federal, state and local governments must maintain strong partnerships to collect, share, and analyze crash data as such a collaboration will be indispensable in order for all levels of government to best understand the safety of AVs. State and local laws regarding privacy should be maintained in this new and emerging market.

**Consumer Education and Resources for NHTSA**
Preparing the public for the safe use of automated vehicle technology is a concern today and will continue to be for the foreseeable future. NHTSA must be properly resourced to carry out its safety mission. Congress should direct NHTSA to establish an interdisciplinary working group to advise the agency on responsible consumer education efforts. Congress should also allow the voluntary use of NHTSA highway safety grant funding on state and local efforts to educate the public about the safe use and interaction with AV technology especially where testing or deployment are occurring.