



May 3, 2010

The Honorable Anne S. Ferro  
Administrator  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue, SE, West Building  
Washington, DC 20590

**RE: Federal Motor Carrier Safety Administration Docket Number: FMCSA-2009-0370; Limiting the Use of Wireless Communication Devices**

Dear Administrator Ferro:

On behalf of the Transportation Trades Department, AFL-CIO (TTD) we are pleased to submit the following comments on the Federal Motor Carrier Safety Administration's (FMCSA) Notice of Proposed Rulemaking (NPRM) that would prohibit Commercial Motor Vehicle (CMV) drivers from texting while driving. TTD represents 32 affiliated transportation unions, including those with members employed in transit, over-the-road bus, school bus operation, passenger vehicle transportation, emergency response, as well as other workers who will be affected by this proposal.<sup>1</sup>

We appreciate the fact that the Department of Transportation (DOT) and FMCSA have issued this proposal and have aggressively sought to address the dangers posed to highway safety by text messaging. TTD has actively participated in the debate over distracted driving, and we believe this proposal is a strong first step toward properly regulating the use of electronic devices by motorists. As the NPRM correctly notes, the growing use of cell phones and personal digital assistants has resulted in the increased prevalence of motorists' text messaging, which threatens the safety of our roadways. FMCSA's proposed rulemaking strikes the correct balance in limiting the negative impact of these devices while ensuring the legitimate concerns of affected employees are given consideration.

Mobile communications play a significant role in the transportation sector, and for transportation workers, any limits or bans change their workplace considerably. TTD believes the NPRM appropriately considers the legitimate concerns of workers by excluding emergency text messages and first responders from the ban, properly clarifying the definition of driving, and ensuring that penalties for commercial driver's license (CDL) holders are limited to CMV operations. However, we believe further steps on texting while driving may increase safety, including holding employers responsible, extending the ban to all motor vehicles, and clarifying the use of other work-related technologies.

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<sup>1</sup> A complete list of TTD affiliated unions is attached.

**Transportation Trades Department, AFL-CIO**

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Edward Wytkind, President • Patricia Friend, Secretary-Treasurer

Personal electronic devices are a modern reality and, when used properly, can help advance the cause of safety. In fact, CMV operators are too often witnesses to accidents or subject to assaults, and it is critical they be able to communicate with emergency service personnel. We are therefore pleased the NPRM allows for this type of emergency contact without penalty. Similarly, the proposal upholds the regulatory exceptions to permit firefighters and paramedics to use electronic devices, enhancing their response time to more efficiently and effectively protect the public.

The NPRM's definition of driving for purposes of disqualification also serves the interest of safety by correctly identifying when a vehicle is truly operational. By differentiating vehicles that are only temporarily stationary from those safely pulled over but still running, the proposal provides the necessary clarity for workers to operate their vehicles safely without confusion. As just one example, for bus drivers, it is sometimes necessary to keep the vehicle running while safely pulled over, and the proposed rule allows bus drivers to use cell phones in this situation without fear of sanction.

Additionally, the proposal correctly sanctions texting while driving for CDL holders only when they are "operating a CMV" and not "while operating a vehicle for which a CDL is not required."<sup>2</sup> While TTD believes that FMCSA's existing regulations, which allow certain personal offenses to impact an individual's CDL status, are unduly harsh and discriminatory, this proposed rulemaking draws the proper conclusion of the impact non-CDL related infractions should have on a worker's CDL.

There are issues not addressed by the proposal that would further advance the safety of our highways and deserve FMCSA's attention. Although proposed Section 392.80 states that "no motor carrier shall allow or require its drivers to engage in texting while driving," the NPRM does not articulate any enforcement mechanism to hold employers responsible for violations of the provision. As a result, it appears that only employees – who are subject to CDL disqualification and fine – may be sanctioned. If an employee engages in text messaging at the behest of an employer, especially under duress, any enforcement action should be directed at employers, not employees. The current and long standing safety laws prescribe requirements that regulate motor carriers relative to "safety of operation and equipment" and ensure that "the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely," respectively.<sup>3</sup> These laws provide the authority to effectively sanction CMV companies that violate the proposal and deserve FMCSA's consideration moving forward.

The proposal correctly identifies that texting creates a significant level of distraction, placing motorists and the public at considerable risk. In addition to the formal regulatory and policy actions, the Administration has gone to great lengths to raise awareness and educate the public on the dangers distracted driving presents for all motorists. However, the NPRM only applies to CMV drivers. While this is an important first step, any texting ban that excludes the majority of motor vehicle drivers is inherently limited. We believe it would be both sensible and consistent with the Administration's efforts if a texting ban were extended to all automobiles.

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<sup>2</sup> Limiting the Use of Wireless Communication Devices, 75*Fed. Reg.* 16391, 16400 (April 1, 2010)

<sup>3</sup> See 49 U.S.C. § 31502(b) and 49 U.S.C. § 31136(a)

Finally, we note that as FMCSA plans to address the use of other electronic devices in separate rulemaking proceedings, TTD believes that regulation of these technologies should, like the current proposed rule, take thoughtful consideration of the views of transportation workers. Due to the inherent separation of employees from their work headquarters, motor vehicle operators are often required to be dispatched by citizens' band radio, global position devices and other electronic technologies. These devices are used by employers to communicate with their employees, and any future ban should accordingly direct enforcement actions at the employers. In addition, many workers must program and listen to automated voice technology systems that require constant monitoring and potential reprogramming in the event of a malfunctions. As FMCSA looks to address distracted driving in the future, we believe these concerns merit further examination.

This rulemaking is an important start to combating the dangers posed by distracted driving. TTD supports FMCSA in its resolute push to enhance transportation safety through this proposal. We look forward to working with you and the Secretary to meet the safety needs of our transportation system.

Thank you for taking the time to consider the views of transportation labor.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edward Wytkind', with a large, stylized flourish at the end.

Edward Wytkind  
President

# **TTD MEMBER UNIONS**

*The following labor organizations are members of and represented by the TTD:*

*Air Line Pilots Association (ALPA)*  
*Amalgamated Transit Union (ATU)*  
*American Federation of State, County and Municipal Employees (AFSCME)*  
*American Federation of Teachers (AFT)*  
*Association of Flight Attendants-CWA (AFA-CWA)*  
*American Train Dispatchers Association (ATDA)*  
*Brotherhood of Railroad Signalmen (BRS)*  
*Communications Workers of America (CWA)*  
*International Association of Fire Fighters (IAFF)*  
*International Association of Machinists and Aerospace Workers (IAM)*  
*International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers (IBB)*  
*International Brotherhood of Electrical Workers (IBEW)*  
*International Federation of Professional and Technical Engineers (IFPTE)*  
*International Longshoremen's Association (ILA)*  
*International Longshore and Warehouse Union (ILWU)*  
*International Organization of Masters, Mates & Pilots, ILA (MM&P)*  
*International Union of Operating Engineers (IUOE)*  
*Laborers' International Union of North America (LIUNA)*  
*Marine Engineers' Beneficial Association (MEBA)*  
*National Air Traffic Controllers Association (NATCA)*  
*National Association of Letter Carriers (NALC)*  
*National Conference of Firemen and Oilers, SEIU (NCFO, SEIU)*  
*National Federation of Public and Private Employees (NFOPAPE)*  
*Office and Professional Employees International Union (OPEIU)*  
*Professional Aviation Safety Specialists (PASS)*  
*Sailors' Union of the Pacific (SUP)*  
*Sheet Metal Workers International Association (SMWIA)*  
*Transportation · Communications International Union (TCU)*  
*Transport Workers Union of America (TWU)*  
*United Mine Workers of America (UMWA)*  
*United Steel, Paper and Forestry, Rubber, Manufacturing, Energy,  
Allied Industrial and Service Workers International Union (USW)*  
*United Transportation Union (UTU)*