

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ALLIANCE FOR AUTOMOTIVE INNOVATION,

Plaintiff,

v.

ANDREA CAMPBELL, ATTORNEY GENERAL
OF THE COMMONWEALTH OF
MASSACHUSETTS in her official capacity,

Defendants.

CIVIL ACTION
NO. 1:20-cv-12090-DPW

**NOTICE OF TRANSMITTAL OF LETTER TO NATIONAL HIGHWAY TRAFFIC
SAFETY ADMINISTRATION**

Defendant Attorney General Andrea Joy Campbell respectfully notifies the Court that on August 22, 2023, the Office of the Attorney General transmitted a letter to the National Highway Traffic Safety Administration (“NHTSA”) in response to NHTSA’s August 22, 2023 letter. A copy of the Attorney General’s August 22, 2023 letter is attached hereto as Exhibit A.

Respectfully submitted,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

By her attorneys,

/s/ Christine Fimognari

Robert E. Toone, BBO No. 663249
Eric A. Haskell, BBO No. 665533
Phoebe Fischer-Groban, BBO No. 687068
Christine Fimognari, BBO No. 703410
Assistant Attorneys General
Office of the Attorney General
One Ashburton Place
Boston, Massachusetts 02108
(617) 963-2206
christine.fimognari@mass.gov

August 22, 2023

CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on August 22, 2023.

/s/ Christine Fimognari
Christine Fimognari
Assistant Attorney General

Exhibit A



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

August 22, 2023

Kerry Kolodziej, Esq.
Assistant Chief Counsel for Litigation and Enforcement
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Dear Ms. Kolodziej:

On behalf of Attorney General Andrea Joy Campbell, I write in response to your letter dated earlier today. We respect the critical role that NHTSA plays in ensuring motor vehicle safety, and we are pleased to work collaboratively with NHTSA and other federal agencies on these important issues. In particular, we appreciate NHTSA's willingness to discuss the concerns, outlined in your letter to vehicle manufacturers dated June 13, 2023, about potential issues related to those manufacturers' implementation of the Commonwealth's Data Access Law (i.e., Mass. G.L. c. 93K, as amended by Mass. St. 2020, c. 386).

Based on the evidence presented at the trial in Alliance for Automotive Innovation v. Campbell, No. 20-cv-12090 (D. Mass.), the Commonwealth believes that there are multiple approaches by which a vehicle manufacturer might implement the Data Access Law without violating the Motor Vehicle Safety Act or any other federal law. The "platform" described by Mass. G.L. c. 93K, § 2(f), may utilize any type of wireless communication technology, so long as it provides the features, capabilities, and access required by the Data Access Law—including, but not limited to, the ability to "directly access[]" all "mechanical data" as that term is defined in Mass. G.L. c. 93K, § 1, and the ability to "securely communicat[e]" with vehicle owners, class 1 dealers, and independent repair facilities. Under the Data Access Law, the types of wireless communication technology that such a platform might utilize include, but are not limited to, cellular, Wi-Fi, and Bluetooth.

Consistent with this evidence, and with the Attorney General's interpretation of the Data Access Law as presented in U.S. District Court, we can confirm NHTSA's understanding that a platform that provides the required features, capabilities, and access using a short-range wireless protocol such as Bluetooth is one approach that a vehicle manufacturer might use to achieve compliance with the Data Access Law. We appreciate the clarification of NHTSA's position that such a short-range compliance approach, implemented appropriately, therefore would not be preempted by the Motor Vehicle Safety Act.

Kerry Kolodziej, Esq.
August 22, 2023
Page 2

We also appreciate NHTSA's willingness to continue to collaborate regarding implementation of the Data Access Law, including its timing, and to hear from stakeholders who may be interested in other compliance approaches. For our part, we stand ready to work with NHTSA and other stakeholders to implement the Data Access Law. We look forward to further dialogue on those topics.

On behalf of Attorney General Campbell, we thank NHTSA for its collaboration and for its commitment to supporting the Commonwealth's efforts to ensure that vehicle manufacturers implement the Data Access Law safely and promptly.

Very truly yours,

Eric
Haskell

Digitally signed
by Eric Haskell
Date: 2023.08.22
13:41:12 -04'00'

Eric A. Haskell
Assistant Attorney General