



Commercial Vehicle Safety Alliance

Improving uniformity in commercial motor vehicle safety and enforcement

May 17, 2017

Daphne Jefferson
Deputy Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE, 6th Floor
Washington, DC 20590-9898

RE: Petition for Rulemaking – Clarifying Definition of Broadband/Wireless Services as a Utility in 49 C.F.R. § 395.2.

Dear Deputy Administrator Jefferson:

Pursuant to Title 49 Code of Federal Regulations (C.F.R.) § 389.31, the Commercial Vehicle Safety Alliance (CVSA) is petitioning the Federal Motor Carrier Safety Administration (FMCSA) to amend Title 49 C.F.R. § 395.2 by clarifying the definition of a utility service vehicle.

Paragraph 49 C.F.R. § 395.2 states that:

Utility service vehicle means any commercial motor vehicle:

- (1) Used in the furtherance of repairing, maintaining, or operating any structures or any other physical facilities necessary for the delivery of public utility services, including the furnishing of electric, gas, water, sanitary sewer, telephone, and television cable or community antenna service;*
- (2) While engaged in any activity necessarily related to the ultimate delivery of such public utility services to consumers, including travel or movement to, from, upon, or between activity sites (including occasional travel or movement outside the service area necessitated by any utility emergency as determined by the utility provider); and*
- (3) Except for any occasional emergency use, operated primarily within the service area of a utility's subscribers or consumers, without regard to whether the vehicle is owned, leased, or rented by the utility.*

Justification

In February 2015, the Federal Communications Commission (FCC) voted to regulate broadband internet services as a public utility, placing it in the same category as television and telephone services, under Title II of the Telecommunications Act of 1996. The change followed the remarks of President Obama in 2014, calling on the FCC to classify high-speed broadband service as a utility under the rationale that “[f]or most Americans, the Internet has become an essential part of everyday communication and everyday life.”¹ Although challenged in court, the FCC reclassification was upheld when the D.C. Circuit Court ruled that “given the tremendous impact third-party internet content has had in our society, it would be hard to deny its dominance in the broadband experience. Over the past two decades, this content has transformed nearly every aspect of our lives, from profound actions like choosing a leader, building a career, and falling in love to more quotidian ones like hailing a cab and watching a movie.”²

Moreover, in FMCSA’s September 23, 2016 correspondence with Annette Sandberg on behalf of the National Association of Tower Erectors (NATE), the agency noted that it considers broadband internet and wireless services to be analogous to public utilities such as “telephone, and television cable or community antenna service.”³ The agency notes that the rationale for not including broadband and wireless services in the current definition of “utility service vehicle” is that at the time § 395.2 was adopted in 2005 with the passage of the Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETA-LU), broadband internet services were not in common use. Today, the utilities landscape has changed. CVSA asks that FMCSA initiate rulemaking expanding the current definition of a utility service vehicle in § 395.2 to include vehicles engaged in providing broadband internet and wireless services. This clarification would eliminate confusion and inconsistency in enforcement, which benefits both industry and the enforcement community.

CVSA works to closely monitor, evaluate and identify potentially unsafe transportation processes and procedures as well as to help facilitate and implement best practices for enhancing safety on our highways. Commercial motor vehicle safety continues to be a challenge and we need the involvement of all affected parties to help us better understand these issues and put into place practical solutions. We appreciate the opportunity to comment on this proposal and the agency’s commitment to safety and stakeholder involvement.

If you have further questions or comments, please do not hesitate to contact me by phone at 301-830-6149 or by email at collinm@cvsa.org.

Respectfully,



Collin B. Mooney, MPA, CAE
Executive Director
Commercial Vehicle Safety Alliance

¹ Net Neutrality: President Obama’s Plan for a Free and Open Internet. <https://www.whitehouse.gov/net-neutrality>

² *United States Telecom Ass’n v. FCC*, D.C.Cir. June 14, 2016.

³ 49 C.F.R. § 395.2.