Response to Written Question Submitted by Hon. John Thune to Gary Shapiro

Question. In December 2014, President Obama observed that, at times, "the regulatory agencies treat every problem like a nail and only have a hammer, and aren't engaging with industry enough to think, all right, here is the problem we're trying to solve, is there a smarter way of solving it." How effective have regulators been in working with industry and incorporating their perspectives?

Answer. The Consumer Technology Association (CTA) has had the opportunity to work with federal regulators under the jurisdiction of the Senate Commerce Committee to advance pro-innovation policies. Our experience to date has been varied.

CTA's work with the U.S. Department of Transportation's National Highway Traffic Safety Administration (NHTSA) is a prime example of this varied experience. CTA is working with NHTSA on its Federal Automated Vehicles Policy and is encouraged by its receptiveness to industry's perspective and recognition of the need for consistency for self-driving vehicles and the importance of flexibility for the industry to continue to innovate.

However, CTA is also working with NHTSA on its Phase II Driver Distraction Guidelines. CTA shares NHTSA's concerns about the hazards of distracted driving. But we believe the Phase II Guidelines take the wrong approach to technology, both in substance and by impermissibly reaching beyond NHTSA's statutory authority under the National Traffic and Motor Vehicle Safety Act ("Safety Act"). In this instance, CTA would have encouraged greater incorporation of industry's expertise and perspective. In the end, NHTSA does not have the authority to dictate the design of smartphone apps and other devices used in cars – its legal jurisdiction begins and ends with motor vehicle equipment. This regulatory overreach could thwart innovative safety solutions from ever coming to market.

Examples of positive industry engagement set by federal agencies include the work of the Federal Aviation Administration (FAA) on drone policy. FAA's early and ongoing engagement with the drone industry and user community is to be commended and should be replicated by other departments and agencies approaching new industries. FAA reached out to the emerging industry early, appointing staff to engage directly and keep the path of communication open. They regularly solicit feedback from industry and stakeholders, even appointing an advisory committee (the Drone Advisory Committee) to assist the agency with key issues. However, even with this orientation and approach, regulatory flexibility for FAA is needed, as they still must work through a regulatory regime established long before consumer and commercial drones took to the skies.

While my written and oral testimony expressed deep concern with the Federal Communications Commission's (FCC) broadband privacy rules and their effect on future innovation, CTA continues to work closely and cooperatively with the FCC on other matters. As one of many examples, when Congress passed the 21st Century Communications and Video Accessibility Act

of 2010 (CVAA), industry was deeply involved in the legislative process. Similarly, industry has worked closely with the FCC to ensure the rules are implemented in way that balances the needs of industry and the needs of consumers with disabilities. Thus far, we have succeeded in striking a balance. Industry also worked closely and successfully with the FCC to craft rules that enabled the commission to conduct the world's first voluntary TV broadcast spectrum incentive auctions.

Response to Written Questions Submitted by Hon. Deb Fischer to Mr. Gary Shapiro

Question 1. Mr. Shapiro, in your written testimony, you observed how numerous agencies and committees may have potential jurisdiction over the Internet of Things. I am concerned that this disjointed approach could lead to conflicting or duplicative regulations being imposed on companies due to agencies operating in silos. Do you believe the Internet of Things will be enabled or inhibited by the imposition of new regulations? Given how many agencies could claim some basis for regulating the Internet of Things, how do we streamline the way that agencies and Congress are approaching the Internet of Things?

Answer. A myriad of overlapping and contradicting regulations will inhibit growth of the Internet of Things (IoT). For example, a startup developing a new wireless device may not know that there are FCC rules on equipment authorization and spectrum use. Meanwhile, IoT wearable devices offered by health care providers fall under the Health Insurance Portability and Accountability Act (HIPAA), while the same devices purchased from a retail store are regulated in an entirely different manner by the Federal Trade Commission (FTC). The FTC, the federal agency most involved in exploring IoT, increasingly shares jurisdiction with other agencies that lack expertise in consumer privacy issues. To comply with the myriad of possible regulations requires the expertise of lawyers, and startups rarely have the resources needed to hire a team of legal experts.

The technology industry has considered how to navigate the fragmented approaches to IoT within the government, specifically within the legislative branch. Policymakers and regulators should avoid creating regulatory "silos" that confuse industry and consumers. Regulatory responsibilities should be clarified to avoid duplication among agencies.

CTA supports implementation of a consistent approach to privacy and security, building on the expertise of cross-cutting agencies such as the FTC, the National Institute of Standards and Technology (NIST), and others as appropriate.

CTA applauds the creation of the bipartisan Senate IoT Working Group, which aims to educate members and bring them "up to speed on this technology and its impact on the modern economy and consumers."

Question 2. Mr. Shapiro, your testimony highlighted the obstacles faced by members of your association that you characterize as "disruptive companies." I agree with your view that policymakers should exercise regulatory humility so new business models can grow and thrive. Is there a role for Congress to play in eliminating regulations that could stifle innovation by disruptive companies? Are there specific laws you would like to see passed or regulations you want to see eliminated?

Answer. Congress can enable disruptive innovators in several ways. First, change outmoded rules that inadvertently suppress current business models. For example, the Senate could pass the

Modernizing Government Travel Act enabling federal employees to use ridesharing services while on official government business.

Second, Congress can promote a business climate conducive to risk-taking and innovation. For example, startups are disproportionately the victims of patent trolls. Cracking down on patent abuse would save entrepreneurs time and resources fighting frivolous patent lawsuits.

Third, Congress and policymakers can use their "bully pulpit" to embrace innovation and explain how new technologies benefit our communities and our lives.

Question 3. As it relates to regulatory reform, I've been a strong proponent of transparency, better cost- benefit analysis, and more stakeholder participation in the process. As chair of the Surface Transportation Subcommittee, I've convened hearings on performance-based regulations, whereby agencies set goals or benchmarks and allow flexibility in achieving those goals. From your perspectives, what are the benefits of moving away from prescriptive regulations towards more goal-oriented regulations?

Answer. Over-regulation is always a danger, but the impact is more acute on a dynamic, rapidly-evolving industry such as technology. Ideally, regulation will be goal-oriented and focus narrowly on specific health and safety concerns or harms. This "light touch" approach will allow potentially life-saving innovations such as driverless cars to be deployed as quickly as possible.

Response to Written Questions Submitted by Hon. Dean Heller to Gary Shapiro

Question 1. For tech companies like those at the Consumer Electronics Show, what regulations are doing the most harm to their business?

Answer. Several regulations present challenges to our members and the thousands of companies that exhibit at CES. One particularly onerous mandate was the Obama Administration's Department of Labor decision to increase the annual salary threshold, used to determine which employees are eligible for overtime pay, from $23,660 to $47,476. In startup culture, many employees knowingly join a new venture at a low salary, with the expectation of a substantial payoff should the venture succeed. Many times these initial employees are the friends - or even dorm-mates - of the founder. The massive expansion of overtime eligibility upends this business model and makes it unaffordable for many startups.

Another is the Securities and Exchange Commission (SEC) requirement for conflict mineral disclosure. As minerals are like water, disclosure is difficult to trace and the laws have been more harmful than helpful. Congress should eliminate that requirement.

Question 2. Are there any regulations coming out of the Federal Communications Commission (FCC) that you believe are harmful to innovation?

Answer. The FCC's most recent Order on broadband privacy failed to justify the FCC's decision to depart from longstanding precedent and FTC recommendations with respect to what information should be considered sensitive and thus subject to opt-in consent. To the contrary, the Order summarily dismissed record evidence that demonstrates how the Commission could institute a sensitivity-based framework that is consistent with the FTC's framework and with the goal of providing appropriate privacy protections to consumers across the internet ecosystem. In sum, the FCC's latest broadband privacy rules will chill innovation across the entire internet ecosystem.