Testimony of Commissioner Alvaro M. Bedoya[1]
For the Hearing:
"Artificial Intelligence: Examining Trends in Innovation and Competition"

Before the
Subcommittee on the Administrative State, Regulatory Reform & Antitrust
Committee on the Judiciary, U.S. House of Representatives
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Thank you for the opportunity to testify today. The Federal Trade Commission was founded 111 years ago to fight fraudsters and monopolists; over time, that mission has come to include substantial expertise in technology, privacy, and artificial intelligence. It is an honor to testify before the Subcommittee to convey some of the Commission's work and research in this area, as well as my own concerns about the competitive landscape surrounding artificial intelligence, particularly with respect to labor.

In terms of my own background, I am an attorney with a decade and a half of experience investigating, crafting policy around, and now conducting antitrust and consumer protection work in advanced technology, especially surveillance technology and AI. In the Senate, I served as the first chief counsel to the Senate Judiciary Subcommittee on Privacy, Technology, and the Law upon its founding in 2011; there, I helped craft legislation to rein in surveillance by the National Security Agency, and conducted investigations into the use and abuse of geolocation tracking and face surveillance. At Georgetown Law, I founded a think tank and conducted the first nation-wide survey of police use of face surveillance technology, an investigation that spurred congressional investigations and state legislation. I also taught privacy law, including in an intensive course taught jointly with the Massachusetts Institute of Technology.

Before I begin, I should clarify that these opinions are my own; I am not testifying on behalf of the Commission, my fellow commissioners, or Commission staff.

I have three points I would like to underscore today.

First, we should be wary of market arrangements that may stifle future competitiveness in AI. We want a world where a scrappy startup can eat an incumbent. Unfortunately, a recent staff report issued by the FTC suggests that partnerships between certain prominent AI developers and major Cloud Service Providers (CSPs) may raise competitive barriers to startups.

[1] It is the position of this Administration that I am no longer a commissioner. However, the clear language of the Federal Trade Commission Act and binding Supreme Court precedent prohibits this no-cause removal. *See generally* 15 U.S.C.§ 41; *Humphrey's Executor v. United States*, 295 U.S. 602 (1935). Accordingly, it is my position that, under binding Supreme Court precedent, my termination was unlawful and ineffective and therefore I remain a Federal Trade Commissioner, even though my purported termination is preventing me from conducting the formal duties of a commissioner at this time. Last Thursday, I filed suit with Commissioner Rebecca Kelly Slaughter to clarify our continued status as commissioners.

Second, we should reject the idea that AI is "unregulated." While it is unquestionably true that our laws must be updated, we cannot forget that a bevy of existing laws, many of which are enforced by the FTC, already govern AI development and deployment.

Third, we cannot just focus on competition between AI companies. We also need to closely track competition between AI and workers, specifically how AI may displace workers in a way that may be unfair, if not anticompetitive. Frankly, I think this is the most important challenge we face today.

(1) We should be wary of market arrangements that may stifle AI startups.

Right now, regulators think that the success of modern AI development turns on the availability of four key inputs:[2]

- **Chips.** AI developers require advanced chips that are manufactured by a small number of companies.

- **Cloud.** AI developers rely on Cloud Service Providers ("CSPs"), who offer those developers access to specialized chips, as well as a complementary suite of software products, networking, and the infrastructure necessary to operate and integrate these systems.

- **Data.** AI developers train foundation models on vast quantities of data, and there are indications that data generated by AI is inadequate for this purpose.[3] Therefore, there is a race to secure access to ever-larger troves of data.

- **Personnel.** AI developers are highly skilled experts who are in very high demand.

In my view, market arrangements which let powerful incumbents block or restrict startups' access to these resources should be watched carefully for compliance with our antitrust laws.

In January, the Commission issued a staff report on three corporate partnerships between the largest CSPs – Google, Amazon, Microsoft – and two of the most prominent generative AI developers – Anthropic and OpenAI. Specifically, the FTC studied these three partnerships: Microsoft-Open AI, Amazon-Anthropic, and Google-Anthropic.[4]

The report describes some of the key features of the partnership agreements, some of which were not previously public. These include the facts that the partnerships (1) provide CSP partners significant equity and certain revenue sharing rights in their AI developer; (2) provide those partners varying degrees of consultation, control and exclusivity rights with respect to their

[2] *See generally* Office of Technology Staff, "Partnerships Between Cloud Service Providers and AI Developers: FTC Staff Report on AI Partnerships & Investments 6(b) Study," Federal Trade Commission, January 2025 ("FTC Staff Report") at 8-16; U.K. Competition & Markets Authority "AI Foundation Models Review: Short Version," Sept. 18, 2023, at 2.
[3] *See* Ilia Shumailov et al., "AI models collapse when trained on recursively generated data," *Nature* 631 (2024),
[4] *See generally*, FTC Staff Report.

AI developer partners; and (3) include certain commitments to require AI developers to spend a significant amount of the CSP partners' investment on cloud services from that company.

The report also outlined a number of potential competition implications that could possibly arise from these various partnerships, including the fact that the partnerships could increase switching costs for AI developers, and the fact that the partnerships could provide CSP partners access to sensitive technical and business information that may be unavailable to others.

But I am most concerned by the report's conclusion that the three partnerships may impact startups' access to certain key inputs, especially cloud computing resources. For one thing, the partnerships between CSPs and AI developers may incentivize CSPs to restrict access to computing resources to AI developers other than its partner.[5]

The report also surfaced indications that computing resources at those CSPs are growing increasingly scarce. "[W]e face a problem today where scarce GPU resources are being disproportionately used by a few large customers who are getting steep discounts," one CSP wrote in internal documents, further warning about "hoarding behavior."[6]

Another document made clear who may be most impacted by this scarcity: Startups. "We are also unable to serve a growing number of startups who need bursts of GPU capacity to train or fine tune deep-learning models and bring their Generative AI products to market, but can't commit to long-term deals," wrote one CSP in internal documents.[7]

Speaking personally, the fast and surprisingly rigid vertical integration that has developed between CSPs and major AI developers reminds me of another area where vertical integration promised great benefits but appears to have fallen short: Health care. Yet, according to a separate FTC Staff Report, the vertical integration of insurers, pharmacy middlemen, and pharmacies into three vertical stacks may actually have led to a range of anti-competitive outcomes, including dramatically higher prices for certain critical cancer medications.[8]

With health care, Americans learned the hard way that bigger is not necessarily better. My hope is that the same trend does not leave small American technology startups out in the cold.

(2) We should reject the idea that AI is unregulated.

There is a powerful myth in the media that AI is "unregulated." It has a certain intuitive appeal. Frankly, it just sounds right: How could these mysterious new technologies be regulated under our dusty old laws?

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[5] *See* FTC Staff Report at 30-31.
[6] *Ibid* at 30.
[7] *Ibid* at 31.
[8] *See generally*, Staff Report, "Specialty Generic Drugs: A Growing Profit Center for Vertically Integrated Pharmacy Benefit Managers," Federal Trade Commission, Jan. 2025. *See also* Alvaro M. Bedoya, "Return to Fairness," Midwest Forum on Fair Markets, Sept. 22, 2022, at 3-4 (describing process of vertical integration).

If you've heard this, or even said it, I urge you to take a step back and ask: Who does this idea help? As I have said before, I think that this idea that "AI is unregulated" helps that small subset of companies who are uninterested in compliance.[9]

The reality, of course, is that lots of laws *do* apply to AI; there is no AI exception to the law. Unfair and deceptive trade practices laws apply to AI. The FTC's core section 5 jurisdiction extends to companies making, selling, or using AI. If a company makes a deceptive claim using (or about) AI, that company can be held accountable. If a company injures consumers in a way that satisfies our test for unfairness when using or releasing AI, that company can be held accountable. Indeed, FTC staff have pioneered powerful remedies, preventing companies from training AI models on ill-gotten data,[10] and requiring companies to substantiate claims about AI safety and efficacy.[11]

There are two important cases that highlight the FTC's work to rein in abuses and misuses of AI. First, in December 2023, the FTC banned Rite Aid from using face recognition technology.[12] Rite Aid had tried to use facial recognition to "drive and keep persons of interest out of [its] stores." But it failed spectacularly.

In one incident, a Rite Aid employee stopped and searched an 11-year-old girl because of a false match. The girl's mother reported that she missed work because her daughter was so distraught about the incident. In another incident, Rite Aid employees called the police on a customer because the technology generated an alert against an image that was later described as depicting "a white lady with blonde hair." The customer was Black.

Many other customers – people shopping for food, medicine, and other basics – were wrongly searched, accused, and expelled from stores. Sometimes, they were humiliated in front of their bosses, coworkers, or families.

The Commission alleged that its system produced thousands of incorrect matches. This shouldn't have been surprising, given the FTC alleged that the company used low-quality images that were unsuitable for automated analysis, and failed to take the most basic precautions.

The FTC's order flat-out banned Rite Aid from using face surveillance for five years, and required deletion of biometric data collected in connection with the operation of the system. Going forward, if Rite Aid ever decided to take up such a system again, it would have to let people contest their entry into the system, and conduct robust testing, among other things.

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[9] *See generally* Alvaro M. Bedoya, "Early Thoughts on Generative AI," Prepared Remarks Before the International Association of Privacy Professionals, April 5, 2023.

[10] The FTC's actions against Ring, Edmodo, Avast, EverAlbum, and Kurbo/Weight Watchers are notable in this respect. All of the materials relating to these actions are available on the FTC's website at www.ftc.gov.

[11] See the FTC's actions against CafePress, Drizly, Chegg, Cerebral, Premom, BetterHelp, Kurbo/WeightWatchers, 1Health.io/Vitagene, Blackbaud, and Global Tel*Link, available at www.ftc.gov.

[12] *See* Federal Trade Commission, "Rite Aid Banned from Using AI Facial Recognition After FTC Says Retailer Deployed Technology without Reasonable Safeguards," Dec. 19, 2023; Alvaro M. Bedoya, "Statement of Commissioner Alvaro M. Bedoya on FTC v. Rite Aid Corporation & Rite Aid Headquarters Corporation Commission," File No. 202-3190, Dec. 19, 2023.

Second, in May 2023, the FTC forced Amazon Alexa to delete kids' voice recordings and associated data.[13] The Commission alleged that when parents asked Amazon to delete their kids' Alexa voice data, the company did not delete all of it, apparently keeping the transcripts of those conversations. The Commission also alleged that, as a default, Amazon kept child voice recordings indefinitely in violation of federal law, including the Children's Online Privacy Protection Act.

Why did the company do this? According to the FTC, one of the reasons given by Amazon to justify the retention of children's voice data was that the data was important to further refine its voice recognition algorithm.

Right now, AI developers are in a race to acquire ever-larger troves of personal data to train their models. This case sends a clear message to tech companies of all kinds: Training AI is no excuse to break the law.[14]

(3) We cannot just focus on competition between AI companies. We also need to closely track competition between AI and workers.

My first two points focused on the FTC's prior research and enforcement actions. Here, I want to highlight an area that I think is ripe for close scrutiny – and likely legislation – in the future.

There has been extensive discussion, and now litigation, around generative AI developers' decision to train their models on large bodies of copyrighted written works. There has been comparable attention to the use of AI to produce music or visual art that mimics (or apes) the style of an artist whose work that AI has been, without authorization, trained on.[15]

I wholeheartedly support efforts to protect the copyrighted work of authors, musicians, and artists. That said, I would like to warn about another closely related trend that has gotten far less attention: The use of AI to scan and replicate the work of working people you've likely never heard of.

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[13] *See* Federal Trade Commission "FTC and DOJ Charge Amazon with Violating Children's Privacy Law by Keeping Kids' Alexa Voice Recordings Forever and Undermining Parents' Deletion Requests," May 31, 2023; Alvaro M. Bedoya, "Statement of Commissioner Alvaro M. Bedoya Joined by Chair Lina M. Khan and Commissioner Rebecca Kelly Slaughter In the Matter of Amazon Alexa, *United States v. Amazon.com*," *Inc*., May 31, 2023.

[14] The FTC has also filed a series of other cases involving what one might consider more traditional fraudulent or deceptive practices. For example, the FTC took action against DoNotPay, a company that claimed to offer an AI service that was "the world's first robot lawyer," even though the product failed to live up to its lofty claims that the service could substitute for the expertise of a human lawyer. The FTC also filed a lawsuit against an online business opportunity scheme that it alleges has falsely claimed its "cutting edge" AI-powered tools would help consumers quickly earn thousands of dollars a month in passive income by opening online storefronts. According to the complaint, the scheme has defrauded consumers of at least $25 million. *See* Federal Trade Commission, "FTC Announces Crackdown on Deceptive AI Claims and Schemes," Sept. 25, 2024.

[15] *See, e.g.* Federal Trade Commission, Comment on Artificial Intelligence and Copyright, Docket No. 2023-6, Oct. 30, 2023 at 5-8 (reviewing issues with AI and copyrighted content). *See also* U.S. Copyright Office, "Copyright and Artificial Intelligence, Part 1: Digital Replicas," July 2024.

Twenty years ago, the martial artist Jet Li was offered a plum role in one of *The Matrix* sequels – but he declined it. He later explained that the producers had demanded that, as part of that role, he submit to a battery of head-to-toe scans while he performed various martial arts routines. The subsequent data would be the property of the company that made the film, an outcome he did not find acceptable.[16]

His account is jarring. But what jumps out at me is that he was told the job would involve body scanning, he was told who would scan him, and who would own the data – and he was given the option to accept or decline.

A few months ago, I heard an NPR interview with a relatively unknown performer – a modern motion actor named Jasiri Booker. He was one of the movement actors used to create Spider-Man for the video game adaptation of the Marvel movie franchise.

Mr. Booker's job was to spend hours and hours on set in a full bodysuit covered in bright reflective sensors, performing parkour, capoeira, or break dancing. And even though he was doing precisely what Jet Li was asked to do, Mr. Booker had no idea what was happening to his data.

Mr. Booker, who was on strike at the time, told NPR that "[o]ur ask is not that they don't use AI altogether. We're saying, at the very least, please inform us and allow us to consent to the performances that you are generating with our AI doubles."[17]

It's not just motion actors. Social media around the time of the actors' strike was full of stories of background actors – so-called "extras" – who were tapped on the shoulder and told to submit to full-body scans – often with no notice, no contracts, no extra pay, and next to no information about how that data would be used in the future. The few actors who were informed that the scans would let the film company add them into a scene at a later date – for no pay, of course.[18]

But critically, this isn't just happening to actors and other creative professionals. Historically, American customer service call centers have been one of the few professional tracks that offered high school graduates a reliable means through which to access the middle class. Recently, however, these jobs have been pervaded by various surveillance technologies, including AI-powered technologies that tell even seasoned operators what to say, how to say it, and when to say it. The *average* American call center employee is tracked by five separate surveillance technologies.[19]

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[16] *See* Alvaro M. Bedoya, "Your body, your work? Hollywood is scanning actor's moves. What that could mean for the rest of us," *L.A. Times,* Sept. 4. 2023.
[17] *See* Mandalit del Barco, "Video game performers want protections from artificial intelligence," *National Public Radio*, Aug. 28, 2024.
[18] *See, e.g.*, @JustineBateman, Aug. 16, 2023, https://x.com/justinebateman/status/1691873571319201812?s=46.
[19] *See generally* Alvaro M. Bedoya, "Life in Hawtch-Hawtch: Unfairness in Workplace Surveillance and Automated Management," Remarks for the New York University Wagner Labor Initiative, Nov. 17, 2024.

Recent reporting and research suggests that some of the algorithms used in call centers were trained on "thousands of hours of audio" from calls of current call center workers.[20] "Am I training my replacement?" one call center worker wondered aloud to *The New York Times*.[21] These concerns are not hypothetical; a CVS executive recently told the *Wall Street Journal* that the company would seek to have more and more customer questions answered by AI-fueled applications.[22]

Technology is replacing workers through automation. It already regulates them. In the not too distant future, it will *replicate* them. Here are some questions I urge the Subcommittee to consider: How do you compete with a digital version of yourself who can work 24 hours a day, 7 days a week, with no breaks, no benefits, and no vacation? Is it fair to force you to train your AI replacement? Is it fair to have you do it without your knowledge?

Workers need strong, bright line protections against this conduct – and they need them now. Right now, there are two roads to get those kinds of protections. The first is collective bargaining. The Screen Actors Guild won strong protections to ensure that digital replicas would not be made of actors without their knowing about it, agreeing to it, and being paid for it.[23] The Communications Workers of America have made sure that emotion analysis software can't be used to punish or discipline their workers.[24]

The second path is through the passage of a workplace privacy law. How can it be that when I sit at home and buy something with my credit card, turn on cable, or watch a show online, privacy laws may govern that data; but when I go to work, seemingly anything goes? How can it be that people show up at work with no idea who will scan them and measure them and analyze them, with no control over those processes and no idea of how that data will be used?

This legislation could be developed arm-in-arm with representatives from organized labor, to ensure it is responsive to workers who actually experience this tracking. And it should include protections not just on data collection and sharing, but also algorithmic management.

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[20] *See* Josh Dzieza, "How hard will the robots make us work? In warehouses, call centers, and other sectors, intelligent machines are managing humans, and they're making work more stressful, grueling, and dangerous," *The Verge*, Feb. 27, 2020 ("A Voci spokesperson said the company trained its machine learning program on thousands of hours of audio that crowdsourced workers labeled as demonstrating positive or negative emotions."); Virginia Doellgast, Ines Wagner & Sean O'Brady, "Negotiating Limits on Algorithmic Management in Digitalized Services: Cases from Germany and Norway," *Transfer: European Review of Labour and Research* (2023) at 112 (describing a call center where all calls are recorded to "train chatbots").

[21] See Emma Goldberg, "'Training My Replacement': Inside a Call Center Worker's Battle with A.I.," *N.Y. Times*, Jul. 19, 2023.

[22] Isabelle Bousquette, "Inside CVS's Strategy to Improve the Pharmacy Experience," *The Wall Street Journal*, June 20, 2024.

[23] SAG-AFTRA, "TV/Theatrical 2023: Regulating Artificial Intelligence," https://www.sagaftra.org/sites/default/files/sa_documents/AI%20TVTH.pdf.

[24] See CWA Issue Brief: Protections Against Abusive Monitoring, https://cwaunion.org/sites/default/files/protections-against-abusive-monitoring_cwa-issue-brief.pdf

Thank you for the opportunity to testify before the Subcommittee today. I would be glad to answer questions about these or any other matters.