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ALEC Comment on the NTIA's AI Accountability Policy

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June 12, 2023

National Telecommunications and Information Administration
1401 Constitution Avenue, NW
Washington, DC 20230

Re: Comment Submitted by the American Legislative Exchange Council on NTIA's "AI Accountability Policy RFC," Docket ID NTIA-2023-0005

The American Legislative Exchange Council (ALEC) is a Virginia-based nonprofit, nonpartisan

membership organization of state legislators with the mission to discuss, develop, and disseminate

model public policies in the Jeffersonian tradition of limited government, free markets, and federalism.

Comprised of nearly one-quarter of the country's state legislators and stakeholders from across the

policy spectrum, ALEC members represent more than 60 million Americans and provide jobs to more

than 30 million people in the United States.

For 50 years, ALEC has served as the premier forum for state lawmakers to debate our nation's

leading public policy challenges and advance trusted policy solutions that give Americans more control

over their own destinies, make government more responsive to its communities, and deliver widespread

economic prosperity. The ALEC model policy library is home to dynamic and innovative ideas that

reduce the cost of everyday life and ensure economic freedom, offering real solutions to the top issues

facing the states.

Members of ALEC's Communications and Technology Task Force include legislative leaders and

policy experts who believe in the proven light-touch regulatory approach on emerging technology and

telecommunications that solidified the United States as the clear global leader in these sectors. ALEC

legislators lead the charge in their home states to address today's pressing technology issues by

supporting pragmatic policies that expand broadband internet access and deployment in rural areas, grow the digital economy, and encourage the next wave of tech innovation on American shores. ALEC members will continue to play a critical role in the governance of new artificial intelligence technology.[1]

Therefore, ALEC respectfully submits this comment to inform the NTIA's forthcoming rulemaking on artificial intelligence (AI) policy in the United States. We decided to focus our response on Questions 30, 30(a), 30(b), 30(d), and 33 in this filing.

Introduction

Artificial intelligence (AI) has once again been thrust into the global spotlight due to the mainstream deployment and subsequent virality of new generative AI tools and their underlying large language models (LLMs), including but not limited to ChatGPT, DALL-E, Google Bard, Midjourney, Stable Diffusion, and many more. While previous forms of AI were often trained to handle specific microtasks or automate specific processes, generative AI leverages novel breakthroughs in machine learning to interpret information from a vast data set of text, images, video, and audio recordings to generate intricate responses mimicking human speech and create impressive graphic designs at the click of a button.[2] Compared to traditional AI systems, tools like ChatGPT are more general purpose, remarkably easy for everyday users to navigate, and require little to no computer science expertise or coding skills to achieve impressive results.

Just seven months since OpenAI's public debut of ChatGPT, the generative AI sector has dramatically upended the equilibrium across Silicon Valley boardrooms, the halls of Washington, state capitals, Main Street businesses, and everyday households as they consider what the sudden arrival of

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[1] Morabito, Jake. "ChatGPT Mania: What State Lawmakers Need to Know About Generative AI." *American Legislative Exchange Council*. 21 February 2023. https://alec.org/article/chatgpt-mania-what-state-lawmakers-need-to-know-about-generative-ai/
[2] "What is generative AI, what are foundation models, and why do they matter?" *IBM Blog.* 8 March 2023. https://www.ibm.com/blog/what-is-generative-ai-what-are-foundation-models-and-why-do-they-matter/

generative AI means for their day-to-day realities. Many enterprises had already begun incorporating AI into their products and business processes for years in key areas like supply chain management, customer relationship management (CRM), sales and marketing, IT support, and customer service.[3] AI tools are often integrated into software applications behind-the-scenes and not always apparent to consumers. But ChatGPT resonated with the public precisely because OpenAI made the software front-and-center for users and widely accessible to all.

Some economists and market researchers estimate global revenue resulting from generative AI could exceed $100 billion in revenue by 2030.[4] The development of generative AI holds immense promise in nearly all sectors of the economy, but many stakeholders across government and industry have expressed concerns with this highly disruptive technology. Such concerns—ranging from how best to mitigate AI-powered cyberattacks, combatting a growing epidemic of deepfakes, or education and workforce impacts more generally—merit public policy debate in legislatures across the nation. Unfortunately, many conversations on the future of AI are diminished by hyperbolic allusions predicting an AI-fueled apocalypse or some other existential risk to humanity.

Following OpenAI's release of the GPT-4 LLM and Google's effort to launch its own competing AI chatbot, a group of tech luminaries and AI researchers made headlines by calling for a six-month pause in work on advanced artificial intelligence.[5] Pundits and journalists critical of AI often seize on dire warnings from figures like "Godfather of AI" Geoffrey Hinton[6] that tend to gin up media hysteria, overinflate the societal risks of AI, and fail to fairly weigh the opportunity costs of deliberately slowing progress in this space. Commentators often rush to tired, overblown cliches likening the latest leaps in

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[3] See Gartner's artificial intelligence primer for more examples on enterprise AI use cases: https://www.gartner.com/en/topics/artificial-intelligence

[4] See: "Generative AI Market Size, Growth & Share Report, 2030." *Grand View Research*.

[5] Rosenberg, Scott. "AI's great 'pause' debate." *Axios*. 30 March 2023. https://www.axios.com/2023/03/30/chatgpt-ai-pause-debate-existential-risk

[6] Metz, Cade. "'The Godfather of A.I.' Leaves Google and Warns of Danger Ahead." *The New York Times*. 1 May 2023. https://www.nytimes.com/2023/05/01/technology/ai-google-chatbot-engineer-quits-hinton.html

AI to the murderous Skynet from *The Terminator* film franchise or the defiant HAL 9000 from *2001: A Space Odyssey*. Science-fiction dystopias have their place for entertainment purposes, but regulators must approach emerging technology with a sober, rational mind and not make decisions from a position of fear. Extreme rhetoric of this sort only detracts from serious conversations on the positive and negative effects of AI that deserve our attention.

Another consortium of AI stakeholders recently penned a brief statement organized by the Center for AI Safety, explaining that, "Mitigating the risk of extinction from AI should be a global priority alongside other societal-scale risks such as pandemics and nuclear war."[7] OpenAI CEO Sam Altman, a signatory of the statement, has routinely called for a massive expansion of national and international government power over AI. Altman has called for a United Nations-style regulatory agency to throttle AI development modeled after the International Atomic Energy Agency.[8] Similarly, Microsoft President Brad Smith supports a new U.S. agency tasked with licensing and regulating access to "highly capable" AI systems and imposing "obligations for the AI infrastructure operators on which these models are developed and deployed," such as a "Know Your Customer" requirement.[9]

Yes, the deployment of such a transformative and unprecedented technology will necessarily come with tradeoffs, risks, and uncertainty, but we are already seeing signs that the burgeoning generative AI market will deliver immense benefits to consumers across state economies.[10] High-powered, custom-tailored AI tools will help workers, students, and families save time completing complex tasks,[11] streamline busy work and free up time for small businesses to focus on serving their

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[7] Center for AI Safety. "Statement on AI Risk." Accessed 30 May 2023. https://www.safe.ai/statement-on-ai-risk#open-letter
[8] Hutton, Christopher. "ChatGPT developer calls for international regulatory agency for powerful AI." 22 May 2023. https://www.washingtonexaminer.com/policy/technology/chatgpt-developer-international-ai-regulators
[9] Smith, Brad. "How do we best govern AI?" *Microsoft*. 25 May 2023. https://blogs.microsoft.com/on-the-issues/2023/05/25/how-do-we-best-govern-ai/
[10] Dempsey, James. "Generative AI: The Security and Privacy Risks of Large Language Models." *NetChoice*. 27 April 2023. https://netchoice.org/generative-aithe-security-and-privacy-risks-of-large-language-models/
[11] Liu, Yiling. "Using Generative AI for Travel Inspiration and Discovery." *Google for Developers*. 22 May 2023. https://developers.googleblog.com/2023/05/generative-ai-travel-developers.html

customers,[12] and overhaul constituent services across a range of government agencies.[13] If allowed to flourish in an open, free-market environment, generative AI will result in robust competition across the digital marketplace and expand consumer access to the latest and greatest AI tools. Ultimately, without unnecessary government intervention, generative AI has the potential to boost economic growth and prosperity.

Halting or arbitrarily constraining American research on advanced AI, if such an undertaking is even possible, would be a colossal mistake. America cannot shirk away from this pivotal moment that very well may break the dam of the long-promised Fourth Industrial Revolution.[14] AI should become the next great American success story, girded by our nation's foundational values of individual liberty, respect for Constitutional rights, a guiding ethos of limited government, and an unwavering spirit of innovation.

At this preliminary phase of the generative AI development cycle, government officials should take the time to educate themselves on the nature of emerging AI systems, study their capabilities, separate fact from fiction, and learn from the decades of private sector research and enterprise case studies dedicated to achieving trustworthy and responsible AI. What governments *should not* do is rush to adopt overly restrictive laws and regulations just for the sake of "catching up" to bad policies being pursued on other continents[15] or merely to "get a jump" on AI regulation.

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[12] Wiggers, Kyle. "Microsoft launches an AI tool to take the pain out of building websites." *TechCrunch*. 23 May 2023. https://techcrunch.com/2023/05/23/microsoft-launches-an-ai-tool-to-take-the-pain-out-of-building-websites/
[13] "The Government and Public Services AI Dossier: Top uses for AI in government and public services – now and in the future." *Deloitte AI Institute*. https://www2.deloitte.com/us/en/pages/consulting/articles/ai-dossier-government-public-services.html
[14] Morabito, Jake. "A fork in the road for artificial intelligence developers and regulators." *The Washington Times*. 23 March 2023. https://www.washingtontimes.com/news/2023/mar/23/fork-road-artificial-intelligence-developers-and-r/
[15] European Parliament. "AI Act: a step closer to the first rules on Artificial Intelligence." 11 May 2023. https://www.europarl.europa.eu/news/en/press-room/20230505IPR84904/ai-act-a-step-closer-to-the-first-rules-on-artificial-intelligence

Government agencies should approach novel AI as collaborative, informed stakeholders in partnership with the private sector, academia, and the general public to maximize the benefits of generative AI while prioritizing genuine concerns about adverse impacts. With this in mind, ALEC encourages NTIA and the Administration to adopt three foundational principles in any upcoming rules, regulations, or guidance on AI policy:

1. Open-source and voluntary transparency guidelines should build trustworthy AI.
2. AI standards should be industry-led.
3. Lawmakers should promote responsible AI experimentation across sectors.

Open-source and voluntary transparency guidelines should build trustworthy AI.

We appreciate NTIA's interest in advancing trustworthy and accountable artificial intelligence as expressed in the Request for Comment. However, we are concerned by the Biden Administration's suggested remedy: An expansion of government control through a complex system of audits and risk assessments on AI tools. Such a regulatory regime would impose undue burdens on innovators due to the high cost of regulatory compliance, erect barriers to entry for potential market challengers, and insulate industry incumbents from competition. Furthermore, the Administration's recent executive order to explicitly favor certain ideological preferences in the federal government's AI decisions could inject more bias and distrust in AI.

Instead, ALEC encourages NTIA and the Administration to consider how open-source generative AI tools or LLMs and voluntary transparency guidelines can help address the trust and accountability problem without unnecessary regulatory intervention.

For AI to reach mass adoption and be seen as trustworthy across a multitude of use cases and industry sectors, developers need a thorough understanding of how these technologies operate and end users should be able to ascertain whether a given software product is powered by an AI chatbot or automated system. Voluntary transparency practices in AI models could help solve the question of trust and encourage public adoption of the technology. Educating users on AI best practices can help the public discern deepfakes and scrutinize information from a questionable source, but AI developers and deployers can do their part in promoting AI literacy by voluntarily disclosing their use of AI in consumer-facing applications. This way, consumers can make informed decisions about the products they choose and independent third parties can verify whether certain AI tools and LLMs function as advertised.

Turning specifically to Question 30(d) in the Request for Comment regarding accountability practices for AI systems the government employs, Congress and the Administration should strongly consider implementing AI tools as part of their larger procurement mission to modernize government IT and improve constituent services. Too many state and federal agencies are sadly still dependent on analog, paper-based processes, communications by fax machine, or outmoded mainframes operating on decades-old programming languages. Modernizing government IT will improve employee efficiency, save taxpayer dollars on maintenance costs for legacy systems, and reduce processing times for constituents. However, government agencies adopting chatbots or AI solutions—especially for constituent services—should clearly disclose that AI is in use and for what purpose.

Open-source AI models are another key component of the trust conversation. Instead of requiring AI entrepreneurs to amass and train a proprietary LLM from scratch, open-source platforms could allow innovators large and small to integrate general-purpose AI tools across a range of services to deliver new products, make work more efficient, and streamline rote or lower-order tasks for workers.

Unfortunately, some proposals for AI licensure, audits, and risk assessments could disincentivize open-source software by shackling developers and hosting sites, such as GitHub, with liability and subjecting them to extreme fines and penalties for violations. As the Brookings Institution concluded in a 2022 article on proposed European Union AI legislation, "Open-source [general purpose AI] models are freely available for use by anyone, rather than being sold or otherwise commercialized. The proposed [European Union AI Act] draft will create legal liabilities, and thus a chilling effect, on open-source GPAI development."[16]

AI Standards Should Be Industry-Led

Focusing now on Question 33 in the Request for Comment regarding government working with the private sector on trust and accountability best practices, ALEC encourages NTIA to work in tandem with AI developers, AI policy experts at technology industry associations and research organizations, and other private sector stakeholders to develop voluntary guidance while giving innovators flexibility to address emerging challenges as they arise. ALEC members believe that voluntary codes of conduct, industry-driven standards, and individual empowerment should be preferred over government regulation in emerging technology.[17]

As noted in the aforementioned section, private sector leaders already have a clear market incentive without government mandates to demonstrate trust and integrity in their products so consumers feel comfortable adopting them en masse. Therefore, many leading companies at the

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[16] Engler, Alex. "The EU's attempt to regulate open-source AI is counterproductive." *The Brookings Institution*. 24 August 2022. https://www.brookings.edu/blog/techtank/2022/08/24/the-eus-attempt-to-regulate-open-source-ai-is-counterproductive/
[17] ALEC: "Six Principles for Communications and Technology." 18 September 2018. https://alec.org/model-policy/six-principles-for-communications-and-technology/

forefront of AI development—as well as trade associations and research organizations—have advanced thoughtful principles and self-governance standards on accountability, ethics, and best practices for AI.[18] However, issues like the rise of deepfakes, the spread of AI-generated disinformation online, and sophisticated cyberattacks cannot be resolved by standards-setting alone. One project, the Content Authenticity Initiative (CAI), demonstrates the kind of creative thinking and innovative solutions required to mitigate the risks of bad actors abusing generative AI tools.

Instead of relying on the heavy hand of government to regulate away the disinformation and deepfake problem, members of the CAI—including Adobe, Arm, Canon, The New York Times Company, and dozens of firms across sectors—seek to restore trust and transparency by developing a toolkit for users to certify authentic content online.[19] Integrating an easy method for good actors to authenticate and properly attribute genuine content within tools like Adobe Photoshop can reassure consumers that a photo or video is not a malicious deepfake and has not been deceptively altered to mislead the public.[20] Bad actors interested in spreading inauthentic content online will likely not opt into these tools, but if the CAI's voluntary standard catches on, their lack of authentication will be conspicuous and potentially cause users to scrutinize questionable content before believing it at face value.

NTIA and the Administration should be careful not to undermine industry-led efforts like the CAI in forthcoming rulemaking and instead consider rules that bolster private sector collaboration on AI accountability.

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[18] Some examples of industry-led standards on AI: Microsoft's Responsible AI Principles, Google's Responsible AI Practices, IBM's Principles for Trust and Transparency, Oracle's "Responsible AI: Oracle's Guide to Ethical Considerations in AI Development and Deployment," BSA | The Software Alliance's "Confronting Bias: BSA's Framework to Build Trust in AI," and the Information Technology and Innovation Foundation's "Ten Principles for Regulation That Does Not Harm AI Innovation,"

[19] For a more in-depth explanation of the Content Authenticity Initiative, please visit: https://contentauthenticity.org/how-it-works

[20] Belsky, Scott. "Bringing the next wave of Artificial Intelligence to Creative Cloud." *Adobe Blog*. 18 October 2022. https://blog.adobe.com/en/publish/2022/10/18/bringing-next-wave-ai-creative-cloud

Lawmakers Should Promote Responsible AI Experimentation Across Sectors

Much of the regulatory debate has centered around whether "high-risk" use cases for AI ought to be subject to further government regulation and restrictions. Instead of sealing off entire "high-risk" sectors as off-limits for AI, or charging an AI agency with the power to determine who can qualify for an AI license, policymakers should encourage responsible AI experimentation across sectors by considering universal or targeted regulatory sandbox policies that encourage innovation in emerging technologies.[21]

This sandbox framework, already adopted and successful in states like Arizona and Utah,[22] offers a way for regulators to support domestic AI innovation by permitting experimentation of new technologies in controlled environments that would otherwise violate existing regulations. State attorneys general often administer these sandbox programs, provide for consumer protection and transparency requirements, and retain the ability to deny bad actors who violate the sandbox's terms.

A federal AI sandbox could be a helpful mechanism to provide empirical evidence of AI's positives and negatives in "high-risk" settings, such as health care, instead of resorting to hypotheticals or presumed outcomes. If AI can facilitate medical breakthroughs, from restoring a paralyzed patient's ability to walk[23] to assisting physicians with more accurate disease detection and diagnostics,[24] government regulators should preserve these positive developments to the fullest extent possible, while focusing their ire on protecting consumers from genuine harm.

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[21] ALEC members approved two regulatory sandbox model policies: The Targeted Regulatory Sandbox and the Universal Regulatory Sandbox. To read the full text and in-depth analysis on these and more ALEC model policies, please visit https://alec.org/model-policy/.

[22] Empey, Rees. "Arizona Continues to Invite Innovation with Sandboxes." *Libertas Institute*. 29 April 2022. https://libertas.org/free-market/arizona-continues-to-invite-innovation-with-sandboxes/

[23] Whang, Oliver. "Brain Implants Allow Paralyzed Man to Walk Using His Thoughts." *The New York Times*. 24 May 2023. https://www.nytimes.com/2023/05/24/science/paralysis-brain-implants-ai.html

[24] Ganjalizadeh, V., Meena, G.G., Stott, M.A. *et al.* "Machine learning at the edge for AI-enabled multiplexed pathogen detection." *Nature*. 23 March 2023. https://www.nature.com/articles/s41598-023-31694-6

Conclusion

Federal lawmakers and executive agencies have a critical role in this new generation of artificial intelligence. The U.S. government has already established a respected body of work in this space, including NIST's AI Risk Management Framework, Cybersecurity Framework, and Privacy Framework.

Contrary to popular belief, AI systems are not completely unfettered from government regulation. As Federal Trade Commission Chair Lina Khan pointed out, novel tools are not exempt from existing rules.[25] Current laws and jurisprudence prohibiting discrimination of protected classes like race and sex, providing for equal protection under the law, and offering legal redress for consumer protection violations do not evaporate when AI tools are at play.

Instead of making it more difficult for the AI entrepreneurs to do business in the name of trust and accountability, Congress and the Biden Administration should support our private sector champions, ensure America's lead on advanced AI, and complement ongoing efforts in the states to boost innovation and reduce regulatory burdens.

ALEC stands ready to assist Members of Congress and federal regulators on both sides of the aisle to craft policy solutions on emerging technology that respect our nation's enduring tradition of limited government, free markets, and federalism.

Sincerely,

Jake Morabito
Director, Communications and Technology Task Force
American Legislative Exchange Council

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[25] Khan, Lina. "Lina Khan: We Must Regulate A.I. Here's How." *The New York Times*. 3 May 2022.
https://www.nytimes.com/2023/05/03/opinion/ai-lina-khan-ftc-technology.html