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September 30, 2024

Office of the Attorney General
California Department of Justice
Attn: Public Inquiry Unit
P.O. Box 944255
Sacramento, CA 94244-2550

RE: OpenAI, Inc.

Dear Attorney General Bonta,

In a series of previous letters, we have argued that OpenAI is no longer operating as a nonprofit and pursuant to its charitable purpose. Now, it appears that OpenAI plans on its own to convert from nonprofit to for-profit status.¹

As we have explained in our earlier letters and as you know, if OpenAI converts to for-profit status, the assets of the non-profit charitable enterprise must be disgorged and devoted to charitable purpose. Perhaps the key precedent for such a conversion is the conversion of Blue Cross California. When Blue Cross of California transferred its assets to a for-profit subsidiary, the State intervened to protect the interest of Californians and required distribution of all non-profit assets—over \$3.2 billion—to charitable grant-making healthcare foundations.²

The potential conversion of OpenAI involves even more complicated issues than the Blue Cross California conversion. As you prepare to protect the interests of the charitable sector, we urge that you focus on two distinct issues: The monetary value of the nonprofits assets, which we believe should be total well north of \$30 billion, and control over breakthrough, general artificial intelligence technologies that OpenAI For-Profit may develop in the future.

¹ Krystal Hu and Kenrick Cai, “OpenAI to Remove Nonprofit Control and Give Sam Altman Equity,” September 25, 2024, Reuters, <https://www.reuters.com/technology/artificial-intelligence/openai-remove-non-profit-control-give-sam-altman-equity-sources-say-2024-09-25>.

² Community Catalyst, “Conversion and Preservation of Charitable assets of Blue Cross and Blue Shield Plans: How States Have Protected or Failed to Protect the Public Interest” (March 2004), https://www.communitycatalyst.org/wp-content/uploads/2022/11/conversion_and_preservation_of_charitable_assets_of_blue_cross_and_blue_shield_plans_mar04.pdf

OpenAI Nonprofit's Valuation at North of \$30 Billion

As we noted in earlier correspondence, OpenAI Nonprofit's monetary assets are relatively small.³ Since OpenAI decided to create a for-profit affiliate, the overall enterprise's work seems to be done almost entirely through the for-profit, which appears to control the technology, accept infusions of private capital and employ almost all of the overall enterprise's employees. OpenAI is presently closing a \$6.5 billion funding round which reportedly values OpenAI For-Profit at \$150 billion.⁴

While OpenAI Nonprofit's monetary assets are small and its share ownership of the for-profit is not public, so far as we know, the nonprofit maintains a controlling interest over the for-profit. According to OpenAI: "the for-profit subsidiary is fully controlled by the OpenAI Nonprofit. We enacted this by having the Nonprofit wholly own and control a manager entity (OpenAI GP LLC) that has the power to control and govern the for-profit subsidiary."⁵

Thus, in addition to whatever the monetary value of the nonprofit's share ownership in the for-profit, a conversion must compensate for the control premium of the enterprise. In normal market transactions, the control premium is valued at between 20 and 30 percent of the value of the overall enterprise, or sometimes higher.⁶ At the lower end, that would suggest that OpenAI Nonprofit's controlling interest in the for-profit is worth at least \$30 billion.

However, there are several factors that suggest the control premium should be valued at or above the normal range. First, this is not just a transfer in control from one party to another that has a different idea about how to run the business, or from diffuse interests to a single controlling interest. This is a transfer from a controlling interest focused exclusively on developing artificial intelligence technology to benefit humanity – and does not seek to earn profits -- to one that will reorient the business to maximize profit. That suggests the value to the new controllers of OpenAI should be well above a normal control premium.

Second, OpenAI's current arrangements with its investors include a profit cap. Profits for first-round investors were capped at 100 times the initial investment and OpenAI indicated that the cap would be lower in future rounds.⁷ OpenAI Nonprofit has a right to the profits above the cap: "Economic returns for investors and employees are capped (with the cap negotiated in advance on a per-limited partner basis). Any excess returns go to OpenAI Nonprofit."⁸ The capped profit structure seems to remain in place. In fact, the new round of investment is reportedly contingent

³ Public Citizen letter to Attorney General Rob Bonta, January 9, 2024, <https://www.citizen.org/article/letter-to-california-attorney-general-on-openais-nonprofit-status>.

⁴ Andrew Ross Sorkin et. al. "OpenAI Aims for a \$150 Billion Valuation," New York Times, September 12, 2024, <https://www.nytimes.com/2024/09/12/business/dealbook/openai-valuation-artificial-intelligence.html>.

⁵ "Our Structure," OpenAI (June 28, 2023), <https://openai.com/our-structure>.

⁶ See P.J. Patel, Bulls vs. Bears vs. a Pandemic: How do Control Premiums Change?," Valuation Research Corporation, <https://www.valuationresearch.com/insights/stock-market-downturn-control-premium-impact/>; Corporate Finance Institute, "Control Premium," <https://corporatefinanceinstitute.com/resources/valuation/control-premium/>; David Dietz, "The Price of Control: An empirical investigation of the control premium in M&A transactions, pre and post the financial crisis of 2007/2008," University of North Carolina at Charlotte, 2015, <https://ninercommons.charlotte.edu/islandora/object/etd%3A1285>.

⁷ OpenAI, OpenAI LP (Mar. 11, 2019), <https://openai.com/blog/openai-lp>.

⁸ OpenAI, OpenAI LP (Mar. 11, 2019), <https://openai.com/blog/openai-lp>.

on the elimination of the capped profit structure, a move that will come at the expense of OpenAI Nonprofit.⁹ In a conversion that eliminates the capped profit structure, OpenAI Nonprofit should be compensated for this feature, over and above the control premium.

Control Over Artificial General Intelligence

OpenAI's core mission has been to develop artificial general intelligence (AGI), which OpenAI defines as “highly autonomous systems that outperform humans at most economically valuable work.”¹⁰ Although there is no agreed upon definition of AGI and very different views among experts about how close developers are to achieving AGI,¹¹ it is clear that AGI, if it comes into existence, will be enormously powerful, both posing grave risks and presenting enormous opportunities.

OpenAI was founded out of a concern about the dangers of AGI being concentrated in one or a small number of corporate hands. It expressed a commitment to manage AGI according to a different model: “We commit to use any influence we obtain over AGI's deployment to ensure it is used for the benefit of all, and to avoid enabling uses of AI or AGI that harm humanity or unduly concentrate power.” The choice of a nonprofit structure wasn't accidental; the whole idea of OpenAI was that AGI should not be owned and controlled for narrow, profit-seeking interests, but to aid and advance all of humanity, and with due regard for safety considerations. When OpenAI moved to create a for-profit affiliate, it indicated that it was hewing to the same mission but needed a for-profit structure in order to amass the necessary resources.

Now, as OpenAI appears poised to leave nonprofit governance behind all together, we believe that adhering to the original charitable purpose of OpenAI means that a new, for-profit OpenAI should not be permitted to gain monopolistic control over AGI. Accordingly, we suggest the following measures should be part of an agreement permitting the conversion of OpenAI to for-profit status:

- OpenAI should be required to fund an independent expert board to report to the California Attorney General.
- The independent expert board should arrive at a definition or definitions of AGI, against which new OpenAI technologies can be measured.
- OpenAI should be required to report on a biannual basis on the state of its technological development, with a focus on projects that move in the direction of AGI, to the independent expert board. Protections can be afforded for legitimate proprietary concerns of the for-profit OpenAI, but full reporting must be required. The board should issue brief reports to the public and more detailed accounts to the California Attorney General,

⁹ Krystal Hu and Kenrick Cai, “OpenAI's Huge Valuation Hinges on Upending Corporate Structure” Reuters, September 14, 2024, <https://www.reuters.com/technology/artificial-intelligence/openais-stunning-150-billion-valuation-hinges-upending-corporate-structure-2024-09-14>.

¹⁰ “OpenAI Charter,” <https://openai.com/charter>.

¹¹ Lauren Leffer, “In the Race to Artificial General Intelligence, Where's the Finish Line?” Scientific American, June 25, 2024, <https://www.scientificamerican.com/article/what-does-artificial-general-intelligence-actually-mean>.

interpreting the information from OpenAI, as regards the degree to which it is nearing achievement of AGI.

- If and when the independent expert board determines that OpenAI has achieved AGI, specific rules should kick in.
- There is a strong argument that, at this point, the technology should be transferred wholly and completely to the State of California, and then managed and licensed for the benefit of humanity.
- At minimum, any AGI technology should be required to be licensed, at no charge, to California, the U.S. government, with the right of California and the U.S. government to relicense the technology to qualified users, defined as those who can provide guarantees for safe usage.

We recognize that this is both unorthodox and complicated. There is no agreed upon definition of AGI and no regulatory structure in place to ensure the safe and beneficial use of such a technology or technologies. However, the prospective conversion of OpenAI forces these issues upon the State of California. What is certain is that for-profit, monopolistic control over AGI is unacceptable and not in keeping with the charitable purpose underlying the creation of OpenAI Nonprofit.

Thank you very much for considering our views on these matters. An OpenAI conversion to for-profit status will be a momentous event requiring great care and deliberation by your office.

Sincerely,

A handwritten signature in blue ink that reads "Robert Weissman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Robert Weissman
Co-President