

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
<b>Connect America Fund</b>	)	WC Docket No. 10-90
	)	
	)	
<b>Modernizing the E-rate Program for Schools and Libraries</b>	)	WC Docket No. 13-184
	)	

**COMMENTS OF COMMON SENSE KIDS ACTION**

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### **Comments of Common Sense Kids Action**

Common Sense Kids Action, the advocacy arm of Common Sense Media, (collectively “Common Sense”) respectfully submits these comments in response to the Public Notice posted in the Federal Register on September 19, 2016, by the Federal Communications Commission (“Commission” or “FCC”) in the above-captioned proceedings. Common Sense is an independent, nonpartisan voice for America's children that helps parents, children and teachers thrive in the complex world of media and technology. Common Sense works to drive policies at the state and national levels that promote investment in children’s education and overall well-being. Common Sense has an uncommon reach among parents and teachers, with more than 65 million users and over 300,000 educators and 112,000 schools across its network.

#### **Discussion**

The future success of the Schools and Libraries program (“E-rate program” or “the program”) depends on modernizing students’ access to broadband while maintaining financial viability. If the petitioners’ proposals are accurate—that Internet access can be expanded to eligible students at no additional use of E-rate funds—then it is within the Commission’s authority and responsibility to grant waiver. Congress granted the Commission authority to encourage telecommunications development in educational settings. Pursuant to that authority, the Commission enacted the E-rate program designed to secure affordable Internet access to high-needs schools by subsidizing the cost of service in schools and libraries. When that service is extended beyond school and library campuses, the extended use must be allocated from the cost funded through the program. The petitions seek waiver of this cost-allocation rule.

The plans proposed in the petition brought by Microsoft Corporation, Mid-Atlantic Broadband Communities Corporation, Charlotte County Public Schools, Halifax County Public Schools, GCR Company, and Kinex Telecom (“Microsoft”) and the petition brought by

Samuelson-Glushko Technology & Law Policy Clinic on behalf of Boulder Valley School District (“Boulder”), would extend pre-existing E-rate broadband access into rural, low-income communities, without adding financial costs to the program. Both plans should be granted waiver of the cost-allocation rule.

The Commission may waive a rule for good cause shown. Good cause can be found when special circumstances warrant deviation from the rule and deviation serves the public interest. The Commission has previously granted waiver of the cost-allocation rule in an Alaska petition.<sup>1</sup> There, although E-rate accessibility was limited to on-campus access during school hours, the Commission found good cause to extend the program when it granted waiver for non-educational use after-hours in rural Alaska. Much like the Alaska extension of E-rate services, which furthered the statutory purpose of the program and established articulable standards for non-discriminatory extension waivers in other communities, the Microsoft and Boulder petitions present an opportunity to further Congress’ intent to expand broadband access without opening up the floodgates to costly off-campus E-rate services or diminishment of the program. Common Sense believes that good cause exists to extend E-rate services to eligible student homes in low-income communities when the extension requires no additional cost to the E-rate program, given the special circumstances and public interest.

## I. Background

### a. Statement of Authority

The Federal Communications Commission shall “encourage the deployment... of advanced telecommunications capability to all Americans

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<sup>1</sup> See *Petition of the State of Alaska for Waiver for the Utilization of Schools and Libraries Internet Point-of-Presence in Rural Remote Alaska Villages Where No Local Access Exists and Request for Declaratory Ruling*, Order, CC Docket No. 96-45, 16 FCC Rcd. 21,511 (Dec. 3, 2001) (Alaska Order).

(including, *in particular, elementary and secondary schools and classrooms*)” (emphasis added).<sup>2</sup> The Commission further has the authority to “enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms.”<sup>3</sup> Pursuant to this authority, the Commission enacted the E-rate program, which provides discounted Internet service rates to certain eligible schools, provided that the discounted service is limited to *on-campus* use.<sup>4</sup> The E-rate program only extends to schools and libraries. Off-campus must be cost-allocated. However, the Commission can waive the cost-allocation rule and extend the program to off-campus use if there is good cause. Good cause will be sufficient for waiver when (a) special circumstances warrant deviation from the rule; and (b) waiver serves the public interest.<sup>5</sup> The Wireline Competition Bureau has authority to address the petitions.<sup>6</sup>

#### b. Summary of Petitions

In the petition brought by Microsoft, the petitioners seek waiver<sup>7</sup> of the E-rate cost-allocation rule. Microsoft seeks to utilize TV White Spaces (“TVWS”) signals to homes of eligible students who live in two rural, low-income Virginia counties.

TVWS employs a technology that utilizes unused radio spectrum frequencies or

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<sup>2</sup> 47 U.S.C. § 1302.

<sup>3</sup> *Id.* § 254.

<sup>4</sup> See 47 C.F.R. § 54.501 (“Discounts under this subpart shall apply only to the portion of eligible telecommunications and other supported services used by eligible schools and libraries.”); *2017 Eligible Services List* at 14 (“Off-campus use, even if used for an educational purpose, is ineligible for support and must be cost allocated out of any funding request.”)

<sup>5</sup> 47 C.F.R. § 1.3; *NE Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

<sup>6</sup> All references to the “Commission” refer to the Wireline Competition Bureau on authority delegated by the Commission pursuant to 47 U.S.C. § 0.291.

<sup>7</sup> Microsoft requests waiver or clarification.

unassigned TV broadcast channels to deliver high-bandwidth Internet service.<sup>8</sup> The TVWS signal travels to base stations and converts to Wi-Fi. Microsoft estimates that the Wi-Fi signal will cover the home of nearby students in rural, low-income schools, helping each eligible student gain Internet access in the home. The TVWS program can be implemented at no additional cost to the E-rate program.

In the petition brought by Boulder, the petitioners seek waiver of the E-rate cost-allocation rule. The Boulder plan for expanding E-rate broadband access to the homes of students residing in affordable housing offers a solution to the homework gap through local partnerships with housing authorities or other entities.<sup>9</sup> These entities will purchase the equipment needed to connect students to the network and bring broadband access to eligible students' homes by expanding the school districts' existing fiber networks that may already run nearby affordable housing complexes.<sup>10</sup> There is no need for additional E-rate funding.

Again, importantly, neither petition requests additional funds from the E-rate program to extend access to its students.

Both petitioners request waiver of the E-rate program cost-allocation rule and would extend subsidized service for off-campus Internet service provided in addition to the program. The petitioners argue that the rule should be waived when additional broadband access can be provided at no additional cost to E-rate funding.

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<sup>8</sup> See Joint Petition for Clarification or, in the alternative, Waiver of Microsoft Corporation, Mid-Atlantic Broadband Communities Corporation, Charlotte County Public Schools, GCR Company, and Kinex Telecom, WC Docket No. 13-184 (filed July 7, 2016) (Microsoft Petition).

<sup>9</sup> See Petition for Waiver, Boulder Valley School District, Samuelson-Glushko Technology Law & Policy Clinic, WC Docket No. 13-184; WC Docket No. 10-90 (filed May 16, 2016). (Boulder Petition)

<sup>10</sup> See Boulder Petition at 2.

Because both petitions present special circumstances that warrant deviation from the rule, and because such deviation serves the public interest, Common Sense agrees that waiver is proper and should be granted.

- II. The Commission has good cause to waive the E-rate cost-allocation rule for extended service to homes of eligible rural, low-income students when the extension comes at no additional cost to the E-rate program.

The Boulder petition suggests a waiver of cost allocation is appropriate when:

“(1) The school has not requested more services than are necessary for on-campus educational purposes; (2) no additional costs will be incurred by the Universal Service Fund (USF); and (3) the majority of at-home use will be during hours in which classes are not in session.”<sup>11</sup>

Similar circumstances appear to exist in the Microsoft petition.<sup>12</sup> These conditions should both maintain in-school viability of service while also decreasing waste by providing access to excess service to homes. For these reasons, and because the standards for good cause (special circumstances and the public interest) are met, Common Sense believes that good cause exists to waive the cost-allocation rule in both the instances brought by Microsoft and Boulder.

- a. Because the programs proposed in each petition would expand broadband access in rural, low-income communities where access is generally scarce and cost-prohibitive, special circumstances exist to satisfy the first requirement of good cause waiver.

Before granting waiver, one of the issues the Commission must first determine is whether special circumstances that warrant deviation from the rule are present.<sup>13</sup> To

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<sup>11</sup> See Boulder Petition at i.

<sup>12</sup> The Microsoft petition requests extension of pre-existing E-rate services, rather than additional services, at no additional cost. Further, Microsoft anticipates off-campus use will be primarily outside of school hours. See Microsoft Petition at 2.

<sup>13</sup> 47 C.F.R. § 1.3 (2016); *NE. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

find appropriate special circumstances exist, “the agency must... articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on operation as to its operation.”<sup>14</sup> The Commission may look to the particular facts presented by the waiver, giving considerate thought to “hardship, equity, or more effective implementation of overall policy on an individual basis.”<sup>15</sup> In terms of E-rate waivers, the Commission has found that special circumstances may be present when particular facts and characteristics about the community served makes “information services minimal and generally cost-prohibitive.”<sup>16</sup> This rationale justifies waiver of both the Microsoft and Boulder petitions.

The Commission has found that a community’s remoteness, number of residents that lack access, degree of isolation, population, and topography are particular facts that make access to Internet difficult and cut against the effectiveness of the E-rate policy, thus creating special circumstances.<sup>17</sup> Based on these hardships presented in an Alaska petition, in 2001, the Commission found a special circumstance existed to waive the E-rate rule that required E-rate receivers to certify that the discounted used was solely for educational purposes.<sup>18</sup> The waiver allowed schools and libraries to provide after-hours services to rural Alaskan community members, regardless of purpose of use.<sup>19</sup> Similarly, the students represented by the Microsoft and Boulder petitions face similar challenges to accessing broadband at home.

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<sup>14</sup> See *NE Cellular*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>15</sup> See *AT&T v. F.C.C.*, 448 F.3d 426, 433 (D.C. Cir. 2006); *NE Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972);

<sup>16</sup> See Alaska Order at ¶ 6.

<sup>17</sup> See *id.*

<sup>18</sup> See *id.* at ¶ 1.

<sup>19</sup> See *id.*

The hardships of the Alaskan communities—where the topography was especially rocky and communities could only be accessed by plane or boat<sup>20</sup>—served by the 2001 waiver present extreme circumstances that make waiver proper. However, these concerns are also present in communities represented by the Microsoft and Boulder petitions, which represent the rural, low-income Virginia communities of Charlotte and Halifax counties, and Boulder Valley School District, respectively. The Boulder petition represents a diverse socio-economic group of more than 30,000 students in the foothills of the Rocky Mountains.<sup>21</sup> Moreover, the Microsoft petition represents children where the nationwide problem of accessing the Internet is “particularly severe” and students are five times as likely as other Americans to lack broadband access at home.<sup>22</sup> Common Sense believes that minimal access in the foothills of the Rocky Mountains and rural central Virginia present special circumstances warranting deviation from the cost-allocation rule.

Although the Alaska waiver did not extend to off-campus access, it is still persuasive to the extension proposed in the Microsoft and Boulder petitions. The Alaska waiver suggests that when granting waiver regarding the E-rate program that would expand access to services, one of the Commission’s primary concerns is the *cost* of accessibility. The Commission’s reasoning for granting waiver is grounded in the fact that the after-hours extension in schools and libraries came at no additional *cost*. Limiting access when access can be expanded at no additional cost is wasteful and contradicts the statutory purpose of expanding access and educational opportunity

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<sup>20</sup> See *id.* at ¶ 6.

<sup>21</sup> Boulder Petition at 1.

<sup>22</sup> Microsoft Petition at 1.

to low-income communities. Expanding access only in schools and libraries was merely a means to an end to increase accessibility at no additional cost to E-rate funds. Similarly, expanding access in the home via TV White Spaces (“TVWS”) or by allowing housing authorities or other entities to pay for and lay equipment, is merely a means to an end to increase accessibility at no additional cost to E-rate funds. The waivers requested will not conflict with the policy underlying the rule, but rather furthers the statutory purpose of expanding Internet access to as many eligible students as possible. Common Sense believes that the extension at no additional cost to E-rate funds presents a further special circumstance.

For these reasons, Common Sense believes that the circumstances presented in each petition are sufficient to meet the special circumstances requirement of good cause waiver.

- b. Because the plans proposed in the petitions expand excess Internet access, taking a further step to close the homework gap in select communities, there is ample showing that deviation from the rule serves the public interest.

In addition to finding special circumstances, the Commission may only grant waiver when such waiver serves the public interest.<sup>23</sup> The Commission may find that an E-rate waiver will serve the public interest when it “promot[es] access to available resources and allow[s] communities to make use of the excess service.”<sup>24</sup>

Waiver of the petitions here serves the public interest by providing a creative solution that will help close the homework gap.<sup>25</sup> Common Sense has repeatedly recognized and advocated for the Commission to take the “crucial step towards

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<sup>23</sup> 47 C.F.R. § 1.3 (2016); *NE. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>24</sup> See Alaska Order at ¶ 7, 10.

<sup>25</sup> The homework gap is the difference between the number of students assigned Internet-required homework but lack broadband access in the home. See, e.g. Statement of Commissioner Rosenworcel, 29 FCC Rcd. At 15634.

ensuring that all children and families have equal access to home-based broadband.”<sup>26</sup>

However, approximately five million households with school-aged children do not have high-speed Internet service in the home.<sup>27</sup> Seventy percent of teachers assign homework that requires Internet access.<sup>28</sup> And almost every high school student says that teachers regularly assign homework that requires the Internet.<sup>29</sup> Those five million students caught in the homework gap have to find alternative ways to access the Internet to complete assignments. Some students may spend late additional hours away from the home and family—in the library, a friend’s home, a restaurant, or taking longer bus routes home to access the bus’s Wi-Fi service<sup>30</sup>—as a means to complete homework assignments. Aware of these concerns, some teachers are hesitant to assign homework that requires access to the Internet.<sup>31</sup> This hesitancy comes at the detriment to student education as Internet-based research has become a critical skill both generally and in higher education.

Further, without access to Internet in the home, students—particularly ethnic minority and rural students—are at a disadvantage academically, socially, and

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<sup>26</sup> See Comments of Common Sense Kids Action, *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42 at 3 (“Common Sense Lifeline Comment”).

<sup>27</sup> 31.4% of all households with an annual income below \$50,000 with school-aged children do not have high-speed access. See Pew Research Center, *The Numbers Behind the Broadband ‘Homework Gap’* (Apr. 20, 2015), <http://www.pewresearch.org/fact-tank/2015/04/20/the-numbers-behind-the-broadband-homework-gap/>.

<sup>28</sup> Kat Stewart, “Cox Proudly Extends its Commitment to Connect2Compete,” National Cable and Telecommunications Association (NCTA), published August 19, 2014, <https://www.ncta.com/platform/industry-news/cox-proudly-extends-its-commitment-toconnect2compete/>.

<sup>29</sup> See Common Sense Lifeline Comment at 7.

<sup>30</sup> See Cecilia Kang, “Bridging a Digital Divide That Leaves Schoolchildren Behind,” *The New York Times*, published on February 22, 2016, [http://www.nytimes.com/2016/02/23/technology/fcc-internet-access-school.html?\\_r=0](http://www.nytimes.com/2016/02/23/technology/fcc-internet-access-school.html?_r=0).

<sup>31</sup> Fifty-six percent of teachers of the lowest income students say that students’ lack of access to digital technologies is a “major challenge” to incorporating more digital tools into their teaching; 21% of teachers of the highest income students report that problem. See Kristen Purcell et al., “How Teachers Are Using Technology at Home and in Their Classrooms,” Pew Research Center, published February 28, 2013, <http://www.pewinternet.org/2013/02/28/how-teachers-are-using-technology-at-home-and-in-their-classrooms/>.

economically<sup>32</sup>. Common Sense recently released a study focused on media use by low-income, minority tweens and teens. Our researchers found that today's youth all shared one common Internet use: to answer the questions these young media users were unfamiliar with.<sup>33</sup> One research participant noted using the Internet to research college entrance requirements.<sup>34</sup> Another younger participant used the Internet to research pricing for supplies to start a lemonade stand.<sup>35</sup> Indeed, as the State Educational Technology Directors Association (SETDA) explains, "students in low-income or rural areas must have the same digital learning opportunities as other students to be best prepared for college and careers."<sup>36</sup> Connectivity is also necessary for emotional and social well-being and full participation in the modern world.<sup>37</sup> Digital citizenship and participation in 21<sup>st</sup> century life, necessarily requires access to social media as one means to promote self-identity<sup>38</sup> and peer connectivity. By expanding E-rate to off-campus use, the Commission allows students to engage in college preparedness, entrepreneurship, and the connections and exchanges that allow students to become full participatory members in today's society.

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<sup>32</sup> Lack of digital citizenship not only affect grades, but enhances feelings of social isolation and provides a barrier to the online employment process. Common Sense Kids Action and SETDA. "State K-12 Broadband Leadership: Driving Connectivity and Access" (April 2016), [http://www.setda.org/wp-content/uploads/2016/04/Broadband\\_2016.4.11.16\\_updated.pdf](http://www.setda.org/wp-content/uploads/2016/04/Broadband_2016.4.11.16_updated.pdf).

<sup>33</sup> The mobility of internet search engines means that many of these kids do not seem to accept "I don't know" or "I've never heard of that" as an answer. Common Sense Media. "Connection and Control: Case Studies of Media Use Among Lower-Income Minority Youth and Parents." (October 2016), [https://www.common sense media.org/sites/default/files/uploads/research/csm\\_teenethnographic\\_mediasurvey\\_release\\_sprds.pdf](https://www.common sense media.org/sites/default/files/uploads/research/csm_teenethnographic_mediasurvey_release_sprds.pdf). ("Common Sense Media Study").

<sup>34</sup> *Id.* at 57.

<sup>35</sup> *Id.*

<sup>36</sup> SETDA, "The Broadband Imperative II: Equitable Access for Learning" (Sept. 2016), <http://www.setda.org/wp-content/uploads/2016/09/SETDA-Broadband-ImperativeII-Full-Document-Sept-8-2016.pdf>.

<sup>37</sup> *Id.*

<sup>38</sup> Common Sense found that teens and tweens attributed social status to their number of followers and used social media to establish their own "brand" and identity. *See* Common Sense Media Study at 30, 50.

This Commission has recognized that “high-speed Internet access, or broadband, has enabled...the democratization of entrepreneurship... there’s virtually no limit to what Americans who are disconnected today could achieve tomorrow if they were participants in, rather than spectators of, the digital economy.”<sup>39</sup> The Commission has also correctly stated that, “[N]o one program or entity can solve this problem on its own and what is needed is many different organizations, vendors, and communities working together to address this problem.”<sup>40</sup> And, Common Sense has previously argued that “if the United States is to continue its role as a global economic and technology leader, it must take steps... to improve broadband penetration rates.”<sup>41</sup> Common Sense commends the Commission for continuing to expand E-rate to ensure access for students. Schools can and do serve as the anchors in their communities, particularly within rural and economically-struggling areas, and the petitions offer a way—at no cost to the E-rate program—that the school networks can be part of a solution to improve circumstances for their students both at school and at home. Waiver under these circumstances offers an additional step in the right direction towards solving the problem. Common Sense supported the Commission when it took a step in enhancing digital learning opportunities by executing the E-rate program. Moreover, Common Sense has continued to support the Commission’s efforts to update the program to remain effective following changes in technology and

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<sup>39</sup> Ajit Pai, Commission, Fed. Comm’n. Comm’n, Remarks at the Brandery (Sept. 13, 2016) (transcript available at <https://www.benton.org/headlines/remarks-fcc-commissioner-ajit-pai-digital-empowerment-agenda>).

<sup>40</sup> See *Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund, Notice of Proposed Rulemaking*, WC Docket Nos. 11-42, 09-197, 10-90, FCC 15-71, proposed June 18, 2015, at ¶ 22. <https://federalregister.gov/a/2015-17289>.

<sup>41</sup> See Common Sense Lifeline Comments at 10.

digital trends.<sup>42</sup> And Common Sense has advocated for and supported the Commission’s modernization of Lifeline to increase broadband access at home.<sup>43</sup> Now, the Commission has the responsibility of taking this additional step to further address the concern that digital learning increasingly extends into the homes. It is no longer a luxury, but a necessity, that students have high-speed Internet access at home.

A waiver would promote access to resources. Common Sense also believes that waiver here would “make use of the *excess* service”<sup>44</sup> (emphasis added). Utilization of services in homes, as proposed in the petitions, is in *excess* or “incidental to services provided for educational purposes”<sup>45</sup> in schools and libraries. The intangible component that provides service already exists; the petitions only find cost-free ways to expand the component that delivers the service to the homes. The Commission must balance the interests of maintaining high-functioning broadband speeds in schools and libraries with the reality that limiting service to on-campus use is wasteful.<sup>46</sup> Such waste can be mitigated by expanding access off-campus, without compromising broadband speeds during peak school hours. Waiver may be conditioned on certain use requirements as a means to ensure both service viability and increased access.

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<sup>42</sup> See generally *Schools and Libraries Universal Support Mechanism, A National Broadband Plan or Our Future*, CC Docket No. 02-6; GN Docket No. 09-51, Sixth Report and Order, 25 FCC Rcd 18761, ¶ 43 (2010) (Modernizing E-rate program to bring faster broadband speeds.)

<sup>43</sup> See Common Sense Lifeline Comment.

<sup>44</sup> See Alaska Order at ¶ 11.

<sup>45</sup> See *id.*

<sup>46</sup> See *id.* Failing to expand access to service after school hours—when the services are otherwise already paid and provided for, but not used—is wasteful.

## Conclusion

The special circumstances presented by the petitions appropriately limit waiver to the facts and situations present in the Microsoft and Boulder petitions. Moreover, flexibility in waiving the current rule creates incentive for communities, policy-makers, and technology developers to find creative solutions to expand broadband access and close the homework gap, which serves the public interest. Because each petitioner's plan has explained circumstances for which waiver is proper, the Commission has the responsibility of enforcing innovative solutions. Failure to do so may undercut<sup>47</sup> the E-rate program by failing to allow the program to adapt to evolving technology-based learning.

Because waiver for both Microsoft and Boulder communities present good cause reasons for waiver, the cost-allocation rule should be waived in these circumstances.

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<sup>47</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (U.S.D.C. 1969) (“A rule is more likely to be undercut if it does not in some way take into account considerations of hardship, equity, or more effective implementation of overall policy, considerations that an agency cannot realistically ignore, at least on a continuing basis.”).



### **About Common Sense**

Common Sense is dedicated to helping kids thrive in a world of media and technology. We empower parents, teachers, and policymakers by providing unbiased information, trusted advice, and innovative tools to help them harness the power of media and technology as a positive force in all kids' lives. Common Sense Kids Action, the advocacy arm of Common Sense Media, works with policy makers, business leaders, and other advocates across the nation to ensure that every child has the opportunity to succeed in the 21st century. Kids Action works to drive policies at the state and national levels that promote access to high-quality digital learning experiences; ensure that kids' online privacy and safety are protected; make access to high-quality early education possible for every child; and reduce childhood poverty. With potential advocates in every home and school across the nation, Kids Action is building a movement dedicated to making kids and education America's top priority.

[www.common sense media.org/kids-action](http://www.common sense media.org/kids-action).