

1. The bill duplicates existing language:
 - o Section 2 is the same as the definitions already in the MT statutes;
 - o Section 3-1 is in the Federal Act and MT statutes;
 - o Section 3-2 is in Section 69-3-847 and 848 and Section 69-3-811;
 - o Section 4 doesn't include whether the element creates impairment which is required by the federal Telecom Act.
 - o Section 5 the PSC already has rules;
 - o Section 6 the Federal Act and MT statutes already have language that allows the rural companies to not participate in this unlike Qwest.

2. One U.S. Supreme Court and two federal court decisions have already been rendered to the FCC on this issue. The D.C. Circuit Court decision issued in March 2004 found that the unbundling process rests squarely in the federal jurisdiction – not with the states.

The court said in that decision:

The FCC acknowledges that Section 251(d)(2) instructs "the Commission" to "determine which network elements shall be made available to CLECs (Competitive Local Exchange/Telephone Companies) on an unbundled basis..."

3. On January 6, 2005 U.S. District Court ruled against the Michigan PSC when it tried to rule on this issue. The court stated jurisdiction on this issue is not shared with the states.
4. The FCC and U.S. District Courts have repeatedly ruled the states have no authority on this issue.