

SCALIA, J., concurring in judgment

SUPREME COURT OF THE UNITED STATES

Nos. 02–1238, 02–1386, and 02–1405

JEREMIAH W. (JAY) NIXON, ATTORNEY
GENERAL OF MISSOURI, PETITIONER
02–1238 *v.*
MISSOURI MUNICIPAL LEAGUE ET AL.

FEDERAL COMMUNICATIONS COMMISSION
AND UNITED STATES, PETITIONERS
02–1386 *v.*
MISSOURI MUNICIPAL LEAGUE ET AL.

SOUTHWESTERN BELL TELEPHONE, L. P., FKA
SOUTHWESTERN BELL TELEPHONE
COMPANY, PETITIONER
02–1405 *v.*
MISSOURI MUNICIPAL LEAGUE ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[March 24, 2004]

JUSTICE SCALIA, with whom JUSTICE THOMAS joins,
concurring in the judgment.

I agree with much of the Court’s analysis in Parts II and III of its opinion, which demonstrates that reading “any entity” in 47 U. S. C. §253(a) to include political subdivisions of States would have several unhappy consequences. I do not think, however, that the avoidance of unhappy consequences is adequate basis for interpreting a text. Cf. *ante*, at 13 (“The municipal respondents’ position holds sufficient promise of futility and uncertainty to keep us from accepting it”). I would instead reverse the Court of

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Appeals on the ground discussed in Part IV of the Court's opinion: Section 253(a) simply does not provide the clear statement which would be required by *Gregory v. Ashcroft*, 501 U. S. 452 (1991), for a statute to limit the power of States to restrict the delivery of telecommunications services by their political subdivisions.

I would not address the additional question whether the statute affects the “power of . . . *localities* to restrict their own (or their political inferiors) delivery” of telecommunications services, *ante*, at 2 (emphasis added), an issue considered and apparently answered negatively by the Court. That question is neither presented by this litigation nor contained within the question on which we granted certiorari.