Case No.: 11-2984

IN THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

SPRINT COMMUNICATIONS COMPANY, L.P.,
Appellant,

v.

ROBERT B. BERNTSEN, KRISTA TANNER, and DARRELL HANSON,
in their official capacities as Members of the Iowa Utilities Board,

Appellees.

On Appeal from a Judgment of the
U.S. District Court for the Southern District of Iowa, Central Division

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BRIEF OF APPELLANT SPRINT COMMUNICATIONS COMPANY, L.P.

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SUMMARY OF THE CASE

In this appeal, Sprint asks this Court to confirm the simple principle that federal courts have the right to resolve complicated issues of federal law arising under the Telecommunications Act of 1996.

In early 2011, Appellee Iowa Utilities Board ("IUB") adjudicated a commercial dispute between Appellant Sprint Communications Company, L.P. ("Sprint") and Appellee Windstream Iowa Communications ("Windstream"). In its order (and over Sprint's objections) the IUB purported to resolve a complex issue of federal law that Sprint believes the IUB had no authority to decide. So, as is common when state public-utility commissions decide issues under the Telecommunications Act of 1996, Sprint filed suit in federal court challenging the IUB's order. Later the same day, Sprint also filed a state-court petition for review, which sought to preserve Sprint's right to raise state-law issues, but Sprint's state-court lawsuit also asserted that the IUB's order violated federal law.

The district court dismissed Sprint's lawsuit under the abstention doctrine of *Younger v. Harris*, 401 U.S. 37 (1971), holding that Sprint's federal lawsuit would interfere with the state's important interests in the state lawsuit that Sprint had voluntarily filed. Sprint now appeals.

Because this case raises complex issues, Sprint respectfully requests oral argument of 20 minutes.

CORPORATE DISCLOSURE STATEMENT

Under Federal Rule of Appellate Procedure 26.1, Sprint Communications Company, L.P. ("Sprint") respectfully submits the following disclosure statement:

Sprint is a Delaware limited partnership and is principally engaged in providing telecommunications services to the public. The partners of Sprint are US Telecom, Inc., Utelcom, Inc., UCOM, Inc., and Sprint International Communications Corporation—all of which are direct or indirect wholly owned subsidiaries of Sprint Nextel Corporation. Sprint Nextel Corporation is the publicly traded parent company resulting from the merger of Sprint Corporation and Nextel Communications, Inc., which was consummated on August 12, 2005.

Sprint Nextel is a publicly traded corporation with no parent company. No other public company owns 10 percent or more of Sprint's stock.

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JURISDICTIONAL STATEMENT

The district court had jurisdiction under 28 U.S.C. §§ 1331, 2201, and 2202, as interpreted by *Verizon Maryland Inc. v. PSC of Maryland*, 535 U.S. 635 (2002), because Sprint's claims arise under the Constitution and the laws of the United States, including the Supremacy Clause (U.S. Const. art. VI, cl. 2) and the Communications Act of 1934, 47 U.S.C. § 151, *et. seq.* Alternatively, the district court had jurisdiction under 28 U.S.C. § 1332 because this case is a dispute between Sprint, a limited partnership organized and existing under Delaware law with a principal place of business in Overland Park, Kansas, and the defendants, who are citizens of Iowa, and because this case challenges an order of the Iowa Utilities Board that purports to compel Sprint to pay more than $75,000 in access charges. The district court had authority to issue injunctive relief under the All Writs Act, 28 U.S.C. § 1651. This Court has jurisdiction over this appeal under 28 U.S.C. § 1291.

The district court issued a final, appealable judgment on August 4, 2011, and Sprint filed a timely Notice of Appeal on September 2, 2011. *See* Fed. R. App. P. 4(a)(1)(A).

STATEMENT OF ISSUES

1. Sprint filed a federal lawsuit seeking a ruling that an order of the Iowa Utilities Board exceeded the IUB's jurisdiction under the Telecommunications

Act. Later the same day, Sprint voluntarily filed a petition for review of the IUB's ruling in the Iowa District Court for Polk County, arguing mainly state-law issues but, in an abundance of caution, also raising the preemption issue. Did the district court err in deciding to abstain in favor of this voluntarily filed, non-coercive state-court appeal? *Younger v. Harris*, 401 U.S. 37 (1971); *Verizon Maryland Inc. v. PSC of Maryland*, 535 U.S. 635 (2002); *Iowa Network Servs., Inc. v. Qwest Corp.*, 363 F.3d 683, 689 (8th Cir. 2004); *Alleghany Corp. v. Pomeroy*, 898 F.2d 1314, 1317 (8th Cir. 1990).

2. Did the district court err in dismissing rather than staying the suit when Sprint could have voluntarily dismissed the state-level proceeding and therefore returned to federal court? *Cedar Rapids Cellular Tele., L.P. v. Miller*, 280 F.3d 874, 882 (8th Cir. 2002).

STATEMENT OF THE CASE

This case arises from a dispute between Sprint and Iowa Telecom (now Windstream) over "access charges"—fees that telephone companies whose customers originate certain kinds of calls pay to telephone companies whose customers receive those calls. *See Rural Iowa Indep. Tele. Ass'n v. IUB*, 476 F.3d 572, 574 (8th Cir. 2007). Sprint initially filed a complaint with the Iowa Utilities Board seeking a declaration that Sprint's decision to dispute and withhold access charges claimed by Windstream was appropriate under Windstream's tariff. Sprint

did not ask the IUB to resolve the underlying question of Sprint's *liability* for access charges because only the Federal Communications Commission has jurisdiction to address the issue. But the IUB ultimately issued a 50-page analysis purporting to conclude that federal law permits imposition of access charges for VoIP calls.

Sprint filed a complaint in the district court requesting a declaration that the IUB's ruling was preempted by federal law. Later the same day, Sprint filed a petition for review in the Iowa District Court for Polk County. Although the state-court petition largely asserted state-law issues, Sprint also included—in an abundance of caution—the same claim it made before the district court: that the IUB's central ruling that federal law permits the imposition of access charges was preempted under federal law.

The district court abstained under the doctrine of *Younger v. Harris*, one of three primary lines of abstention cases that are all designed to protect a state's ability to interpret, administer, and enforce state laws. But as Sprint noted in the district court, this case has essentially nothing to do with the issues abstention was designed to address because it does not implicate Iowa's ability to administer, interpret, or enforce its laws. To the contrary, this case is about Sprint's right to obtain federal-court review in *federal* court of an issue of *federal* law that is not within the power of the states to resolve.

STATEMENT OF FACTS

Before the district court, the IUB framed the issue now on appeal to this Court as one of "abstention." J.A.130. Sprint, however, argued that squeezing this case into abstention doctrine is putting a square peg in a round hole, and that it would distort the *Younger* doctrine beyond recognition to apply it here. J.A.136 144; J.A.192-203. But Sprint recognizes that this case *does* share with abstention analysis the fundamental question whether the federal district court—which unquestionably had jurisdiction—was required to resolve the underlying issues here or whether those issues were better left to the Iowa courts. Answering that question requires an understanding of the underlying dispute, the manner in which regulatory authority is shared between federal and state governments in the telecommunications context, and the procedural posture of this case.

Factual and Regulatory Background: This case arises from a dispute between Sprint and Iowa Telecom (now Windstream) over "intercarrier compensation," which comprises various kinds of payments made between telephone companies (or "carriers"). J.A.3 ¶12. One category of intercarrier compensation is "access charges," which are paid *by* a carrier whose customer makes (or "originates") a call *to* the carrier that delivers (or "terminates") that call to its customer. J.A.3 ¶13. In the case of traditional telephone calls over the

Public Switched Telephone Network ("PSTN"), the "access charges" assessed may be "interstate" or "intrastate," depending on whether the call crosses state lines.

Prior to Congress's adoption of the Telecommunications Act of 1996 ("1996 Act"), authority to regulate telecommunications had been sharply divided between the FCC, which had exclusive authority to regulate "interstate" traffic, and state commissions, which had exclusive authority to regulate "intrastate" traffic.[1] The 1996 Act altered that regulatory landscape significantly, creating a new "hybrid jurisdictional scheme" in which both federal and state regulators continue to play critical roles. *See Verizon Commc'ns Inc. v. FCC*, 535 U.S. 467, 489 (2002); *BellSouth Telecomms., Inc. v. Sanford*, 494 F.3d 439, 449 (4th Cir. 2007) (describing the regulatory framework under the 1996 Act as "a deliberately constructed model of cooperative federalism"). "Under this new scheme, the state commissions are deputized federal regulators" and retain substantial authority over certain specific aspects of telecommunications regulation, *Pacific Bell v. Pac-West Telecomm., Inc.*, 325 F.3d 1114, 1126 & n.10 (9th Cir. 2003) (internal quotation

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[1] *See Implementation of the Local Competition Provisions in the Telecomms. Act of 1996*, 11 FCC Rcd. 15499, 15544 ¶ 83 (1996), *vacated sub nom. IUB v. FCC*, 219 F.3d 744 (8th Cir. 2000) *aff'd in part, rev'd in part sub nom. Verizon Commc'ns, Inc. v. FCC*, 535 U.S. 467 (2002) and *vacated in part*, 301 F.3d 957 (8th Cir. 2002).

marks and citations omitted), but the traditional division between federal regulation of interstate traffic and state regulation of intrastate traffic no longer exists.

The rise of the Internet has further undermined that traditional division of regulatory authority, and that fact is particularly relevant here because the underlying dispute in this case involves "Voice over Internet Protocol" ("VoIP") calls. J.A.3 ¶12. VoIP calls differ from ordinary telephone calls in that they allow (among other things) Internet users to originate calls to users of traditional telephones. *Id.* All of the VoIP calls at issue here originated on the cable broadband network of Sprint's Iowa cable partner. During the initial Internet leg of such a call, the caller's voice is translated into digital packets and routed over the Internet. *Id.* Subsequently, those packets are transformed into a traditional telephone signal, which may be terminated over the PSTN by a telephone company (like Windstream) to the called party. J.A.5 ¶25.

Under the 1996 Act, the question of whether federal or state regulators should regulate VoIP calls does *not* turn primarily on whether those calls are "interstate" or "intrastate"—as it would have before the 1996 Act—but rather on whether VoIP is an "information service," 47 U.S.C. § 153(24), (formerly known as an "enhanced service"[2]) or a "telecommunications service," 47 U.S.C. § 153

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[2] *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 968 (2005).

(53). Under federal law, information services must remain largely unregulated,[3] while telecommunications services are subject to joint common-carrier regulation by both the federal government and the states.[4]

The FCC and the federal courts have wrestled for years with the question of what makes an offering an "information service," providing some general guidelines but few definitive classifications. The Commission has indicated, for example, that a service is an "information service" if it "enables an end-user to send information into a network in one protocol and have it exit the network in a different protocol" (known as "net protocol conversion").[5] The Commission applied that principle in its 2004 *Pulver Declaratory Ruling*, where it held that Pulver's "Free World Dialup ("FWD") VoIP service was an information service

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[3] 47 C.F.R. § 64.702(a). Generally, it has been thought "unwise" to regulate information services "given the 'fast-moving, competitive market' in which they were offered." *Brand X Internet Servs.*, 545 U.S. at 977; *see also Vonage Holdings Corp. v. Minnesota PUC*, 290 F. Supp. 2d 993, 1002 (D. Minn. 2003), *aff'd* 394 F.3d 568 (8th Cir. 2004) ("In the *Universal Service Report*, the FCC explained that policy considerations required keeping the definition of telecommunications services distinct from information services so that information services would be open to healthy competition.").

[4] *Brand X Internet Servs.*, 545 U.S. at 975 ("The Act regulates telecommunications carriers, but not information-service providers, as common carriers."); 47 U.S.C. §§ 201-276 (regulating common carriers); 47 U.S.C. § 152(b) (state authority).

[5] *Implementation of the Non-Accounting Safeguards of Sections 271 & 272 of the Commc'ns Act of 1934, As Amended*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 21905, 21956-57 ¶¶ 104, 106 (1996).

because FWD's functionality included "generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information" via telecommunications.[6] In contrast, the Commission found soon after *Pulver* that AT&T's "phone-to-phone" IP telephony service—where the information enters and exits the network in the same format and the user does not even realize that the conversation is "packetized" for transport in between—was a telecommunications service.[7]

The proper classification of VoIP reached the federal district courts in *Vonage Holdings Corp. v. Minnesota PUC*, 290 F. Supp. 2d 993 (D. Minn. 2003), which involved Minnesota's efforts to impose certain regulations applicable to telecommunications services—specifically, intrastate Universal Service Fee ("USF") surcharges[8]—to VoIP services provided by Vonage. Vonage sought and

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[6] *Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecomms. nor a Telecomms. Serv.*, 19 FCC Rcd. 3307, 3314 ¶11 (2004).

[7] *Petition for a Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Servs. are Exempt from Access Charges*, 19 FCC Rcd. 7457, 7465 ¶ 12 (2004).

[8] "The universal service system is designed to ensure that low-income consumers can have access to local phone service at reasonable rates. Universal service also ensures that consumers in all parts of the country, even the most remote and sparsely populated areas, are not forced to pay prohibitively high rates for their phone service." *Fed.-State Joint Bd. on Universal Serv.*, 13 FCC Rcd. 11501, 11504 ¶6 (1998). In the 1996 Telecommunications Act, Congress required that "'every telecommunications carrier that provides interstate telecommunications service shall contribute, on an equitable and non-discriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to

obtained federal district court review of the Minnesota PUC order imposing USF fees. Tracing the history of the "enhanced services" (again, another term for "information services") exception to regulation, the court found that the VoIP services provided by Vonage fit within that exception. The court reasoned that under FCC precedent telecommunications services are limited to "'transmi[ssion] of customer information without net change in form or content'"—which was not the case with Vonage's VoIP service, *see Vonage Holdings Corp.*, 290 F. Supp. 2d at 999-1000. The court further concluded that Congress has "occup[ied] the field of regulation of information services," so Minnesota could not impose USF fees. *Id.* at 1002.

At the same time as the district court decision in *Vonage*, the FCC considered a petition to preempt the Minnesota PUC's efforts to regulate Vonage.[9] The FCC found it unnecessary to reach the question whether Vonage's VoIP services were "information services," but instead preempted state regulation under 47 U.S.C. § 152, which authorizes the Commission to "preempt state regulation of a service which would otherwise be subject to dual federal and state regulation where it is impossible or impractical to separate the service's intrastate and

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preserve and advance universal service.'" *Id.* at 11505 ¶8 (quoting 47 U.S.C. § 254(d)).

[9] *In re Vonage Holdings Corp. Petition for Declaratory Ruling re an Order of the Minnesota PUC*, Memorandum Op. and Order, 19 FCC Rcd. 22404 (2004).

interstate components." *See Minnesota PUC v. FCC*, 483 F.3d 570, 576 (8th Cir. 2007). According to the FCC, the nature of Vonage's VoIP service made it "impractical to separate the service's intrastate and interstate components," so state regulation was preempted.[10] The Eighth Circuit affirmed the FCC's order on the basis of the Commission's reasoning (without addressing the views of the *Vonage* district court). *See Minnesota PUC*, 483 F.3d at 574.

As noted above, the VoIP calls at issue here are made by end users with cable broadband Internet access. These calls are initially carried over packet-switched networks, but are later converted to traditional telephone signals and handed off by Sprint to local exchange carriers like Windstream for termination. J.A.3 ¶¶12-13. Sprint initially paid access charges for these calls, but ultimately concluded that it was not required to do so. J.A.3 ¶14. Sprint's position is that these calls represent an information service because—like the VoIP calls of pulver.com and Vonage (and unlike AT&T's phone-to-phone service)—they enter the network in one protocol and exit the network in a different protocol, thus undergoing net protocol conversion. J.A.5 ¶¶24-25. Accordingly, under federal law, the VoIP calls at issue here are not subject to access charges, whether those charges are interstate or intrastate.

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[10] *Id.* at 22413 ¶ 17, 22424 ¶31.

Procedural Background: Upon concluding that the VoIP calls at issue here are an information service not subject to access charges, Sprint began disputing access charges assessed by Windstream for such calls and also withholding payment. J.A.3 ¶14. In response, Windstream threatened to disconnect Sprint's service and effectively block calls to and from Sprint's customers. *Id.* On January 6, 2010, Sprint filed a complaint with the IUB seeking a declaration that, under the terms of Windstream's tariff, it was proper for Sprint to dispute Windstream's imposition of access charges for terminating VoIP calls and to withhold disputed amounts. J.A.4 ¶15. Sprint did *not* ask the IUB to resolve the underlying question whether VoIP calls may properly be subjected to intrastate access charges. J.A.4 ¶16. To the contrary, throughout the history of this proceeding, Sprint has consistently taken the position that whether the VoIP calls at issue are an "information service" under the 1996 Act can only be resolved by the FCC, and that the IUB lacks jurisdiction to address the question. *E.g.* J.A.4 ¶16; J.A.5-6 ¶¶25-26.

In response to Sprint's complaint before the IUB, Windstream informed Sprint and the IUB that it would not attempt to disconnect Sprint's service or block calls to and from its customers. J.A.4 ¶17. Because that assurance addressed Sprint's immediate concern—and because Sprint did not think the IUB could properly resolve the underlying dispute—Sprint withdrew its complaint before the

IUB. J.A.4 ¶¶17-18. Oddly, however, the IUB nevertheless decided *sua sponte* to "recast the proceeding" so as to enable the Board to reach out and decide the underlying issue of VoIP's classification under federal law—which, again, Sprint believes the IUB lacks jurisdiction to consider. J.A.4 ¶18.

On February 4, 2011, the IUB issued a lengthy order that primarily addressed (in Part "A") the fundamental federal law question underlying the dispute between Sprint and Windstream, *i.e.*: "Is the VoIP traffic at issue in this dispute subject to intrastate access charges?" J.A.21-70. The IUB devoted nearly 50 pages to addressing the FCC and federal court precedents relevant to this question, including the *Pulver*, *AT&T*, and *Vonage* decisions noted above. *Id*. But the IUB's lengthy discussion was—perhaps understandably, given that even the FCC and the federal courts struggle mightily with the complex questions of federal policy embedded in this issue—fundamentally unsatisfying. For example, the Board declared that "[w]hether Sprint's traffic is subject to Iowa Telecom's instrastate access tariff depends . . . on whether the traffic is 'interstate' or 'intrastate,'" J.A.40—notwithstanding that, as noted above, the core issue under federal law is whether the calls at issue are an "information service." On that latter issue, the IUB just punted, holding that Windstream could charge Sprint hundreds of thousands of dollars in access charges because the FCC has not *yet* specifically "decided that cable telephony is an information service" and that "in the end, [the

FCC] *may* not make that classification." J.A.55 (emphasis added). Significantly, however, the Board did not seriously dispute Sprint's position that the IUB is not qualified to "make that classification" itself. The IUB's decision also contained short sections "B" and "C" addressing the state law questions whether Sprint's challenge to the access charges demanded by Windstream was proper under Windstream's Iowa tariff, and whether Windstream would have been entitled to disconnect Sprint under state law for non-payment of access charges. J.A.70-87.

On April 25, 2011, Sprint filed a complaint in the United States District Court for the Southern District of Iowa challenging the IUB's decision that Windstream was entitled to assess access charges on VoIP calls as contrary to federal law. J.A.1-7. Sprint's complaint argued—as Sprint had argued to the IUB—that the VoIP calls at issue here are information services due to a net protocol conversion; that state regulation of information services is preempted by federal law; and that only the FCC, not the IUB, has the authority to determine whether intrastate access charges apply to VoIP traffic. *See* J.A.4-6 ¶¶20-28. Later the same day, Sprint sought to preserve potential state-law remedies by filing a petition for judicial review in the Iowa District Court for Polk County. J.A.212. Out of an abundance of caution, however, Sprint also alleged in its state-court petition that the IUB's order is preempted by federal law. J.A.137-138. To allow the federal case addressing the central issue in Sprint's dispute with Windstream to go forward

without the risk of duplicative proceedings, however, Sprint filed a motion to stay the state case pending the resolution of the federal case. J.A.138.

The IUB responded to Sprint's complaint with a motion asking the district court to abstain under the doctrine of *Younger v. Harris*, and to dismiss the case. J.A.125-135. On June 13, 2011, Windstream filed its own motion to dismiss on *Younger* grounds and joinder in the motion of the IUB. J.A.154-189. In response, Sprint pointed out that while Windstream and the IUB purported to invoke *Younger*, their arguments far more closely resembled a claim for abstention under *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943). J.A.192, 195. Sprint argued that Windstream advanced an argument based on *Younger* only because the seemingly more apt *Burford* claim is squarely foreclosed by Supreme Court precedent. *See* J.A.195. Sprint also explained that the basic purpose of all of the abstention doctrines—allowing states to interpret and administer their own statutory, regulatory, and enforcement regimes without undue interference from the federal courts—simply does not apply to federal-court review of the important federal law issues presented by this case. J.A.192-203. Sprint further argued that, in any case, the requirements for *Younger* abstention are not met here: there is no threat of "interference" with a state court proceeding within the meaning of *Younger*, and the state proceeding does not involve the type of "important state interests" required by *Younger*. *See* J.A.139-143; J.A.198-203.

The district court failed even to address Sprint's fundamental arguments about the purpose of the abstention doctrines and the IUB's willful confusion of *Burford* and *Younger*. The district court found, however, that the equitable relief that Sprint seeks here qualifies as "interference" with state proceedings under the *Younger* doctrine because it would "enjoin the IUB from 'enforcing' its order, which would include litigating the issue in the state proceedings.'" Op. at 6 (J.A.265). The district court also found that Iowa's "substantial and legitimate interest in regulating its utilities" was implicated by the state court proceedings because "review of administrative judicial action is an uninterruptible process under the *Younger* doctrine." Op. at 7, 9 (J.A.266, 268).

Sprint now seeks review of the district court's decision in this Court.

SUMMARY OF ARGUMENT

The district court's decision to abstain in this case represents both an unprecedented and an unwarranted expansion of the abstention doctrines. As explained in Part I below, federal courts routinely review decisions of state public-utilities commissions, and this practice was explicitly approved by the U.S. Supreme Court in *Verizon Maryland Inc. v. PSC of Maryland*, 535 U.S. 635 (2002). The district court apparently believed that this case is different because, in addition to bringing this case, Sprint voluntarily filed a state-court petition seeking to review the IUB decision at issue here. But as explained below, this logic is

directly contrary to the binding precedent in this circuit, which holds that the propriety of *Younger* abstention cannot depend on whether a private plaintiff decides to seek state appellate-court review. This case is therefore indistinguishable from the Supreme Court's *Verizon Maryland* case and similar proceedings in this circuit that routinely review decisions of state PUCs without raising any abstention issues. *See, e.g.*, *Iowa Network Servs., Inc.*, 363 F.3d at 689 (noting that "[i]nstead of appealing the final IUB decision to the Iowa courts," the plaintiff brought a federal action); *Rural Iowa Indep. Tele. Ass'n*, 476 F.3d 572.

There is a reason that the Supreme Court and the courts in this circuit have never found an abstention problem in a case like this involving federal-court review of a state-PUC decision—these cases implicate *none* of the purposes animating the abstention. As explained in Part II below, the abstention doctrines reflect the principle that *state* courts should be allowed to interpret *state* statutory, regulatory, and enforcement regimes without undue interference from *federal* courts. *See* J.A. 192-199. This case, by contrast, is about the *federal* courts' authority (and, indeed, responsibility) to decide *federal* law issues as to which *state* agencies have no authority whatsoever. This case accordingly does not raise the concerns addressed by the abstention doctrines.

Moreover, as also explained in Part II below, the district court's decision to apply *Younger* abstention (as opposed to some other form of abstention) is

particularly puzzling. *Younger* abstention was designed to prevent state criminal defendants from interfering with the ongoing proceedings against them by seeking an injunction against those proceedings in federal court. Although this principle has subsequently been expanded to certain civil and administrative proceedings, these proceedings are generally similar to a criminal proceeding in that they are related to a state's *enforcement* of its laws. For this reason, *Younger* seems a strange fit. The state interests emphasized by the IUB actually seem much closer to those at issue in *Burford*. But there is a reason the defendants did not invoke *Buford* abstention below—application of *Burford* to this case is squarely foreclosed by the Supreme Court's decision in *New Orleans Pub. Serv. Inc. v. City of New Orleans*, 491 U.S. 350 (1989) ("*NOPSI*").

In any event, as explained in Part III below, the district court did apply *Younger* rather than *Burford*, but even its *Younger* analysis was fundamentally flawed for multiple reasons. First, both the Supreme Court and this circuit have noted that a state's interests in a state judicial proceeding is sufficiently important only if the proceeding is "coercive." The state-court proceeding at issue here, which was voluntarily initiated by Sprint, is not coercive. Second, the district court found the state's interests in this case to be sufficiently "important" because they were purportedly similar to those at issue in *Night Clubs, Inc. v. City of Fort Smith*, 163 F.3d 475 (8th Cir. 1998). But unlike in this case, the state's interests in

Night Club were in the "*enforcement* and application" of zoning rules, a matter of peculiarly local concern. By contrast, as discussed above, the issues of federal telecommunications law and policy at issue here have nothing to do with the enforcement of any Iowa law, while the federal statutory regime under which those issues arise calls for strong *federal* involvement in telecommunications regulation even in situations that were left to the state before enactment of the 1996 Act.

STANDARD OF REVIEW

The Supreme Court "has been clear that where *Younger* applies, 'there is no discretion to grant injunctive relief.'" *Plouffe v. Ligon*, 606 F.3d 890, 894 (8th Cir. 2010) (Colloton, C.J. concurring) (citing *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 816 n.22 (1976). Accordingly, a district court's decision to invoke *Younger* abstention is a question of law, which should be reviewed *de novo*. *Id.*

Nevertheless, numerous cases in this Circuit have held that a district court's decision to abstain under *Younger* is reviewed for abuse of discretion. *See, e.g.*, *Cedar Rapids Cellular Tele., L.P.*, 280 F.3d at 878 (citing *Beavers v. Arkansas State Bd. Of Dental Exam'rs*, 151 F.3d 838, 840 (8th Cir. 1998)).

Ultimately, however, it makes no difference in this case whether the district court's decision is reviewed for abuse of discretion or *de novo*. An incorrect decision to abstain is an error of law, and "[a]n error of law can always be

characterized as 'an abuse of discretion.'" *Plouffe*, 606 F.3d at 894 (Colloton, C.J. concurring).

ARGUMENT

I. SPRINT INDISPUTABLY HAD THE RIGHT TO CHALLENGE THE IUB'S ORDER IN FEDERAL COURT, AND ITS VOLUNTARY DECISION TO FILE A STATE-COURT PETITION FOR REVIEW DOES NOT CHANGE THE ANALYSIS.

As mentioned already, a state's regulation of telecommunications is fundamentally different from, for example, its regulation of zoning or insurance. Unlike these areas of primarily local concern, the framework for the regulation of the telecommunications industry is set by a *federal* statute—the Telecommunications Act of 1996—and any state participation in this regime must comport with the federal law governing this framework. Thus, as this Court has explained, the Telecommunications Act "thrust the federal government into the local telephone market regulatory arena, which had previously been the exclusive domain of the states," creating a "new relationship between the federal government (through the Federal Communications Commission (FCC)), the federal courts, and the state commissions." *Iowa Network Servs., Inc.*, 363 F.3d at 686; *see also id.* at 691 (noting that the Act "has inserted both the Federal Communications Commission (FCC) and the federal courts into the previously state-regulated monopoly") (internal quotations omitted)).

A. Sprint Indisputably Had the Right to Challenge the IUB's Decision of Federal Law in Federal Court.

One result of this pervasive federal regulatory scheme is that unlike with zoning regulation, where the "'[f]ederal courts have expressly disavowed any desire to sit as a statewide board of zoning appeals hearing challenges to municipalities . . .," *Night Clubs*, 163 F.3d at 480 (quoting *Izzo v. Borough of River Edge*, 843 F.2d 765, 769 (3d Cir. 1988)), the federal courts routinely hear appeals of the telecommunications-related decisions of state public-utilities commissions—and without any requirement that these challenges first be brought in state court. *See, e.g.*, *Rural Iowa Indep. Tele. Ass'n*, 476 F.3d 572; *Connect Commc'ns Corp. v. Sw. Bell Tele., L.P.*, 467 F.3d 703 (8th Cir. 2006); *Rural Iowa Indep. Tele. Ass'n v. IUB*, 362 F.3d 1027 (8th Cir. 2004); *Vonage Holdings Corp.*, 290 F. Supp. 2d 993, *aff'd* 394 F.3d 568 (8th Cir. 2004). As this Court has explained, such federal-court review is simply a part of the regime established by the Act. In other words, "there is no doubt . . . that if the federal courts believe a state commission is not regulating in accordance with federal policy they may bring it to heel." *See, e.g.*, *Iowa Network Servs., Inc.*, 363 F.3d at 693 (quoting *AT&T Corp. v. IUB*, 525 U.S. 366, 378 n.6 (1999)) (ellipsis in Eighth Circuit opinion).

The Supreme Court expressly approved this federal review process in *Verizon Maryland*, 535 U.S. 635, which illustrates the federal courts' authority to review state utility commission orders even where federal law expressly tasks *state*

regulators with responsibility to interpret and enforce the law to be reviewed—which is decidedly not the case here. *Verizon Maryland* involved Section 252 of the 1996 Act, which gives state commissions the authority to approve and interpret "interconnection" agreements between incumbent local exchange carriers ("LECs") and the competitive local exchange carriers ("CLECs") that the 1996 Act sought to encourage. *Id.* at 638. In the state proceeding there, the Maryland PUC had found that Verizon Maryland owed WorldCom a kind of intercarrier compensation ("reciprocal compensation") under the terms of the interconnection agreement between the carriers. *Id.* at 639. Like the tariff at issue here, the interconnection agreement in *Verizon Maryland* had been approved by and was subject to interpretation by the *state* commission.

Verizon sought review in federal district court, arguing that the Maryland PUC's ruling was preempted by federal law, much as Sprint argues here. *Id.* The Maryland Commission took the position that Verizon had no right of appeal to the district court because "the Act does not create a private cause of action to challenge the Commission's order." *Id.* at 642. The Supreme Court squarely rejected that argument, finding that Verizon was entitled to district court review for the simple reason that its claim "falls within 28 U.S.C. § 1331's general grant of jurisdiction." *Id.* at 643.

Verizon Maryland thus established the general rule that—even in cases where a state PUC order addresses issues over which the state commission has exclusive authority—the federal district courts have authority to review state-PUC decisions on issues of federal law. That is exactly what is happening here, *except* that Sprint also maintains that the IUB decided issues of federal law over which it had *no* authority whatsoever. Moreover, the equitable relief that Verizon sought in *Verizon Maryland* would (like the equitable relief Sprint seeks here) have prevented the "[state PUC] from 'enforcing' its order, which would include litigating the issue in [any] state proceeding" reviewing the order, *see* Op. at 6 (J.A.265)—but, again, no one thought that there was any abstention issue in *Verizon Maryland*.

B. Sprint's Voluntarily-Filed State-Court Petition for Review Does Not Change the Analysis.

The district court recognized that under *Verizon Maryland*, Sprint would ordinarily have had the right to challenge the IUB's decision of federal law in federal court. But it held that there was one key difference between this case and *Verizon Maryland*: In addition to filing this federal case *Sprint* voluntarily *chose* to include the issues of federal law presented here in its protective filing of a petition for review in the Iowa court of appeals. The district court held that this voluntary state-court filing fundamentally changed the analysis. In its view, "the rationale of *Younger* was inapplicable" in *Verizon Maryland* because Verizon "did not

subsequently file a state action in addition to its federal one," whereas in this case Sprint voluntarily chose to file both a federal- and a state-court action challenging the IUB's order. Op. at 6 n.3 (J.A.265).

The district court thus held that the applicability of *Younger* depends on whether a federal plaintiff voluntarily chooses to pursue state-court appeals. If the federal plaintiff voluntarily seeks state-court review of an administrative agency's decision, then *Younger* prevents a federal court from hearing a case involving the same issues. But, under the district court's ruling, the plaintiff may apparently *avoid* the strictures of *Younger* by choosing *not* to petition for review in state court, instead bringing a challenge directly to federal court.

This holding makes little sense, because *Younger* is designed to protect a *state's* interests, which do not depend on whether a private party voluntarily pursues an appeal. Equally important, the district court's approach is squarely contrary to the binding precedent of this Circuit, which holds that "a party cannot avoid *Younger* by choosing not to pursue available state appellate remedies." *Alleghany Corp. v. McCartney*, 896 F.2d 1138, 1144 (8th Cir. 1990); *accord. Alleghany Corp. v. Pomeroy*, 898 F.2d at 1317 ("[I]t is well-settled that parties may not avoid the strictures of *Younger* simply by allowing a state judgment to

become final.").[11] The lesson of the *Alleghany* cases is that a federal plaintiff cannot trigger or avoid *Younger* abstention simply by filing or choosing not to file state-court proceedings. The district court's decision completely obliterates that principle.

The district court rightly recognized that this case is similar to *Verizon Maryland*—the only difference being the pendency of a voluntarily filed appeal. That should have ended the analysis. Instead, the district court created a regime in which applicability or inapplicability of *Younger* is completely in the hands of the federal plaintiff. The district court's decision must be reversed.

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[11] Notably, the relevant holding of the *Alleghany cases* was that *Younger* applied to an administrative proceeding evaluating an application to acquire the stock of an insurance company. That holding is inconsistent with Supreme Court precedent and has been resoundingly rejected outside the Eighth Circuit. *See, e.g.*, *Brown ex rel. Brown v. Day*, 555 F.3d 882, n.8 (10th Cir. 2009) (noting that *Alleghany* "inexplicably ignored" the Supreme Court's decision in *Patsy v. Board of Regents*, 457 U.S. 496 (1982) and "conflicted with the Seventh Circuit's conclusion, regarding the same federal plaintiff's identical claims"); *Alleghany Corp. v. Haase*, 896 F.2d 1046, 1056 (7th Cir. 1990), *vacated on other grounds sub nom. Dillon v. Alleghany Corp.*, 499 U.S. 933 (1991). But of course Sprint is not asking this Court to overrule this circuit's binding precedent—the insurance proceeding at issue in *Alleghany* was plainly different than the PUC proceeding at issue here because, unlike the Telecommunications Act, which provides for federal-court review of many state PUC telecommunications decisions, the McCarran-Ferguson Act "provides that the business of insurance 'shall be subject to the laws of the several States'" and "emphasizes the strong state interest in allowing the state court system to interpret its laws and apply them in light of federal legislation and the Constitution." *Alleghany Corp. v. McCartney*, 896 F.2d 1138, 1142 (8th Cir. 1990).

II. FEDERAL REVIEW OF THE IUB'S DECISION IMPLICATES NONE OF THE CONCERNS ADDRESSED BY THE ABSTENTION DOCTRINES.

A. The Abstention Doctrines Reflect the Principle That *State C*ourts Should be Allowed to Interpret S*tate* Statutory, Regulatory, and Enforcement Regimes without Undue Interference from *Federal* Courts.

Putting aside that the federal telecommunications regulatory regime contemplates federal-court review of state-PUC decisions, it also bears emphasis that the review Sprint seeks here implicates none of the concerns that the abstention doctrines were designed to address. This case is about the *federal* courts' authority (and, indeed, responsibility) to decide *federal* law issues as to which *state* agencies have no authority whatsoever. By contrast, the abstention doctrines reflect the principle that *state* courts should be allowed to interpret *state* statutory, regulatory, and enforcement regimes without undue interference from *federal* courts.

A brief overview of the abstention doctrines demonstrates this point amply. As explained below, the abstention doctrines consist of three primary categories of cases—*Pullman*, *Burford*, and *Younger*—each of which permit the federal courts to decline to exercise their jurisdiction so as not to interfere unduly with the administration of various state-level regimes. The *Pullman* cases require a federal court to stay its hand when the resolution of unsettled questions of state law by state courts may make it unnecessary to decide a federal constitutional question.

The *Burford* cases require the federal courts to administer their regulatory regimes without undue interference from the federal courts. And the *Younger* cases expand the *Burford* doctrines to state-level criminal and similar civil-enforcement regimes.

As discussed below, the facts of this case actually fall far closer to the *Burford* line of cases than to the *Younger* cases. But there is a reason why the Defendants invoked *Younger* abstention rather than the more relevant doctrine of *Burford*: *Burford* abstention in this case would be clearly foreclosed by the Supreme Court's decision in *NOPSI*, 491 U.S. at 362-63. To escape this clear precedent, the Defendants convinced the district court to apply *Younger* abstention instead. But, of course, *Younger* abstention was inappropriate: The remedy Sprint seeks here would in no way interfere with any Iowan criminal or quasi-criminal civil proceeding.

To see why this case does not implicate the concerns addressed by the abstention doctrines, a brief overview of abstention law is helpful. The heart of abstention doctrine is that while the federal courts are generally "bound to proceed to judgment and to afford redress . . . in every case to which their jurisdiction extends," *Chicot County v. Sherwood*, 148 U.S. 529, 534 (1893), "there are some classes of cases" in which judges may exercise their common-law discretion to "withhold[] . . . authorized equitable relief because of undue interference with state

proceedings." *NOPSI*, 491 U.S. at 359. These "classes of cases" divide roughly into three categories.

The first such class was recognized by the Supreme Court in *Railroad Comm'n of Texas v. Pullman*, 312 U.S. 496 (1941), which involved a constitutional challenge to an order of the Texas Railroad Commission requiring that a Pullman conductor (rather than a porter) be present in any train car with a sleeper. A federal district court had enjoined the Texas law on the ground that the relevant Texas statutes did not authorize the order, but the Supreme Court reversed. The Court pointed out that the lower court's view of Texas law was not authoritative, but merely a "forecast," and that the "reign of law is hardly promoted if an unnecessary ruling of a federal court is [soon after] supplanted by a controlling decision of a state court." *Id.* at 499-500. *Pullman* abstention, then, requires a federal court to stay its hand when the resolution of unsettled questions of state law by state courts may make it unnecessary to decide a federal constitutional question. This allows state courts to provide needed (and authoritative) answers to state law questions without undue federal interference. *Pullman* abstention is thus essentially a non-interference doctrine.

Two years after *Pullman*, the Supreme Court in *Burford* recognized a second class of case in which federal courts may decline to exercise their jurisdiction. There, the plaintiff sought federal-court review of a Texas Railroad Commission

order granting a permit to drill oil wells on the basis of that commission's rules specifying minimum spacing between wells but allowing exceptions to those rules certain circumstances. Under Texas law, review of Railroad Commission orders was concentrated in the courts of Travis County, Texas, such that "the Texas courts [were] working partners with the Railroad Commission in the business of creating a regulatory system for the oil industry." *Burford*, 319 U.S. at 326. The Supreme Court found that the federal plaintiff's case raised "questions of regulation of the [oil] industry by the State administrative agency," and that "[c]onflicts in the interpretation of state law, dangerous to the success of state policies, are almost certain to result from the intervention of the lower federal courts" to review Railroad Commission orders. *Id.* at 332-34. Like *Pullman*, then, *Burford* abstention is also a doctrine of non-interference in the state's administration of its own laws and regulations, reflecting a "reluctance to intrude into state proceedings where there exists a complex state regulatory system." *NOPSI*, 491 U.S. at 361 (quoting *NOPSI v. City of New Orleans*, 798 F.2d 858, 861-62 (5th Cir. 1986)).[12]

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[12] So-called "*Thibodaux*" abstention is closely related to *Burford* abstention; under *Thibodaux*, federal courts sitting in diversity jurisdiction may choose to allow a state court to decide issues of state law that are of great public importance to that state, to the extent that a federal determination would infringe on state sovereignty. *See generally Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25 (1959). Because there are no issues of state law before this Court, *Thibodaux* abstention plainly is not relevant here.

Notably, the state interests identified by the Defendants in the district court—"enforcing the terms of telephone company tariffs and otherwise regulating telephone companies" and the "protection of . . . citizens" who make phone calls in Iowa (*see* J.A.248-249)—are closely related to the *Burford* policy of non-intervention in state regulatory affairs.[13] At first blush, it therefore seems odd that neither Windstream nor the IUB invoked *Burford* abstention. But the reason why they did not is simple—application of *Burford* to this case would have been squarely foreclosed by the Supreme Court's *NOPSI* decision. *Cf. GTE N., Inc. v. Strand*, 209 F.3d 909, 920-21 (6th Cir. 2000) ("Because Congress has invested the federal courts with primary responsibility for adjudicating [Federal Telecommunications Act] challenges to state telecommunications regulations, and because this case does not concern a disputed issue of state law, but rather a potential conflict between state and federal telecommunications laws, *Burford* abstention is inappropriate.") (citing *NOPSI*). Like this case, *NOPSI* involved a claim that *federal* law preempted a decision of a state regulatory agency—specifically, that a FERC order requiring that the costs of planned nuclear reactors

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[13] The purported "state interests" advanced by Windstream echoed those advanced by the IUB, which claimed that the "state has an important interest in requiring that telephone companies pay intercarrier compensation in a manner required by [state] statute and approved by tariff in order to protect and advance the public interest in a functional telecommunications system." J.A.152-153.

should be allocated to power companies in proportion to each company's share of overall demand preempted the New Orleans City Council's order denying a rate adjustment. *NOPSI*, 491 U.S. at 352-57. In reversing the lower courts' application of *Burford*, the Supreme Court observed that "[w]hile *Burford* is concerned with protecting complex state administrative processes from undue federal interference, it does not require abstention whenever there exists such a process, or even in all cases where there is a 'potential for conflict' with state regulatory law or policy." *Id.* at 362. The Court further explained:

> Here, NOPSI's primary claim is that the Council is prohibited by federal law from refusing to provide reimbursement for FERC-allocated wholesale costs. Unlike a claim that a state agency has misapplied its lawful authority or has failed to take into consideration or properly weigh relevant state-law factors, federal adjudication of this sort of pre-emption claim would not disrupt the State's attempt to ensure uniformity in the treatment of an "essentially local problem[.]"

Id. at 362 (citation omitted). Finally, the Court noted that "no inquiry beyond the four corners of the Council's retail rate order is needed to determine whether it is facially pre-empted by FERC's allocative decree," *id.*at 363, and emphasized that there is "'no doctrine requiring abstention merely because resolution of a federal question may result in the overturning of a state policy,'" *id.* (quoting *Zablocki v. Redhail*, 434 U.S. 374, 380 n.5 (1978)).

The Court's ruling in *NOPSI* is, of course, equally apropos in this case. The district court could have resolved the federal-preemption arguments advanced by

Sprint without any inquiry "beyond the four corners" of the IUB's order, and federal adjudication of that claim would not have disrupted Iowa's administration of its regulatory regime. Presumably, then, Windstream and the IUB chose not to invoke *Burford* because they were aware that the Supreme Court had stated—in a case very much like this—that the non-interference principle underlying abstention doctrine simply does not apply to a claim of federal preemption. What Windstream and the IUB did instead was try to shoehorn this case into the three-part test for *Younger* abstention by taking that language out of context. *In* context, however, as discussed directly below, it is clear that *Younger* abstention has no bearing on this case, and in applying it here, the district court essentially expanded *Burford* abstention beyond the bounds defined by the Supreme Court by fleeing to the more malleable language of the *Younger* test.

Younger is the third category of abstention cases, first recognized by the Supreme Court decades after the *Pullman* and *Burford* cases in *Younger v. Harris*, 401 U.S. 37 (1971). Wright and Miller aptly describe *Younger* as "a variant of *Burford*-type abstention that has developed . . . a life of its own." 17A Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc. Juris. § 4241 (3d ed.).

Understanding why the *Younger* doctrine is a variant of *Burford*—and why it, too, does not apply in this case—requires a brief review of *Younger*'s evolution. The *Younger* case involved a state criminal prosecution that the defendant (the

federal plaintiff) sought to enjoin on the ground that the state's criminal syndicalism law, under which he was charged, was unconstitutional. The Court held that Congress over the years has indicated that state courts should generally be permitted to "try state cases free from interference by federal courts" and indeed that to do otherwise would "unduly interfere with the legitimate [enforcement] activities of the States." *Younger*, 401 U.S. at 43-44. Subsequent Supreme Court cases extended *Younger* to certain state civil enforcement proceedings. Many of those cases emphasized that the state was a party to the enforcement proceedings, and that its interest was thus "in important respects . . . more akin to a criminal prosecution than are most civil cases." *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604 (1975) (under *Younger*, action by state to enforce nuisance statute barring exhibition of obscene films could not be enjoined); *accord Moore v. Sims*, 442 U.S. 415, 423 (1979) (action by state for temporary custody of children was like *Huffman*, since the state was a party to the proceeding and civil enforcement in context of suspected child abuse was in aid of and closely related to criminal statutes); *Middlesex County Ethics Comm'n v. Garden State Bar Ass'n*, 457 U.S. 423, 431-32 (1982) (state proceeding to discipline an attorney bore a close relationship to proceedings of a criminal nature).[14] And *all* of the Supreme Court's

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[14] In other *Younger* decisions, the Court emphasized that the federal courts should be wary of interfering with state enforcement proceedings that are part and parcel

Younger cases, as Wright and Miller indicate, represent "variations" on *Burford*—their central tenet is that just as the federal courts should not unduly interfere with a state's administration of its own statutory and regulatory regimes, neither should the federal courts unduly interfere with a state's administration of its criminal and civil-enforcement mechanisms.

B. This Case Raises None of the Issues Addressed by Abstention.

Against this backdrop, it is clear that *Younger* does not apply here: Sprint does not seek to challenge any aspect of the way that Iowa chooses to administer its criminal or civil-enforcement mechanisms. Indeed, the proceeding before the IUB was a garden-variety civil proceeding to resolve liability between two commercial entities; the state has not engaged in any enforcement activities.

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of state administration of its regulatory programs. For example, in *Trainor v. Hernandez*, 431 U.S. 434, 444 (1977), the Court found that an action "brought by the State in its sovereign capacity" to recover welfare payments was subject to *Younger* abstention because it was part of state's role in administering its public assistance programs. *See also Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc.*, 477 U.S. 619 (1986) (*Younger* applied to administrative action brought by state agency to vindicate state policy against sex discrimination). And in still other cases, the Court found that federal constitutional challenges to the processes by which the State compels compliance with the judgments of its courts also raise the specter of undue interference with a state's administration of its laws and regulatory regimes. *See, e.g., Juidice v. Vail*, 430 U.S. 327, 336 (1977) (federal court interference with contempt proceeding in civil case is "'an offense to the State's interest . . . likely to be every bit as great as it would be were this a criminal proceeding'") (ellipsis in *Juidice*); *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 13 (1987) (challenge to bond and lien provisions that state used to "compel[] compliance with the judgments of its courts" was subject to *Younger*).

Rather, as noted above, this case is much closer to *Burford*, which discourages federal court interference with "state proceedings where there exists a complex state regulatory system." *NOPSI*, 491 U.S. at 361 (quoting *NOPSI*, 798 F.2d at 861-62). As also discussed above, however, *Burford* does not apply here either: Sprint does *not* ask this Court to second-guess any aspect of Iowa's application of its statutory and regulatory policies regarding telecommunications. Rather, the IUB's work in this case is done, and Sprint went to the district court with the sole question whether the IUB's order is "facially pre-empted" by federal law—a question that requires "no inquiry beyond the four corners" of the IUB's decision. *NOPSI*, 491 U.S. at 363.

In sum, abstaining in this case overstepped the purposes of abstention doctrine, which is about allowing states to interpret (*Pullman*) and administer (*Burford*) their statutory, regulatory, and enforcement (*Younger*) regimes without undue interference from the federal courts. Sprint's preemption challenge here is not about any aspect of how Iowa runs its internal affairs, but rather about the proper division of authority (under federal law) between the FCC and the states—and *that*, of course, is an entirely fitting question for a federal court to decide. Moreover, abstention in this case blurred the lines that the Supreme Court has drawn in its *Burford* and *Younger* cases in a way that makes no sense. Rather than treating abstention as a narrow *exception* to the general rule that the district courts

have a "virtually unflagging obligation" to exercise the jurisdiction delegated them by Congress, the district court's decision suddenly expanded it to include deference to state appellate courts on matters of *federal* law. *Colo. River Water Conservation Dist.*, 424 U.S. at 817. This Court should reject that overly expansive reading of abstention doctrine.

III. THIS CASE DOES NOT MEET THE SPECIFIC REQUIREMENTS FOR *YOUNGER* ABSTENTION.

As explained already, this case does not raise the problems that *Younger*—or any of the other abstention doctrines, for that matter—were designed to address. It should not be surprising, therefore, that this case does not meet the specific prerequisites that the Supreme Court and this Court have identified for *Younger* abstention in civil cases. Specifically, as the Supreme Court explained in *Middlesex County Ethics Comm'n*, 457 U.S. at 432 , a federal court should abstain from granting relief that would interfere with a state proceeding if three factors are met: (1) the remedy in this proceeding would interfere with "an ongoing state judicial proceeding"; (2) the proceeding "implicate[s] important state interests" sufficient to trigger *Younger*; and (3) the state "proceeding affords an adequate opportunity to raise the federal questions presented." *Cedar Rapids Cellular Tele. L.P.*, 280 F.3d at 879. *Younger* abstention was inappropriate in this case because

neither the first factor (interference)[15] nor the second factor (existence of important state interests) were met.

A. The Remedy Sought By Sprint Would Not Have Interfered with any Ongoing State Proceeding.

The first *Middlesex* factor permits *Younger* abstention only if the relief sought in the federal proceeding would interfere with state proceedings in a way that the abstention doctrines are designed to prevent. *See Night Clubs, Inc.*, 163 F.3d at 477 n.1 (stating that the question is whether the relief "would interfere with pending state proceedings in such a way as to offend principles of comity and federalism.") As discussed above, the abstention doctrines are designed to prevent interference that impinges on a state's ability to interpret, administer, or enforce certain state-law-based regimes. But in this case, as in *NOPSI*, the only question is one of preemption—specifically, whether federal law preempts the IUB's efforts to impose access charges on the VoIP traffic at issue. Resolving that preemption

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[15] There is a circuit split over whether the interference is a part of the first *Middlesex* factor or whether it is a *fourth* factor in the analysis. *Compare 31 Foster Children v. Bush*, 329 F.3d 1255, 1276 (11th Cir. 2003) ("[W]e join our sister circuits in explicitly stating that an essential part of the first *Middlesex* factor in *Younger* abstention analysis is whether the federal proceeding will interfere with an ongoing state court proceeding."), *with AmerisourceBergen Corp. v. Roden*, 495 F.3d 1143, 1149 (9th Cir. 2007) (recognizing interference as a fourth factor). The Eighth Circuit does not appear to have taken a position on this issue, and Sprint has assumed in this brief that interference is a part of the first factor. It would make no difference, however, if interference were considered a fourth factor.

question will have no effect on how the state chooses to administer its *own* statutes and regulations. In contrast, of course, invoking the federal Constitution to interfere with state resolution of state-law issues (*Pullman*), to interfere with state administration of a *state* regulatory regime (*Burford*), or to short-circuit state efforts to engage in criminal or civil enforcement of state laws (*Younger*) *would* interfere with the state's sovereign administration of its own statutes and regulations. In short, the relevant kind of "interference"—present in *Pullman*, *Burford*, and *Younger*—is absent from this case.

In the district court, however, the Defendants successfully reinterpreted the *Younger* interference requirement as being satisfied here by the fact that this case could collaterally estop the parties from relitigating any preemption issues decided by the federal court. But while this effect might be called "interference" in the general sense, it is not the type of interference that the abstention doctrines are designed to address. As other courts have expressly held, the mere possibility that a federal case might have collateral-estoppel effects on a parallel civil case between the parties is not—without more—the sort of interference that *Younger* was designed to prevent. *E.g. Marks v. Stinson*, 19 F.3d 873, 885 (3d Cir. 1994) (allowing federal plaintiff to pursue "parallel actions in the state and federal courts" and noting that "the mere fact that a judgment in the federal suit might

have collateral effects in the state proceeding *is not interference for* Younger *purposes.*") (emphasis added).

The reason is simple: As the Supreme Court explained in *Colo. River Water Conservation Dist.*, the mere pendency of parallel federal and state proceedings addressing the same issue is not generally sufficient to justify abstention because concurrent litigation in federal and state courts is the price of federalism: "Generally, as between state and federal courts, the rule is that 'the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction . . . .'" 424 U.S. at 817 (citation omitted). If the mere possibility of collateral estoppel were sufficient to create interference for *Younger* purposes, the rule would be the opposite. Thus, as the Ninth Circuit has explained it, "the Supreme Court has rejected the notion that federal courts should abstain whenever a suit involves claims or issues simultaneously being litigated in state court merely because whichever court rules first will, via the doctrines of res judicata and collateral estoppel, preclude the other from deciding that claim or issue." *AmerisourceBergen Corp. v. Roden*, 495 F.3d 1143, 1151 (9th Cir. 2007) (rejecting the argument that "the requisite 'interference with ongoing state proceedings' occurs whenever the relief sought in federal court would, if entertained, likely result in a judgment whose preclusive effect would prevent the state court from independently adjudicating the issues before it").

The district court rightly recognized—over the objection of Windstream, J.A.175—that interference with an ongoing state proceeding is a prerequisite to *Younger* abstention. *See* Op. at 5 (J.A.264); *see also Cedar Rapids Cellular Tele., L.P.*, 280 F.3d at 881 (expressly addressing "whether the relief sought by the appellants would unduly interfere with ongoing state judicial proceedings"); *Silverman v. Silverman*, 267 F.3d 788 (8th Cir. 2001).[16] The district court also acknowledged that the courts of appeals in other circuits have held that collateral estoppel alone does not amount to interference for *Younger* purposes. *See* Op. at 6 (J.A.265). But the district court found that Sprint's "requested injunctive relief would do more than collaterally estop the litigation of issues in the state proceeding." *Id.* According to the court, Sprint had sought to "enjoin the IUB

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[16] Although the cited cases clearly adhere to this principle, courts in other circuits have explained this idea more explicitly: as the Eleventh Circuit explained in *31 Foster Children*, "we join our sister circuits in explicitly stating that an essential part of the first *Middlesex* factor in *Younger* abstention analysis is whether the federal proceeding will interfere with an ongoing state court proceeding. If there is no interference, then abstention is not required." 329 F.3d at 1276; *accord FOCUS v. Allegheny County Court of Common Pleas*, 75 F.3d 834, 843 (3d Cir. 1996) (explaining that under the first *Middlesex* factor, "there must be an ongoing state judicial proceeding to which the federal plaintiff is a party and with which the federal proceeding will interfere"); *J.B. ex rel. Hart v. Valdez*, 186 F.3d 1280, 1291 (10th Cir. 1999) (first *Middlesex* factor is that federal proceedings would "(1) interfere with an ongoing state judicial proceeding"); *cf. AmerisourceBergen Corp.*, 495 F.3d at 1149 ("Thus, once the three *Middlesex* elements are satisfied, the court does not automatically abstain, but abstains only if there is a *Younger*-based reason to abstain—i.e., if the court's action would enjoin, or have the practical effect of enjoining, ongoing state court proceedings.").

from 'enforcing' its order, which would include litigating the issue in the state proceeding." *Id.*

In so ruling, the district court seriously misconstrued Sprint's complaint. It is true that Sprint's Complaint asked the district court to enjoin the IUB from "enforcing" its order, *see* J.A.7 ¶ 2, but such an injunction would not interfere with any *pending* proceedings because the pending state-court proceedings have nothing to do with *enforcement* of the IUB's order (see discussion in Part III.B below). To the contrary, as explained in Part III.B below, the IUB has never initiated or even threatened to initiate *enforcement* proceedings against Sprint. The only pending state proceeding involves the *validity* of the IUB's order in a case between two private entities. Thus, Sprint's reference to "enjoining enforcement" of the IUB's order was simply another way of asking the district court to reverse the IUB's order. Doing *that* would not enjoin any ongoing enforcement proceeding and would affect an ongoing proceeding only via collateral estoppel—which is insufficient to support abstention.

The district court also found that the interference in this case was akin to the interference in *Night Clubs, Inc.*, 163 F.3d at 475. But the district court's reliance on *Night Clubs* is odd because that case does not address the interference requirement at all—much less hold that the relief sought by the plaintiff in that case would interfere with an ongoing proceeding. Although *Night Clubs* does

mention the requirement of interference in a footnote, as quoted above, it does not otherwise address the requirement or discuss whether the relief requested in that case constituted interference or not. It may seem odd that the court failed to address interference in upholding the district court's decision to abstain, but there is a perfectly reasonable explanation for this omission—so far as this Court's decision reveals, at least, the parties do not appear to have raised the issue of interference on appeal and the Court therefore had no occasion to address it.

B. Iowa Lacks an Important Interest in the State-Court Proceeding.

Putting aside the issue of interference, Younger abstention was also inappropriate here because the state-level proceeding initiated by Sprint did not implicate the type of "important state interest" that triggers *Younger* abstention. As this Court has explained, *Younger* abstention is appropriate "only where 'the State's interests in the proceeding are so important that exercise of the federal judicial power would disregard the comity between the States and the National Government.'" *Airlines Reporting Corp. v. Barry*, 825 F.2d 1220, 1225 (8th Cir. 1987) (quoting *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, at 11 (1987)). As explained below, Iowa has no such interest in the state judicial proceeding initiated by Sprint.

1. The State-Level Proceeding Was Not the Sort of "Coercive" Proceeding to Which *Younger* Applies.

As explained earlier, *Younger* itself held that a federal court cannot enjoin a state-level criminal proceeding because doing so would improperly interfere with a state's administration of its criminal-enforcement regime. Thus, the original state interest protected by *Younger* was the state's interest in its role as an enforcer of the criminal laws. *Younger* was eventually expanded to include civil proceedings "in aid of and closely related to criminal statutes," *Huffman*, 420 U.S. at 604, and eventually to similar administrative proceedings seeking civil enforcement of state law. But despite these expansions, the interests protected by *Younger* have continued to be the state's interests as an *enforcer*. *E.g. Walker v. Wegner*, 624 F.2d 60, 62 (8th Cir. 1980) ("[I]t has become clear that the vital consideration in Younger was not the distinction between civil and criminal proceedings, but rather . . . abstention is appropriate when the State's interest in *enforcing certain of its laws with a nexus to criminal laws* overrides the interests of the Federal government") (emphasis added); *Potrero Hills Landfill, Inc. v. County of Solano*, No. 10-15229, --- F.3d ---, 2011 WL 4035760, at *4 (9th Cir. Sept. 13, 2011) (*Younger* doctrine "recognizes that a state's ability to enforce its laws against socially harmful conduct that the State believes in good faith to be punishable under its laws and Constitution is a basic state function with which federal courts should not interfere") (citations and internal quotations omitted). Indeed, as the

Ninth Circuit has explained, "the content of state laws becomes 'important' for *Younger* purposes only when coupled with the state executive's interest in enforcing such laws." *Id.* at *5. For this reason, a state's interest as *adjudicator* of "wholly private disputes" is not protected, while its interests in *enforcing (e.g.* "compel[ling] compliance with") the judgments resulting from those suits is protected. *See Airlines Reporting Corp.*, 825 F.2d at 1225 (quoting *Pennzoil Co.*, 481 U.S. at 13-14 n.12 (1987)).

This distinction between the state's interest as an enforcer—which is protected by *Younger*—and other interests which are not protected is at the heart of the Supreme Court's distinction between a "coercive" proceeding (in which a state may have a sufficient interest for *Younger* to apply) and a "remedial" proceeding (in which the state's interest is insufficient). *See Peery v. Brakke*, 826 F.2d 740, 745-46 (8th Cir. 1987) (explaining the distinction's history); *Planned Parenthood of Greater Iowa, Inc. v. Atchison*, 126 F.3d 1042, 1047 (8th Cir. 1997) (there was no "administrative proceeding of a kind subject to *Younger*" because "the plaintiff was not yet subject to coercive proceedings"); *Brown ex rel. Brown v. Day*, 555 F.3d 882, 888-89 (10th Cir. 2009). In a "coercive" proceeding, the state initiates suit against a defendant to penalize an alleged violation of law. *See Brown*, 555 F.3d at 892 (considering whether "the federal plaintiff sought to thwart a state administrative proceeding initiated to punish the federal plaintiff for a bad act" and

noting that "a common thread appears to be that if the federal plaintiff has committed an alleged bad act, then the state proceeding initiated to punish the plaintiff is coercive."); *Dultz v. Velez*, 726 F. Supp.2d 480, 493-94 (D.N.J. 2010) (discussing Third Circuit decisions and concluding that proceedings are coercive if "brought by the state to enforce violations of its own laws or processes"). By contrast, a remedial proceeding includes proceedings such as the state-court suit filed by Sprint, which was brought voluntarily by Sprint to remedy a wrong by the state. *See Brown*, 555 F.3d at 892 (concluding that "a state's enforcement of its laws or regulations in an administrative proceeding constitutes a coercive action," while "[o]ther administrative proceedings fill the 'remedial' category"); *see also Devlin v. Kalm*, 594 F.3d 893, 895 (6th Cir. 2010) ("Therefore, *Younger* does not apply when 'the federal plaintiffs are also *plaintiffs* in the state court action' and 'the plaintiffs are not attempting to use the federal courts to shield them from state court enforcement efforts.'"); *Kentucky West Virginia Gas Co. v. Pennsylvania PUC*, 791 F.2d 1111, 1117 (3d Cir. 1986) (holding that the balance of federal and state interests "tips decidedly away from abstention" when "the federal plaintiffs . . . are also the state plaintiffs" and "they are not seeking to enjoin any state judicial proceeding; instead, they simply desire to litigate what is admittedly a federal question in federal court, having agreed to dismiss their pending state appeal if the district court assumes jurisdiction over the merits of their

complaint."); *Wexler v. Lepore*, 385 F.3d 1336, 1340 (11th Cir. 2004) ("The Younger doctrine does not require abstention merely because a federal plaintiff, alleging a constitutional violation in federal court, filed a claim under state law, in state court, on the same underlying facts.").

This long line of precedent should have ended the analysis. Unlike a "coercive" proceeding in which Iowa could have had the requisite "important" interests under *Younger*, Sprint initiated both the administrative proceeding at issue and the state-court proceeding challenging that proceeding. And, in any event, the underlying proceeding involved only an ordinary commercial dispute between two parties—not an "enforcement" proceeding initiated by the state to remedy criminal or quasi-criminal wrongdoing.

The district court recognized the long line of precedent holding that *Younger* does not apply to a "remedial" proceeding of the type at issue here. But it disregarded the holdings of numerous other circuits under the theory that "Sprint's state court action is best characterized as an appeal from the IUB order, and the *Younger* doctrine prohibits a federal court from interfering with the state appellate process." Op. at 8 (J.A.267). But of course, the Supreme Court's decision in *NOPSI* explicitly rejects the idea that *Younger* applies to every state-court appeal of an administrative order. 491 U.S. at 368. Under *NOPSI*, *Younger* applies to a state-court appeal of an administrative action *only* if the administrative proceeding

itself was one to which *Younger* could apply in the first place. *Id.* at 369. ("Respondents' case for abstention still requires, however, that the *Council proceeding* be the sort of proceeding entitled to *Younger* treatment."). And of course, the IUB proceeding was not the sort of proceeding entitled to *Younger* deference because it was not coercive—*i.e.*, it was not initiated by the IUB in order to punish Sprint for wrongdoing.

2. The Interests at Issue Here Are Different than the Purely Local Interests In *Night Clubs.*

The district court also held that the interest at issue in this case to similar to the interest at issue in *Night Clubs*, where this Court applied *Younger* abstention to a ruling of a state zoning board. But the state interest at issue in *Night Clubs* was the "*enforcement* and application of zoning ordinances and land use regulations" (emphasis added), whereas (as explained already), the state interest at issue here has nothing to do with *enforcement* of any laws. 163 F.3d at 480. Moreover, the state interests at issue in *Night Clubs* were peculiarly sensitive matters of purely local policy. *See id.* Indeed, *Night Clubs* cited numerous cases for the idea that "'land use planning is a sensitive area of social policy' which federal courts typically ought not enter" and that "'[s]tate and local zoning and land use law is particularly the province of the State and . . . federal courts should be wary of intervening in that area in the ordinary case'" *Id.* (citing cases). And *Night Clubs* emphasized that "'[f]ederal courts have expressly disavowed any desire to sit as a

statewide board of zoning appeals hearing challenges to municipalities.'" *Id.* (quoting *Izzo*, 843 F.2d at 769).

By contrast, as explained in Part I, *supra*, the telecommunications issues here are *not* solely the province of the state. To the contrary, the Telecommunications Act expressly contemplates a role for federal courts in its administration, and unlike the zoning issues at issue in *Night Clubs*, federal courts routinely hear appeals of decisions of state public-utilities commissions. Thus, the uniquely local interests at issue in *Night Clubs* are completely different than those at issue here. *Cf. Alleghany Corp. v. McCartney*, 896 F.2d at 1145 (distinguishing treatment of "certain of our decisions in the public utility area" from insurance regulation because the utility regulations "involved a pervasive federal regulatory scheme which indicated a strong federal interest," whereas insurance regulation is "an area of regulation delegated to the states by Congress").

IV. EVEN IF *YOUNGER* ABSTENTION WERE APPROPRIATE, THE DISTRICT COURT ERRED BY DISMISSING, RATHER THAN STAYING, THE CASE.

Finally, even if *Younger* abstention were permissible, the appropriate remedy would have been to stay—rather than dismiss—this case. As this Court explained in *Cedar Rapids Cellular*, "[a] stay is preferred to dismissal in cases where there is a possibility that the parties will return to federal court." 280 F.3d at 882 (citing *Fuller v. Ulland*, 76 F.3d 957, 960-61 (8th Cir. 1996)). Indeed, a stay

is such a clearly preferred remedy that in *Cedar Rapids Cellular*, this Court reversed the district court's decision to dismiss rather than stay the case even though the plaintiffs had "not clearly explained how they might return to federal district court." 280 F.3d at 882. In contrast to *Cedar Rapids Cellular*, it is obvious how the parties could return to federal court: among other things, Sprint could choose to dismiss the state-court appeal it voluntarily filed with the Iowa District Court of Polk County, or the state court might reach a decision that does not fully address Sprint's preemption claim. In that case, there would no longer be a pending state-court proceeding, and hence no reason to abstain.

The district court nevertheless dismissed rather than stayed the case under the theory that dismissal is appropriate when a plaintiff seeks only declaratory and injunctive relief, whereas a stay is appropriate when a plaintiff also seeks damages. Op. at 11 (J.A.270) (citing *Night Clubs*, 163 F.3d at 481). But while this rule may be a fairly good generalization of when a party could conceivably return to federal court, this case is not the typical *Younger* case in that Sprint filed *both* the federal and the state actions at issue. Therefore, unlike in the typical case, Sprint has sole control over whether the state proceeding continues, and it is quite conceivable that the parties could return to federal court. Thus, a stay—and not dismissal—would be the appropriate remedy.

CONCLUSION

Accordingly, the judgment of the district court should be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2011, I caused the foregoing Brief of Appellant Sprint Communications Company, L.P., to be filed electronically with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

Dated: October 25, 2011 /s/ Christopher J. Wright

CERTIFICATE OF COMPLIANCE

The undersigned certifies, pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), that the foregoing brief complies with the type-volume limitations in Federal Rule of Appellate Procedure 32(a)(7)(B). Exclusive of the portions exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii), this brief contains 12,102 words, as measured by the word-count feature of Microsoft Word 2010. Furthermore, this digital submission has been scanned for viruses with VIPRE Enterprise Premium version 4.0.4205 last updated on October 25, 2011 and, according to the program, contains no viruses.

Dated: October 25, 2011 /s/ Christopher J. Wright