No.

In the
Supreme Court of the United States

SPRINT COMMUNICATIONS COMPANY, L.P.,
Petitioner,

v.

ELIZABETH S. JACOBS, et al.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Eighth Circuit erred by concluding, in conflict with decisions of nine other circuits and this Court, that *Younger* abstention is warranted not only when there is a related state proceeding that is "coercive" but also when there is a related state proceeding that is, instead, "remedial."

PARTIES TO THE PROCEEDING

Petitioner Sprint Communications Company, L.P., was the appellant in the proceeding below. Respondents Elizabeth S. Jacobs, Darrell Hanson, and Swati A. Dandekar, sued in their official capacities as members of the Iowa Utilities Board ("IUB"), were the appellees.

CORPORATE DISCLOSURE STATEMENT

Sprint Communications Company, L.P., ("Sprint") is a limited partnership organized under Delaware law that primarily provides telecommunications services to the public. Sprint's partners include U.S. 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 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 Nextel's stock.

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PETITION FOR A WRIT OF CERTIORARI

Sprint Communications Company, L.P., respectfully petitions for review of the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the Eighth Circuit (Pet. App. 1a-10a) is reported at 690 F.3d 864 (8th Cir. 2012). The decision of the United States District Court for the Southern District of Iowa, Central Division, is reprinted at Pet. App. 11a-27a. The decision of the Iowa Utilities Board (Pet. App. 60a-158a) is available at 2011 WL 459686, and the Board's order denying reconsideration (Pet. App. 28a-59a) is available at 2011 WL 1148175.

JURISDICTION

The judgment below was entered on September 4, 2012. A 30-day extension for filing this petition was granted on November 19, 2012, making the deadline January 2, 2013. *See* Application No. 12A499. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Portions of the following relevant provisions are reprinted in the Appendix at Pet. App. 159a-162a: 47 U.S.C. §§ 152, 153; 47 C.F.R. § 64.702.

OVERVIEW

The Eighth Circuit's decision below: 1) creates a stark split in the circuits in the application of federal abstention doctrine under *Younger v. Harris*, 401 U.S. 37 (1971); and 2) also represents a sharp departure from this Court's jurisprudence establishing the "primacy of the federal judiciary in deciding questions of federal law." *England v. Louisiana State Bd. of Med. Exam'rs*, 375 U.S. 411, 415-16 (1964). The practical effects of the ruling

below are dramatic—cases involving issues of federal law that routinely go forward in federal district court in other circuits may now be heard only by the state courts in the Eighth Circuit.

The basic purpose of *Younger* abstention is to ensure that the States may try criminal cases free from federal judicial interference with their legitimate enforcement interests. *See* 401 U.S. at 43-44. Although this Court has extended *Younger* to protect certain state civil-enforcement proceedings "akin to a criminal prosecution," *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604 (1975), the point of *Younger* abstention has remained unchanged: "[I]f a person is believed to have violated a state law, the state has instituted a criminal, disciplinary, or other enforcement proceeding against him, and he has a federal defense, he cannot scurry to federal court and plead that defense as a basis for enjoining the state proceeding." *Nader v. Keith*, 385 F.3d 729, 732 (7th Cir. 2004). Because *Younger* protects the States' *enforcement* interests, a key requirement for *Younger* abstention is that the state proceeding must be a criminal, disciplinary, or similar civil-enforcement proceeding—or as some courts have summed up that requirement, the proceeding must be "coercive" rather than "remedial." *See, e.g., Brown ex rel. Brown v. Day*, 555 F.3d 882, 889 (10th Cir. 2009) (adopting the First Circuit's test for whether a state proceeding is remedial or coercive).

But the Eighth Circuit has now rejected that core principle of *Younger*, and requires abstention in cases—like this one—involving *no* coercive or enforcement action by the State. The result is a direct conflict in the circuits. The Eighth Circuit

staked out its position in two cases. The first, *Hudson v. Campbell*, 663 F.3d 985 (8th Cir. 2011), was decided after briefing but before argument in the present case. The *Hudson* court acknowledged that other circuits find the coercive/remedial distinction "outcome determinative" under *Younger*, but nonetheless rejected it—yet at the same time, *Hudson* left open the possibility that abstention might not apply in remedial cases involving a "pervasive federal regulatory scheme." 663 F.3d at 988. Below, the Eighth Circuit reaffirmed *Hudson* and also found that it makes no difference that this case does involve a "pervasive federal regulatory scheme." Pet. App. 7a. In short, the Eighth Circuit has now interpreted *Younger* abstention to apply to essentially *all* state agency cases, even those dominated by issues of federal law and policy.[1]

Under the coercive/remedial test, there plainly would be no abstention in this case. As the Tenth Circuit explained in *Brown v. Day*, cases that are "coercive" for purposes of *Younger* "originate[] with the state's proactive enforcement of its laws," and the "federal plaintiff . . . [seeks] to block [state] proceedings that would ultimately impose punishment" on it. 555 F.3d at 892. This case involves absolutely nothing of the sort, but rather arises from a commercial dispute between Sprint and Iowa Telecom (now Windstream) about "access charges," which are fees that telephone companies whose customers make calls sometimes must pay to telephone companies whose customers receive the calls.

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[1] No petition for certiorari was filed in *Hudson*.

The Eighth Circuit's denial of Sprint's right to federal court review of its federal-law claim also conflicts with this Court's jurisprudence regarding district courts' "virtually unflagging obligation" to decide cases subject to their jurisdiction. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976). Specifically, in *England*, this Court explained that "[a]bstention is a judge-fashioned vehicle for according appropriate deference to . . . the role of state courts as the final expositors of state law." 375 U.S. at 415. Again, Sprint's filing in district court unquestionably involved *no* issues of state law—Sprint sought federal court review of complex issues of federal telecommunications law arising under the Telecommunications Act of 1996 ("1996 Act" or "Act"). And this Court has repeatedly found that, under the 1996 Act, "if the federal courts believe a state commission is not regulating in accordance with federal policy they may bring it to heel." *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 378 n.6 (1999). Indeed, under the 1996 Act, state telecommunications regulators act as "deputized federal regulators," so the federal courts routinely hear appeals of the telecommunications-related decisions of state public utilities commissions. This Court expressly approved this federal review process in *Verizon Maryland, Inc. v. Pub. Serv. Comm'n of Maryland*, 535 U.S. 635 (2002).

Finally, the decision below is fundamentally inconsistent with this Court's nuanced abstention jurisprudence. As noted above, this Court has made clear that *Younger* applies to "coercive" and "enforcement" cases. But this Court *also* has an abstention doctrine designed to protect important state interests in non-coercive state administrative

cases like this one. Specifically, *Burford* abstention—originating in *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943)—prevents federal court "intru[sion] into state proceedings where there exists a complex state regulatory system." *New Orleans Pub. Serv. Inc. v. City of New Orleans*, 491 U.S. 350, 361 (1989) (internal citations omitted). The Eighth Circuit's rejection of the coercive/remedial distinction collapses and conflates the *Younger* and *Burford* doctrines, opening the door to further mischief in both district courts and the courts of appeals.

This Court should grant certiorari to bring the law of the Eighth Circuit into line with that of this Court and other circuits, and to prevent further confusion—in the Eighth Circuit and elsewhere—about this Court's related but separate abstention doctrines.

STATEMENT

This petition arises from a dispute between Sprint and Iowa Telecom (now Windstream) over "access charges," a kind of "intercarrier compensation" or payment made between telephone companies. Carriers whose customers make (or "originate") calls are sometimes required to pay access charges to the carriers that deliver (or "terminate") those calls to their customers. The statutory and regulatory landscape relevant to access charges requires some explanation here.

A. Statutory and Regulatory Background.

Access charges may be either intrastate or interstate, depending on whether the call traverses state lines. Traditionally—*i.e.*, for calls made over the Public Switched Telephone Network ("PSTN")—this distinction between "intrastate" and "interstate" calls dictated whether federal or state regulators had authority to regulate a call. State regulators regulated intrastate calls, while federal regulators regulated interstate calls.

This case, however, concerns "Voice over Internet Protocol" ("VoIP") calls rather than traditional telephone calls. The particular VoIP calls at issue here originated on the cable broadband network of a cable company with which Sprint had a business arrangement. During the initial Internet leg of a VoIP call, the caller's voice is translated into digital packets and routed over an Internet protocol ("IP") network. Subsequently, those packets are transformed by Sprint into a traditional telephone signal, which may be terminated over the PSTN by a telephone company (like Windstream) serving the called party.

For such VoIP calls, the question whether access charges apply is closely connected to the question of which regulators have authority to regulate the calls. Under the Telecommunications Act of 1996 ("1996 Act" or the "Act"), authority to regulate no longer turns on whether calls are "interstate" or "intrastate." Instead, the issue is whether VoIP is an "information service" under the 1996 Act, 47 U.S.C. §

153(24) (formerly known as an "enhanced service"[2]), or is alternatively a "telecommunications service," *id.* at § 153(53). Pet. App. 161a. Federal law—administered by the FCC—requires information services to remain largely unregulated,[3] while telecommunications services remain subject to joint regulation by state and federal regulators.[4]

The question of what makes an offering an "information service" under the 1996 Act is a difficult one that has perplexed the FCC and the federal courts since the passage of the Act. Nevertheless, the FCC has proposed general guidelines for distinguishing information services, including that a service may be 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]

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

[3] *See* Pet. App. 162a.

[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); Pet. App. 159a (state authority).

[5] *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Commc'ns Act of 1934, As Amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 21,905, 21,956-57 ¶¶ 104, 106 (1996).

As noted above, the VoIP calls at issue in this case 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. Sprint initially paid access charges for these calls, but ultimately concluded that it was not required to do so. Sprint's position is that these calls represent an information service because they enter the network in one protocol and exit the network in a different protocol, thus undergoing net protocol conversion.[6] As explained above, federal law requires "information services" to remain largely unregulated by the States, so only the FCC—and not state

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[6] *Cf. 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) (finding that Pulver's Free World Dialup VoIP service was an information service); *Vonage Holdings Corp. v. Minnesota PUC*, 290 F. Supp. 2d 993, 1002 (D. Minn. 2003) (finding that Vonage's VoIP is an information service and that Congress has "occup[ied] the field of regulation of information services," so Minnesota could not impose telecommunications regulation on VoIP). The FCC subsequently preempted the Minnesota PUC's efforts to regulate Vonage on alternate grounds, and that order was affirmed by the Eighth Circuit (without addressing the views of the *Vonage* district court). *See Vonage Holdings Corp. Petition for Declaratory Ruling re an Order of the Minnesota Pub. Utils. Comm'n*, Memorandum Op. and Order, 19 FCC Rcd. 22,404 (2004); *Minnesota Pub. Utils. Comm'n v. FCC*, 483 F.3d 570, 574-76 (8th Cir. 2007).

regulatory commissions—could decide to impose access charges on these calls. Because the FCC had not done so, Sprint concluded that the calls at issue were not subject to access charges.

B. 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. In response, Windstream threatened to disconnect Sprint's service and effectively block calls to and from Sprint's customers. 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, *id.* at 4 ¶16, but rather maintained that issue is a fundamental question of *federal* law and policy that only the FCC may answer. The IUB disagreed, issuing a 50-page analysis both claiming authority to decide the issue and concluding that federal law *does* permit imposing access charges on VoIP calls.

Sprint then filed a complaint in federal district court arguing that the IUB lacked authority to determine whether access charges apply to VoIP traffic. The district court had jurisdiction under 28 U.S.C. §§ 1331, 1332, 1651, 2201, and 2202. But Sprint's counsel determined that prudence *also* required petitioning for review of the IUB order in

Iowa District Court. The state-court filing was necessary because: 1) existing Eighth Circuit law already appeared to understand *Younger* abstention extremely broadly, *see, e.g. Night Clubs, Inc. v. City of Fort Smith*, 163 F.3d 475, 481 (8th Cir. 1998), so counsel recognized the danger that the federal district court might decline to hear Sprint's appeal; and 2) the Eighth Circuit had held—contrary to the Fifth Circuit—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); *cf. Thomas v. Texas State Bd. of Med. Exam'rs,* 807 F.2d 453, 456 (5th Cir. 1987) ("mere availability of state judicial review of state administrative proceedings does not amount to the pendency of state judicial proceedings within the meaning of *Huffman*"). Taken together, these rules raised the risk that Sprint would be barred from federal court *after* the time for appeal to state court had run. Sprint therefore filed for review in state court shortly after filing its federal complaint. In its state-court filing, Sprint appealed both state-law (tariff) issues and the federal-law issues on which the IUB primarily focused. 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 resolution of the federal case.

In district court, the IUB moved for abstention under *Younger v. Harris*, seeking to capitalize on the Eighth Circuit's broad understanding of the doctrine. Sprint opposed, arguing that *Younger*, like all abstention doctrines, is fundamentally about protecting a state's ability to administer, interpret,

and enforce its *own* laws—and that this case has nothing to do with any of those things. Rather, Sprint argued, this case is about Sprint's basic right to obtain review in *federal* court of an issue of *federal* law. The district court disagreed on very broad grounds, finding that, "Sprint's state court action . . . is properly characterized as an appeal from the IUB orders," and that "a state court's review" of a state agency decision is "an uninterruptible process under the *Younger* doctrine." Pet. App. 24a.

The district court's holding that state-court review of a state-agency decision—even review of issues of federal law arising under the 1996 Act—is an "uninterruptible process" was nothing short of alarming. The clear implication was that, under *Younger*, *all* state-agency decisions *must* be appealed *only* through the state system, and federal-court review is unavailable—even where, as in this case, the district court unquestionably has *jurisdiction* to hear the issues presented to it.

Sprint accordingly appealed to the Eighth Circuit, which had jurisdiction under 28 U.S.C. § 1291, arguing that the lower court's broad holding would allow *Younger* to defeat the district courts' "virtually unflagging obligation" to decide cases subject to their jurisdiction in a broad range of proceedings. *Colorado River Water Conservation Dist. v. United States,* 424 U.S. 800, 817 (1976). Sprint therefore urged the Eighth Circuit to construe its *Younger* test more narrowly than the district court had done, and consistently with the tests used in other circuits. In particular, Sprint argued that the court should construe the "state interest" prong of its test for *Younger* abstention to mandate the kind of *coercive*

state interest that other courts of appeals require. Sprint maintained that run-of-the-mill, *remedial* state-agency adjudications, unlike state criminal and quasi-criminal proceedings, do not implicate the coercive state interests to which *Younger* applies.

After briefing in the Eighth Circuit but before oral argument, the Eighth Circuit issued a decision expressly *rejecting* the coercive/remedial distinction advanced by Sprint in this case, although acknowledging that other circuits find that distinction "outcome determinative" under *Younger*. *See Hudson v. Campbell*, 663 F.3d 985, 987 (8th Cir. 2011). *Hudson* thus suggested that the Eighth Circuit's *Younger* standard requires abstention in essentially all state agency proceedings, but the court did leave open the possibility that abstention might not apply in cases involving a "pervasive federal regulatory scheme." *Id.* at 988. At oral argument, Sprint emphasized that this case *does* involve a pervasive federal regulatory scheme—the 1996 Act, under which state telecommunications regulators act as "deputized federal regulators." *See Illinois Bell Tel. Co., Inc. v. Global NAPs Illinois, Inc.*, 551 F.3d 587, 595 (7th Cir. 2008). The IUB, in contrast, boldly proclaimed that *Younger* abstention applies to *all* of its proceedings regardless of the legal regime involved—*i.e.*, that review of IUB decisions is available only through the state court system.[7]

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[7] The Eighth Circuit's recording equipment malfunctioned during argument so there is no record of the IUB's position—but the IUB was by no means reluctant to advance it, and so will presumably take the same position here.

The Eighth Circuit's decision below reaffirmed *Hudson*, rejecting Sprint's claim that the state-interest prong of the Eighth Circuit's *Younger* test was not met because the IUB proceeding was not coercive. Pet. App. 6a. The court also closed the door left open by *Hudson*, finding that because the state here has a "substantial, legitimate interest in regulating intrastate retail [telecommunications] rates," it makes no difference that this case involves a "pervasive federal regulatory scheme." *Id.* at 7a. In short, the Eighth Circuit upheld abstention in this case as a run-of-the mill application of its *Younger* standard, now clearly construed never to require a coercive state proceeding.

REASONS FOR GRANTING THE PETITION

The Court should grant certiorari to resolve an important—and deeply rooted—split between the Eighth Circuit and the other circuits over the scope of *Younger* abstention. Nine circuits apply *Younger* only if the ongoing state proceeding is "coercive"—*i.e.* if it was initiated by the state to punish the federal plaintiff for wrongdoing. The Eighth Circuit has split with the other circuits by rejecting this limitation on *Younger*, thus applying *Younger* to prevent a federal plaintiff from challenging *any* decision of a state administrative body in federal court. As a result, cases that routinely go forward in nine other circuits are forced to proceed in state court if they arise in the Eighth Circuit.

This Court should also grant certiorari because the Eight Circuit's decision conflicts with this Court's longstanding jurisprudence that "a state court determination may not be substituted, against a party's wishes, for his right to litigate his federal

claims fully in the federal courts." *See, e.g.*, *England v. Louisiana State Bd. of Med. Exam'rs*, 375 U.S. 411, 417 (1964). Consistent with that principle, this Court has specifically allowed for federal courts to review the decisions of state telecommunications regulators. *Verizon Maryland, Inc. v. Pub. Serv. Comm'n of Maryland*, 535 U.S. 635 (2002). The Eighth Circuit's decision is inconsistent with this line of cases.

Finally, the Court should grant certiorari because the Eighth Circuit's decision is inconsistent with the Court's abstention cases and creates confusion in abstention law. In particular, the decision is inconsistent with *Ohio Civil Rights Commission v. Dayton Christian Schools., Inc.,* 477 U.S. 619 (1986), which created the coercive/remedial distinction. The Eighth Circuit's approach also confuses *Younger* abstention with *Burford* abstention, which is designed to protect the sort of non-coercive state interests at issue here.

I. The Court Should Grant Certiorari to Resolve the Circuit Split over the Scope of *Younger* Abstention.

A. The Eighth Circuit Has Split With Nine Other Circuits in Rejecting the Coercive/Remedial Distinction.

The Eighth Circuit's decision to abstain in this case rejects the majority rule that the federal courts may invoke *Younger* abstention *only* when the "the state has instituted a criminal, disciplinary, or other enforcement proceeding" against the federal plaintiff, and the federal lawsuit would interfere with that proceeding. *See Nader v. Keith*, 385 F.3d 729, 732

(7th Cir. 2004). This requirement is frequently summarized by saying that the state proceeding must be "coercive" rather than "remedial," and the courts using those terms generally define the state proceeding as coercive if "the federal plaintiff had engaged in misconduct" and the state proceeding "would ultimately impose punishment for that misconduct." *Brown ex. rel. Brown v. Day*, 555 F.3d 882, 892 (10th Cir. 2009).

The majority rule is clearly applied in at least four circuits[8] (the First, Sixth, Seventh, and Tenth) and apparently so in five more[9] (the Second, Third, Fourth, Ninth, and Eleventh).

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[8] *See Guillemard-Ginorio v. Contreras-Gómez*, 585 F.3d 508, 522 (1st Cir. 2009); *Devlin v. Kalm*, 594 F.3d 893 (6th Cir. 2010); *Majors v. Engelbrecht*, 149 F.3d 709 (7th Cir. 1998); *Brown ex. rel. Brown v. Day*, 555 F.3d 882, 893 (10th Cir. 2009).

[9] *Univ. Club v. City of New York*, 842 F.2d 37 (2d Cir. 1988) (determining that relevant state proceeding was "coercive" rather than "remedial" and rejecting argument that abstention was inappropriate); *Philip Morris, Inc. v. Blumenthal*, 123 F.3d 103, 106 (2d Cir. 1997) (*Younger* abstention was inappropriate because, among other things, the state proceeding was "essentially a suit for money damages" rather than a "sovereign enforcement proceeding"); *Wyatt v. Keating*, 130 Fed. Appx. 511, 514-15 (3d Cir. 2005) (unpublished); *O'Neill v. City of Philadelphia*, 32 F.3d 785, 791 n.13 (3d Cir. 1994); *Moore v. City of Asheville*, 396 F.3d 385, 394-95 (4th Cir. 2005) (noting that *Huffman* extended *Younger* "into a state coercive civil proceeding" and focusing on whether the federal litigation would "disrupt[] important state enforcement efforts"); *id.* at 395 n.4 (noting that Supreme Court has distinguished between "coercive" and

By contrast, two Eighth Circuit cases in quick succession (including this one) have now split with the other circuits, invoking *Younger* abstention in favor of non-coercive state-level administrative proceedings. In the first case, *Hudson v. Campbell*, 663 F.3d 985 (8th Cir. 2011), the plaintiff filed a federal lawsuit challenging the State of Missouri's decision to deny her Medicaid benefits. The district court abstained under *Younger*, and the plaintiff argued on appeal that *Younger* abstention was inappropriate because the state proceeding was remedial, not coercive. The Eighth Circuit acknowledged that "[o]ther circuits recognize a distinction between coercive and remedial actions and require exhaustion of state appellate remedies

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"remedial" administrative proceedings, "concluding that *Younger* requires federal courts to abstain in favor of pending state administrative proceedings that are coercive in nature"); *Laurel Sand & Gravel, Inc. v. Wilson*, 519 F.3d 156, 166 (4th Cir. 2008) (affirming abstention after finding that the state proceeding was "clearly coercive"); *Woollard v. Sheridan*, No. 10-2068, 2010 WL 5463109, at *4 (D. Md. Dec. 29, 2010) (referring to the coercive-remedial distinction as "the key factor" in its analysis and noting that the "Fourth Circuit . . . has abstained pursuant to *Younger* only in favor of administrative proceedings it deems 'coercive.'"); *Green v. City of Tucson*, 255 F.3d 1086, 1102 n.16, *limited on other grounds by Gilbertson v. Albright*, 381 F.3d 965 (9th Cir. 2004); *Wexler v. Lepore*, 385 F.3d 1336, 1340 (11th Cir. 2004) ("Second, we have found no binding precedent requiring federal plaintiffs to raise federal claims in pending state court proceedings where they are also plaintiffs. Abstention might be more appropriate when the federal plaintiff, as a defendant in state court, chose not to assert a constitutional *defense*.")*.*

only in those that are coercive in nature." *Id.* at 987 (emphasis added). But it held that, unlike the other circuits, "we have not considered the distinction to be outcome determinative" and noted that in past cases "we afforded *Younger* deference to the state administrative proceedings without classifying the proceeding as coercive or remedial." *Id.* at 987-88. The Eighth Circuit thus required abstention even though it expressly acknowledged that courts in five other circuits would not have done so. *Id.* at 987.

In reaching this result, the Eighth Circuit contrasted its ruling with the Tenth Circuit's decision in *Brown*, 555 F.3d at 889. In *Brown*, which mirrors the facts of *Hudson*, the State terminated Brown's Medicaid benefits on the basis that she was no longer eligible. As in *Hudson*, Brown sued the State in federal court, claiming that the State's eligibility determination violated federal law. The State asked the district court to abstain—even threatening to file a "Petition for Civil Enforcement"—and the district court obliged. But unlike in *Hudson*, the Tenth Circuit reversed, finding that the state administrative proceedings were not "the *type* of state proceeding that is due the deference accorded by *Younger* abstention." 555 F.3d at 888. In reaching that conclusion, the Tenth Circuit held that *Younger* abstention is appropriate only if the state proceedings are "coercive," and found that the state Medicaid proceeding was not coercive. It emphasized that a coercive proceeding involves "a state's enforcement of its laws or regulations in an administrative proceeding," *id.* at 890, and held that a "common thread" in coercive proceedings is that "the federal plaintiff sought to thwart a state administrative proceeding initiated to punish the

federal plaintiff for a bad act," *id.* at 891. The Tenth Circuit's decision in *Brown*—echoed by the courts of eight other circuits—thus stands in sharp contrast to the Eighth Circuit's opinion in *Hudson*.

The Eighth Circuit continued its departure from established law in the proceedings below. Because *Hudson* had not yet been decided at the time Sprint's briefs were due, Sprint argued that *Younger* abstention was inappropriate because the state proceedings were remedial, not coercive. Nevertheless, the Eighth Circuit took this case as an opportunity to reaffirm *Hudson*. It confirmed its position that the coercive/remedial distinction is "not . . . outcome determinative" and held that *Younger* abstention was appropriate without further discussing the issue. Pet. App. 6a-7a.

Although the Eighth Circuit did not explicitly acknowledge the circuit split here as it did in *Hudson*, it bears emphasis that this case—like *Hudson*—would not have triggered abstention in any of the nine circuits applying the majority rule. That is because the proceedings before the IUB were initiated *by Sprint* to resolve a garden-variety commercial dispute with Windstream—not to punish Sprint for any sort of misconduct. And the proceedings before the Iowa District Court were initiated *by Sprint* to challenge the IUB's interpretation of the law. Thus, under the rule applied outside the Eighth Circuit, this case would never have been a candidate for *Younger* abstention.

B. The Roots of the Circuit Split Are Deep and Thus Unlikely to Be Resolved Without Intervention by this Court.

Although the Eighth Circuit has explicitly rejected the coercive/remedial distinction only recently, the seeds of the current circuit split have been sewn over the last two decades. Because the division between the Eighth Circuit and the other circuits has been so persistent, the split is unlikely to be resolved without the intervention of this Court.

The roots of the current split go back to at least 1990 in a series of cases involving the Alleghany Corporation ("Alleghany"). Those cases arose when Alleghany sought to acquire shares of an insurance holding company, an act that required approval of the insurance commissions of a number of states. After commissions in Indiana, Wisconsin, North Dakota, and Nebraska denied Alleghany's applications, it filed lawsuits in several federal district courts. The state insurance commissions asked the courts to abstain under *Younger*, arguing that the federal lawsuit would interfere with the proceeding before the insurance commissions. And although Alleghany had chosen not to appeal that decision in state court, the commissions argued that Alleghany had to exhaust its state appellate remedies and could not challenge the proceeding in federal court.

The cases eventually ended up on appeal in the Seventh and Eighth Circuits, and both courts considered whether to apply *Younger* abstention. The two courts came to vastly different conclusions.

The Seventh Circuit held that *Younger* did not apply because the state had not initiated any type of enforcement action against Alleghany—a distinction that would equally preclude abstention in this case: "*Younger* is confined to cases in which the federal plaintiff had engaged in conduct actually or arguably in violation of state law, thereby exposing himself to an enforcement proceeding in state court which, once commenced, must be allowed to continue uninterrupted to conclusion . . . ." *Alleghany Corp. v. Haase*, 896 F.2d 1046, 1053 (7th Cir. 1990) (Posner, J.), *vacated as moot sub nom. Dillon v. Alleghany Corp.*, 499 U.S. 933 (1991).[10]

Less than a week later—and without so much as a citation to the Seventh Circuit's opinion—the Eighth Circuit issued a set of opinions conflicting with the Seventh Circuit's decision. *Alleghany Corp. v. McCartney*, 896 F.2d 1138 (8th Cir. 1990); *Alleghany Corp. v. Pomeroy*, 898 F.2d 1314 (8th Cir. 1990). Contrary to the Seventh Circuit, the Eighth Circuit held that *Younger* abstention applies even

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[10] *Haase* was summarily vacated as moot in *Dillon v. Alleghany Corp.*, 499 U.S. 933 (1991), but the Seventh Circuit has reaffirmed *Haase*'s holding regarding *Younger*: "The district court properly relied on our decision in *Alleghany Corp. v. Haase*, 896 F.2d 1046, 1053 (7th Cir. 1990), *vacated as moot*, 499 U.S. 933, . . . where we noted that '*Younger* is confined to cases in which the federal plaintiff ha[s] engaged in conduct actually or arguably in violation of state law, thereby exposing himself to an enforcement proceeding in state court * * *.'" *Hinrichs v. Whitburn*, 975 F.2d 1329, 1333 (7th Cir. 1992); *see also id.* at 1333 n.7 (noting that *Haase* was vacated only because it had become moot).

though Alleghany was accused of no wrongdoing, and the state had commenced no enforcement proceedings against it: "[W]e find no merit in Alleghany's argument that *Younger* abstention applies only where there is a pending state enforcement proceeding." *McCartney*, 896 F.2d at 1145. In reaching this conclusion, the Eighth Circuit relied on this Court's decision in *Pennzoil Company v. Texaco, Inc.,* 481 U.S. 1 (1987), which it interpreted to allow abstention "in a state proceeding between two private parties." *McCartney,* 896 F.2d at 1145. The court did not grapple with *Pennzoil*'s admonition that "[o]ur opinion does not hold that *Younger* abstention is always appropriate whenever a civil proceeding is pending in a state court." 481 U.S. at 14 n.12.

The Eighth Circuit's conflicting position did not go unnoticed by the Seventh Circuit, however. That court issued an Order noting that the Eighth Circuit had reached decisions "opposite to, but apparently unaware of, our decision," and stating that "[w]e are not persuaded to abandon our position." *Haase*, 896 F.2d at 1056 (Order).

The Eighth Circuit's split with the Seventh Circuit in the *Alleghany* cases foretold a vast expansion of the *Younger* doctrine in the Eighth Circuit. In a number of subsequent cases, the Eighth Circuit continued to invoke *Younger* abstention in cases that were unquestionably remedial rather than coercive. For example, in *Night Clubs, Inc. v. City of Fort Smith*, 163 F.3d 475 (8th Cir. 1998), the federal plaintiff had applied for permission to open a nude-dancing facility, and that application was denied because the city's Planning Commission interpreted

the zoning laws not to allow nude dancing. Although there was no hint that the federal plaintiff was guilty of any wrongdoing or that the city had begun any proceeding to punish wrongdoing, the Eighth Circuit abstained in favor of the state proceedings, citing *Younger*.

This long line of cases shows that the Eighth Circuit is unlikely to retreat from its more recent rejection of the coercive/remedial distinction.

II. The Decision Below is Inconsistent with this Court's Jurisprudence Establishing the Primacy of the Federal Judiciary in Deciding Questions of Federal Law.

As discussed above, Sprint's federal complaint in this case presented *only* issues of federal law—specifically, Sprint argued that the IUB lacked authority under the 1996 Act to determine whether access charges apply to VoIP traffic and that the IUB's finding that such charges do apply also violated the Act. The Eighth Circuit's novel application of *Younger* to bar Sprint from receiving federal court review of these federal questions is flatly inconsistent with this Court's longstanding general rule that "a state court determination may not be substituted, against a party's wishes, for his right to litigate his federal claims fully in the federal courts." *England*, 375 U.S. at 417.

This Court has, of course, long emphasized the district courts' "virtually unflagging obligation" to decide cases brought before them, noting that "[t]his obligation does not evaporate simply because there is a pending state court action involving the same

subject matter." *Federated Rural Elec. Ins. Corp. v. Arkansas Elec. Coops, Inc.*, 48 F.3d 294, 297 (8th Cir. 1995) (quoting *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 817 (1976)). The Court's decision in *England* explored the relationship between the general rule and abstention doctrine's exceptions to it. The Court first explained:

> Congress, pursuant to constitutional authorization, has conferred specific categories of jurisdiction upon the federal courts, and . . . "[w]hen a Federal court is properly appealed to in a case over which it has by law jurisdiction, it is its duty to take such jurisdiction . . . . The right of a party plaintiff to choose a Federal court where there is a choice cannot be properly denied."

England, 375 U.S. at 415. (quoting *Willcox v. Consolidated Gas Co.*, 212 U.S. 19, 40 (1909)). Abstention, the Court observed, provides exceptions to this rule only in certain limited circumstances:

> Abstention is a judge-fashioned vehicle for according appropriate deference to the "respective competence of the state and federal court systems." *Louisiana P. & L. Co. v. Thibodaux*, 360 U.S. 25, 29. Its recognition of the role of state courts as the final expositors of state law implies no disregard for the primacy of the federal judiciary in deciding questions of federal law.

Id. at 415-16 (citation omitted). Again, however, this case does not involve state exposition, administration, or enforcement of state law. To the contrary, the Eighth Circuit's decision below directly

undermines the "primacy of the federal judiciary in deciding questions of federal law," mandating that Sprint's federal questions go to state court notwithstanding the district court's unquestioned jurisdiction over those issues.

This Court applied the general rule set forth in cases like *Willcox* and *England* to a case very similar to this in *Verizon Maryland*, 535 U.S. 635, which confirms the federal courts' authority to review state utility orders on the 1996 Act. *Verizon Maryland* involved Section 252 of the 1996 Act, which confers on state commissions the authority to approve and interpret "interconnection" agreements between incumbent local exchange carriers ("ILECs") and the competitive local exchange carriers ("CLECs") that the 1996 Act sought to encourage. 535 U.S. 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 agreement between the carriers. *Id.* at 639.

Verizon sought review in federal district court, arguing that the Maryland PUC's ruling was preempted by federal law, much as Sprint argued below. *Id.* The Maryland Commission took the position that Verizon had no right to federal court review. *Id.* at 642. This 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 applied the general rule that federal courts should decide issues of federal law whenever their jurisdiction is properly invoked

to the very context at issue here—review of state PUC decisions on issues of federal law. That is exactly what Sprint sought below, and the Eighth Circuit's decision is thus inconsistent with both this Court's general rule and with *Verizon Maryland*.

III. The Decision Below is Inconsistent with this Court's Abstention Cases and Will Result in Further Confusion of Abstention Law in the Eighth Circuit and Beyond.

As discussed above, the Eighth Circuit's decision is inconsistent with *Younger* abstention law in other circuits. But that decision also both conflicts with and thoroughly confuses this Court's abstention precedents.

First, the decision below is inconsistent with the basic principle underlying this Court's abstention cases, which is that *state* courts should be allowed to interpret *state* statutory, regulatory, and enforcement regimes without undue interference from *federal* courts. Here, in contrast, Sprint's efforts to obtain review concern the *federal* courts' authority (and, indeed, responsibility) to decide *federal* law issues as to which *state* agencies have no authority whatsoever. Second, the Eighth Circuit's approach conflicts with *Dayton*, which established the remedial/coercive distinction applied by other circuits. And finally, the decision below conflates *Younger* with *Burford* abstention, threatening further confusion in the lower courts.

A. The Purposes of Abstention Doctrine Do Not Apply Here.

A brief overview of the abstention doctrines amply demonstrates that the concerns animating abstention are entirely inapposite here. The first class of cases to which abstention applies was recognized by this 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 Court reversed. The Court pointed out that the lower federal 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 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. In short, abstention began in *Pullman* as a doctrine of non-interference with state court construction of state law.

Two years after *Pullman*, the 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 under 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 v. Sun Oil Co.*, 319 U.S. 315, 326 (1943). The 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, 334. 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." *New Orleans Public Serv. Inc. v. Council of the City of New Orleans,* 491 U.S. 350, 361 (1989) ("*NOPSI*") (quoting *NOPSI v. City of New Orleans*, 798 F.2d 858, 861-62 (5th Cir. 1986)).

Younger, the third major category of abstention cases recognized by this Court, is a direct descendant of *Pullman* and *Burford*. In *Younger*, the federal plaintiff sought to enjoin a state criminal prosecution 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 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 v. Harris,* 401 U.S. 37, 43-44 (1971).

Subsequent cases of this Court 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).[11] And *all* of this

[11] 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 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 the state's critical role in administering its public assistance programs. The Court has also found that federal constitutional challenges to the processes by which the

Court's *Younger* cases represent "variations" on *Burford, see* 17A Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc. Juris. § 4241 (3d ed.)—the central tenet of the cases 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.

In short, the fundamental principle of non-interference in matters of the States' administration and enforcement of their own laws that underlies all of abstention law is utterly inapposite here. The Eighth Circuit's extension of "abstention" doctrine to this case thus makes nonsense of the doctrine.

B. The Eighth Circuit's Rule Ignores the Remedial/Coercive Line Drawn by this Court's Precedents.

As discussed in Part I, *supra*, the Eighth Circuit's decision below rejects the remedial/coercive line for application of *Younger* employed by other circuits. But it bears emphasis that other circuits did not

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State compels compliance with the judgments of its courts 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*).

invent that test out of whole cloth—rather, it comes directly from this Court's precedents. The roots of the distinction go back to the long line of cases that gradually extended *Younger* from a doctrine applicable only when there was a pending state *criminal* proceeding to a doctrine that also applies to certain civil cases. In making this expansion, the Court repeatedly emphasized that *Younger* would apply only to a limited category of civil proceedings—proceedings which were "more akin to a criminal prosecution than are most civil cases," *Huffman*, 420 U.S. at 604, cases involving "an ongoing civil enforcement action . . . brought by the State in its sovereign capacity," *Trainor*, 431 U.S. at 444, and cases involving "challenges to the processes by which the State compels compliance with the judgments of its courts," *Pennzoil,* 481 U.S. at 13-14. *See also NOPSI,* 491 U.S. at 367-68 (discussing categories).

In expanding *Younger* beyond criminal cases, however, this Court has carefully emphasized that it was *not* expanding *Younger* to all civil proceedings. *Pennzoil*, 481 U.S. at 34 n.12 ("Our opinion does not hold that *Younger* abstention is always appropriate whenever a civil proceeding is pending in a state court."); *Moore,* 442 U.S. at 423 n.8 ("[W]e do not remotely suggest 'that every proceeding between a State and a federal plaintiff justifies abstention unless one of the exceptions to *Younger* applies.'"). And the Court warned that "[a]bstention from the exercise of federal jurisdiction is the exception, not the rule." *Colorado River*, 424 U.S. at 813; *accord NOPSI*, 491 U.S. at 368 ("only exceptional circumstances justify a federal court's refusal to decide a case in deference to the States").

These principles culminated in a Supreme Court case specifically announcing the remedial/coercive distinction. In *Dayton*, the Court clarified the line between state administrative proceedings to which abstention applies and those to which it does not. The *Dayton* Court distinguished its earlier holding in *Patsy v. Board of Regents of the State of Florida*, 457 U.S. 496 (1982), that a federal employment discrimination claim could proceed without exhaustion of or deference to state administrative proceedings. Specifically, the *Dayton* Court found that *Younger does* apply to administrative action brought by a state agency to vindicate the State's policy against sex discrimination. The Court wrote:

> The application of the *Younger* principle to pending state administrative proceedings is fully consistent with *Patsy v. Florida Board of Regents*, which holds that litigants need not exhaust their administrative remedies prior to bringing a § 1983 suit in federal court. Unlike *Patsy*, the administrative proceedings here are *coercive rather than remedial*, began before any substantial advancement in the federal action took place, and involve an important state interest.

Dayton, 477 U.S. at 627 n.2 (emphasis added and citations omitted). As subsequent courts have recognized, "[t]he critical distinction" between *Dayton* and *Patsy* was that *Dayton* involved a "coercive" proceeding, whereas *Patsy* did not. *See, e.g. O'Neill v. City of Philadelphia*, 32 F.3d 785, 791 n.13 (3d Cir. 1994).

The Eighth Circuit's decision below is thus not only inconsistent with the principles underlying

Younger abstention, but also with this Court's specific distinction, in *Dayton*, of coercive state proceedings to which *Younger* does apply from remedial proceedings where it does not.

C. The Eighth Circuit's Decision Improperly Conflates *Burford* and *Younger* Abstention.

The Eighth Circuit's decision thoroughly confuses abstention law by conflating the *Burford* and *Younger* doctrines into a new, unrecognizably broad kind of abstention.

As discussed above, the *Burford* abstention cases require the federal courts to administer their regulatory regimes without undue interference from the federal courts. And the *Younger* cases prevent federal court interference with state criminal and similar civil-enforcement regimes. At first blush, this case falls far closer to the *Burford* line of cases than to the *Younger* cases. The state interests identified by the IUB in the district court—"enforcing the terms of telephone company tariffs and otherwise regulating the telephone companies" and the "protection of . . . citizens" who make phone calls in Iowa (*see* J.A.248-249)—were closely related to the *Burford* policy of non-intervention in state regulatory affairs. The Eighth Circuit decision makes this point even more clearly, identifying no *Younger*–style enforcement interest, but only a "generic" interest in the "regulation of utilities." Pet. App. 7a-8a.

Below, however, the IUB did not even attempt to invoke *Burford* abstention. And the reason why it did not is simple—application of *Burford* to this case would have been squarely foreclosed by this Court's

decision in *NOPSI*. Like this case, *NOPSI* involved a claim that federal law preempted a decision of a state regulatory agency—specifically, that a Federal Energy Regulatory Commission order requiring that the costs of planned nuclear reactors 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*, this 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. (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)); *see also GTE North, 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*).

This Court's ruling in *NOPSI* is, of course, equally apropos in this case. The lower courts 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, IUB chose not to invoke *Burford* because it was aware that this Court had stated—in a case very much like this one—that the *Burford* doctrine does not apply. Instead, the IUB convinced the Eighth Circuit to expand *Younger* beyond recognition.

In short, the Eighth Circuit's application of abstention in this case blurred the lines that this Court has drawn in its *Burford* and *Younger* cases in a way that makes no sense. This Court should correct the Eighth Circuit's confusing and overly expansive reading of *Younger*.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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