

In The  
**Supreme Court of the United States**

—◆—  
SPRINT COMMUNICATIONS COMPANY, INC.,  
*Petitioner,*

v.

ELIZABETH S. JACOBS, ET AL.,  
*Respondents.*

—◆—  
**On Writ Of Certiorari To The  
United States Court Of Appeals  
For The Eighth Circuit**

—◆—  
**BRIEF OF THE IOWA OFFICE OF  
CONSUMER ADVOCATE AS *AMICUS CURIAE*  
IN SUPPORT OF RESPONDENTS**

—◆—  
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**QUESTION PRESENTED**

Whether the Eighth Circuit Court of Appeals correctly found abstention was appropriate since state proceedings were conducted under state law to defend important state interests.

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**INTEREST OF *AMICUS CURIAE*<sup>1</sup>**

The Office of Consumer Advocate (OCA) is a statutory division of the Iowa Attorney General's office, charged with the duty to act as attorney for and represent all consumers generally and the public generally in proceedings before the Iowa Utilities Board (IUB), and in actions instituted in state or federal court which involve the validity of a rule, regulation, or order of the IUB. Iowa Code §§ 475A.2(2), (4) (2013). OCA participated in the formal complaint proceeding before the IUB and the state judicial review proceeding filed by Sprint Communications Company, L.P. (Sprint). OCA submits this brief as *amicus curiae* in support of Respondent IUB to highlight the nature of the state proceeding and the IUB's authority to enforce state laws and regulations which involve important state interests, including protecting Iowa consumers from the harms associated with the loss of telecommunications services.

**SUMMARY OF ARGUMENT**

The IUB acted under state law and regulations when it adjudicated the complaint involving a dispute between two carriers who each claimed to be

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<sup>1</sup> The parties' consent to the filing of *amicus curiae* briefs in this case has been filed with the Clerk. None of the parties or their counsel authored this brief in whole or in part, and no one other than *amicus* or its counsel contributed money or services to the preparation or submission of this brief.

operating under the provisions of an intrastate access tariff approved by the IUB. The IUB's action was necessary for the vindication of important state policies involving the regulation of utilities, including preservation of the integrity of the telephone network, protection of the health, safety and welfare of telephone customers, and the furtherance of competition in the telecommunications market in Iowa.



## **ARGUMENT**

### **I. THE IUB ACTED UNDER STATE LAW AND REGULATIONS.**

The complaint Sprint brought before the IUB sought relief from imminent disconnection of carrier switched access services provided by Windstream Iowa Communications, Inc. (Windstream).<sup>2</sup> Sprint's complaint was based solely on state statutory provisions. State law authorized the IUB to conduct emergency adjudicative proceedings in situations involving an immediate danger to the public health, safety, or welfare requiring immediate agency action.<sup>3</sup> In addition, the IUB has broad authority to review a utility's rates, charges, schedules, service or regulations and

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<sup>2</sup> Iowa Telecommunications, Inc. d/b/a Iowa Telecom, the respondent in the dispute before the IUB, merged with Windstream Corporation and was renamed Windstream Iowa Communications, Inc.

<sup>3</sup> Iowa Code § 17A.18A(1) (2013).

determine whether they are unjust, unreasonable, discriminatory or violate any other provision of law.<sup>4</sup> The IUB also must act to promote competition and enforce restrictions against certain acts which might impede competition.<sup>5</sup>

Sprint had unilaterally stopped paying intrastate access charges for intrastate long distance calls using Voice over Internet Protocol (VoIP), as required by Windstream's intrastate access tariff approved by the IUB.<sup>6</sup> Sprint claimed that it had properly disputed the charges and withheld payment, as permitted by the tariff. In response, Windstream threatened to disconnect the carrier services provided to Sprint for non-payment, also permitted by the tariff. (Pet. App. 64a-65a). Both parties claimed their contradictory actions were permitted under Windstream's tariff. While the immediate threat of disconnection and need for emergency agency action was removed through the informal actions of the parties, both Sprint and Windstream acknowledged the dispute would likely recur. (Pet. App. 65a-67a). In that context, the IUB moved forward to resolve the underlying dispute between the parties about their rights and obligations under the intrastate access tariff and the application of tariffed charges to the intrastate traffic in question. (Pet. App. 67a-68a).

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<sup>4</sup> Iowa Code § 476.3(1) (2013).

<sup>5</sup> Iowa Code §§ 476.100-101 (2013).

<sup>6</sup> The IUB has authority to investigate and approve intrastate access tariffs under Iowa Code § 476.4 (2013).



The dispute before the IUB was based on state law and involved intrastate calls. The Telecommunications Act of 1996 reserves state authority over intrastate communication services. 47 U.S.C. § 152(b). There are some specific provisions of the Telecommunications Act of 1996 that delegate authority to state regulators. For example, 47 U.S.C. § 252 delegates some authority over negotiated interconnection agreements and arbitrations to state regulators, and both Sprint (Br. 14-16) and CTIA—The Wireless Association (CTIA) (Br. 13-16) rely on *Verizon Maryland Inc. v. Public Serv. Comm'n of Maryland*, 535 U.S. 635 (2002), which involved the interpretation and enforcement of an interconnection agreement. The case before the IUB, however, did not involve an interconnection agreement or arbitration. It required the IUB to interpret an intrastate access tariff it had previously approved, and adjudicate the contradictory actions of disputing carriers who each claimed to be acting pursuant to the terms of that tariff. The IUB's jurisdiction over intrastate access charges is complaint based, and arises when carriers cannot agree to the terms and conditions upon which intrastate toll traffic is exchanged.<sup>7</sup> The authority to consider complaints necessarily includes switched access services which carriers pay to originate and terminate most interexchange calls. (Pet. App. 70a). When it adjudicated the dispute between Sprint and Windstream,

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<sup>7</sup> Iowa Code § 476.11 (2013); 199 Iowa Admin. Code r. 22-14 (2013).

the IUB was not acting as a “deputized federal regulator” as claimed by Sprint (Br. 10) or “in the voluntarily assumed capacity of a federal regulator” as claimed by CTIA. (Br. 33). The IUB was acting under state law.

Sprint claims that under the 1996 Act, authority to regulate no longer turns on a geographic distinction between intrastate and interstate, but instead on a technological distinction between telecommunications service and information service. (Br. 4).<sup>8</sup> Before the IUB, Sprint claimed it was not obligated to pay intrastate access charges under the intrastate access tariff because it did not provide regulated telecommunications service but rather information service. Sprint acknowledged the status of compensation for VoIP traffic was not clear, but asserted that the issue must be resolved by the Federal Communications Commission (FCC) and argued the IUB was preempted from deciding the case. (Pet. App. 73a).

Sprint claims that it did not ask the IUB to resolve the underlying question whether VoIP traffic was subject to intrastate access charges. (Br. 6-7). In order to adjudicate the competing claims under the tariff and prevent the emergency situation from arising again, however, the IUB had to resolve the underlying dispute about VoIP traffic. When Sprint filed its complaint, the FCC had not made any final determination about the classification of the type of

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<sup>8</sup> Sprint concedes that the determination of where a service falls on that technological divide is often difficult. (Br. 5).

VoIP traffic provided by Sprint and whether state authority over VoIP traffic was pre-empted. In fact, the FCC has yet to finally classify VoIP traffic, and has not been persuaded that all VoIP traffic must be exclusively under federal regulation.<sup>9</sup> Acknowledging the resulting regulatory uncertainty created, the FCC nevertheless indicated that state regulatory agencies have had to resolve disputes over intercarrier compensation for intrastate VoIP traffic.<sup>10</sup> That is what the IUB did in this case.

## II. THE PROCEEDING BEFORE THE IUB INVOLVES IMPORTANT STATE INTERESTS.

The regulation of utilities is one of the most important functions traditionally associated with the states' police powers. *New Orleans Pub. Serv., Inc. v.*

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<sup>9</sup> *Connect America Fund, etc.*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd. 17663, ¶ 934 (FCC Nov. 18, 2011). As recently as April 2013, the FCC reiterated that it has not addressed the classification of interconnected VoIP services. *Numbering Policies for Modern Communications, IP-Enabled Services, et al.*, WC Docket No. 13-97, *et al.*, Notice of Proposed Rulemaking, Order and Notice of Inquiry, FCC 13-51, 28 FCC Rcd. 5842, ¶ 6 (FCC Apr. 18, 2013).

<sup>10</sup> *Connect America Fund*, FCC 11-161, 26 FCC Rcd. 17663, ¶¶ 937-938. For an example contemporaneous with the IUB's adjudication, see *Petition of UTEX Communications Corp., etc.*, DA 09-2205, 24 FCC Rcd. 12573, ¶¶ 9-10 (Wir. Comp. Bur. 2009), *renewed pet. denied*, 25 FCC Rcd. 14168 (Wir. Comp. Bur. 2010). The proceeding before the Texas PUC involved an arbitration under 47 U.S.C. § 252(e)(5).

*City of New Orleans*, 491 U.S. 350, 365-66 (1989). The Iowa legislature has adopted policy statements intended to guide the IUB in its consideration of telecommunications issues during the on-going transition from a fully-regulated market to a competitive one. These legislative findings recognize the importance of communications services in today's society and require the IUB to ensure that communications services are widely available at just, reasonable, and affordable rates from a variety of providers.<sup>11</sup> The IUB must also consider the effects of its decisions on competition in telecommunications markets and act to further the development of competition.<sup>12</sup> These important state interests were at stake in the state proceedings.

Contrary to Sprint's argument, the dispute in this case was much more than a "garden variety commercial dispute." (Br. 9). Maintaining the integrity of the state's telephone network and protecting customers from disruptions and loss of service is a vital component of the IUB's statutory duties.<sup>13</sup> Iowa's many rural customers often depend on long distance calls to seek medical assistance, contact family, interact with school and community officials, and conduct business. Customers' health, safety and welfare can be endangered when they lose their ability to place or receive long distance calls.

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<sup>11</sup> Iowa Code § 476.95(1) (2013).

<sup>12</sup> Iowa Code § 476.95(2) (2013).

<sup>13</sup> Iowa Code §§ 476.3, 476.5, 476.20(1), and 476.29 (2013).

End-user customers are the ones most affected by a carrier dispute which carries a potential for disconnection of service. Those customers expect a fully-functioning and seamless communications network, and are almost always unaware of the number and identities of the carriers who may be involved in the transmission of a toll call. The self-help remedies used as leverage by Sprint, in withholding payment, and Windstream, in threatening to disconnect services to Sprint, endangered the continuation of services to end-user customers. The actions of the disputing carriers put at risk the service to the direct and indirect end-user customers of both Sprint and Windstream, and the IUB's adjudication of the dispute was "necessary for the vindication of important state policies." *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982).

The IUB also has a duty to consider the effects of its decisions on competition, and act to further competition where reasonable and lawful. Retail telephone rates are deregulated in Iowa and carriers set rates as they see fit.<sup>14</sup> Access charges are wholesale carrier rates, but are ultimately recovered from retail customers. In the case before the IUB, allowing VoIP carriers like Sprint to avoid intrastate switched access charges would reduce Sprint's cost of business and give Sprint an advantage over its interexchange carrier competitors. (Pet. App. 87a). Iowa customers

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<sup>14</sup> Iowa Code § 476.1D (2013).

must rely on the competitive market for services that are available from a variety of providers at reasonable and affordable rates. Different treatment of carriers would detrimentally affect that market. Iowa law also proscribes a carrier from taking any action that disadvantages a customer who has chosen to receive service from another carrier.<sup>15</sup> Threats to block calls or disconnect service would disadvantage customers who chose Sprint as their carrier. (Pet. App. 143a). These issues were implicated by the dispute between Sprint and Windstream, and the IUB is the entity charged with assuring the state's important state policies remain in place and are enforced. *Middlesex Cnty.*, 457 U.S. at 432.



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<sup>15</sup> Iowa Code § 476.101(9) (2013).

**CONCLUSION**

The judgment of the Eighth Circuit Court of Appeals should be affirmed.

Respectfully submitted,

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