No. 12-815

In the
Supreme Court of the United States

SPRINT COMMUNICATIONS COMPANY, L.P.,
Petitioner,

v.

ELIZABETH S. JACOBS, et al.,
Respondents.

**On Writ of Certiorari to
The United States Court of Appeals
for the Eighth Circuit**

REPLY BRIEF FOR THE PETITIONER

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INTRODUCTION AND SUMMARY

Sprint's opening brief demonstrated that the Eighth Circuit's decision is inconsistent with this Court's jurisprudence establishing the primacy of the federal judiciary in deciding questions of federal law and inconsistent with the purposes of abstention. The abstention doctrine is intended to permit states to interpret and administer state statutory, regulatory, and enforcement regimes without undue interference from the federal courts. But this case does not implicate those concerns—it is a commercial dispute about the proper division of authority under *federal* law between the FCC and the states.

In urging application of *Younger* abstention here, the IUB seeks to dramatically expand the doctrine, transforming a narrow *exception* to the district courts' virtually unflagging obligation to decide cases over which they have jurisdiction into the rule. Contrary to the IUB's claims, its conception of *Younger* is utterly devoid of meaningful limiting principles. In particular, its understanding of *Younger* would mandate exclusive state-court review of essentially all IUB proceedings that are "adjudicatory" in nature, even when (as here) they involve only garden-variety commercial disputes between private parties.

The IUB bases its arguments for *Younger* abstention substantially on decisions not even mentioned by the Eighth Circuit. Unlike the present case, however, the decisions cited by the IUB—including *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975), *Juidice v. Vail*, 430 U.S. 327 (1977), and *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987)—all fit comfortably within the *Younger* categories identified by this Court in *New Orleans Public Service, Inc. v. Council of New Orleans,* 491 U.S. 350 (1989) ("*NOPSI*"). And nothing about either the holdings or the reasoning of those cases suggests that *Younger* should apply here.

The IUB's argument that the state-court proceeding to which the lower courts deferred *was* coercive borders closely on frivolous. To the contrary, *Sprint* sought review of the IUB proceedings in state court, albeit only because Eighth Circuit law would otherwise have barred Sprint from federal court. Moreover, because Sprint had paid Windstream all disputed monies at the conclusion of the IUB proceedings, there was, as a practical matter,

nothing for the state to "coerce" Sprint into doing by the time of the district court decision to abstain.

Finally, the IUB's vague insistence that the lower federal courts properly abstained because this case *belongs* in state court, since it purportedly involves review of a "state-law proceeding" in which the IUB did not act "as a deputized federal regulator," IUB Br. 8, is both beside the point and wrong. It is beside the point because *Burford* abstention, not *Younger*, is concerned with avoiding federal interference with state regulatory policy, and the IUB itself emphasizes that it does not invoke *Burford* here. And it is wrong because the issues before both the IUB and the courts below were fundamentally federal law issues governed by the Telecommunications Act of 1996 ("1996 Act").

ARGUMENT

I. THE IUB SEEKS TO DRAMATICALLY EXPAND THE SCOPE OF *YOUNGER* ABSTENTION.

The IUB invokes "equity, comity, and federalism," IUB Br. 10, to argue that federal courts should apply *Younger* in deference to virtually all "state civil proceedings involving important state interests" and "state administrative proceedings that are judicial in nature, so long as the federal plaintiff has a full and fair opportunity to present any constitutional claims." IUB Br. 11. But that turns *Younger* on its head, transforming a narrow exception to the "right of a party plaintiff to choose a Federal court where there is a choice," *England v. La. State Bd. of Med. Exam'rs*, 375 U.S. 411, 415 (1964), into the rule for a broad swath of cases.

A. *Younger* Abstention Is the Exception, Not the Rule.

In *England*, this Court observed that when "Congress, pursuant to constitutional authorization, has conferred specific categories of jurisdiction upon the federal courts," the courts have a "*duty* to take such jurisdiction."[1] *Id.* (emphasis added and internal citation omitted). Against that backdrop, as the *NOPSI* Court wrote, "only exceptional circumstances justify a federal court's refusal to decide a case in deference to the States." 491 U.S. at 368. *NOPSI* also sets forth the particular "exceptional circumstances" in which "concern for comity and federalism" has "led [this Court] to expand the protection of *Younger* beyond state criminal prosecutions." *Id.* at 367-68. Specifically, those circumstances include "civil enforcement proceedings" and "civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions." *Id.*

But the IUB does not even attempt to argue that the present case fits within the *Younger* categories identified by *NOPSI*. Rather, as noted above, the Board maintains that essentially all "state judicial inquiries" are "entitled to *Younger* abstention." IUB

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[1] For a seminal critique of abstention doctrine on the ground that this duty is ineradicably rooted in separation of powers principles, *see* Martin H. Redish, *Abstention, Separation of Powers, and the Limits of the Judicial Function*, 94 Yale L. J. 71 (1984). For a balanced critique of Professor Redish's argument, *see* George D. Brown, *When Federalism and Separation of Powers Collide—Rethinking* Younger *Abstention*, 59 Geo. Wash. L. Rev. 114 (1990).

Br. 17. But this is a dramatic overreading of *NOPSI*; again, the IUB simply ignores the *NOPSI* Court's discussion of what *constitutes* "judicial" state action for purposes of *Younger*. That fundamental error turns the IUB's conception of *Younger* abstention into exactly what *NOPSI* said that it is *not*—a general "doctrine that the availability or … the pendency of state judicial proceedings excludes the federal courts." 491 U.S. at 373. In short, the *IUB* improperly transforms *Younger* from the exception into the rule.

B. The IUB's Application of *Younger* Abstention Lacks Meaningful Limiting Principles.

Given that the IUB casts *Younger* as a broad rule, it is not surprising that its brief is devoid of meaningful limiting principles. "[E]quity, comity, and federalism," IUB Br. 10, are all worthy values, but such broad notions do little to trace a practical line between cases in which the federal courts have a "duty" to exercise their jurisdiction, and the narrow subset of abstention cases in which that duty should yield to the "state courts as the final expositors of state law." *England*, 375 U.S. at 415-16.[2]

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[2] There is, moreover, an odd asymmetry to the IUB's notion of comity. While the IUB repeatedly emphasizes the purportedly critical nature of *state* court review of the *federal* issues decided by the IUB, the fact is that "comity works both ways." *Chaulk Servs., Inc. v. Mass. Comm'n Against Discrimination*, 70 F.3d 1361, 1369 (1st Cir. 1995). As discussed in Sprint's opening brief, under this Court's cases, *federal* courts are the final expositors of *federal* law, which is what is at issue here. Pet. Br. 14-18; *see also infra* at 20-24.

Like the Eighth Circuit's decision below, the IUB's broad reconceptualization of *Younger* abstention relies primarily on the three-part test of *Middlesex County*. *See* IUB Br. 13-17. But the Board ignores a critical limitation implicit in *Middlesex County*, as well as explicit limitations contained in the three-part test.

First, as Sprint argued in its opening brief—an argument that the IUB simply ignores—the *Middlesex County* test is, "[r]ead literally," Pet. Br. 28 (quoting *Green v. City of Tucson*, 255 F.3d 1086, 1093 (9th Cir. 2001)), far broader than this Court's *Younger* precedents as a whole. That is because *Middlesex County* itself clearly *did* involve one of the three categories of "judicial" action subject to *Younger* abstention that were later identified by *NOPSI*. Specifically, the state bar disciplinary proceedings in *Middlesex County* obviously were "civil enforcement proceedings," *NOPSI*, 491 U.S. at 368, so there was no need for the Court there to pose the question whether the case was of a "*type* … that is due the deference accorded by *Younger* abstention." *Brown ex rel. Brown v. Day*, 555 F.3d 882, 888 (10th Cir. 2009).

In addition to ignoring this limitation that is *not* expressly stated in *Middlesex County*, the IUB also effectively reads out the limitations that are present in that case's three-pronged *Younger* analysis. First, the IUB essentially substitutes "adjudicatory" for the word "judicial" in the first prong of the *Middlesex County* test. Plainly, however, this expansive understanding of the term "judicial" supplies no limitation at all in connection with state *court* cases. They are *all* adjudicatory by definition. And, even in connection with administrative proceedings, this

"limit" does nothing to distinguish ordinary commercial disputes—like this one—from the kinds of "judicial" cases to which this Court has applied *Younger*, which involve a state's invocation of its criminal or quasi-criminal "judicial" power against a party. *See also infra* at 16-19 (discussing the usefulness of a "coercion" prong in identifying "judicial" cases subject to *Younger*). Such coercive "judicial" power is fundamentally different from disinterested "adjudicatory" authority.

In addition, the IUB reads *Middlesex County*'s "important state interests" limitation so broadly as to render it meaningless. As the Law Professor *amici* point out, the interests that the IUB advances are interests in the state *agency* proceeding. Law Prof. Br. 15-17. But those interests cannot logically constitute "important state interests" for purposes of abstention analysis here, because that is not the proceeding in favor of which the district court abstained—the district court deferred to state judicial *review* of the IUB decision. *Id.* The proper *Younger* question here is thus whether the state's interests in *state* judicial review of the federal questions presented in Sprint's federal case are sufficiently important to trump *federal* court review of those federal questions—which, of course, they are not.

Moreover, even if the state's interests in the IUB proceedings were relevant, the IUB advances interests so broad and general that this prong will always be satisfied in IUB cases. Barring the very slim possibility of utterly rogue action by the Board, its cases presumably *always* involve "[r]egulation of utilities" and "protecting its citizens." IUB Br. 15. In

short, the IUB reads this prong of *Middlesex County* to supply no meaningful limitation on *Younger*.

The IUB also advances certain purported "well-established limits" that it contends suffice to keep *Younger* "within its proper bounds." IUB Br. 20. But, upon closer examination, these "limits" simply evaporate.

First, the IUB claims, "*Younger* abstention does not apply when the state administrative proceedings are legislative in nature, rather than judicial." IUB Br. 21. As discussed above, however, by reading "judicial" to mean "adjudicatory," *see supra* at 6, and ignoring the limitations on the *kinds* of judicial action subject to *Younger* described by *NOPSI*, the IUB vastly broadens the *Middlesex County* test.

The IUB also invokes the "limit" that "[a]bstention is not available if the plaintiff is seeking something other than equitable or other discretionary relief," IUB Br. 21 (citing *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 719 (1996)). While true, this supplies no significant limitation with respect to review of IUB or other state-agency decisions on federal-law issues in federal court. Plaintiffs (like Sprint in this case) seeking federal-court review of federal-law issues decided by state agencies are presumably *always* seeking "equitable or other discretionary relief." In other words, a federal plaintiff seeking correction of an erroneous state-agency construction of federal law must necessarily seek declarative and/or injunctive relief from the district court in order to obtain relief at the state agency.

Moreover, upon closer examination, *Quackenbush*—which *affirmed* the Ninth Circuit's

refusal to apply *Burford* abstention—supports *Sprint*'s position here, not the IUB's. Specifically, the *Quackenbush* Court explained that abstention analysis "balances the strong federal interest in having certain classes of cases, and certain federal rights, adjudicated in federal court, against the State's interests in maintaining uniformity in the treatment of an essentially local problem." 517 U.S. at 728 (internal citation omitted). And "[t]his balance only rarely favors abstention," which "represents an extraordinary and narrow exception to the duty of the District Court to adjudicate a controversy properly before it." *Id.* (internal citation omitted). That is precisely what Sprint argues here—abstention is a rare exception to the "virtually unflagging obligation" of the federal courts to decide issues over which Congress has granted them jurisdiction. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976).

The IUB's three final purported "limits" on *Younger* bear little discussion. The IUB points out that in cases of judicial bias, *Younger* does not apply. IUB Br. 21. Again, this is true, but as a practical matter it appears unlikely to impose any significant limitation on the application of *Younger* to IUB cases, since bias does not appear widespread within either the IUB or the Iowa state-court system. The IUB's point that "*Younger* abstention does not apply when Congress has declared that state action in specific circumstances should be reviewed in federal court," *Id.* at 21, is also correct—but the fact that Congress has stated that some federal law issues *cannot* be heard in state court does not mean that all other such issues *must* be heard in state court. To the contrary, as discussed above, the background

rule recognizes the "right of a party plaintiff to choose a Federal court where there is a choice," *England*, 375 U.S. at 415, and *Younger* is a narrow *exception* to that rule. Finally, the IUB observes that "abstention is unavailable if any one of the three *Middlesex County* factors is not present," IUB Br. 21—but, as also discussed above, the IUB maintains that those factors are *always* present in its adjudications. *See supra* at 7-9. The logical conclusion—which the IUB confirmed to the Eighth Circuit in oral argument—is that IUB adjudicatory decisions are reviewable only in state court.

In sum, the IUB's conception of *Younger*—that the federal courts must abstain in favor of *all* state court and agency adjudications, so long as an "important state interest" (very broadly defined) exists and the plaintiff can present his federal questions in state court—would represent an enormous and unjustifiable expansion of the doctrine.

C. The Cases on Which the IUB Relies Do Not Support Abstention Here.

Sprint's opening brief pointed out that the Eighth Circuit's decision relied only on *NOPSI* and *Middlesex County*, ignoring all of this Court's other *Younger* cases cited by Sprint. Pet. Br. 24. Sprint further demonstrated that the lower court misread *NOPSI* by ignoring the Court's discussion of the specific, limited categories of "judicial" cases to which *Younger* applies, *Id.* at 25-27, and failed to take the context of *Middlesex County* into account. *Id.* at 27-29.

The IUB does not attempt to respond to Sprint's arguments concerning *NOPSI* and *Middlesex County*, but instead invokes additional *Younger* decisions not mentioned by the Eighth Circuit. Unlike this case, however, those cases—*Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975), *Juidice v. Vail*, 430 U.S. 327 (1977), and *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987)—all fit comfortably within the *Younger* categories identified by *NOPSI*.

1. *Huffman*: The IUB argues that *Huffman* stands for the broad proposition that "federal restraint is appropriate in civil proceedings because the comity and federal interests underlying the *Younger* doctrine fully apply to civil proceedings where important state interests are involved." IUB Br. 12. In fact, however, the import of *Huffman* is more limited, and neither its holding nor its reasoning applies here.

Huffman involved an action brought in state court by "the sheriff and prosecuting attorney of Allen County, Ohio" to enforce Ohio's public nuisance statute, Ohio Rev. Code Ann. § 3767.01 *et seq*. (1971), against the operator (Pursue) of a theater that "specialized in the display of films … which in numerous instances [had] been adjudged obscene after adversary hearings." 420 U.S. at 595. After the state court entered judgment ordering the theater closed, Pursue filed suit in federal district court seeking to enjoin enforcement of Ohio's nuisance statute on the ground that it was unconstitutional, rather than pursuing state appeals. *Id.* at 598.

The *Huffman* Court acknowledged that *Younger* is based, in part, on "the traditional reluctance of courts of equity … to interfere with a criminal

prosecution." 420 U.S. at 604. But, the Court noted, "we deal here with a state proceeding which in important respects is more akin to a criminal prosecution than are most civil cases." *Id.* In particular, the Court pointed out that the "State is a party to the Court of Common Pleas proceeding, and the proceeding is both in aid of and closely related to criminal statutes which prohibit the dissemination of obscene materials." *Id.* As a result, the Court concluded, "an offense to the State's interest in the nuisance litigation is likely to be every bit as great as it would be were this a criminal proceeding." *Id.*

Against this backdrop, it is clear that *Huffman* was a "civil enforcement proceeding," as *NOPSI* itself indicates. 491 U.S. at 368. This case, in contrast, arises from a commercial dispute between Sprint and Windstream regarding the intercarrier compensation applicable to certain VoIP calls. The IUB's adjudication of that dispute is neither "in aid of" nor even remotely "related" to any criminal statute. 420 U.S. at 604. Accordingly, this case does not fall within the category of civil enforcement proceedings to which *Younger* has been extended in cases like *Huffman*.[3]

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[3] The IUB also claims that *Huffman* was intended to limit "duplicative legal proceedings," while Sprint purportedly "seeks to present its claims in a repetitive manner; first its federal claim in federal court and then its state claims in state court." IUB Br. 12. Again, however, as Sprint has repeatedly explained throughout this litigation, it filed in state court only because of the Eighth Circuit's rule 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). *See also infra* at 19.

2. *Juidice* and *Pennzoil:* As with *Huffman*, the IUB invokes *Juidice* and *Pennzoil* for an extremely general principle: "If there is a sufficiently important state interest, comity requires abstention." IUB Br. 24. But, as with *Huffman*, the decisions themselves are far narrower.

As the IUB appears to acknowledge, IUB Br. 24, *Juidice* and *Pennzoil* fall into the category of *Younger* cases that *NOPSI* described as "civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions." 491 U.S. at 368. This case does not, of course, fit within that category, and the Court's analysis in *Juidice* and *Pennzoil* does not apply here.

In *Juidice*, a default judgment was entered against a debtor named Vail, who then failed to appear when subpoenaed for a deposition relating to satisfaction of the judgment. Juidice, a Justice of New York's Dutchess County Court, issued Vail an order to show cause why he should not be held in contempt. When Vail failed to appear for the hearing, Juidice held Vail in contempt and imposed a fine. Vail and co-plaintiffs filed suit in district court raising federal constitutional challenges to New York's statutory contempt procedures.

This Court found that "[t]he contempt power lies at the core of the administration of a State's judicial system." *Juidice,* 430 U.S. at 335. Accordingly, "[w]hether disobedience of a court-sanctioned subpoena, and the resulting process leading to a finding of contempt of court, is labeled civil, quasi-criminal, or criminal in nature," the "salient fact is that federal-court interference with the State's

contempt process is 'an offense to the State's interest … likely to be every bit as great as it would be were this a criminal proceeding,' *Huffman, supra*, 420 U.S. at 604." *Juidice*, 430 U.S. at 335-36. The Court further explained that the contempt process clearly "stands in aid of the authority of the judicial system, so that its orders and judgments are not rendered nugatory." *Id.* at 336 n.12 (internal citation omitted).

The concerns expressed by the *Juidice* Court, like those of *Huffman*, are absent here. As noted above, the lower courts here—in which Sprint raised only federal-law issues—abstained in favor of state-court *review* of the IUB decision. A state's interest in federal non-interference with state-court review of a state agency's construction of federal law plainly is not "every bit as great" as a state's interest in federal non-interference with a state criminal prosecution. *Juidice,* 430 U.S. at 336 (citing *Huffman,* 420 U.S. at 604).

Pennzoil is readily distinguishable for similar reasons. Like *Juidice*, *Pennzoil* arose from litigation between private parties. Specifically, Pennzoil filed a tortious-interference-with-contract action against Texaco in Texas state court, *see Texaco, Inc. v. Pennzoil, Co.*, 729 S.W.2d 768, 784-85 (Tex. Ct. App. 1987), and ultimately received a $10.5 billion jury verdict. *Id.* at 784. Under Texas law, the entry of final judgment would permit Pennzoil to obtain liens on Texaco's property; Pennzoil could obtain a writ of execution and begin collecting on Texaco's assets thirty days after entry of judgment. *Pennzoil*, 481 U.S. at 4-5. Texas law further specified that an appeal would delay execution of final judgment, but only if Texaco posted a bond in the amount of the judgment plus interest and costs, approximately

$13 billion. *Id.* at 5-6. Texaco appealed in state court without posting a bond, *id.* at 6 n.5, and—before entry of judgment—filed suit in federal district court claiming that the Texas bond requirement violated its federal constitutional rights. *See Texaco, Inc. v. Pennzoil Co.*, 626 F. Supp. 250, 251 (S.D.N.Y. 1986). The lower courts enjoined Pennzoil from filing any lien against Texaco or attempting to collect the judgment.

The *Pennzoil* Court's majority opinion found that "[t]he reasoning of *Juidice* controls here." 481 U.S. at 13. The Court explained:

> [*Juidice*] rests on the importance to the States of enforcing the orders and judgments of their courts. There is little difference between the State's interest in forcing persons to transfer property in response to a court's judgment and in forcing persons to respond to the court's process on pain of contempt. Both *Juidice* and this case involve challenges to the processes by which the State compels compliance with the judgments of its courts.

Pennzoil, 481 U.S. at 13-14. The *Pennzoil* Court also stated that, "as in *Juidice*, we rely on the State's interest in protecting 'the authority of the judicial system, so that its orders and judgments are not rendered nugatory." *Pennzoil*, 481 U.S. at 14 n.12.

The present case, of course, has nothing to do with "the processes by which the State compels compliance with the judgments of its courts." *Id.* at 13-14. Nor does it have anything to do with protecting "the authority of the judicial system" in Iowa. And the state had no interest here in "forcing" Sprint to "transfer property," *id.*, since Sprint paid

Windstream in full at the close of the IUB proceedings. Again, the *Younger* question in this case is whether federal courts must abstain based on a state's interest in *state-court* review of a state administrative agency's decisions on issues of *federal* law. *Pennzoil* does not suggest anything of the sort. To the contrary, as *NOPSI* indicates, *Juidice* and *Pennzoil* merely expanded *Younger* to a narrow category of "civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions." 491 U.S. at 368.

II. THE COERCIVE/REMEDIAL DISTINCTION IS CONSISTENT WITH THIS COURT'S *YOUNGER* CASES.

In addition to claiming that *Pennzoil* and *Juidice* support abstention here—which, as discussed above, they do not—the Board also argues that those decisions are inconsistent with the "coercion" requirement adopted by nearly every court of appeals. IUB Br. 22-29. That argument is wrong, and also misunderstands the purpose of the coercion requirement.

First, the IUB's argument that *Pennzoil* and *Juidice* "cannot be characterized as 'coercive,'" IUB Br. 23-24, is incorrect. Again, in *Pennzoil,* this Court wrote that "[b]oth *Juidice* and this case involve challenges to the processes by which the State compels compliance with the judgments of its courts." 481 U.S. at 13-14. And, as set forth above, this Court described the states' interests in those cases as "forcing persons to transfer property in response to a court's judgment" (*Pennzoil*) and "forcing persons to respond to the court's process on

pain of contempt" (*Juidice*). Given this Court's characterization of *Pennzoil* and *Juidice* as involving states "compelling" or "forcing" compliance, those cases appear entirely "reconcile[able]," IUB Br. 23, with a test applying *Younger* abstention only in the context of coercive state action.

The present case, in contrast, does not involve "the processes by which the State compels compliance with the judgments of its courts." *Pennzoil,* 481 U.S. at 13-14. And Iowa has no interest here in "forcing persons to transfer property in response to a court's judgment." *Id.* There had not, of course, even been a state court "judgment" at the time of the lower courts' abstention decisions.[4] And, as noted above, Sprint paid Windstream *all* monies in dispute at the conclusion of the Board's proceedings, so there was nothing left for Sprint to "transfer." This case is about whether Sprint gets any of that money *back*.

Perhaps more importantly, the IUB also misunderstands the purpose of the coercive/remedial distinction. As discussed above, the *Pennzoil* and *Juidice* cases fall into the category of *Younger* cases that *NOPSI* describes as "civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions." 491 U.S. at 368. That category of cases is

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[4] The Iowa district court has now ruled on Sprint's state petition for review. *Sprint Commc'ns Co., L.P. v. Iowa Utils. Bd.,* Case No. CVCV008638, slip op. (Iowa Dist. Ct. Sept. 16, 2013). The decision contained errors of federal law and state procedure, and Sprint intends to seek reconsideration in the state trial court and, if necessary, appellate review.

a small one, and presumably does not pose difficult line-drawing problems. Certainly, it is clear that the present case does not involve an "order[] … uniquely in furtherance of the state courts' ability to perform their judicial functions," *id*.—even the IUB does not appear to argue that it does.

The purpose of the coercion requirement relates to the *other* category of non-criminal cases to which *NOPSI* indicates that *Younger* has been extended—the "civil enforcement proceedings" category. 491 U.S. at 368. As Sprint argued in its opening brief, "in cases where the quasi-criminal nature of state enforcement action is *not* obvious, the coercion inquiry adopted by the vast majority of circuits serves to ensure that an administrative proceeding falls within" the scope of *Younger*. Pet. Br. 29. Thus, in *Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc.*, 477 U.S. 619 (1986), this Court employed the coercive/remedial line to distinguish coercive proceedings brought by a state to enforce its policy against sex discrimination from a non-coercive employment-discrimination claim brought by an individual in *Patsy v. Board of Regents of Florida*, 457 U.S. 496 (1982). Plainly, for *Younger* purposes, the state's interest in state-initiated civil enforcement proceedings is stronger than its interest in adjudication of private claims of discrimination, and the coercive/remedial line helps to make that distinction.

Finally, though, it bears emphasis that neither the circuit courts that have adopted the "coercion" requirement nor Sprint has ever suggested that "coercion" is the be-all and the end-all of *Younger* analysis. Rather, Sprint argues that the *Middlesex County* prongs, read literally, do not address the

important question whether ongoing state proceedings "fall within the categories to which *Younger* can apply, as later described by *NOPSI*." Pet. Br. 28-29. Cases like *Pennzoil* and *Juidice* that fall into the *NOPSI* category "involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions," 491 U.S. at 368, are likely to be rare and readily identified. But the line between purely civil actions (to which *Younger* does not apply) and civil actions in which the state has an enforcement interest (to which *Younger* may apply) is harder to draw, and the "coercion" requirement helps to define it.

III. SPRINT'S STATE-COURT PETITION FOR REVIEW OF THE IUB'S DECISION WAS NOT A COERCIVE STATE ACTION.

The IUB's argument that even if *Younger* abstention requires coercive state action, the state proceeding to which the federal courts deferred *was* coercive borders on frivolous. First, the IUB again focuses on the wrong state proceedings, the "IUB proceedings." IUB Br. 29. Again, at the time of the district court's abstention analysis, the IUB proceedings had concluded. *See* Law Prof. Br. 10-17. Sprint had subsequently sought review of the IUB's decision in the Iowa courts—albeit only because Sprint would otherwise have been barred from federal district court in the Eighth Circuit under *Alleghany*. *Cf. Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 294 n.9 (2005) (finding nothing "inappropriate ... about filing a protective action" in state court).

Plainly, however, Sprint's appeal was not coerced, or at least not coerced by Iowa. Moreover, as noted

above, Sprint had repaid Windstream all disputed monies at the conclusion of the Board proceedings, Pet. Br. 7, so there was nothing left for the state to "coerce" Sprint into doing at the time of the lower courts' decisions to abstain. Finally, there was, in any event, nothing "coercive" about even the IUB proceedings themselves—*Sprint* initiated those proceedings to resolve a commercial dispute, and the IUB's determination not to close them at Sprint's request did not transform them into coercive state action any more than a trial court's denial of a motion for voluntary dismissal of a commercial dispute would transform it into coercive state action.[5]

IV. THE IUB'S SUGGESTIONS THAT THIS CASE INVOLVES PRIMARILY STATE-LAW ISSUES ARE WRONG.

A general theme of the IUB's brief is that the lower courts properly abstained because this case *belongs* in state court, since it purportedly involves review of a "state-law proceeding" in which the IUB acted "in its sovereign capacity" and "not as a deputized federal regulator." IUB Br. 8. Indeed, the

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[5] The IUB's argument that it sought to "coerce" Sprint is particularly odd here because the Board actually *granted* Sprint's motion to withdraw its complaint. Pet. App. 67a. The IUB nonetheless proceeded to address "the parties' rights and obligations (as provided in federal law, state law, and Iowa Telecom's tariff) regarding intrastate switched access charges" applicable to Voice over Internet Protocol (VoIP) traffic. *Id.* at 68a. The Board's decision analyzes *federal* law governing that issue for some fifty-three pages of the Petitioner's Appendix, 72a-125a, but contains no mention of coercion or enforcement.

IUB goes so far as to claim that the "issues before [it] involved straightforward [state] tariff interpretation, akin to contract interpretation." *Id.* at 35. But the IUB's depiction of Sprint's federal case as involving primarily state-law issues that belong in state court is both beside the point and wrong.

The IUB's argument is beside the point because *Burford* abstention, not *Younger*, is concerned with avoiding federal interference—which could be "dangerous to the success of state policies," *Burford v. Sun Oil Co.*, 319 U.S. 315, 332-34—in "complex state regulatory system[s]," *NOPSI*, 491 U.S. at 361 (quoting *New Orleans Pub. Serv., Inc. v. City of New Orleans*, 798 F.2d 858, 861-62 (5th Cir. 1986)). But the IUB itself emphasizes that it does not invoke *Burford* here. IUB Br. 34-35. And *NOPSI* makes clear that *Burford* would not apply if the IUB had raised it. Pet. Br. 33-34.

The IUB's argument is wrong because it fails to recognize the fundamentally *federal* nature of the 1996 Act issues before both the IUB and the courts below. The heart of the IUB's misunderstanding is its claim that "[s]tates have primary authority over intrastate services." IUB Br. 19 (citing 47 U.S.C. § 152(b)). Both as a general matter under the 1996 Act, and with respect to the specific legal issues underlying this dispute, that is incorrect. As this Court explained in *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 378 n.6 (1999), there is no question under the 1996 Act "*whether* the Federal Government has taken the regulation of local telecommunications competition away from the States. With regard to the matters addressed by the 1996 Act, it unquestionably has." (emphasis added).

The specific dispute underlying this appeal concerns access charges, which are one kind of "intercarrier compensation," or payment made between telephone companies. Access charges are, of course, a "matter[] addressed by the 1996 Act." *Id.* Indeed, as the FCC has explained, Section 251(b)(5) of the Act addresses intercarrier compensation for *all* "telecommunications," without regard to "geographic scope (*e.g.*, 'local,' 'intrastate,' or 'interstate')." *Connect Am. Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17,663, 17,915 ¶ 761 (2011) ("*Intercarrier Compensation Reform Order*").

Again, the IUB claims that notwithstanding the broad scope of Section 251(b)(5), "[s]tates [still] have primary authority over intrastate services," citing 47 U.S.C. § 152(b). IUB Br. 19. But the FCC has specifically "reject[ed] arguments that section 251(b)(5) does not apply to intrastate access traffic." *Intercarrier Compensation Reform Order* at 17,916 ¶ 765. The Commission has likewise rejected claims that Section 152(b) limits federal authority over intrastate traffic, quoting this Court's holding that "[s]uch an interpretation [of Section 152(b)] would utterly nullify the 1996 [Act] amendments, which clearly 'apply' to instrastate services." *Id.* (quoting *AT&T v. Iowa Utils. Bd.*, 525 U.S. at 380).

As the FCC has also explained, for access traffic exchanged *before* issuance of that *Order*—including the traffic at issue in this case—Section 251(g) of the Act "preserved the pre-1996 Act regulatory regime that applie[d] to access traffic," including the rules for intercarrier compensation. *Intercarrier Compensation Reform Order* at 17,916 ¶ 763. The dispute in this case arose because it is unclear what

pre-1996 Act regulatory regime applies under Section 251(g). As *amicus* CTIA explained in its brief:

> Because the Telecommunications Act "regulates telecommunications carriers, but not information-service providers, as common carriers," *National Cable Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 975 (2005), if VoIP calls are deemed an "information service," then they are not subject to regulation [under § 251(g)] by a state utility commission, *see* 47 U.S.C. § 153(24) …. [But] [i]f VoIP calls were considered a "telecommunications service" and treated like other traditional telephone traffic for intercarrier compensation, then the state regulator (subject to federal law limitations) could decide whether intrastate access charges were appropriate.

CTIA Br. 7. Plainly, however, the question whether VoIP calls made prior to the *Intercarrier Compensation Reform Order* should be treated as "information services" or "telecommunications services" is an issue of *federal* law arising under the 1996 Act. Again, that is the central merits question underlying this appeal.

As Sprint explained in its opening brief, its position before the IUB was that the Board lacked authority to resolve this underlying merits question, because "the issue is a fundamental question of federal law and policy that *only* the FCC may answer." Pet. Br. 7. But the "IUB disagreed, and issued a 50-page analysis both claiming authority to decide the issue and concluding that federal law *does*

permit imposing access charges on VoIP calls." *Id.* Sprint's complaint in federal district court was limited to the question of the Board's authority and the status of VoIP calls—"information service" versus "telecommunications service"—under the 1996 Act. Sprint raised *no* issues of state law. J.A. 6a-8a.

In short, the IUB's repeated suggestions that this case *belongs* in state court because it involves review of a "state-law proceeding," IUB Br. 8, concerning issues of "straightforward [state] tariff interpretation," *id.* at 35, are incorrect. This case involves a federal preemption argument arising under the Supremacy Clause and issues of federal telecommunications law arising under the Telecommunications Act of 1996. Consistent with the federal courts' "virtually unflagging obligation" to decide cases brought before them, *Colorado River Water Conservation Dist.*, 424 U.S. at 817, these issues should be allowed to proceed in federal court unless they fall into one of the narrow exceptions to this general rule under the abstention doctrines. As discussed above, they do not.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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