

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

---

<p>IN RE:</p> <p>RON LUDWIG,</p> <p style="padding-left: 40px;">Complainant,</p> <p style="padding-left: 80px;">v.</p> <p>LEAST COST ROUTING, INC.,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>DOCKET NO. FCU-00-5 (C-00-148)</p>
--	---

---

**ORDER APPROVING SETTLEMENT AGREEMENT**

(Issued December 20, 2000)

On April 10, 2000, Mr. Ron Ludwig filed an informal complaint with the Utilities Board (Board) regarding his long distance telephone service, pursuant to Iowa Code Supplement § 476.103(1999). In his complaint, Mr. Ludwig alleged his long distance service at his home and his business had been slammed by Least Cost Routing, Inc. (Least Cost Routing or LCR) in November of 1999.

The complaint was docketed as C-00-148, and handled as an informal complaint. The parties were unable to resolve the complaint informally, and Board staff requested the Board docket the case as a formal complaint proceeding and consider imposition of civil penalties.

On August 31, 2000, the Board issued an Order Initiating Formal Complaint Proceeding and Assigning to Administrative Law Judge. In the Order, the Board found that Least Cost Routing's response was inadequate in several respects and there was reasonable ground for further investigation of the complaint. The Board docketed the matter as a formal complaint proceeding and assigned the case to the undersigned administrative law judge.

On September 20, 2000, the undersigned issued an Order Establishing Procedural Schedule and Notice of Hearing. Upon motion of Least Cost Routing and the Consumer Advocate Division of the Department of Justice (Consumer Advocate), the procedural schedule was amended in an Order dated October 9, 2000.

The Consumer Advocate filed its prepared direct testimony on November 9, 2000. Mr. Ludwig and Least Cost Routing did not file prepared testimony. Instead, Least Cost Routing filed a Motion to Suspend Procedural Schedule in Light of Imminent Settlement on November 28, 2000. The motion was granted in an Order issued November 29, 2000.

On December 6, 2000, the parties filed a Joint Motion for Order Approving Settlement Agreement, Taking Official Notice, and Addressing Civil Penalties. They also filed a Settlement Agreement with attached Principles of Settlement.

In their motion, the parties state that the Settlement Agreement resolves all issues in this case, they have concluded it is in the best interests of the parties and the general public to reach a negotiated settlement, and that the terms of the Settlement Agreement are just, fair, reasonable, and consistent with Iowa law. They

request approval of the Settlement Agreement. They further request that the Board take official notice of the final resolutions in each of the complaint proceedings identified in paragraph one of the Principles of Settlement. Finally, they request that the order approving the Settlement Agreement “expressly provide that, without prejudice to any of the complainants’ rights and remedies under Iowa Code § 476.103 and 199 IAC 22.23, the Board will not on its own motion seek to impose civil penalties on LCR in connection with the complaint under investigation in this proceeding or the complaints identified in paragraph 1 of the Principles of Settlement so long as LCR remains in compliance with this Settlement Agreement.”

The undersigned will approve this Settlement Agreement and include the above sentence in the Order. However, in order to be clear, the burden of proving compliance with the Settlement Agreement is on Least Cost Routing. This is consistent with Article VI of the Settlement Agreement.

In Article I of the Settlement Agreement, the parties state that “The facts and procedural history of this matter are accurately set forth in the Administrative Law Judge’s ‘Order Establishing Procedural Schedule and Notice of Hearing’ (Sept. 20, 2000). The parties incorporate by reference the facts and procedural history contained in this Order as the Statement of Case and Issues Presented for Settlement.” Article I will be treated as a stipulation of the facts and procedural history of the case pursuant to 199 IAC 7.7(4) and such stipulation is hereby approved. Also in Article I, the parties state “the issues in this case generally involve the change of Mr. Ludwig’s long distance telephone carrier from Sprint to Least Cost

Routing. More specifically, one issue is whether LCR complied with state and federal law when it changed Mr. Ludwig's service. Other issues relate to the alleged inadequacy of LCR's response to the informal complaint and the taped recording submitted by LCR in support of its position. Another issue is whether a civil penalty should be imposed on LCR pursuant to Iowa Code § 476.103(4) (1999 Supp.) and 199 IAC 22.23(5)."

Article II of the Settlement Agreement provides that the parties understand and agree that the terms of the settlement are made in the spirit of compromise, and Least Cost Routing does not admit to any violation of the law or other wrongdoing.

Article IV of the Agreement states "This Agreement shall not become effective unless and until the ALJ issues a Proposed Order Approving this Agreement in its entirety without condition or modification and said Order becomes the final order of the Board pursuant to 199 IAC 7.8(2)."

Article V of the Agreement states if it does not become effective in accordance with Article IV, it shall be null, void, and privileged. It states that the agreement is intended to relate only to the specific matters referred to, and no party waives any claim or right with respect to any other matter. It further states "Apart from a proceeding to compel compliance with this Settlement Agreement, no Party or representative thereof shall directly or indirectly refer to this Agreement or that part of any Order of the ALJ and Board referring to this Agreement in any other current or future proceeding before the Board." Although it is somewhat unclear, this sentence

may be in conflict with paragraph ten of the Principles of Settlement as discussed below.

Article VI of the Agreement states “The parties agree that LCR’s adherence to the terms of the Settlement Agreement will likely resolve the concerns giving rise to this formal complaint proceeding and other complaints filed against LCR as well as substantially reduce, if not eliminate, future complaints against LCR. In view of LCR’s cooperation in this proceeding and expressed desire to comply with applicable laws and regulations governing LCR’s conduct in this state, the OCA will not seek the imposition of civil penalties based on existing complaints filed against LCR as long as LCR demonstrates its compliance with the terms of this Settlement Agreement. The OCA will not seek the imposition of civil penalties against LCR for subsequent complaints involving LCR’s telemarketing or verification scripts prior to the effective date of this Settlement Agreement as long as LCR demonstrates its compliance with the terms of this Settlement Agreement.”

The Principles of Settlement are attached to the Settlement Agreement. Paragraph one of the Principles of Settlement states that one issue in the case is whether civil penalties should be imposed on Least Cost Routing pursuant to Iowa Code Supplement § 476.103(4) (1999). The parties request that the Board take official notice of the final resolutions in each of the listed complaints. The parties do not propose a different resolution of the complaints. Rather, Least Cost Routing and the Consumer Advocate state they undertake mutual promises with respect to the

listed complaints in accordance with paragraphs two and ten of Principles of Settlement.

One of the listed cases is C-00-487, Conklin/Nex Comm Technology. It is the understanding of the undersigned administrative law judge that this case has not been settled. Therefore, the undersigned takes official notice of the final resolutions in each of the informal complaint dockets listed in paragraph one of the Principles of Settlement with the exception of C-00-487, Conklin/Nex Comm Technology. Iowa Code § 17A.14(4) (1999). If the parties provide proof of final resolution of C-00-487 in the report to be filed with respect to paragraph two of the Settlement Agreement, they may move that official notice be taken of the final resolution and that it be included in the terms of the Settlement Agreement. In taking official notice of the final resolutions in the listed complaint files, the undersigned is neither approving nor disapproving the final resolutions in the cases. 199 IAC 7.2(11).

Paragraph two of the Principles of Settlement states that Least Cost Routing will make full restitution to the listed complainants in cases where IUB staff concluded the switch was not properly authorized and/or where Least Cost Routing or its billing agent agreed to refund or credit disputed charges. It further states that Least Cost Routing will file a report detailing its actions with respect to the listed complaints, including a statement of all amounts credited or refunded to each complainant and the date of the credit or refund. This report will be filed with the Board and the Consumer Advocate within 30 days of the Board's approval of this Settlement Agreement.

Approval of the Settlement Agreement is dependent on Least Cost Routing filing its report within the 30-day timeframe. If the report is not timely filed, the Board retains jurisdiction to take appropriate action. In addition, the complainants in the listed cases are not parties in this case. Approval of this Settlement Agreement is dependent on the understanding that there is a final resolution in each of the listed cases and that Least Cost Routing will abide by the terms of each final resolution. If this is not the case, the Board retains jurisdiction to take appropriate action.

Paragraph three of the Principles of Settlement states that Least Cost Routing will pay Mr. Ludwig \$707.89 in settlement of Mr. Ludwig's claims against Least Cost Routing in this case.

Paragraph four of the Principles of Settlement states that Least Cost Routing will incorporate the following points into its telemarketing and third-party verification scripts:

- a. In order to distinguish statements made by the third-party verifier from those made by the telemarketer, third party verifiers shall identify themselves as such and the company that they represent.
- b. LCR is not affiliated with the incumbent local carrier or with any other long distance carrier. LCR shall comply with this provision by affirmatively identifying itself and avoiding any assertion that LCR is affiliated with another carrier. When any other carrier is mentioned (either by name or function), the telemarketer must say that LCR is not affiliated with that carrier.
- c. LCR is marketing long distance services. While LCR may offer a streamlined billing process in conjunction with its marketing of long distance services, LCR must not assert or imply that it is necessary to switch to LCR in order to get a single bill for local and long distance service.

d. After determining a customer is authorized to approve changes in long distance service, the telemarketer and third party verifier must separately and specifically ask whether the customer agrees to switch their long distance telephone service to LCR.

e. In securing a customer's authorization to switch long distance service, the telemarketer and third party verifier must specifically advise the customer as to whether this switch is effective for interLATA and/or intraLATA service and the applicable rate for each long distance service.

Paragraph four also states "Proof of customer verification for change in service to LCR must include the foregoing points. LCR shall, within 30 days of the Board's approval of this settlement, supply the Board and OCA its telemarketing and third party verification scripts incorporating the foregoing requirements."

Paragraph five of the Principles of Settlement provides that LCR will provide the Board and the Consumer Advocate with a sample of the document it uses for satisfaction of the customer notification requirements in 199 IAC 22.23(2)"c" within 30 days of Board approval of the Agreement. LCR may be asked to revise the notice if it does not adequately alert a customer to the change.

Paragraph six of the Principles of Settlement states that LCR's compensation to third party verifiers shall not be based on a commission basis of successful conversions to LCR service.

Paragraph seven states that LCR shall use its own employees in telemarketing its services to Iowa consumers, and paragraph eight states that LCR shall dismiss any employee who intentionally fails to administer the script in

accordance with the requirements of paragraph four of the Principles of Settlement<sup>1</sup>. The paragraph further states that intent may be established by a pattern of violations.

Paragraph nine of the Principles of Settlement states that LCR will submit to the IUB and the Consumer Advocate “the Iowa portion of the report contemplated by paragraph 56 of ‘Implementation of the FCC’s proposed Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers,’ CC Docket No. 94-129 (adopted July 21, 2000), which shall provide, among any other required items, the number and identity of complaints received from Iowa consumers during the relevant reporting period.”<sup>2</sup> The paragraph states that the reporting obligation continues until August 15, 2002, and shall continue even if the FCC eliminates the reporting requirement. It further states that LCR agrees to promptly and fully respond to inquiries by the Consumer Advocate and the IUB regarding the subject matter of the reports. The paragraph does not specify when LCR is to submit the report to the IUB and the Consumer Advocate. LCR should submit the reports to the IUB and the Consumer Advocate at the same time it submits them to the FCC.

---

<sup>1</sup> The Principles of Settlement actually refers to “part 3 of this settlement agreement.” It is assumed this is a mistake.

<sup>2</sup> Carriers are to submit biannual reports to the FCC on February 15 and August 15 of each year.

Paragraph ten of the Principles of Settlement provides that LCR agrees to abide by the terms of this Settlement Agreement in conducting its long distance service businesses in Iowa. It further states LCR admits no wrongdoing in connection with the complaints listed in paragraph one. It further states “So long as LCR is in compliance with this agreement, OCA will not seek civil penalties for unauthorized switches of long distance service in connection with the complaints set forth in paragraph 1 or subsequent complaints involving LCR’s use of telemarketing or verification scripts prior to the effective date of this Settlement Agreement. Should OCA determine that LCR is not abiding by the terms of this agreement, OCA may seek civil penalties based on the complaints that are the subject of this settlement agreement.”

The final sentence of Article V of the Settlement Agreement states “Apart from a proceeding to compel compliance with this Settlement Agreement, no Party or representative thereof shall directly or indirectly refer to this Agreement or that part of any Order of the ALJ and Board referring to this Agreement in any other current or future proceeding before the Board.” If it is determined that LCR is not in compliance with the Settlement Agreement, and the OCA desires to seek civil penalties pursuant to paragraph ten of the Principles of Settlement, it may or may not be necessary to refer to this Settlement Agreement or its terms. Since it is unclear at this time whether there may be a conflict between Article V and paragraph ten, the Board will construe paragraph ten to be controlling in the event of a conflict between the two sections.

Board rule 199 IAC 7.2(11) provides that the parties may propose to settle a contested case. The rule states that settlement “shall be limited to issues pending before the board and shall not extend to substantive issues which may come before the board in other or future proceedings. The board will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.” 199 IAC 7.2(11).

Rule 199 IAC 22.23(5)”b” provides that civil penalties may be compromised by the Board. “In determining the amount of the penalty, or the amount agreed upon in a compromise, the board may consider the size of the service provider, the gravity of the violation, any history of prior violations by the service provider, remedial actions taken by the service provider, the nature of the conduct of the service provider, and any other relevant factors.” 199 IAC 22.23(5)”b”.

All of the parties in this case have executed the Settlement Agreement and have agreed that its terms are just, fair, reasonable, and consistent with Iowa law. All issues in the case are resolved in the Settlement Agreement. Least Cost Routing has agreed to pay Mr. Ludwig \$707.89 in settlement of his claims.

The existence of over twenty other complaints involving similar behavior is troubling. However, the other complaint files were not a part of the record in this case until the parties moved for official notice, and the undersigned is only being asked to take official notice of the final resolutions in those cases. In addition, Least Cost Routing is attempting to resolve the complaints, and has stated in the Principles of Settlement it will make full restitution to the complainants when IUB staff

concluded the switch was not properly authorized, LCR or its billing agent agreed to a refund or credit of disputed charges, or both.

In addition, LCR has agreed to take very specific steps to ensure it is in compliance with the telemarketing requirements in the future. If Least Cost Routing telemarketers and LCR's third-party verifiers follow the requirements contained in paragraphs four through eight of the Principles of Settlement, this will eliminate the behavior complained of in this case, and should eliminate future complaints against Least Cost Routing for the type of behavior complained of in this case. Compliance with paragraph nine should provide further assurance that Least Cost Routing remains in compliance with the Settlement Agreement, at least through the first half of 2002.

Given the limited record available for review in this case, the Settlement Agreement appears to be reasonable, consistent with law, and in the public interest. 199 IAC 7.2(11).

Article IV of the Settlement Agreement states that "This Agreement shall not become effective unless and until the ALJ issues a Proposed Order Approving this Agreement in its entirety without condition or modification and said Order becomes the final order of the Board pursuant to 199 IAC 7.8(2)." In this Order, the undersigned has issued several clarifications and corrections. If any party does not accept the clarifications and corrections pursuant to Article IV, he or she should file a motion stating the refusal and consequential withdrawal from the Settlement Agreement, and a new procedural schedule will be established.

**IT IS THEREFORE ORDERED:**

1. The motion of the parties for approval of the Settlement Agreement, to take official notice as specified above, and to address the issue of civil penalties in the context of the complaint proceedings listed in the Principles of Settlement is granted. This grant is contingent on Least Cost Routing filing the documents specified in the Settlement Agreement in a timely manner. The Board retains jurisdiction to ensure all required documents are filed and to take appropriate action if the terms of the Settlement Agreement are not followed.

2. The Settlement Agreement (as clarified in this order) is hereby adopted as the settlement and resolution of all issues in this formal complaint proceeding.

3. The final resolutions in each of the informal complaint dockets listed in paragraph one of the Principles of Settlement, with the exception of C-00-487, Conklin/Nex Comm Technology, are hereby officially noticed.

4. Without prejudice to any of the complainants' rights and remedies under Iowa Code Supplement 476.103 (1999) and 199 IAC 22.23, the Board will not on its own motion seek to impose civil penalties on Least Cost Routing in connection with the complaint under investigation in this proceeding or the complaints identified in paragraph one of the Principles of Settlement so long as Least Cost Routing remains in compliance with this Settlement Agreement. The burden of proving compliance with the Settlement Agreement is on Least Cost Routing.

5. This order will become the final order of the Board unless, within 15 days of its issuance, the Board moves to review the order or a party files an appeal of the order with the Board.

**UTILITIES BOARD**

/s/ Amy L. Christensen  
Amy L. Christensen  
Administrative Law Judge

ATTEST:

/s/ Raymond K. Vawter, Jr.  
Executive Secretary

Dated at Des Moines, Iowa, this 20th day of December 2000.