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December 26, 2019

**Ms. Terri Lemoine Bordelon
Louisiana Public Service Commission
Records Division
602 North 5th Street, 12th Floor
Baton Rouge, Louisiana 70802**

Via UPS

**In re: Audit of Lafayette Utilities System's Covered Services under
General Order of the Louisiana Public Service Commission
dated October 4, 2005 for the years 2016-2017;
Docket No. U-34830;
Our File No. 4850-300**

Dear Ms. Bordelon:

Please file the attached letters from Lafayette Consolidated Government ("LCG") to the Commission, dated July 8, 2019 and December 18, 2019, in the above-referenced docket. In these letters, LCG self-reports facts regarding potential violations of the Local Government Fair Competition Act and the Commission's Cost Allocation and Affiliate Transaction Rules, on behalf of its Lafayette Utilities System division ("LUS"). These facts appear to be relevant to the current Commission compliance audit for FY 2017. LUS therefore asks that they be considered by the Commission in this docket as part of the current audit.

Please note that the attachments to the second letter are provided in redacted and unredacted versions. The redactions are the Communications Division's standard nonaffiliate pricing or verbiage from which that pricing can be calculated. This pricing is proprietary and trade secret information pursuant to the Public Records Act and commercially sensitive marketing information pursuant to the FCA, and LUS requests that it be kept confidential and exempt from public disclosure.

Ms. Terri Lemoine Bordelon
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If you have any questions, please do not hesitate to contact us.

Sincerely,

OATS & MARINO
A Partnership of Professional Corporations


Lawrence E. Marino

LEM/lm

Enclosures

cc: Lauren Temento, via email, with enclosures
Randy Young/Katherine King, via email, with enclosures



Joel Robideaux
Mayor-President / Maire-Président

July 8, 2019

VIA HAND DELIVERY

Commissioner Lambert C. Boissiere, III
Louisiana Public Service Commission
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LA PUBLIC SERVICE
COMMISSION

RE: Lafayette Utilities System – Communications Division
Power Outage Monitoring System charges

Dear Commissioners:

The purpose of this letter is to self-report a possible violation of the Commission’s Cost Allocation and Affiliate Transaction Rules (Rules) and the Local Government Fair Competition Act (FCA).

The facts outlined in this letter recently came to my attention during our review of the Public Service Commission (PSC) staff audit report and in conjunction with our internal budget process. Specifically, during our current budget process I learned that the Lafayette Utilities System (LUS) “Power Outage Monitoring System” (POMS) was being eliminated from LUS’s budget. This fact coincided with the PSC staff audit report that highlighted substantial monthly billings from the Communications Division (Table 12), namely \$1,013,400 of affiliated charges billed to LUS for “Power Outage Monitoring.”

I began investigating the utilization of POMS and discovered that LUS has paid the Communications Division for POMS since November 2010. The payments ranged from a little over \$20,000 per month in the first year to more than \$84,000 per month thereafter. Terry Huval, former director of both LUS and its Communications Division, described POMS as a notification system that would enable LUS to respond more quickly to power outages. POMS would use software developed by LUS to analyze existing signals from existing Communications Division equipment at customers’ homes and businesses to identify and locate outages. Questions remain as to whether POMS was utilized as anything other than a second or third tier redundant data

source. Questions also remain as to whether POMS was of significant value to LUS in identifying outages because the data being paid for excluded the vast majority of LUS's electric grid, since the Communications Division's customer base was only a fraction of LUS's customer base. In addition, charges for POMS were based on "value" to LUS customers rather than "cost" to the Communications Division.

In October 2010, Huval directed the Communications Division to provide the POMS service to LUS. The Communications Division initially proposed charging for POMS based on the cost of phone lines to LUS electrical taps, proposing \$15 per month per tap for all 3,574 taps. Huval then proposed charging on a basis of \$25 per month for the 989 taps with two or more connections, which he said would be the cost to obtain such a service from third parties. The Communications Division then proposed charging \$30 per month for all 3,574 taps, which they said would be the minimum cost of telephone lines to the taps. No documentation for any of these revenue options can be found in LUS or Communications Division files, and these revenue options were dropped.

LUS then proposed to base the POMS charge on a combination of the cost of outages to LUS customers plus the loss of revenue to LUS due to outages, noting that this was much less than the "per-tap" charge previously considered. The outage cost to customers was based on a report by Lafayette Economic Development Authority (LEDA) concluding that a 60-minute, LUS-wide power outage costs LUS customers a total of \$897,032. Additionally, LUS stated that its revenue loss due to such an outage was \$9,500 per hour. These loss figures were added together for a total of \$906,532 and then reduced by 2/3 (because POMS was predicted to reduce the 60-minute average outage by 20 minutes), and then reduced by an additional 20% to be "conservative." The net figure was \$241,741 per year, or \$20,145 per month.

Based on this outage cost analysis, Huval instructed the Communications Division to charge \$20,145 per month to LUS, effective November 2010. The LEDA report and basis for the revenue loss estimate cannot be found in LUS or Communications Division files. Both figures assumed an outage of the entire LUS system, though outages typically affect only portions of the system.

Eight months later in July 2011, Huval directed the POMS charge to be increased to \$84,450 per month. He relied on a new report by LEDA concluding that a reduction in average power outage duration by 20 minutes would save LUS customers \$2.03 million per year. No explanation was given as to why this second LEDA report varied so dramatically from the first. Huval increased the Communications Division charge for POMS to half of this savings, \$1.013 million per year (\$84,450 per month). The full LEDA report cannot be found in LUS or Communications Division files. As with the first report, the second was based on outage of the entire LUS system, though outages typically affect only portions.

Before Huval increased the charge for POMS, also in July 2011, Lafayette Consolidated Government (LCG) accounting staff notified him of the requirement to use the full-cost accounting methodology to calculate the charge. No analysis of the cost to the Communications Division to provide POMS can be found in LUS or Communications Division files.

To the contrary, Huval later confirmed in a file memo to himself in April 2018, shortly before his departure from LUS, that he *had not* pursued any analysis of the cost to provide POMS. It is unclear why Huval prepared this file memo to himself, which reiterates the conclusions of the prior documentation. Regardless, the memo confirms that Huval based the charge on estimated savings to customers in 2010 and 2011, and that this remained the basis through 2018. In the Communications Division attest audits to date, management's justification based on savings to customers and the estimated cost of an alternative service (the phone lines to the taps) are the only bases identified for the POMS charge.

In summary, internal documentation shows that the charge for POMS was originally based on an estimated benefit to LUS customers, and then substantially increased based on a new estimate of that same benefit. There is no documentation of any analysis or consideration of the cost to the Communications Division of providing POMS in determining the charge. In this regard, it is important to note that the actual cost to the Communications Division was insignificant because POMS used existing Communications Division equipment and LUS internally built the software interface to use the data provided.

POMS is not a tariffed service or made available to parties other than LUS. The Rules require that "[t]ransfers or sales of non-tariffed goods or services between the separate division created to provide the covered services and an affiliated division that are not provided to unaffiliated outside parties will be recorded under the full-cost accounting methodology." PSC Gen'l Order R-28270 (10/4/05), p. 10. LUS's own Cost Allocation Manual imposes an identical requirement. LUS Cost Allocation Manual – Revision 2 (1/19/10), pp. 11-12.

Basing the POMS charge on the benefit to LUS customers, instead of the actual cost to the Communications Division to provide the service, appears to be an improper affiliate charge in violation of the Rules and the Manual. Depending on whether the charge exceeds the full cost of providing the service, it may also violate the requirement of the Fair Competition Act that "[a] local government may not cross-subsidize its covered services with tax dollars, income from other local government or utility services, ... or any other means." La. R.S. 45:844.53(2).

As stated in LCG's letter of self-reporting to the Commission dated April 14, 2018, steps have already been taken to prevent improper affiliate charges in the future by separating the directorship of LUS and its Communications Division into two separate positions; and by improving management controls to ensure that non-tariffed goods and services are charged between LUS and

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its divisions at full cost. Additionally, current LUS Interim Director Jeffrey Stewart has eliminated the POMS expenditure from his proposed fiscal year budget for the 2019-2020 fiscal year.

The facts outlined in this letter appear to be relevant to the current Commission staff audit. It is unclear why the proper methodology for the POMS charge was not detected or disclosed previously. However, considering the affiliate nature of the transaction, LUS will report these facts to the attest auditor to be evaluated and considered in the upcoming audit for the most recent fiscal year, to determine whether a violation of the Rules or the FCA has occurred. The latest attest audit began in May 2019, and the results will be filed with the Commission by August 2019.

Sincerely,

A handwritten signature in black ink, appearing to read "Joel Robideaux", written over a horizontal line.

Joel Robideaux
Mayor-President

LUS FIBER AFFILIATE TRANSACTION INTERNAL REVIEW, FY 2017

Lowell Duhon, Interim Director, Lafayette Utilities System
Kayla Miles, Interim Director, LUS Fiber
Lawrence Marino, Oats & Marino, Assistant City Attorney
Draft December 16, 2019

EXECUTIVE SUMMARY

Lafayette Utilities System (“LUS”) and Lafayette Consolidated Government (“LCG”) self-reported two potential violations of the Fair Competition Act (“FCA”) to the Louisiana Public Service Commission (“PSC”) regarding Fiscal Year 2017. The first, regarding payments by LUS to LUS Fiber for fiber services that LUS was unable to utilize, is part of the PSC’s ongoing compliance audit of LUS for FY 2017. The second, regarding payments by LUS to LUS Fiber for a Power Outage Monitoring Service priced on projected cost savings to LUS customers instead of LUS Fiber’s cost to provide it, as required by the PSC Rules, may also be added to the audit. Before LUS and the PSC make a decision on whether to do so, LCG Mayor-President Joel Robideaux is conducting this internal review of LUS Fiber’s other affiliate service accounts to determine whether there may be any other potential FCA or Rule violations, and to self-report any concerns that are identified.

The authors reviewed LUS Fiber’s affiliate accounts for FY 2017 to identify the services provided and their appropriate price basis under the PSC Rules. If a service was also provided to unaffiliated outside parties, market price was the proper basis; if not, LUS Fiber’s cost to provide it was the proper basis.

Nearly all of the affiliate services were the same as or functionally similar to services provided to nonaffiliates, so in most cases, market price was the proper basis. Since competitor pricing was unavailable, the authors determined market price according to the price at which LUS Fiber offered or actually provided the service to nonaffiliates.

Most affiliate services were network, internet, or voice services billed at the same or lower prices than those offered to or paid by nonaffiliates. LUS Fiber therefore appears to have billed these services at market price.

However, LUS Fiber charged LUS much more for some network services than it charged the Lafayette Police Department or the Traffic Control Department. LUS and LUS Fiber were still under common directorship in FY 2017 (prior to separation of the directorships in 2018), but the Police and Traffic Control Departments already had their own directors and were thus more at arm’s length from LUS Fiber. While the prices charged to LUS for these services in FY 2017 still appear to be market, the pricing differential combined with the common directorship situation raises the concern that LUS failed to seek lower prices with LUS Fiber that may have been achievable through arm’s length negotiation. These circumstances could even raise the opposite concern that the charges to the Police and Traffic Control Departments were below market price.

In a few instances, the affiliate prices for network services were 2%-20% higher than nonaffiliate pricing or actual contract prices, which suggests that the charge may exceed market price. However, there were differences that may justify the higher price as market – there was no contract or the contract term was shorter; the affiliate service was more complicated and thus more costly to provide than the nonaffiliate analog; and LUS and LCG are endpoint users, not resellers like most nonaffiliates, which typically resell the service at a profit to their own endpoint users. Nevertheless, these charges may exceed market price, and if so, may have violated the Rules in FY 2017 and all other years in which it was charged above market price.

One internet service was priced at \$4,865/mo. to LUS, more than quadruple nonaffiliate pricing and actual prices. This charge therefore appears to significantly exceed market price. This appears to be a billing error resulting from carrying over the price under an expired contract. The price was market when the contract was entered, as it was the same price offered to nonaffiliates at that time. However, it was well above market by FY 2017, several years after the contract had expired. As a result, the charge appears to violate the Rules in FY 2017 and all other years in which it was charged after expiration of the contract.

One service for rack co-location was priced at \$2,323/mo. to LCG, nearly double the price charged to a nonaffiliate in the subsequent fiscal year, which suggests that the charge may exceed market price in FY 2017. There were differences that may justify the higher price as market - this is a non-standard service, and the price may fluctuate with the availability of space; the price may have been an accommodation in negotiating other services; and the charge may have been an offset with the nonaffiliate, which provided the same service to LUS Fiber. Nevertheless, this charge may exceed market price, and if so, may have violated the Rules in FY 2017 and all other years in which it was charged above market price.

One service for a dark fiber lease was priced at \$44,087/mo. to LUS, approximately triple both the price actually paid by University of Louisiana and the standard pricing by a municipal telecom company in Tennessee for similar service. This suggests that the charge to LUS may exceed market price. Further, the LUS price was determined using replacement cost methodology, whereas telecom expert and LUS Fiber consultant Doug Dawson originally proposed a different “embedded cost” methodology; and was increased from double the UL rate to triple in 2014, after a recalculation of the replacement cost. There were differences that may justify the higher price as market - the service was provided to the University as an add-on to an electric power contract in 2001, under a 20-year contract, and was priced long before LUS Fiber developed its current pricing methodology; and the specific market dynamics in Tennessee are unknown. Further, Mr. Dawson advised that the replacement cost methodology is a valid and common method of determining market value for such services, though it sets the high end of market. Nevertheless, this charge may exceed market price, and if so, may have violated the Rules in FY 2017 as well as all other years in which it was charged.

Finally, two services were not provided to nonaffiliates and thus LUS Fiber’s cost to provide it is the correct price basis. For one, the T1 management service priced at \$170/mo. to LUS, LUS Fiber had performed a cost analysis that supported the charge. For the other, Sonet Port service, LUS Fiber could not locate a cost analysis. LUS Fiber provided it to LUS and LCG at different prices, \$50 and \$280 respectively, but both charges were small and reasonable cost

analysis may support the charges. Nevertheless, the charges may exceed LUS Fiber's cost, and if so, may have violated the Rules in FY 2017 as well as all other years in which it was charged.

The PSC may conclude that the network, internet, and dark fiber charges are justifiable as being within market price; and a cost analysis may justify the Sonet Port charge to PSC's satisfaction. However, there is reason for concern as to whether these charges are proper under the FCA and the Rules. Accordingly, it is reasonable to bring these matters to the PSC's attention for consideration and determination as to whether they comply with the FCA and the Rules, as interpreted by the PSC, and if not, the appropriate remedy.

While not an FCA issue, as PSC staff have already noted, LUS and LCG should enter long-term contracts for most if not all of these services in order to secure more favorable pricing available under such contracts. Also, LUS Fiber should better manage its contracts so that they can be located, which was not the case for many of the contracts at issue in this review; so that they are correctly labeled as to the service actually being provided; and so that expiring contracts are tracked and renewed or renegotiated as appropriate, using current market prices. LUS and LCG should likewise monitor the contracts for the same reasons. Finally, LUS should systematically review the services that it is obtaining from LUS Fiber to ensure that these levels of service are necessary and determine whether lesser service levels would suffice. Taking these steps will ensure not only better compliance with the PSC Rules, but also that proper business judgment is exercised in the interests of all affected ratepayers and taxpayers.

LUS FIBER AFFILIATE TRANSACTION INTERNAL REVIEW, FY 2017

Lowell Duhon, Interim Director, Lafayette Utilities System
Kayla Miles, Interim Director, LUS Fiber
Lawrence Marino, Oats & Marino, Assistant City Attorney
Draft December 16, 2019

CONTAINS COMMERCIALY SENSITIVE CONFIDENTIAL INFORMATION

BACKGROUND AND PURPOSE

On April 4, 2018, Lafayette Utilities System (“LUS”) and Lafayette Consolidated Government (“LCG”) self-reported a potential violation of the Fair Competition Act (“FCA”) to the Louisiana Public Service Commission (“PSC”) regarding payments by LUS to LUS Fiber for fiber services to LUS lift stations and capacitor banks that LUS was unable to utilize. The PSC then directed a compliance audit of LUS pursuant to the FCA for Fiscal Year (“FY”) 2017. This compliance audit remains open. In their draft audit report, PSC staff have taken the position that the payments for the unusable services to the lift stations and capacitor banks violated the FCA.

In the draft audit report, PSC staff also pointed out a number of large LUS and LCG accounts with LUS Fiber that were paid on a month-to-month basis and therefore may have been paid at higher rates than if the accounts had been under long-term contracts. These 11 “affiliate” accounts were listed on Table 12 of the draft report. While PSC staff did not consider month-to-month contracting to violate the FCA, it did suggest that tighter internal controls such as long-term contracting may be appropriate and should be considered.

LUS spot-checked one of the largest accounts on Table 12, Power Outage Monitoring Service (“POMS”). Through reviewing documents and interviewing personnel regarding POMS, LUS determined that LUS Fiber had priced the service based on half of the cost savings to LUS customers that LUS projected would be generated by using POMS. However, under the applicable PSC Rules, since LUS Fiber provided POMS only to LUS and did not provide it to unaffiliated parties, POMS had to be priced according to the cost to LUS Fiber to provide that service. Moreover, the actual usefulness of the service was questioned.

On July 8, 2019, LCG self-reported this second potential violation of the FCA to the PSC, and it may be added to PSC’s ongoing FY 2017 compliance audit. Before LUS and the PSC make a decision on whether to do so, however, LCG Mayor-President Joel Robideaux is conducting this internal review of the other affiliate accounts on Table 12 to determine whether there may be any other potential FCA violations, and to self-report any concerns that are identified.

CONTAINS COMMERCIALY SENSITIVE CONFIDENTIAL INFORMATION

THE FAIR COMPETITION ACT AND PSC AFFILIATE TRANSACTION RULES

LUS Fiber is a division of LUS, which is itself a division of LCG. LUS Fiber provides telecommunications services, including internet, television, telephone, and other services, to individuals, businesses, LUS, other LCG agencies, and other public agencies in the Lafayette area.

The Louisiana Legislature enacted the Fair Competition Act ("FCA") in 2004. La. R.S. 45:844.41 - 45:844.56. In pertinent part, the FCA requires that:

A local government may not cross-subsidize its covered services with tax dollars, income from other local government or utility services, below-market rate loans from the local government or any other means.

La. R.S. 45:844.53(2). "Covered services" means "telecommunications services [two-way transmission of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, light waves, or other electromagnetic means], advanced services [high-speed Internet access capability in excess of 144 kilobits per second] and cable television services." La. R.S. 45:844.43(6, 19, 1). "Local government" means "any parish, municipality, or other political subdivision of the state and any utility authority, board, branch, department or other unit thereof." La. R.S. 45:844.43(16).

Accordingly, the FCA precludes cross-subsidizing the telephone, internet, or television services provided by LUS Fiber, using funds from LUS or other LCG agencies.

"Cross subsidize" means "to pay a cost included in the direct costs or indirect costs of providing a covered service that is not accounted for in the full cost of accounting of providing the service, other than the payment of start-up costs." La. R.S. 45:844.43(7). "Full costs" means "all capital costs, direct costs and indirect costs." La. R.S. 45:844.43(12). "Capital costs" means "all costs of providing a service that are capitalized in accordance with generally accepted accounting principles." La. R.S. 45:844.43(3). "Indirect costs" means "any costs: (i) Identified with two or more services or other functions. (ii) That are not directly identified with a single service or function." La. R.S. 45:844.43(14). "Direct costs" means "those expenses of a local government that: (a) Are directly attributable to providing a covered service. (b) Would be eliminated if the service described in Subparagraph (8)(a) was not provided by the local government." La. R.S. 45:844.43(8).

Accordingly, the FCA precludes LUS from paying a cost of LUS Fiber that is not part of the capital, indirect (overhead or general administrative) cost, or direct cost of a service or asset provided to LUS by LUS Fiber, because this would be a prohibited cross-subsidy.

The FCA requires PSC to "adopt rules to define and govern equitable cost allocation, as well as safeguards to govern affiliate or inter-company transactions for purposes of application of R.S. 45:844.53(2) [the cross-subsidy prohibition]." La. R.S. 45:455.55(D)(1). Compliance with these cost allocation and affiliate transaction rules "shall constitute per se compliance with R.S.

45:844.53(2) [the cross-subsidy prohibition].” *Id.* “A local government that provides a covered service under this Chapter is subject to all applicable provisions of local, state and federal law, including applicable rules of the Louisiana Public Service Commission.” La. R.S. 45:455.43(1); see also La. R.S. 844.55(D)(3) (providing procedure for enforcement of the rules for covered services that are not within the PSC’s jurisdiction).

Accordingly, the FCA subjects LUS Fiber to PSC authority to enforce its Rules governing transactions among affiliates, to prevent cross-subsidies.

PSC promulgated its Cost Allocation and Affiliate Transaction Rules (the “Rules”) in 2005. PSC Docket No. R-28270 (10/4/2005). In pertinent part, the “Transactions with Affiliates” section of the Rules provides as follows:

Provision of Tariffed Goods or Services

Goods or services provided between the separate division created to provide the covered services and an affiliated division will be recorded pursuant to a tariff among the divisions in the appropriate revenue and expense accounts at the tariffed rate.

Transfer or Sale of Non-Tariffed Assets or Services

- Transfers or sales of non-tariffed goods or services between the separate division created to provide the covered services and an affiliated division that are also provided to unaffiliated outside parties will be recorded at the prevailing market price.
- Transfers or sales of non-tariffed goods or services between the separate division created to provide the covered services and an affiliated division that are not provided to unaffiliated outside parties will be recorded under the full-cost accounting methodology.

Rules, p. 10. An “affiliate” is “a division, business section of a division, or subsidiary of a company. An entity or division effectively controlled by another entity or division.” Rules, p. 3. Since LUS Fiber is a division of LUS and LUS is a division of LCG, LUS Fiber, LUS, and all LCG divisions are “affiliates” for purposes of the Rules.

Accordingly, LUS Fiber can provide any services to LUS or other LCG divisions, but the price paid to LUS Fiber must comply with the PSC Rules regarding affiliate transactions. If not, the affiliate payment to LUS Fiber is a prohibited cross-subsidy.

A “tariff” is a “schedule of rates and regulations filed by common carriers.” *See, e.g.*, 47 C.F.R. 61.3(ss). For services for which LUS Fiber has such a schedule, LUS Fiber can provide them to LUS at the tariffed rate. However, LUS Fiber has no tariffs.

Accordingly, under the Rules, if LUS Fiber provides a service to unaffiliated outside parties, it can provide that service to LUS Fiber at the “prevailing market price.” If LUS Fiber does not provide a service to unaffiliated outside parties, however, it can provide that service to LUS only at cost. If LUS Fiber violates these Rules, it has made a prohibited cross-subsidy.

The Rules do not define “market price.” The commonly understood definition, however, and the one used in this review, is the prevailing price at which something is sold, or the price at which a good or service is offered or will fetch. Black’s Law Dictionary, p. 1381 (10th ed. 2014).

METHODOLOGY

In conducting this review, the authors reviewed numerous documents regarding the Table 12 affiliate services and their cost and basis, and interviewed several persons knowledgeable of these matters. FY 2017 was selected for initial review, as this is the fiscal year at issue in the current compliance audit. This is also recent enough to provide a relevant and representative sample of the affiliate services.

The authors’ methodology was to:

- (1) Identify the services LUS Fiber provided in FY 2017 under the ten Table 12 affiliate accounts other than POMS;
- (2) For services incorrectly labeled, identify the services actually provided;
- (3) Determine the price paid by each affiliate for each service, whether it was pursuant to a contract, and if so, its duration and term;
- (4) For services under contracts that were apparently expired, confirm expiration of the contract and conversion to month-to-month billing;
- (5) Determine whether the same or a functionally similar service was also offered or provided to unaffiliated parties, and if so at what price;
- (6) For services also offered or provided to nonaffiliates, determine the market price for that service, generally the price offered to or actually paid by the nonaffiliates;
- (7) Where LUS Fiber charged affiliates more than nonaffiliates for seemingly similar services, determine whether there were reasons that appeared to justify a greater price to the affiliate; and
- (8) For services that LUS Fiber provided only to affiliates, determine whether LUS performed a cost analysis for the service, and if so, whether the price exceeded LUS Fiber’s cost of providing it.

The services at issue are classified by LUS Fiber as “wholesale,” which are distinct from standard residential or business services. Wholesale services are guaranteed, meaning the service

is more consistently “up” and the contracted speed is always provided, whereas standard services share bandwidth and are therefore effectively reduced when overall demand is high. The quality of wholesale service is also higher, regarding “latency,” “priority,” and other technical aspects, and additional service support is provided. The wholesale customer is authorized to resell the service to retail users (typically at a higher price), which LUS does not do, but which is important to nonaffiliates. Wholesale services therefore command a significantly higher price than standard residential or business services. Pricing for standard residential or business services is not an appropriate comparison for determining the market price for wholesale services.

LUS Fiber categorizes the services it provides to affiliates as “wholesale services.” However, this is not the commonly understood usage of the term as referring to services resold at higher prices to retail customers – LUS and LCG do not resell the services. Rather, this usage of the term refers only to the quality of the services, as discussed above.

Where market price was the relevant price basis under the Rules, LUS Fiber affiliate prices were therefore compared to LUS Fiber’s standard nonaffiliate wholesale pricing for such services, and where available, to LUS Fiber’s actual contract prices to nonaffiliates. Competitors hold their wholesale pricing confidential, and therefore this was not available for comparison for this review. However, LUS Fiber’s standard nonaffiliate pricing and actual nonaffiliate contract prices provide an appropriate and reasonable basis for comparison to assess whether LUS Fiber affiliate transactions were at market price.

ANALYSIS OF LUS FIBER AFFILIATE SERVICES ON TABLE 12

The results of this review are discussed below and summarized in the chart attached as Appendix A, Summary of LUS Fiber Affiliate Transaction Internal Review, FY 2017. Most LUS Fiber affiliate services were provided to nonaffiliates, and were priced at or below nonaffiliate standard pricing or actual prices. However, some concerns were identified that may constitute violations of the FCA and the Rules.

1. LCG IS&T Hosted Voice (129948)

The services billed under this account were voice services that were also provided to nonaffiliates. Market price was therefore the appropriate price basis.

All affiliates and nonaffiliates paid the same price of \$17.95/mo. for Business Utility Line, and the same prices of \$3.00/mo., \$5.00/mo., and \$8.00/mo. for the various Hosted Voice Sidecar equipment. Affiliates paid \$30.00/mo. for Hosted Voice Seat, which was at the low end of the range of \$29.50-\$56.00/mo. paid by nonaffiliates. Similarly, affiliates paid \$19.00/mo. for Hosted Voice Utility Seat, which was at the low end of the range of \$16.95-\$27.00/mo. paid by nonaffiliates. Accordingly, the prices billed by LUS Fiber appear to be within market price as established by LUS Fiber’s nonaffiliate standard pricing and actual charges. No cross-subsidization concerns were identified regarding this account.

CONTAINS COMMERCIALY SENSITIVE CONFIDENTIAL INFORMATION

2. LUS Electric (124109)

The services billed under this account were VPLS 30 Mbps network services functionally similar to Shared Packet 30 Mbps services that were provided to nonaffiliates. Market price was therefore the appropriate price basis.

LUS Fiber billed all services provided under this account on a month-to-month basis, whereas nonaffiliates are required to have at least a 1-year contract. LUS Fiber's rate pricing was higher for shorter contract durations, which is reasonable and commonplace in pricing services. Thus, the comparable service was provided to nonaffiliates; only the terms of providing that service (monthly versus under contract) differed. Since the provision of the service to nonaffiliates determines the appropriate price basis, not provision of similar terms, market price was still the appropriate price basis.

LUS Fiber charged \$420/mo. for month-to-month billing under this account, which is █% above standard nonaffiliate pricing of \$█/mo. under a 1-year contract for the Shared Packet 30 Mbps service. This suggests that the charge may exceed market price. The charge is also above an actual 2-year nonaffiliate contract for \$317/mo. for the Shared Packet 30 Mbps service. Standard nonaffiliate pricing for a 2-year contract was \$█/mo., which indicates that customers can negotiate rates from LUS Fiber below standard pricing, and that the standard rates are likely at the top of the range of market price for nonaffiliates.

A price increase from 1- and 2-year contract rates for having no contract is justifiable as still being within market. The increase over standard pricing for a 1-year contract is small, though the increase is proportionately greater over actual pricing for a 2-year contract. Also, LUS is an endpoint user of the services, unlike most nonaffiliates, which would typically resell the service at a profit to their own endpoint users. However, the permissible magnitude of the increase that would still be within market, as interpreted by the PSC, is not known.

Accordingly, the price billed by LUS Fiber for this service may be justifiable as being within market price as established by LUS Fiber's standard nonaffiliate pricing, modified to take the circumstances into account. However, it may also exceed market price, and if so, may have violated the Rules in FY 2017 and all other years in which it was charged above market price.

3. LUS AMI Gatekeeper (118417)

The services billed under this account were VPLS 100 Mbps network services functionally similar to Shared Packet 100 Mbps services that were provided to nonaffiliates. Market price was therefore the appropriate price basis.

LUS Fiber billed all services provided under this account on a month-to-month basis, whereas nonaffiliates are required to have at least a 1-year contract. However, as discussed under the LUS Electric account, since the provision of the service to nonaffiliates determines the appropriate price basis, market price was still the appropriate price basis.

LUS Fiber charged \$680/mo. for month-to-month billing under this account, which is █% above standard affiliate pricing of \$█/mo. under a 1-year contract for the Shared Packet 100 Mbps service. Moreover, LUS Fiber charged LUS much more for the VPLS 100 Mbps service than it charged the Police Department – \$680/mo. versus \$405/mo. LUS and LUS Fiber were still under common directorship in FY 2017 (prior to separation of the directorships in 2018), but the Police Department already had its own director and was thus more at arm’s length from LUS Fiber. The pricing differential combined with the common directorship situation raises the concern that LUS failed to seek lower prices with LUS Fiber that may have been achievable through arm’s length negotiation.

A price increase for month-to-month billing over a 1-year contract is justifiable as still being within market, although the permissible magnitude of the increase that would still be within market, as interpreted by the PSC, is not known. Also, LUS is an endpoint user of the services, unlike nonaffiliates, which would typically resell the service at a profit to their own endpoint users. Most significantly, LUS Fiber actually charged the same price of \$680/mo. to a nonaffiliate, even under a 5-year contract. This suggests that the charge to LUS is justifiable as being within market price.

Accordingly, the price billed by LUS Fiber appears to be within market price as established by LUS Fiber’s actual nonaffiliate contract prices. Nevertheless, the fact that the actual contract price exceeds standard pricing and the discrepancy between LUS and Police Department rates for the same service are potentially of concern.

4. LUS Water Operations (114835)

Most of the services billed under this account were VPLS 30 Mbps and VPLS 100 Mbps network services functionally similar to Shared Packet 30 Mbps and Shared Packet 100 Mbps services that were provided to nonaffiliates. Market price was therefore the appropriate price basis.

LUS Fiber billed all services provided under this account on a month-to-month basis, whereas nonaffiliates are required to have at least a 1-year contract. However, as discussed under the LUS Electric account, since the provision of the service to nonaffiliates determines the appropriate price basis, market price was still the appropriate price basis.

LUS Fiber billed the same rates for the VPLS 30 Mbps under this account, as under the LUS Electric account. Accordingly, for the same reasons discussed under that account, the price billed by LUS Fiber for this service may be justifiable as being within market price as established by LUS Fiber’s standard nonaffiliate pricing, modified to take the circumstances into account; or may exceed market price, and if so, may have violated the Rules in FY 2017 and all other years in which it was charged above market price.

LUS Fiber billed the same rates for the VPLS 100 Mbps, as under the LUS AMI Gatekeeper account. Accordingly, for the same reasons discussed under that account, the price billed by LUS Fiber for this service appears to be within market price as established by LUS Fiber’s actual nonaffiliate contract prices; though the fact that the actual contract price exceeds

standard pricing and the discrepancy between LUS and Police Department rates for the same service are potentially of concern.

The services billed under this account also included cable TV and voice services that were also provided to nonaffiliates. Market price was therefore the appropriate price basis. LUS Fiber billed these services under this account at or below nonaffiliate prices, and thus they were within market price.

5. Lafayette Utilities System SCADA (113691)

Most of the services billed under this account were VPLS 100 Mbps network services functionally similar to Shared Packet 100 Mbps services that were provided to nonaffiliates. Market price was therefore the appropriate price basis.

LUS Fiber billed all services provided under this account on a month-to-month basis, whereas nonaffiliates are required to have at least a 1-year contract. However, as discussed under the LUS Electric account, since the provision of the service to nonaffiliates determines the appropriate price basis, market price was still the appropriate price basis.

LUS Fiber charged \$820/mo. for month-to-month billing for this service under this account, which is ■% above standard nonaffiliate pricing of \$■/mo. under a 1-year contract for the Shared Packet 100 Mbps service. This is also 20% above the \$680/mo. actually paid by a nonaffiliate for Shared Packet 100 Mbps service under a 5-year contract. This suggests that the charge may exceed market price.

A price increase for month-to-month billing over a 1-year contract is justifiable as still being within market, although the permissible magnitude of the increase that would still be within market, as interpreted by the PSC, is not known. Also, LUS is an endpoint user of the services, unlike nonaffiliates, which would typically resell the service at a profit to their own endpoint users. Most significantly, this was a "Main Site" service, not a regular one as priced in the standard nonaffiliate pricing and provided to the nonaffiliate. The difference is that significantly more setup and maintenance is required for the Main Site level of service, warranting increased cost, although the permissible magnitude of the increase that would still be within market, as interpreted by the PSC, is not known.

Accordingly, the price billed by LUS Fiber for this service may be justifiable as being within market price as established by LUS Fiber's actual nonaffiliate contract prices, modified to take the circumstances into account. However, it may also exceed market price, and if so, may have violated the Rules in FY 2017 and all other years in which it was charged above market price.

The services billed under this account also included cable TV, voice, and internet services that were also provided to nonaffiliates. Market price was therefore the appropriate price basis. LUS Fiber billed these services under this account at or below nonaffiliate prices, and thus they were within market price.

6. LUS Wastewater 770 (111525)

Most of the services billed under this account were VPLS 30 Mbps and VPLS 100 Mbps network services functionally similar to Shared Packet 30 Mbps and Shared Packet 100 Mbps services that were provided to nonaffiliates. Market price was therefore the appropriate price basis.

LUS Fiber billed all services provided under this account on a month-to-month basis, whereas nonaffiliates are required to have at least a 1-year contract. However, as discussed under the LUS Electric account, since the provision of the service to nonaffiliates determines the appropriate price basis, market price was still the appropriate price basis.

LUS Fiber billed the same rates for the VPLS 30 Mbps under this account, as under the LUS Electric account. Accordingly, for the same reasons discussed under that account, the price billed by LUS Fiber for this service may be justifiable as being within market price as established by LUS Fiber's standard nonaffiliate pricing, modified to take the circumstances into account; or may exceed market price, and if so, may have violated the Rules in FY 2017 and all other years in which it was charged above market price.

LUS Fiber billed the same rates for the VPLS 100 Mbps, as under the LUS AMI Gatekeeper account. Accordingly, for the same reasons discussed under the LUS AMI Gatekeeper account, the price billed by LUS Fiber for this service appears to be within market price as established by LUS Fiber's actual nonaffiliate contract prices; though the fact that the actual contract price exceeds standard pricing and the discrepancy between LUS and Police Department rates for the same service are potentially of concern.

The services billed under this account also included cable TV and internet services that were also provided to nonaffiliates. Market price was therefore the appropriate price basis. LUS Fiber billed these services under this account at or below nonaffiliate prices, and thus they were within market price.

7. LUS Power Outage Monitoring Service (111265)

The Power Outage Monitoring Service ("POMS") billed under this account was unique and unlike any services provided to nonaffiliates. The full-cost accounting methodology was therefore the appropriate price basis. POMS was apparently priced based on projected cost savings to LUS customers, not on LUS Fiber's cost to provide the service, and therefore appears to be inconsistent with the Rules. No further analysis is made here, however, because this account has already been addressed and is outside the scope of this review.

8. LCG Traffic Control (105670)

The services billed under this account were VPLS 10 Mbps network services functionally similar to Shared Packet 10 Mbps services that were provided to nonaffiliates. Market price was therefore the appropriate price basis.

LUS Fiber provided these services under 5-year contracts.

LUS Fiber charged \$67/mo. under this account, versus \$[REDACTED]/mo. under a 5-year contract under standard nonaffiliate pricing. Similarly, LUS Fiber charged \$281/mo. to a nonaffiliate for a lesser Shared Packet 5 Mbps service for a shorter 3-year contract. Thus, LUS Fiber charged far below both its standard and actual nonaffiliate pricing, under this account. Accordingly, the price billed by LUS Fiber appears to be well within or below market price as established by LUS Fiber's standard and actual nonaffiliate pricing, and likely should be increased.

No cross-subsidization concerns were identified regarding this account. However, the very low rate could raise the opposite concern that by charging too far below market price, LUS Fiber is granting an "undue or unreasonable preference or advantage" to its Traffic Control affiliate, which would be impermissible under the FCA. La. R.S. 45:448.53(3)(a).

9. Lafayette Police Department (136428)

Most of the services billed under this account were VPLS 20 Mbps, VPLS 100 Mbps, VPLS 150 Mbps, and VPLS 1 Gbps network services functionally similar to Shared Packet 20 Mbps, Shared Packet 100 Mbps, Shared Packet 150 Mbps, and Shared Packet 1 Gbps services that were provided to nonaffiliates. Market price was therefore the appropriate price basis.

LUS Fiber provided these services under 5-year contracts.

LUS Fiber billed these services at rates below, and often significantly below, both LUS Fiber standard affiliate pricing and actual charges to customers. In particular, LUS Fiber charged \$200/mo. for VPLS 20 Mbps service under this account, versus \$[REDACTED]/mo. under a 5-year contract under standard nonaffiliate pricing. LUS Fiber charged \$1,440/mo. for VPLS 1 Gbps Mbps service under this account, versus \$[REDACTED]/mo. under a 5-year contract under standard nonaffiliate pricing. Accordingly, the prices charged by LUS Fiber are within market price as established by LUS Fiber's standard and actual nonaffiliate pricing.

The services billed under this account also included internet services that were also provided to nonaffiliates. LUS Fiber billed these services under this account at or below nonaffiliate prices, and thus they appear to be within market price.

No cross-subsidization concerns were identified regarding this account. However, the very low rates could raise the opposite concern that by charging too far below market price, LUS Fiber is granting an "undue or unreasonable preference or advantage" to its Traffic Control affiliate.

10. LCPCG - Wholesale (6276914329)

a. Network, Internet, and Point-to-Point Services.

Most of the services billed under this account were MAN 10 Mbps and Shared Packet 10 Mbps, MAN MPLS 100 Mbps, and MAN MPLS 1 Gbps network services functionally similar to

Shared Packet 10 Mbps, Shared Packet MPLS 100 Mbps, and Shared Packet MPLS 1 Gbps services that were provided to nonaffiliates. Direct Internet 500 Mbps and Point to Point 50 Mbps services were also provided under this account, which were identical to services also provided to nonaffiliates. Market price was therefore the appropriate price basis.

LUS Fiber billed most of the services provided under this account on a month-to-month basis, whereas nonaffiliates are required to have at least a 1-year contract. However, as discussed under the LUS Electric account, since the provision of the service to nonaffiliates determines the appropriate price basis, market price was still the appropriate price basis.

LUS Fiber charged \$135/mo. and \$175/mo. for the MAN 10 Mbps and Shared Packet 10 Mbps services on this account under 3-year contracts, versus \$[REDACTED]/mo. for Shared Packet 10 Mbps service under a 3-year contract under standard nonaffiliate pricing. This is well below standard nonaffiliate pricing. This is also significantly below the \$281/mo. LUS Fiber actually charged under a 3-year contract with a nonaffiliate for a lesser 5 Mbps Shared Packet service. Accordingly, the prices charged by LUS Fiber for these services appear to be within market price. However, the very low rate may raise the opposite concern that by charging too far below market price, LUS Fiber is granting an “undue or unreasonable preference or advantage” to its LUS affiliate.

LUS Fiber charged \$420/mo. for the MAN 100 Mbps service on this account on a month-to-month basis, versus \$[REDACTED]/mo. for Shared Packet 100 Mbps service under a 1-year contract under standard nonaffiliate pricing. This is significantly below standard nonaffiliate pricing. This is also significantly below the \$527/mo. LUS Fiber actually charged for Shared Packet 100 Mbps service under a 1-year contract with a nonaffiliate. Accordingly, the price charged by LUS Fiber for this service appears to be within market price.

LUS Fiber charged \$850 and \$895/mo. for the MAN MPLS 100 Mbps service under this account on a month-to-month basis, versus \$[REDACTED]/mo. for Shared Packet MPLS 100 Mbps under a 1-year contract under standard nonaffiliate pricing. This is below standard nonaffiliate pricing. Accordingly, the prices charged by LUS Fiber for this service appear to be within market price.

LUS Fiber charged \$3,680/mo. for the MAN MPLS 1 Gbps service under this account on a month-to-month basis, versus \$[REDACTED]/mo. under a 1-year contract under standard nonaffiliate pricing. This is below standard nonaffiliate pricing. Accordingly, the price charged by LUS Fiber for this service appears to be within market price.

LUS Fiber charged \$1,782/mo. for the Direct Internet 500 Mbps service under this account on a month-to-month basis. LUS Fiber did not have a nonaffiliate pricing sheet for this service current as of FY 2017 (the latest sheet available was from 2010, did not list 500 Mbps service, and listed \$[REDACTED]/mo. for a lesser 100 Mbps service under a one-year contract). Regardless, the price to LUS is well below the \$2,126/mo. LUS Fiber actually charged a nonaffiliate for this service under a 3-year contract. Accordingly, the price charged by LUS Fiber for this service appears to be within market price as established by LUS Fiber’s actual nonaffiliate pricing.

LUS Fiber charged \$437/mo. for the Point to Point 50 Mbps service under this account on a 5-year contract, which is [REDACTED] as under a 5-year contract under standard nonaffiliate pricing. This is also the same price actually charged by LUS Fiber to a nonaffiliate under a 5-year contract. Accordingly, the price charged by LUS Fiber for this service appears to be within market price.

No cross-subsidization concerns were identified regarding the network, direct internet, and point to point services under this account.

b. Rack Co-Location Service

The services billed under this account also included one instance of Rack Co-Location Space Service, which was not provided to nonaffiliates in FY 2017, and for which no standard pricing was available. The Rack Co-Location Service was provided to a non-affiliate in FY 2018, however, so market price is the correct price basis.

LUS Fiber charged LCG \$2,323/mo. for Rack Co-Location on a month-to-month basis under an expired 5-year contract, which is nearly double the \$1,250/mo. charged to the nonaffiliate a year later. This suggests that the charge may exceed market price.

This is a non-standard service, however, and the price may fluctuate with the availability of space and as accommodation in negotiating other services. Further, LUS Fiber also leases rack co-location space from that same nonaffiliate, so the price to the nonaffiliate for the Rack Co-Location service provided by LUS Fiber may be offset or reduced as a result.

Accordingly, the price billed by LUS Fiber for this service may be justifiable as being within market price as established by LUS Fiber's actual nonaffiliate contract rates, modified to take the circumstances into account. However, it may also exceed market price, and if so, may have violated the Rules in FY 2017 and all other years in which it was charged above market price.

c. Sonet Port Service

The services billed under this account also included one instance of Sonet Port service, which was not provided or offered to nonaffiliates. Cost was therefore the appropriate price basis for this service.

LUS Fiber charged LCG \$280/mo. for this service, and was unable to locate any cost analysis for it. Moreover, this is more than five times the \$50/mo. rate charged to LUS under the LUS Telecom Wholesale Account below. Given the small size of this charge, upon performing a cost analysis properly accounting for direct, capital, and indirect costs as required by the Rules, this charge may be appropriate under the Rules. However, the requisite cost analysis either was not done or cannot be located, and a new one as of FY 2017 has not yet been prepared. Accordingly, this charge was not properly documented, and if it exceeds the LUS Fiber's cost to provide it, may violate the Rules in FY 2017 and all other years in which it was charged above LUS Fiber's cost.

11. LUS Telecom - Wholesale (2362872683)

a. Network Services

Most of the services billed under this account were Shared Packet 1.5 Mbps, Shared Packet 10 Mbps, Shared Packet 10 Mbps Quality of Service (“QoS”), Shared Packet 100 Mbps, Shared Packet 100 Mbps QoS, MAN MPLS 100 Mbps, and MAN MPLS 1 Gbps network services functionally similar to Shared Packet 1.5 Mbps, Shared Packet 10 Mbps, Shared Packet 100 Mbps, Shared Packet 10 Mbps QoS, Shared Packet MPLS 100 Mbps, and Shared Packet MPLS 1 Gbps services that were provided to nonaffiliates. Market price was therefore the appropriate price basis for these services.

LUS Fiber provided these services under 1-year and 5-year contracts, many of which had long expired by FY 2017 and had become month-to-month.

LUS Fiber charged \$210/mo. for the Shared Packet 1.5 Mbps service on this account under a 5-year contract, versus \$[REDACTED]/mo. with a 5-year contract under standard nonaffiliate pricing. This is below standard nonaffiliate pricing. Accordingly, the price charged by LUS Fiber for this service appears to be within market price.

LUS Fiber provided a “wireless network service” under this account, that was actually a Shared Packet 10 Mbps service, under an expired 5-year contract. Therefore this service is actually being provided on a month-to-month basis under this account, and the correct price comparison is to month-to-month pricing. LUS Fiber charged \$337/mo. for month-to-month billing under this account, which is [REDACTED]% above standard nonaffiliate pricing of \$[REDACTED]/mo. under a 1-year contract for the Shared Packet 10 Mbps service. This is also five times the rate for the same service under the LCG Traffic Control account. This suggests that the charge may exceed market price.

A price increase for month-to-month billing over a 1-year contract is justifiable as still being within market. Although the permissible magnitude of the increase that would still be within market as interpreted by the PSC is not known, the increase here is only [REDACTED]%. Also, LUS is an endpoint user of the services, unlike nonaffiliates, which would typically resell the service at a profit to their own endpoint users. The LCG Traffic Control rate is clearly within or below market, as addressed above regarding that account. Accordingly, the price billed by LUS Fiber for this service may be justifiable as being within market price as established by LUS Fiber’s standard nonaffiliate pricing, modified to take the circumstances into account. However, it may also exceed market price, and if so, may have violated the Rules in FY 2017 and all other years in which it was charged above market price.

LUS Fiber charged \$299/mo. for the Shared Packet 10 Mbps QoS service on this account under a 5-year contract, which is [REDACTED] as under standard nonaffiliate pricing. It is also the same price actually charged to a nonaffiliate under a 5-year contract. Accordingly, the price charged by LUS Fiber for this service appears to be within market price.

In some instances, LUS Fiber charged \$436/mo. for the Shared Packet 100 Mbps service on this account under 5-year contracts, which is [REDACTED] as under the standard nonaffiliate pricing. It is also substantially below the \$680/mo. actually charged to a nonaffiliate under a 5-year contract. Accordingly, the price charged by LUS Fiber for this service appears to be within market price.

In other instances, LUS charged \$680/mo. for the Shared Packet 100 Mbps service on this account, apparently on a month-to-month basis, which is the same rate charged under the LUS AMI Gatekeeper account. Accordingly, for the same reasons discussed under the LUS AMI Gatekeeper account, the price billed by LUS Fiber for this service is within market price as established by LUS Fiber's actual nonaffiliate contract prices; but the fact that the actual contract price exceeds standard pricing and the discrepancy between LUS and Police Department rates for the same service are potentially of concern.

In still other instances, LUS charged \$800/mo. for the Shared Packet 100 Mbps service on this account. While the service is noted as being provided under 5-year contracts they were long expired. Therefore this service was actually being provided on a month-to-month basis under this account, and the correct price comparison is to month-to-month pricing. Moreover, this was a "Main Site" service, and the charge is slightly less than the \$820/mo. charged for Main Site Shared Packet 100 Mbps under the LUS SCADA account. Accordingly, for the same reasons discussed under that account, the price billed by LUS Fiber for this service may be justifiable as being within market price as established by LUS Fiber's actual nonaffiliate contract prices, modified to take the circumstances into account. However, it may also exceed market price, and if so, may have violated the Rules in FY 2017 and all other years in which it was charged above market price.

LUS Fiber charged \$723/mo. for the Shared Packet 100 Mbps QoS service on this account under a 5-year contract, versus \$[REDACTED]/mo. under a 5-year contract under standard nonaffiliate pricing. However, LUS Fiber actually charged \$723/mo. to a nonaffiliate under a 5-year contract. This suggests that the charge to LUS is justifiable as being within market price. Accordingly, the price billed by LUS Fiber appears to be within market price as established by LUS Fiber's actual nonaffiliate contract prices. Nevertheless, the fact that the actual contract price exceeds standard pricing is potentially of concern.

LUS Fiber charged \$895/mo. and \$1,000/mo. for the MAN MPLS 100 Mbps service under this account under a 1-year contract, which is [REDACTED] the \$[REDACTED]/mo. under a 1-year contract under standard nonaffiliate pricing. Accordingly, the price charged by LUS Fiber for this service appears to be within market price.

In some instances, LUS Fiber charged \$3,680/mo. for the MAN MPLS 1 Gbps service under this account under a 5-year contract, which is [REDACTED] under a 5-year contract under standard nonaffiliate pricing. Accordingly, the price charged by LUS Fiber for this service appears to be within market price.

In other instances, LUS Fiber charged \$3,930/mo. for the MAN MPLS 1 Gbps service under this account under a 1-year contract, which is [REDACTED] under a 1-year contract under

standard nonaffiliate pricing. Accordingly, the price charged by LUS Fiber for this service appears to be within market price.

b. Direct Internet Access Services

Direct Internet 45 Mbps and Direct Internet 100 Mbps services were also provided under this account, which were identical to services also provided to nonaffiliates. Market price was therefore the appropriate price basis for these services.

LUS Fiber billed the Direct Internet 45 Mbps service under a 3-year contract that had expired by FY 2017. Therefore, this service was actually being provided on a month-to-month basis under this account, and the correct price comparison is to month-to-month pricing. LUS Fiber provided the Direct Internet 100 Mbps service under a 5-year contract that was still current in FY 2017.

LUS Fiber charged \$4,865/mo. for the Direct Internet 45 Mbps service under an expired contract. LUS Fiber did not have a nonaffiliate pricing sheet for this service current as of FY 2017. However, the Direct Internet 45 Mbps price is more than quadruple the \$820/mo. LUS Fiber actually charged a nonaffiliate for a lesser 10 Mbps service under a 1-year contract in FY 2017, as well as the \$1,057/mo. LUS Fiber actually charged a nonaffiliate for a superior Direct Internet Access 100 Mbps service under a 2-year contract in FY 2017. Accordingly, this charge appears to be far above market price, and therefore appears to violate the Rules in FY 2017 and all other years in which it was charged above market price, after the contract expired.

The expired contract dated from 2009, when LUS Fiber's then-current standard affiliate rate for Direct Internet Access 45 Mbps was \$[REDACTED]/mo. under a one-year contract. Accordingly, this appears to be a billing error, resulting from carrying over the former contract price despite its expiration. The fact remains, however, that the charge was far above market price.

LUS Fiber charged \$790/mo. for the Direct Internet 100 Mbps service under a 5-year contract. Fiber did not have a nonaffiliate pricing sheet for this service current as of FY 2017. However, this rate is well below the \$937 LUS Fiber charged a nonaffiliate for Direct Internet 100 Mbps service in FY 2017. Accordingly, the price charged by LUS Fiber for this service appears to be within market price.

c. Sonet Port service

The services billed under this account also included one instance of Sonet Port service, which was not provided or offered to nonaffiliates. Cost was therefore the appropriate price basis for this service.

LUS Fiber charged LUS \$50/mo. for this service, and was unable to locate any cost analysis for it. Given the very small size of this charge, upon performing a cost analysis properly accounting for direct, capital, and indirect costs as required by the Rules, this charge may be appropriate under the Rules. However, the requisite cost analysis either was not done or cannot

be located, and a new one as of FY 2017 has not yet been prepared. Accordingly, this charge was not properly documented, and if it exceeds the LUS Fiber's cost to provide it, may violate the Rules in FY 2017 and all other years in which it was charged above LUS Fiber's cost.

d. T1 management service

LUS Fiber also billed a T1 management service under this account. This is not T1 service itself, but management of T1 equipment owned by LUS. LUS Fiber does not offer or provide this service to any nonaffiliates. Cost was therefore the appropriate price basis for these services.

LUS Fiber billed this service under 5-year contracts.

In pricing this service, LUS Fiber performed a cost analysis for it. The direct cost alone, excluding any capital or indirect costs, was \$217/mo., excluding any profit margin. LUS Fiber charges \$170/mo. for this service under this account, which is less than the direct cost alone, even before considering capital or indirect costs. Accordingly, this charge is appropriate under the Rules. No concerns were identified regarding this item on this account.

e. Dark fiber lease

LUS Fiber also billed a dark fiber lease under this account. This is a lease of 10 of the 96 (on average) fibers in the LUS Fiber backbone, which LUS "lights" using its own equipment on either end of the fibers, instead of using services provided by LUS Fiber to do so. LUS uses the dark fiber to manage its electrical operations to ensure adequate communication among its facilities to respond instantaneously to problems to preserve the power supply to its customers and to protect its facilities from overload. This was one of the primary reasons LUS installed fiber in the first place, before LUS and LUS Fiber "split." LUS Fiber provides the same dark fiber service to the University of Louisiana ("UL"), which is a nonaffiliate of LUS Fiber. Market price was therefore the appropriate price basis for the dark fiber lease.

LUS Fiber provides this service to LUS under a 5-year contract.

LUS Fiber originally charged LUS \$44.23 per fiber per mile per month for this service, for a total charge of \$28,752/mo., effective in 2007. In 2014, LUS Fiber increased the charge to LUS to \$67.83 per fiber per mile per month, for a total charge of \$44,087/mo. Both prices were set using the same methodology, which is also the same methodology LUS Fiber uses to develop product rates for other wholesale services. Telecom consultant Doug Dawson assisted LUS Fiber in developing this methodology. Mr. Dawson also consults for many other public and private telecom companies and utilities throughout the nation.

Mr. Dawson advises that the methodology LUS Fiber used is "replacement cost," which is a standard technique for pricing telecom and other services. He advises that it is one of the three methods for determining market price for such services. While it sets the high end of market price, it is a valid method for doing so because it is based on recouping the cost to construct a new facility (in this case the fiber system), adds a maintenance fee, and adds a profit margin. Another method

is comparison to other service providers' rates, but this is generally is not possible for services such as dark fiber because competitors rarely reveal their pricing, and pricing can vary widely depending on negotiation and individual circumstances. The third method is the "embedded cost" method, which sets the very bottom of market price because it recoups only actual cost to construct the facility. Embedded cost and replacement cost models are similar, except the former is based on original costs of construction of the actual facilities, while the latter is based on the current cost to construct a new one. Mr. Dawson opined that replacement cost is "more like the market" than embedded cost, because in the market, providers can charge customers up to the cost necessary to build and operate their own facility. Accordingly, LUS Fiber's methodology appears to be an acceptable method to determine market price for the dark fiber lease.

Mr. Dawson originally presented an embedded cost methodology to LUS Fiber, which LUS Fiber appears to have converted on its own into the current replacement cost methodology. Mr. Dawson did not specifically recall providing or reviewing the replacement cost model LUS Fiber ultimately used, though as discussed above, he believed it to be reasonable for determining market price.

LUS Fiber increased the price for the LUS dark fiber lease in 2014 due to a change in its allocation of the cost of constructing a fiber backbone, which is one of the primary inputs into the replacement cost method. The LUS dark fiber lease is for 10 of the 96 fibers in the LUS Fiber backbone. However, the cost to construct a 12-fiber backbone (the smallest possible) is only marginally cheaper than the cost to construct a 96-fiber backbone. The only difference is the cost of a bigger cable, which is a small part of the total cost. LUS Fiber originally allocated 40% of the total cost of construction to the incremental difference in cable cost, meaning it estimated replacement cost for the 10 leased fibers at 60% of the total cost of construction. In 2014, however, LUS Fiber performed a mathematical analysis of the actual difference in cost. LUS Fiber determined that the incremental difference was only 8%, meaning the replacement cost for the 10 leased fibers was actually 92% of the total cost of construction. LUS Fiber repriced the service on this basis, beginning in 2014. Given the relatively small contribution of the difference in cable size to the total cost, if LUS Fiber's cost assumptions for its calculation of the marginal difference are accurate, this allocation may be reasonable.

Mr. Dawson advises that the construction cost used in the methodology, \$36,277 per mile, is actually cheap. He also advises that the other inputs into the methodology LUS Fiber used are also reasonable: recovery of the costs of construction at 6% over 10 years; annual maintenance fee of 7% of construction cost; and 20% markup to cover in-lieu-of taxes and profit. LUS Fiber advises that these same inputs are used in pricing all of its wholesale services. Mr. Dawson opined that these figures are reasonable, and that it would be inappropriate under the FCA for LUS Fiber to calculate lease prices to affiliates using lower rates than used for nonaffiliates, presumably referring to La. R.S. 45:448.53(3)(a). Accordingly, LUS Fiber's inputs into the replacement cost methodology appear to be reasonable.

LUS Fiber provides dark fiber service to UL for \$22.25 per fiber per mile per month to UL, which is about a third of the price charged to LUS. However, LUS Fiber does so under an amendment to a 20-year contract for electric power that expires in 2021 (the amendment was done

in 2001, long before LUS and LUS Fiber split). The price was reached as part of renegotiating the electricity contract, was not based on LUS's cost, and was done long before systematic pricing was instituted. LUS Fiber does not actively market dark fiber leases, as providing its own services over the fiber generates more income – the lease to LUS is the result of the fiber originally having been installed for the benefit of LUS's electrical system, while the lease to UL is the result of the historical context when the amendment was done. Furthermore, cost of construction, which is a major factor in the replacement cost methodology, had increased since the UL lease began. While the UL contract provided that it could be repriced, this was apparently never done. The historical lease price to UL is therefore not necessarily a constraint on the market price of LUS Fiber's dark fiber lease.

Pricing information for dark fiber was obtained from Johnson City Power Board ("JCPB") in Johnson City, Tennessee. For dark fiber over the distance and in the configuration of the LUS dark fiber lease, JCPB's standard pricing sheet states a price of \$22.50 per fiber per mile per month, similar to the LUS Fiber dark fiber lease to UL. However, this is another market area and a municipal provider with its own costs and operational concerns, so again, the JCPB price does not necessarily set the market price for LUS Fiber's dark fiber lease.

Accordingly, the price billed by LUS Fiber for this service may be justifiable as being within market price as established by the replacement cost methodology. However, it may also exceed market price, as embodied by the UL lease and JCPB standard pricing, as interpreted by the PSC. If so, this may have violated the Rules in FY 2017 and all other years in which it was charged.

ADDITIONAL RECOMMENDATIONS

As indicated throughout this review, LUS is purchasing many affiliate services from LUS Fiber without the benefit of contracts. LUS Fiber's standard nonaffiliate pricing and common sense demonstrate that LUS could obtain substantial cost savings by entering into long-term contracts to lock in lower rates. This is not always possible, since some services or service locations are eliminated or moved over time. However, LUS Fiber has provided most of the services to LUS for many years, and LUS is very likely to continue to require those services, indicating that long-term contracts are appropriate in most instances. Furthermore, often when services are no longer needed at a particular service location, it is because the facility being serviced has been moved, not because it was eliminated. It would be appropriate and reasonable for long-term contracts to allow services to be moved, with no penalty but with a reasonable service charge for the reinstallation work, removing this concern in most instances. Thus, while the PSC staff has already indicated that failure to obtain contracts does not raise concerns under the FCA and the PSC Rules, LUS should enter into long-term contracts in most cases.

LUS Fiber was unable to locate signed copies service orders or contracts for many of the affiliate services it provides. Further, many of the service orders and contracts that could be located were expired according to their terms, and LUS Fiber apparently simply carried on the same prices on a month-to-month basis. LUS Fiber should better manage its contracts, storing them systematically so that they can be located, and monitoring them so that they can be renewed or

renegotiated when they expire. Pricing should be adjusted to current market price, or appropriately justified, upon renewal or renegotiation. Many of the services were mislabeled, and care should be taken to correctly document and label the service actually being provided. Likewise, LUS and LCG should monitor the contracts for the same reasons. Finally, LUS Fiber should ensure and preferably document that prices paid are market, comparable to nonaffiliate or market rates (if available), or that proper cost analysis is done for services provided only to affiliates.

LUS should also systematically review the services it is obtaining from LUS Fiber to ensure that these types and levels of service are necessary. Cost savings may be achievable if lesser service levels would suffice.

In these ways, LUS, LUS Fiber, and LCG can better ensure not only compliance with the Rules, but that proper business judgment is exercised in the interests of all ratepayers and taxpayers.

