

SUNSET DIGITAL COMMUNICATIONS INC.  
AND  
LENOWISCO, INC I  
AGREEMENT FOR EQUIPMENT LEASE

This is an Agreement made and entered into October 20, 2003 by and between Lenowisco Inc. I, a Virginia non-profit corporation, with a business address of P.O. Box 366, Duffield, VA 24244-0366 ("Lenowisco") and Sunset Digital Communications, INC, a Virginia corporation with a business address of P.O. Box 405, Duffield, VA 24244-0405 ("Sunset") and both referred to herein as "Party" or "Parties."

**Definitions.**

The following terms shall have the stated definitions in this Agreement.

(a) "Acceptance Date" has the meaning in Section 2.4.

(b) "Agreement" means this Lease of Fiberoptics Agreement, as amended, supplemented, or restated from time to time.

(c) "As-Built Drawings" means the visual depiction of the Lenowisco Network, as it is constructed or as it may be modified from time to time which are rendered after construction has been completed.

(d) "Cable Plant" when used herein as defined term means the fiber optic cable and the fibers contained therein, and associated splicing connections, splice boxes, all associated conduits whether containing fiber or not, and vaults which have been or will be installed as part of the Lenowisco Network.

(e) "Costs" when used as a defined term means actual, direct and indirect costs paid or payable in accordance with the established accounting procedures generally used by Lenowisco and which it utilizes in billing third parties for reimbursable projects which costs shall include, without limitation, the following: (1) internal labor costs, including wages and salaries, and benefits and overhead allocable to such labor costs, excluding contributions to 401(k) and other retirement plans, and overhead costs allocable to such labor costs (which overhead costs shall not be less than twenty percent (20%) of the labor costs and shall not exceed 30% of the labor costs) and (2) other direct costs, capital costs and other out-of-pocket expenses on a pass through basis (e.g., equipment, materials, supplies, contract services, etc.).

(f) "Dark Fiber" means fiber optic cable and the fibers contained therein provided without electronics or optronics, and which are not "lit" or activated.

(g) "Equipment" means all electronic equipment subject to this lease that serves to light the Network, any equipment used to support service to the customer, including fiber interfaces, servers to manage the network, distribution facilities, and any related items used to operate the network by Sunset.

(h) "Indefeasible Right of Use" or "IRU" means an exclusive, long-term lease of all or a portion of the capacity of a fiber optic cable.

(i) "Underlying Owners" means any Person (other than Lenowisco): (a) owning any portion of the property interest in the Lenowisco Network; (b) leasing to Lenowisco, or providing an IRU to Lenowisco in, any portion of the Network; or (c) granting any Underlying Rights to Lenowisco.

(j) "Underlying Rights" means all deeds, leases, easements, rights-of-way, rights of use, licenses, franchises, permits, authorizations, consents and approvals (including without limitation, any necessary local, state, federal or tribal authorizations, consents and environmental permits) and other rights, titles or interests as are necessary for the construction, installation, operation, maintenance and repair of Lenowisco Network and for the other purposes described in this Agreement.

#### RECITALS

WHEREAS, Lenowisco has received funding for the development of a high-speed fiber optic network to serve and operate in the counties of Lee, Scott and Wise and the town of Norton that includes all Cable Plant, Fiber, Dark Fiber, conduit, and associated equipment (the "Lenowisco Network" or "Network"); and

WHEREAS, Lenowisco wishes to deploy the Network and Equipment to provide fast, reliable and affordable network access in furtherance of economic development within the counties of Lee and Wise and the town of Norton (the "Service Area"); and

WHEREAS, Sunset desires to lease the Equipment from Lenowisco and Lenowisco desires to lease the Equipment to Sunset; and

WHEREAS, Lenowisco seeks to keep the Network open to all qualified users in the Service Area;

WHEREAS, the Parties have entered into a separate agreement (the "Network Agreement") and agree that the Network Agreement is incorporated into this Agreement as if fully set forth herein.

#### AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Lenowisco has completed a portion of the Lenowisco Network. The parties have entered into an exclusive lease agreement for the Lenowisco Network (the "Network Lease"). As part of

Lenowisco's construction of the Network, it has purchased Equipment compatible with the Network engineering that will allow complete operation of the Network. Lenowisco agrees to lease the Equipment to Sunset on an exclusive basis. In return for the exclusive lease, Sunset agrees to accept, operate and maintain the Equipment for use to operate the Network, sell services to the general public and maintain the Equipment and Network on the terms and conditions in this Agreement.

Sunset and Lenowisco desire to work together to extend the Lenowisco Network and Lenowisco finds that the interests of the public and itself will be well served by entering into this Agreement;

**1. Lease of Equipment.** Lenowisco hereby grants an exclusive lease of the Equipment including but not limited to the Cable Plant, Dark Fiber, conduit, Underlying Rights and related connections to Sunset in order to allow it to operate the Network and provide services in the Service Area.

1.1. Lease Term. This Agreement shall become effective upon completion of all construction of the Lenowisco Network ("Effective Date"). The Lease shall terminate on September 30, 2024 ("Term"). At the end of the initial term the parties agree to negotiate in good faith to develop mutually beneficial terms and conditions for a new agreement, based on the circumstances at that time.

1.2. Limitations on Grant. Sunset acknowledges and agrees that it is responsible for maintenance and operation of the Equipment.

1.3. Payment of Rent. The Rent shall begin to accrue on the first day following the second anniversary of the Effective Date. Rent shall be payable beginning the third anniversary of the Effective Date, and will accrue in each year thereafter. On the fifteenth (15) day after the end of the anniversary of the Effective Date, Sunset shall tender the Rent to Lenowisco to accounts designated by Lenowisco. Sunset shall tender to Lenowisco five percent (5%) of the gross revenue generated for the twelve calendar months preceding each anniversary from provision of any services less any payments made during the period to other carriers for distribution, transport and termination of communications and less any applicable sales, use, property and other taxes and tariffs, and when necessary for payments made for Replacement Equipment as further defined in Section 5. ("Revenue").

## **2. Equipment.**

2.1. Testing and Effective Date. The Equipment purchased by Lenowisco will be compatible with the Network. Sunset will accept the Equipment after complete performance testing to insure that it operates according to accepted industry standards and manufacturer specifications. Sunset shall be given a reasonable time period in which to test the Equipment. Should any changes, repairs or alterations be necessary, the Parties agree to cooperate with each other to ensure that the manufacturer of the Equipment will repair or alter the Equipment to

perform up to industry standards and its specifications. After testing is complete, and after necessary alterations or repairs are complete, Sunset shall accept the Equipment. The Effective Date of the Network Lease shall govern this Equipment Lease Agreement as if stated herein. The Effective Date of this Agreement shall be the same date as the Effective Date of the Network Lease, once Sunset has accepted the Equipment.

2.2. Warranty, Service and Cooperation. Lenowisco agrees to require the Equipment manufacturer to issue a warranty on its equipment that will include Sunset's use and operation of the Equipment on the Network. The manufacturer will be provided notice of this Agreement, and its warranty will acknowledge the existence of this Agreement. Lenowisco agrees to cooperate with Sunset in the event warranty work is required, and any related service orders become necessary to have the Equipment operate according to the warranty.

2.3. Equipment List. Attached as Exhibit A is a full and complete list of all the Equipment subject to this Agreement, and the Bill of Sale. Attached, as Exhibit B is the warranty issued by the manufacturer. To the extent Replacement Equipment or new Equipment is purchased and placed into service on the Network, the Parties agree that Exhibit A shall be updated at that time, and shall be incorporated into this Agreement. Any warranty issued for Replacement or new Equipment will be added to Exhibit B.

### **3. Operation And Use Of The Lenowisco Network**

3.1. Lawful Use. Notwithstanding anything in this Agreement to the contrary, Sunset may use the Equipment for any lawful telecommunications purpose. Sunset shall keep the Equipment free from any liens, rights or claims of any third party attributable to Sunset, except that Sunset may encumber the Lease granted to Sunset in the Equipment, on the condition that Sunset shall provide thirty (30) Days notice to Lenowisco of such a grant.

3.2. Network Customers. Sunset may transfer, lease, license, grant rights of use in, or otherwise convey its interests or rights in or to the Cable Plant, Dark Fiber, Network and Equipment. Regardless of any such conveyance of any interest, Sunset shall remain solely responsible for its performance of its obligations under the agreement and this Agreement. Sunset shall ensure that its agreements with its users shall bind its users to comply with all restrictions set forth in this Agreement and shall contain limitations on warranty and liability at least as restrictive as those set forth in this Agreement.

3.3. Services. Sunset agrees that the services it offers on the Network shall be offered equally to similar classes of customers throughout the Service Area. Sunset shall be entitled to require reasonable customer deposits, and provide services to customers consistent with the laws of the state of Virginia. A customer is qualified to locate on and attach to the Network when it agrees to use the Network consistent with any reasonable requirements Sunset may impose that are necessary to maintain the integrity of the Network. A qualified customer shall not operate in a manner harmful to other customers ("Qualified Customer"). In addition,

Sunset may require Qualified Customers to enter into agreements establishing reasonable terms and conditions to attach to the Network, including rental obligations.

3.4. Network Damage. Sunset shall promptly notify Lenowisco of any matters pertaining to any damage or impending or threatened damage to or loss of the use of the Lenowisco Network including the Equipment, Cable Plant and Dark Fiber that are known to Sunset. Each of Sunset and Lenowisco shall promptly notify the other of any matters pertaining to, or the occurrence (or impending occurrence) of, any events which would be reasonably likely to give rise to any damage or impending damage to or loss of the Lenowisco Network that are known to it.

3.5. Compliance with Law. Nothing stated herein shall be construed to interfere with Sunset's or Lenowisco's ability to comply with the rules, regulations or directives of any governmental or jurisdictional authority.

3.6. Access to Facilities. Each Party shall provide reasonable and timely access to any facility locations on the Network and shall be in accordance with each Party's internal security procedures, and any applicable governmental requirements and Underlying Rights and any applicable collocation agreement.

3.7. Control; Licenses.

3.7.1. Lenowisco will take all reasonable precautions not to disturb or interfere with Sunset's services or property, unless such disturbance or interference is deemed to be necessary for the Lenowisco Network. Each Party shall provide the other Party with notice of any such disturbance or interference within twenty-four (24) hours following the disturbance or interference.

3.7.2. Neither Party shall represent itself as the holder of any authorization issued to the other Party, or as the representative of the other Party before any federal, state or local regulatory body or any other third party.

3.7.3. Except as otherwise required by law, all filings made during the Lease Term before regulatory bodies with respect to either Party's governmental authorizations shall be made by and in the name of the authorized Party, and the other Party shall cooperate fully with the authorized Party in making such filings.

**4. Maintenance of Network**

4.1. Sunset is responsible for maintenance of the Equipment and the Network, and Sunset shall use qualified in-house personnel, contractors and subcontractors to conduct such maintenance. Sunset agrees to take all reasonable efforts to maintain the Network.

4.2. Sunset and its contractors or subcontractor shall at all times hereunder, maintain the Network in such a manner as will best enable Sunset to fulfill service and other requirements, and will do so in accordance with all applicable ordinances, statutes, regulations, laws, tariffs, and codes. Sunset shall supply all labor, tools and equipment necessary to perform maintenance, if any, as to the Network provided, however, that Lenowisco shall cooperate with, and assist, as may be reasonably required and requested by Sunset.

4.3. Sunset agrees to pay all costs for damages caused by it and/or its agents to any of Lenowisco's property.

**5. Equipment Replacement and Upgrade.** To the extent Lenowisco, in its own discretion, may seek to upgrade the equipment and technology used on the Network, any Equipment purchased and placed on the Network by Lenowisco, will be added to this Agreement on the date it is put into service.

## **6. Representations and Warranties**

6.1. Each Party represents and warrants to the other that:

6.1.1. It has the requisite power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement;

6.1.2. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by the requisite organizational action on the part of such Party;

6.1.3. This Agreement has been duly executed and delivered, and creates lawful, valid and legally binding obligations, in accordance with its terms; and

6.1.4. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby are not prohibited by, do not violate or conflict with any provision of, and do not constitute a default under or a breach of: (a) any contract, agreement or other instrument to which it is a party or by which any of the assets that are the subject hereof are bound; or (b) to the Party's knowledge, any order, writ, injunction, decree or judgment of any court or governmental agency.

6.2. Lenowisco represents and warrants as follows:

6.2.1. Lenowisco represents and warrants that the Equipment subject to this Agreement will be subject to a full warranty that will be assignable to Sunset.

6.2.2. Lenowisco represents and warrants that the Equipment it purchased is operational and unencumbered by any liens, mortgages or claims from any third party.