

SUNSET DIGITAL COMMUNICATIONS INC.
AND
LENOWISCO, INC I
AGREEMENT FOR LEASE OF
FIBEROPTICS AND ASSOCIATED RIGHTS-OF-WAY

This is an Agreement made and entered into as of 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) "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.
- (h) "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.

(i) "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 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 Dark Fiber Network from Lenowisco and Lenowisco desires to lease the Dark Fiber Network to Sunset; and

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

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.

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. This Agreement serves to lease this portion and the remainder of the planned construction to Sunset on an exclusive basis. In return for the exclusive lease, Sunset agrees to accept, operate and maintain the Lenowisco 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 extension of the Network and entering into this Agreement;

1. **Lease of Cable Plant and Dark Fiber.** Lenowisco hereby grants an exclusive lease of the Network 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 is responsible for maintenance and operation of the Network.

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 twenty five percent (25%) of the gross revenue generated for the twelve calendar months preceding each anniversary from provision of the 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 ("Revenue").

2. Underlying Rights

2.1. Lenowisco will obtain Underlying Rights. Lenowisco shall obtain all Underlying Rights that are necessary in order to (i) permit Sunset to use, own, operate, access and maintain the Network as provided and permitted in this Agreement, and (ii) to permit Sunset to grant sub-easements or sub-licenses, and other related grants of use in the Network, as the case may be, to third parties all in accordance with the terms and conditions hereof and the Underlying Rights. In the event the grantor of the Underlying Rights does not permit Lenowisco to grant sub-easements or sub-licenses to third parties, Lenowisco agrees that Sunset may participate in the acquisition of a separate set of Underlying Rights, provided that any separate set of Underlying Rights acquired by Sunset shall not adversely impact the Lenowisco Network.

2.2. Lenowisco will perform faithfully under the Underlying Rights. Lenowisco further agrees to observe and perform its duties, obligations and responsibilities under the agreements providing the Underlying Rights and under this Agreement. Lenowisco represents and warrants that all Underlying Rights shall extend for the length of the term of this Agreement.

2.3. Defense and Protection of the Underlying Rights. Throughout the term of each such Underlying Right, Lenowisco will, at its sole cost and expense, defend and protect its rights in and interests under the Underlying Rights and Sunset's right to use the Lenowisco Network as provided and permitted in this Agreement against interfering or infringing rights, interests or claims of third parties. Lenowisco shall defend and indemnify Sunset to the extent any claims are made by Underlying Owners regarding Underlying Rights. Should any claims regarding the Underlying Rights impact Sunset in its operation of the Network to such an extent that it can no longer provide services over the Network, it shall be considered an Event of Default, and all such remedies shall be available to Sunset.

2.4. Underlying Rights Acquired After the Effective Date. With respect to any Underlying Rights obtained after the Effective Date hereof by Lenowisco (or any Underlying Rights existing under any document, agreement or instrument first delivered to Sunset after the date hereof), Lenowisco agrees that it will use all reasonable efforts to assure that the terms and conditions thereof, and the rules and regulations imposed in connection therewith, shall not impose materially more burdensome limitations, costs, and restrictions on the rights of Sunset to use the Lenowisco Network than the Underlying Rights existing on the Effective Date. Such Underlying Rights acquired after the Effective Date shall become part of the Lenowisco Network, as defined in the Agreement.

2.5. Loss of an Underlying Right by Sunset. If an Underlying Right is lost through Sunset's fault, Sunset shall replace the lost Underlying Right at no cost to Lenowisco, after proper notice to Sunset of the loss of Underlying Right. Lenowisco shall cooperate with Sunset in order to restore the Underlying Right.

2.6. Sunset Approvals. During the Term, Sunset will secure any approvals, consents, permits, licenses and leases (the "Sunset Approvals") as may be necessary (a) for Sunset's use and operation of the Network for the purpose intended by Sunset and (b) to provide Lenowisco with the requisite access to Sunset's buildings and facilities in order for Lenowisco to perform its obligations hereunder. At all times, Sunset shall be in material compliance with all applicable federal, state and local codes, ordinances, laws, rules and regulations, and all approvals, licenses, leases, agreements, easements, Underlying Rights, permits, orders and consents applicable to its use of the Lenowisco Network and the transactions contemplated by this Agreement.

2.7. Lenowisco Approvals. During the term of this Agreement, Lenowisco shall be in material compliance with all applicable federal, state and local codes, ordinances, laws, rules and regulations, and all agreements, licenses, easements, Underlying Rights, permits, orders and consents applicable to the construction, installation and provisioning of the Lenowisco Network and the transactions contemplated by this Agreement.

2.8. Underlying Rights. To the best of Lenowisco's knowledge, information and belief, none of the Underlying Rights prohibits the sale, sublease, grant of indefeasible rights of use in or other alienation, transfer or license of all or a part of the Cable Plant, Dark Fiber or Lenowisco Network, as contemplated by this Agreement. The parties understand that Sunset's ability to operate and maintain the Network will require it to enter into such sale, sublease, grant of indefeasible rights of use in or other alienation, transfer or license of the Network.

3. Relocation

3.1. Notice. If Lenowisco is required (a) by any municipal, state, local or national authority with legal authority to so require, (b) by the provider of an Underlying Right, (c) by reason of the occurrence of a Force Majeure Event as defined herein or (d) because of bona fide operational reasons, to relocate any portion of the Lenowisco Network, then Lenowisco shall provide at least sixty (60) Days notice of the proposed relocation or the longest possible notice reasonable under the circumstances. With the notice of relocation, Lenowisco

shall transmit the construction specifications to Sunset for the portion of the Lenowisco Network to be relocated.

3.2. Relocation. After providing the notice required under Section 3.1, Lenowisco shall have the right to either proceed with such relocation (including, but not limited to, the right, in good faith, to reasonably determine the extent of, the timing of, and methods to be used for such relocation) or to pay such amounts as may be necessary to avoid such relocation. Lenowisco agrees to meet and confer with Sunset regarding the best manner to complete such relocation.

3.3. Standards. Any relocation shall be constructed and tested in accordance with the industry standards. Lenowisco and Sunset agree that such industry standards will be included in any contracts with vendors to complete the relocation of the Network.

3.4. Cost Allocation. If a segment is subject to relocation Sunset and Lenowisco shall share equally Relocation Costs (which shall include any amounts paid by Lenowisco to avoid relocation), except if the cause of the Relocation shall be due to either Party's actions or inactions, and then such Relocation Costs shall be paid by that party.

3.5. Updated As-Builts. Lenowisco shall deliver to Sunset updated preliminary As-Built Drawings with respect to any portion of the Lenowisco Network which is relocated not later than sixty (60) Days following the completion of such relocation and final As-Built Drawings not later than one hundred twenty (120) Days following the completion of such relocation.

3.6. Service Interruptions. In the event of any relocation, Lenowisco shall use all commercially reasonable efforts to minimize any service interruptions, including scheduling any relocation during the Maintenance Window.

4. Operation And Use Of The Lenowisco Network

4.1. Lawful Use. Notwithstanding anything in this Agreement to the contrary, Sunset may use the Lenowisco Network for any lawful telecommunications purpose. Sunset shall keep the Lenowisco Network 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 Network, on the condition that Sunset shall provide thirty (30) Days notice to Lenowisco of such a grant.

4.2. Conveyance of Fibers. 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 or Network. 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.

4.3. 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 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.

4.4. 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.

4.5. 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.

4.6. Control; Licenses.

4.6.1. 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.

4.6.2. 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.

4.6.3. 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.

4.7. 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.

5. Maintenance of Network

5.1. It is agreed that Sunset is responsible for maintenance of the Network, and Sunset shall use qualified in-house personnel, contractors and subcontractors to conduct such maintenance. Sunset agrees to provide all reasonable efforts to maintain the Network.

5.2. 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.

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

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 Underlying Rights granted to it will survive for the entire length of the term of this Agreement, and to the extent additional Underlying Rights are secured subsequent to the Effective Date they will also survive for the entire length of the term of this Agreement.

6.2.2. Lenowisco represents and warrants that all portions of the Network subject to this Agreement are complete, operational and unencumbered by any liens, mortgages or claims from any third party.

6.2.3. Lenowisco agrees to cooperate in the application for all necessary construction permits, rights of way, easements, use or crossing permits, franchise licenses and any other necessary approvals, rights or licenses required for construction, completion and additions to the Network.

6.3. Disclaimer. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, LENOWISCO DOES NOT WARRANT, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE EQUIPMENT, DARK FIBER, ANY FACILITIES PROVIDED OR USED HEREUNDER OR DESCRIBED HEREIN, ANY SERVICES, MATERIAL, GOODS, REAL ESTATE OR OTHER TANGIBLE OR INTANGIBLE ASSET THAT IS CONVEYED, HYPOTHECATED, LEASED, SOLD, OR OTHERWISE PROVIDED IN ANY MANNER HEREUNDER, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED.

7. Assignment and transfer. This Agreement shall accrue to the benefit of and be binding upon the Parties, any permitted assignees or any successors-in-interest.

7.1. Consent to Assignment. Except as expressly provided in this Agreement, neither Party may assign its obligations hereunder without prior written consent of the other, such consent will not be unreasonably withheld. Either Party may, however, assign its rights hereunder to a company which purchases all or substantially all of its assets; provided that the Party seeking the assignment will require the purchaser to be bound by all terms and conditions of this Agreement, including purchaser's agreement to cure all prior defaults under this Agreement. Any assignment or transfer of this Agreement by either Party shall be subject to the other Party's rights and obligations herein, and any assignee or transferee shall continue to perform such obligations to the other Party and shall, correspondingly, be entitled to the benefits of this Agreement pursuant to the terms and conditions hereof. The parties agree that any assignment to any Affiliate, in which event the assignor shall remain liable as a guarantor of the assignee/Affiliate's performance of such Party's obligations hereunder, shall not be considered an Assignment, nor shall a successor in a merger or acquisition.

7.2. Security Interests. If Sunset so requests, Lenowisco shall obtain from any Lender to which Lenowisco provides a security interest in its rights or obligations under this Agreement a written non-disturbance agreement substantially to the effect that such Lender acknowledges Sunset's rights and interests under this Agreement and agrees not to disturb such rights and interests so long as Sunset is in compliance with the terms and provisions of this Agreement. If Lenowisco so requests, Sunset shall obtain from any Lender to which Sunset provides a security interest in its rights or obligations under this Agreement a written agreement substantially to the effect that (a) such Lender is subject to all of the terms and conditions of this Agreement that are binding on Sunset, and (b) to the extent that such Lender exercises its rights as a secured party, (i) it does not acquire any greater rights or assume any lesser obligations than were available to or imposed upon Sunset prior to such exercise and (ii) it would be subject to any rights and remedies available to Lenowisco.

7.3. Right to Subcontract. Notwithstanding this Article, Lenowisco may subcontract for design, construction, installation, testing, maintenance, repair, restoration, relocation or other operational and technical services it is obligated to provide under this Agreement or may have the Underlying Owner or its contractors and subcontractors perform any of these obligations, provided that Lenowisco shall remain responsible for performance.

8. Default. In the event either Party fails to observe or perform any of the terms and provisions of this Agreement including the Representations and Warranties, and such failure shall continue for a period of thirty (30) days after receipt of written notice from the non-defaulting Party ("Default"), then the non-defaulting Party may terminate this Agreement, provided however, that where such Default cannot reasonably be cured within such period, and the defaulting Party has proceeded promptly to cure the same and is prosecuting such cure with diligence, the time for curing such Default shall be extended for an amount of time, not to exceed sixty (60) days, after the initial thirty days, as may be necessary under the circumstances to complete such cure. Each Party hereby waives the right to seek consequential, indirect, special or punitive damages. Neither Party shall be entitled to receive, nor responsible to pay for consequential, indirect, special or punitive damages.

9. Termination.

9.1. Effectiveness. This Agreement shall be in effect on the Effective Date and shall remain in effect for the duration of the Term.

9.2. Effect of Termination. Termination of this Agreement refers to the termination of the Parties' respective commitments and obligations from and after the date of termination, but does not relieve the Parties of their payment and other obligations incurred prior to the date of termination and their continuing obligations, as agreed to by the parties.

10. Responsibility for Taxes and Assessments. Lenowisco shall be responsible for, and shall promptly pay, any taxes, franchise fees, or other assessments which may be levied against it associated with respect to its Underlying Rights in the Network. Sunset shall be responsible for, and shall promptly pay, any taxes, franchise fees, or other assessments which may be levied against it associated with respect to its this Agreement relating to the use of the Network. Each Party shall cooperate with the other regarding notices and payments for the taxes and assessments.

11. No License for Intellectual Property. Except as otherwise agreed in writing, nothing in this Agreement shall be deemed to imply or grant any license with respect to the intellectual property of either Party.

12. Confidentiality. Each Party shall treat all confidential information made available or disclosed to, or developed or obtained by, the other Party as the result of or related to this Agreement which is marked "confidential" or "proprietary" ("Confidential Information") as confidential, and shall not disclose in any manner or use Confidential Information without the other Party's written permission unless required by law.

13. Liability

13.1. Limitation. Notwithstanding anything in this Agreement to the contrary, each Party's liability to the other, whether in contract or in tort (including breach of warranty, negligence and strict liability in tort) related to this Agreement, shall be limited to the value of the consideration paid to the Party upon whom liability is imposed. The limitation set forth in this Section shall not apply with respect to: (i) third party claims subject to indemnification

pursuant to the Agreement; or (ii) fees due and owing under this Agreement at the time of the claim.

13.2. Force Majeure. In the event that either party's performance is delayed, prevented, obstructed, or inhibited because of any act of God, fire, casualty, delay or disruption in transportation, flood, war, strike, lockout, epidemic, destruction or shut-down of facilities, shortage or curtailment, riot, insurrection, governmental acts or directives, any full or partial failure of any communications or computer network or any cause beyond such Party's reasonable control, the Party's performance will be excused and the time for the performance will be extended for the period of the delay or inability to perform resulting from such occurrence. The occurrence of such an event will not constitute grounds for a declaration of default by either Party hereunder.

14. Indemnification

14.1. Each Party shall indemnify, defend and hold harmless the other Party and its Affiliates and their respective officers, directors, employees, agents, successors, and assigns, from any and all losses and threatened losses arising from, in connection with, or based on allegations of, any of the following:

14.1.1. Its failure to observe or perform its duties or obligations to third parties (e.g., duties or obligations to subcontractors);

14.1.2. Its infringement or misappropriation of any Intellectual Property Rights of any third party;

14.1.3. To the extent caused by its gross negligence or willful misconduct, the death or bodily injury of any agent, employee, the other Party, any business invitee or any other person;

14.1.4. To the extent caused by its gross negligence or willful misconduct, the damage, loss or destruction of any real or tangible personal property;

14.1.5. Fines, penalties or other amounts payable due to its violation of applicable laws or regulations; and

14.1.6. When resulting from its act or omission, any claim, demand, charge, action, cause of action, or other proceeding asserted against the other Party in its capacity as an employer of any person.

14.2. With respect to third party claims, the following procedures shall apply:

14.2.1. Promptly after receipt of notice of the commencement or threatened commencement of any civil, criminal, administrative, or investigative action or proceeding involving a claim in respect of which the indemnitee will seek indemnification pursuant to this Section, the indemnitee will notify the indemnitor of such claim in writing. No failure to so notify the indemnitor will relieve the indemnitor of its obligations under this Agreement except to the extent that it can demonstrate damages attributable to such failure.