

## TOWER OPTION AGREEMENT

THIS TOWER OPTION AGREEMENT ("Agreement"), made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2003, by and between Silver Bow Communications II, Inc., a Delaware corporation (hereinafter referred to as "Buyer") and Robert R. Rule d.b.a. Rule Communications (hereinafter referred to as "Seller").

### WITNESSETH:

WHEREAS, Seller is the operator of a Tower Communication Business at Hill 8821 near Laramie, Wyoming (hereinafter referred to as "Tower Business"); and

WHEREAS, Seller desires to grant to Buyer, upon a closing of that certain Asset Purchase Agreement dated September \_\_\_\_, 2003 by and between Seller and Appaloosa Broadcasting Company, Inc. ("Asset Purchase Agreement"), a limited option to acquire certain assets used and useful in the operation of the Tower Business.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties intending to be legally bound agree as follows:

#### Option

1. During the Term of this Agreement, Buyer shall have the right to purchase from Seller the Assets for the Purchase Price as defined below. The Term of this Agreement shall commence upon the Closing of the Asset Purchase Agreement and shall immediately and irrevocably terminate on the date eighteen (18) months subsequent to the date of the Asset Purchase Agreement (the "Term"). If Buyer has not tendered to Seller the Purchase Price under this Agreement during the Term, neither the Seller nor the Buyer hereunder shall have any further obligations to each other and this Option shall have no further force or effect. The option to purchase the Assets contained in this Agreement may be exercised by Buyer giving to Seller thirty (30) days notice of the Closing Date for the tender of the Purchase Price. In the event that the Buyer fails to appear on the Closing Date ready, willing and able to tender the Purchase Price and consummate this transaction, this Agreement shall immediately expire and neither party shall have any further obligations under to this Agreement provided seller has met his obligation hereunder.

#### Assets to be Conveyed

1. Upon the Closing Date of this Agreement, as hereafter defined, Seller will assign, transfer, convey and deliver to Buyer the following assets (collectively the "Assets"):

- (a) To the extent permitted by law, the permits and any other authorizations associated with the Tower Business set out in Appendix A, excluding any FCC licenses held by Seller for the operation of ancillary communications businesses.
- (b) The tangible personal assets used and useful in the operation of the Tower Business listed and described in Appendix B, free and clear of all liens, charges and encumbrances whatsoever. Specifically excluded under this paragraph, are all of Seller's business records (including files, logs, books of account and other records relating to the operation of the Tower Business).
- (c) All leases, oral and written, set forth in Appendix C ("Leases"). Buyer agrees to assume all obligations of Seller under same Leases.
- (d) Buyer shall not assume any of Seller's liabilities except for Leases set out in Appendix C.
- (e) Deed customarily used in community or equivalent free of all liens and encumbrances for building and tower, set out in Exhibit D.
- (f) Seller, subsequent to the Closing, shall retain the right for the space in the building and on the towers now used by the Seller for 20 years as described in Section 16 below pursuant to a lease to be executed by both parties.

#### Purchase Price and Method of Payment

- 2. The purchase price for the Assets shall be the sum of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000) ("Purchase Price") which shall be paid to Seller at Closing in readily available funds by wire transfer, cashier's check or by other means satisfactory to Seller. Upon Closing, in the event that certain Promissory Note and Consulting Agreement entered into pursuant to the Asset Purchase Agreement remains unpaid, Buyer shall at the Closing give to Seller a security interest in the Assets being sold by adding the Assets to the Collateral in that certain Security and Pledge Agreement entered into pursuant to the Asset Purchase Agreement, with such security interest to be 2<sup>nd</sup> in position only to institutional financing in an amount no greater than the Purchase Price for the purchase of the Assets.

#### Seller's Representation and Warranties

- 3. Seller represents and warrants that now or at closing:
  - (a) Appendix A contains a complete list of the authorizations for the Tower Business only which Seller holds with respect to the operation of the Tower Business. Seller is the valid, legal holder of all such authorizations set forth on Exhibit A. There are no proceedings or complaints pending as of the date hereof relating to the operations of the Business.
  - (b) Seller now has and at Closing shall have good and marketable title to all of the property listed and described in Appendix B and Exhibit D, or replacements

thereof made in the normal course of business, and shall transfer same free and clear of all liens, mortgages, pledges and encumbrances.

- (c) There is no pending or threatened litigation, suit, investigation or proceeding which may give rise to any material claim against any of the Assets to be conveyed or upon Seller's ability to perform in accordance with the terms of this Agreement.
- (d) All Leases are in full force and effect and neither any landlord nor any tenant have a claim for breach thereof.
- (e) To the best of Seller's knowledge, no hazardous materials are stored or have been deposited on Tower Business property or property used or leased by Tower Business.
- (f) Seller has due authority to enter into the proposed transaction.

#### Buyer's Representations and Warranties

- 4. Buyer represents and warrants to Seller that:
  - (a) The execution and performance of this Agreement will not conflict with or result in any breach or violation of, or constitute a default under, any laws or regulations, or agreements or other instrument to which Buyer is a party.
  - (b) The covenants, representations and warranties of the Buyer contained in this Paragraph 4 or in any certificate or document delivered pursuant to the provisions of this Agreement shall be true on the Closing Date and shall survive the Closing.
  - (c) Buyer is a corporation, duly organized, validly existing, and in good standing and is fully authorized to purchase the Assets and consummates the transaction contemplated hereby.

#### Indemnification

- 5. Seller undertakes and agrees to hold harmless the Buyer, its successors and assigns against any and all losses, costs, liabilities, claims, obligations and expenses, including reasonable attorney's fees, incurred or assumed by the Buyer arising from breach, misrepresentation, or other violation by Seller of any of the covenants, warranties and representations contained in this Agreement and for and against any undisclosed liabilities. In the event that any claim is asserted against Buyer, that, if established, would constitute a breach of any of the covenants, warranties or representations contained in this Agreement, the Buyer shall promptly give Seller written notification of such claim. Within ten (10) days thereafter, Seller shall inform Buyer in writing whether Seller will defend such claim. Should Seller elect not to defend, Buyer may defend such claim. In either event, Seller shall be liable for the costs of such defense. Neither Seller

nor Buyer shall settle any claim in a manner adverse to the other without the other's consent, which consent shall not be unreasonably withheld.

6. Buyer undertakes and agrees to hold harmless the Seller, his successors and assigns against any and all losses, costs, liabilities, claims, obligations and expenses, including reasonable attorney's fees, incurred or assumed by the Seller arising from breach, misrepresentation, or other violation by Buyer of any of the covenants, warranties and representations contained in this Agreement and for and against any undisclosed liabilities. In the event that any claim is asserted against Seller, that, if established, would constitute a breach of any of the covenants, warranties or representations contained in this Agreement, the Seller shall promptly give Buyer written notification of such claim. Within ten (10) days thereafter, Buyer shall inform Seller in writing whether Buyer will defend such claim. Should Buyer elect not to defend, Seller may defend such claim. In either event, Buyer shall be liable for the costs of such defense. Neither Buyer nor Seller shall settle any claim in a manner adverse to the other without the other's consent, which consent shall not be unreasonably withheld.

#### Risk of Loss

7. The risk of loss or damage to the fixed or tangible assets to be sold to Buyer hereunder shall be upon Seller at all times prior to the Closing. In the event of such loss or damage, Seller shall repair, replace or restore such assets as soon as possible. If Seller cannot restore the facilities so that normal and usual transmission can be resumed before the Closing, the Closing may be postponed at Buyer's option until such transmission has been resumed or this agreement may be terminated by either party.

#### Closing Date/Preliminary Matters

8. The Closing Date for the transaction contemplated by this Agreement shall be as set by Buyer in Section 1 above. No later than twenty (20) days prior to the Closing Date, Seller shall update the Exhibits.
  - (a) Within ten (10) days of the execution hereof Seller shall provide Exhibits set out in appendix hereof to Buyer who shall have twenty-one (21) days to review same. If Buyer is unsatisfied with the factual information set forth in such Exhibits and so notifies Seller within such ten (10) day review period, Buyer may terminate this Agreement and neither party shall have any further obligations to the other. If Buyer does not object within twenty-one (21) days, this condition shall be deemed waived.

#### Closing Documents

9. The Closing shall take place commencing at 10:00 a.m. Mountain Time at the offices of the Seller. On the Closing Date at the closing place,

- (a) Seller shall deliver to Buyer:
- i. One or more bills of sale conveying to Buyer all of the tangible personal assets;
  - ii. One or more assignments, with all necessary consents, assigning to Buyer all of the leases and other agreements to be assigned to Buyer hereunder conveying Leases in Appendix C;
  - iii. An assignment transferring the interests of Seller in and to the leases to Buyer and other authorizations issued by the Federal Government for the operation of the Business listed in Appendix A;
  - iv. Deed as is customary in the community or equivalent to the building and tower.
- (b) Buyer shall deliver to Seller:
- i. The Purchase Price set forth in Paragraph 2 hereof;
  - ii. A lease of the building and tower space described in Section 16 below.

The parties will also execute such other documents and perform such other acts before and/or after Closing, as may be reasonably necessary for the implementation and consummation of this Agreement.

#### Survival of Representation and Warranties

10. The several warranties, representations and covenants of the parties herein contained shall survive the Closing Date.

#### Notices

11. All necessary notices, demands, and requests required or committed to be given under the provisions of this Agreement shall be in writing and shall be deemed duly given if sent by overnight courier or mailed by certified mail, postage prepaid, addressed as follows:
- (a) If to Buyer: Silver Bow Communications II, Inc.  
288 South River Road  
Bedford, NH 03110
- (b) If to Seller: Robert R. Rule  
Rule Communications  
2232 Dell Range Boulevard – Suite #103  
Cheyenne, WY 82009-4994

#### Counterparts

12. This Agreement may be signed in any number of counterparts with the same effect if the signature of each such counterparts were the same instruments. The Agreement may not be altered or amended except in writing.

#### Headings

13. Headings to the paragraphs of this Agreement are for convenience only and in no way modify, interpret, or construe the specific provisions of the Agreement.

#### Choice of Laws

14. This Agreement is to be construed and governed by the laws of the State of Wyoming and any actions thereunder shall be brought in either the state or federal courts located in Wyoming.

#### Successors and Assigns

15. The terms and conditions of this Agreement are binding of the parties hereto, their successors and assigns.

#### Seller's Lease

16. At the Closing, Seller shall have delivered to it by Buyer a lease in the form and substance of Exhibit E (Seller's Lease) with a term of twenty (20) years giving Seller exclusive use of seven (7) feet of floor and rack space on the west end of the building, all existing tower space now being used by the Seller as of the date of the execution of this Agreement, as set out in Exhibit F. Such tower space and building space shall be used by Seller only for FCC facilities licensed to Seller. Should Seller sell any such FCC facilities now licensed to Seller, such space used by such FCC facility will cease to be included under this Seller's Lease on a date 180 days after the closing of such a sale, provided however, that Buyer agrees to continue to lease to any such buyer of any of Seller's FCC facilities the same or commercially similar space at a commercially reasonable rate through the conclusion of the twenty year term of Seller's Lease.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on a date written above.

RULE COMMUNICATIONS

\_\_\_\_\_  
WITNESS

By: \_\_\_\_\_  
ROBERT R. RULE

SILVER BOW COMMUNICATIONS II, INC.

\_\_\_\_\_  
WITNESS

By: \_\_\_\_\_  
STEVEN A. SILBERBERG

## APPENDIX A

### SCHEDULE OF PERMITS AND LICENSES

Special Use Permit issued by Medicine Bow-Routt National Forest, United States Forest Service.

## APPENDIX B

### SCHEDULE OF PERSONAL PROPERTY

There is no land included (the land belongs to the United States Government), but there is one 20 foot by 16 foot cement block building, one 80 foot tall 36 inch face radio tower, and one 90 foot tall Rohn Model 45G radio tower included.

## APPENDIX C

### SCHEDULE OF TENANTS

| <u>TENANT</u>            | <u>BEGIN</u> | <u>END</u> | <u>RATE</u> |
|--------------------------|--------------|------------|-------------|
| Heggie Logging (two-way) | Mid 1970s    | Indefinite | \$200/month |
| KGWN TV-5 (translator)   | 1980s        | Indefinite | \$300/month |
| KGWN TV-5 (microwave)    | 1980s        | Indefinite | \$300/month |
| KGWC TV-14 (microwave)   | 1980s        | Indefinite | \$300/month |
| S & S Builders (two-way) | 1998         | Indefinite | \$300/month |
| FedEx                    | 2003         | Indefinite | \$300/month |

## EXHIBIT D

### PLOT PLAN OF PROPERTY

The land belongs to the United States Government, and is not included.

The site is located at:

Hill 8821, Sherman Mountains, Medicine Bow-Routt National Forest, approximately 8 miles east of Laramie, Wyoming, which is located more specifically at approximately 41° 17' 06" North Latitude, and 105° 26' 41" West Longitude (NAD-27), and which is also known as the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 10, Township 15 North, Range 72 West of the 6<sup>th</sup> P. M., Albany County, Wyoming. This site has been assigned the street address of: 209 West Pilot Hill Road, Laramie, Wyoming.

## EXHIBIT E

### SELLER'S LEASE

The Seller's Lease appears on the pages that follow.