

172165

RETURN RECORDED DOCUMENT TO:
Williams Communications, Inc.
1005 Terminal Way, Suite #125
Reno, NV 89502

RIGHT of WAY AGREEMENT # 189058

THIS AGREEMENT, made and entered into this 20th day of April, 1999, between **NEVADA LAND AND RESOURCE COMPANY, LLC**, a Delaware Limited Liability Company whose address is 3264 Goni Road, Suite 153, Carson City, Nevada, 89706 ("NLRC") and **WILLIAMS COMMUNICATIONS INC.**, a Delaware Corporation, whose address is P.O. Box 22064, Tulsa, OK 74121-2064, and its successors and assigns ("Company"); NLRC and the Company collectively called the "Parties."

Recitals

- A. WHEREAS, NLRC owns portions of the East ½ Section 35, Township 32 North, Range 51 East, MDBM in Eureka County in the State of Nevada ("Property" and or "Right-of-Way") more particularly described on Exhibit "A"; and
- B. WHEREAS, the Company wishes to survey, construct and maintain an underground communications system(s) together with necessary appurtenances connected therewith ("Facilities") across the Property;

NOW, THEREFORE, in consideration of their mutual promises, NLRC and the Company agree to the terms, obligations, covenants and conditions of this Agreement as follows:

The Agreement shall be subject to the following terms and conditions:

1. **Agreement:** NLRC grants to the Company, its successors and assigns a ten (10) foot wide non-exclusive right of way to construct, inspect and maintain the Facilities over, under and upon NLRC's property, more particularly described in Exhibit A. The purpose of the Facilities are for telecommunications together with a temporary work space to provide work space along and adjacent to the right-of-way as maybe reasonably necessary in connection with the construction, maintenance and operation of said Facilities.

2. **Use and Term:** The Company shall have and hold the rights hereby granted and conveyed so long as it uses and maintains the right-of-way for the purpose stated herein, and the

rights granted herein shall terminate upon the Company's discontinuance of such use or maintenance for a period of three (3) years.

3. Right of Way Consideration: One Dollar (\$1.00) per foot paid in advance of execution of this Agreement for a total fee of Three Thousand Eight Hundred Seventy Two Dollars (\$3,872.00).

4. Surrender: Subject to Paragraph 2, if the Company's is discontinued, the Company's (and successor and assigns) interest in the right-of-way automatically reverts to NLRC (and successor and assigns) and said interest shall merge with the fee ownership of NLRC (and successors and assigns). In the case of such discontinued use, the Company (and successor and assigns) hereby agrees, if so requested to execute an instrument in recordable form evidencing such discontinued use and revert to NLRC (and successor and assigns).

5. Access: The Company, its successors and assigns shall have the right to reasonable ingress and egress over the Property for the purpose of constructing, repairing, renewing, altering, changing, patrolling and operating the fiber optic communications system(s).

6. Insurance and Indemnity.

6.1 The Company's Liability Insurance: The Company shall, at the Company's sole cost, keep in force during the construction phase of the Facilities, a term policy of commercial general liability insurance covering property damage and liability for personal injury occurring on or about the Property, with limits in the amount of at least Two Million Dollars (\$2,000,000) general aggregate, One Million Dollars (\$1,000,000) per occurrence for injuries to or death of person, property damage, and with a contractual liability endorsement ensuring the Company's performance of the Company's indemnity obligations of this Agreement.

6.2 Workers' Compensation: The Company shall maintain Workers' Compensation Insurance in the amount required by law, which insurance shall contain a waiver of subrogation against NLRC. In the event that such waiver of subrogation is not provided, the Company hereby agrees to waive any workers compensation subrogation claims, liens or demands, which could be asserted against NLRC by the Company, its employees, or its' insurance carrier and further agrees to indemnify NLRC and its employees except in the case of NLRC's negligence, for any and all worker compensation subrogation claims, liens or demands, asserted by the Company, its employees or Company's insurance carrier.

6.3 Forms and Certificates: The policy of insurance required to be carried by the Company pursuant to Section 6.1 shall be with a Company approved by NLRC and shall have a Best's Insurance Rating of at least A-1X. Such policy shall name NLRC as additional insured and contain a cross-liability and severability endorsement. The Company's insurance policy shall also be primary insurance, without right of contribution from any policy carried by NLRC. A certificate of insurance shall be provided to NLRC before any entry by the company or its agents or employees on the Property and shall provide that such policy is not subject to cancellation,

expiration or change, except upon thirty (30) days prior written notice to NLRC. Company shall be allowed to self-insure.

6.4 Waiver of Subrogation: The Company and NLRC each hereby waives any and all rights of recovery against the other, and against the partners, members, officers, employees, agents and representatives of the other, for loss of or damage to the Property or injury to person to the extent such damage or injury is covered by proceeds received under any insurance policy carried by NLRC or the Company in force at the time of such loss or damage.

6.5 Waiver and Indemnification: NLRC shall not be liable to the Company and the Company hereby waives all claims against NLRC for any injury to or death of any person or damage to or destruction of any personal property or equipment or theft of property occurring on or about the Property or to the Company's business conducted on the Property, unless NLRC is negligent or engages in willful misconduct. The Company shall defend indemnify and hold harmless its members, officers, directors, agents and employees from and against any and all claims, judgments, damage, demands, losses, expenses, costs or liability arising in connection with injury to person or property from any activity, work, or things done, permitted or suffered by the Company or the Company's agents, partners, servants, employees, invitees or contractors on or about the Property, or from any breach or default by the Company in the performance of any obligation on the part of the Company to be performed under the terms of this Agreement (all of the foregoing collectively referred to hereinafter as General Indemnity Claims), excluding, however, the negligence of NLRC of which negligence NLRC has actual knowledge and reasonable time to correct. The Company agrees to defend all general Indemnity claims on behalf of NLRC with counsel reasonably acceptable to NLRC (which acceptance shall not be unreasonably withheld or delayed). The obligations of the Company contained in this Paragraph shall survive the expiration of the term or sooner termination of this Agreement.

7. Relocation of Right of Way: In the event NLRC determines at any time and from time to time it is necessary to relocate any portion of the Facilities or appurtenances, for any activity of NLRC property included in or adjacent to the Property, then on sixty (60) days written notice the Company agrees to work with NLRC to relocate Facilities to a location mutually acceptable to NLRC and the Company, with reasonable relocation costs paid by NLRC or its successors and assigns. NLRC and the Company shall execute any necessary amendatory documents as a result of such relocation.

8. Removal of Obstructions: The company, its successors and assigns shall have the right to remove or clear any combustible materials, trees, brush, debris, or any other obstruction from the Property, which in the judgment of the Company may interfere with or endanger the construction, operation, repair and maintenance of the Facilities. Any subsequent grants of rights-of-way shall not unreasonably interfere with the rights herein.

9. Compliance with Laws: The Company, its successors and assigns shall comply with all laws, statutes, ordinances, rules and regulations, including applicable judicial or agency orders that may apply, including but not limited to, environmental constraints.

10. Liens and Notices of Non-Responsibility: The Company agrees to keep the Property at all times free and clear of all liens, charges and encumbrances of any and every nature and description done, made or caused by the Company, and to pay all indebtedness and liabilities incurred by or for the company which may or might become a lien, charge or encumbrance; except that the company need not discharge or release any such lien, charge or encumbrance so long as the Company disputes or contests the lien, charge or encumbrance and posts a bond sufficient to discharge lien acceptable to NLRC. Subject to the Company's right to post a bond in accordance with the foregoing, if the Company does not within (90) days following the imposition of any such lien, charge or encumbrance, cause the same to be released of record, NLRC shall have, in addition to NLRC's contractual and legal remedies, the right, but not the obligation, to cause the lien to be released by such manner as NLRC deems proper, including payment of the claim giving rise to such lien, charge or encumbrance. All sums paid by NLRC for and all expenses incurred by it in connection with such purpose shall be payable by the Company to NLRC on demand with interest at 12% per annum (or the maximum allowable by law) starting from the date due until paid in full.

11. Environmental Protection: The company shall take all reasonable precautions to prevent the improper disposal of hazardous wastes and the pollution of air and water by the Company's operations. Any facilities for employees established on the property shall be operated in a sanitary manner, and refuse and waste resulting from the Company's use, servicing, repair, or abandonment of equipment shall be removed from the Property. It shall be the Company's sole responsibility to comply with all applicable environmental laws or regulations, subject to the Company's right to contest the same. If NLRC finds physical evidence that air, land, water quality, or other environmental damage has occurred or is about to occur due to the Company's non-compliance with said environmental laws or regulations, NLRC shall have the right, upon written notice to the Company to require the company or its contractors, agents or assigns to cease, alter, or modify immediately that portion of operations on the Property which is causing or is about to cause such air, land water quality, or other environmental damage; and to direct the Company in writing to take immediate action to correct or eliminate said damage or threat thereof. The company shall then in consultation with NLRC, review the operation to determine if additional actions are necessary to correct or eliminate such damage or threat. NLRC's rights under this provision shall not release the company of its obligations hereunder, nor shall they constitute a waiver of NLRC's rights as provided by this Agreement and /or by law. NLRC shall be under no obligation to provide for any inspections as to environmental practices of the company, or to take any responsibility whatsoever for the company's actions, it being agreed that compliance therefore is the sole responsibility of the Company. Liability for any environmental or water quality damage that is caused by the company or its contractors, agents or assigns, shall be borne by and at the sole expense of the Company. If the Company fails or refuses to correct or repair within a reasonable time any environmental damage caused by the Company's failure to comply with applicable laws or with any obligation or covenant of this Agreement after being directed to do so, then NLRC shall have the right to contract with any qualified party to correct said condition, and the Company shall pay to NLRC on demand for all costs including attorney's fees of said correction or repair. The Company's obligations under this Section shall survive the termination of this Agreement. Notwithstanding any other provisions of this Agreement, the company shall indemnify and defend NLRC from any and all losses, damages, expenses, claims,

demands, and civil or criminal liabilities or penalties; clean-up lawsuits and other proceedings; and all costs and expenses including damages, attorneys' fees and disbursements which accrue to or are incurred by NLRC, arising directly or indirectly from, or out of, or which are in anyway connected with the Company's acts or omissions which cause environmental or water quality damage as defined by non-compliance with federal, state or local regulations, orders, or laws; or which cause losses, damages, expenses, claims, demands, or civil or criminal penalties or sanctions to be incurred. The Company agrees to store, transport and dispose of all hazardous substances, and all hazardous wastes, as defined by any applicable state or federal law, in accordance with all local, state and federal laws, including the "Resource Conservation and Recovery Act" ("RCRA") and the "Comprehensive Environmental Response, Compensation and Liability Act" ("CERCLA"), as amended, regarding the same. The company shall not dispose of any hazardous wastes upon the Property. Further, NLRC and the Company acknowledge and agree that in the event mining wastes are regulated by CERCLA, or by any other statute, the Company may dispose of such wastes on the Property provided the company complies fully with such laws and shall be solely responsible for any contamination or other environmental damage found on the Property resulting from the company's operations, including the cost of clean-up. Hazardous substances and estimated quantities thereof shall be disclosed in the Plan prior to their being brought onto the Property. At the end of each year, the company shall notify NLRC of all hazardous substances and hazardous wastes and the quantities brought to, stored upon, used on, or transported from the Property.

12. Taxes.

12.1. Real Property Taxes. NLRC shall pay any and all taxes assessed and due against the property before execution of this Agreement. The Company shall pay promptly before delinquency all taxes and assessments, general, special, ordinary and extraordinary, that may be levied or assessed against improvements which the Company places on the Property during the term of this Agreement, if applicable.

12.2. Personal Property Taxes. Each party shall promptly when due pay all taxes assessed against such party's personal property, improvements or structures placed or used on the Property, if applicable.

12.3. Delivery of Tax Notices. If NLRC receives tax bills or claims which are the Company's responsibility, NLRC shall promptly forward them to the Company for payment, if applicable.

13. Survival: The provisions of this Section are in addition to the other provision of this Agreement and shall survive any termination or expiration of this Agreement, if applicable.

14. Existing Instruments: The Company acknowledges that portions of the Property are described in the Minerals Lease # 182091 dated August 3, 1987, executed by Southern Pacific Land Company, predecessor-in-interest of NLRC, as lessor, and SFP Minerals Corporation, as Lessee; and are described in the Grazing Lease # 181619 executed by NLRC as lessor and Palisade Ranch; and are described in the Oil & Gas Lease # 187482 executed by NLRC's

predecessor-in-interest as lessor and Santa Fe Energy corporation as Lessee and that NLRC has delivered to the Company copies of the Existing Instruments. NLRC makes no covenant, representation or warranty concerning the effect or enforceability of the Minerals Leases and nothing in the Agreement will obligate, or be deemed to obligate, NLRC to perform any obligation under the Minerals Leases or to constitute, or be deemed to constitute, an acknowledgement or admission that the Minerals leases are effective or enforceable. The company acknowledges that portions of the Property are described in the Exploration Agreement and Option to Lease, or the Memorandum the same, dated as of November 29, 1990, and that NLRC has delivered to the company a copy of the Exploration Agreement and Option to Lease.

15. Assignment: The company shall not assign, convey, encumber, sublease, grant any concession, or Agreement or otherwise transfer (each a "Transfer") all or any part of its interest in this Agreement or the Property, without, in each case, NLRC's prior written consent, which may be granted or denied in NLRC's sole and absolute discretion, however such consent shall not be unreasonably withheld, conditioned or delayed. Any Transfer of this Agreement, which is prohibited under this, shall be deemed void and shall constitute a material default under the terms of this Agreement.

16. Amendments: This Agreement may be amended upon mutual agreement in writing of both parties.

17. Disputes: In the case of any dispute arising under this Agreement which cannot be resolved by mutual agreement of both parties, the matter shall be set down for binding arbitration in accordance with the provision. The parties shall appoint a single arbitrator appointed by the American Arbitration Association. The arbitrator so selected shall consider the evidence and render an award in accordance with the provision and procedures of the commercial Arbitration rules of the American Arbitration Association.

NLRC represents that its representative signing below is duly authorized to execute this instrument on behalf of NLRC. NLRC further represents that it is a Delaware Limited Liability Company, organized under the laws of the State of Delaware and whose Taxpayer Identification Number is 33-0678837.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective the day entered above:

Grantor: Nevada Land & Resource Co., LLC,
a Delaware Limited Liability Company

Grantee: Williams Communications, Inc.

By: *[Signature]*

By: *[Signature]*
William P. Harwell

Its: *Vice President*
Tax ID# 33-0678837

Its: Attorney-in-fact

COOPER

[Corporate]
Acknowledgement

STATE OF OKLAHOMA)
 : ss.
COUNTY OF Tulsa)

The foregoing Agreement was acknowledged before me this 16th day of April, 1999,
by William P. Harwell the Attorney-in-fact for Williams Communications, Inc., a
Delaware corporation.

Lucy D. Croff
Notary Public Signature and Seal

Acknowledgment

STATE OF NEVADA)
 : ss.
COUNTY OF CARSON CITY)

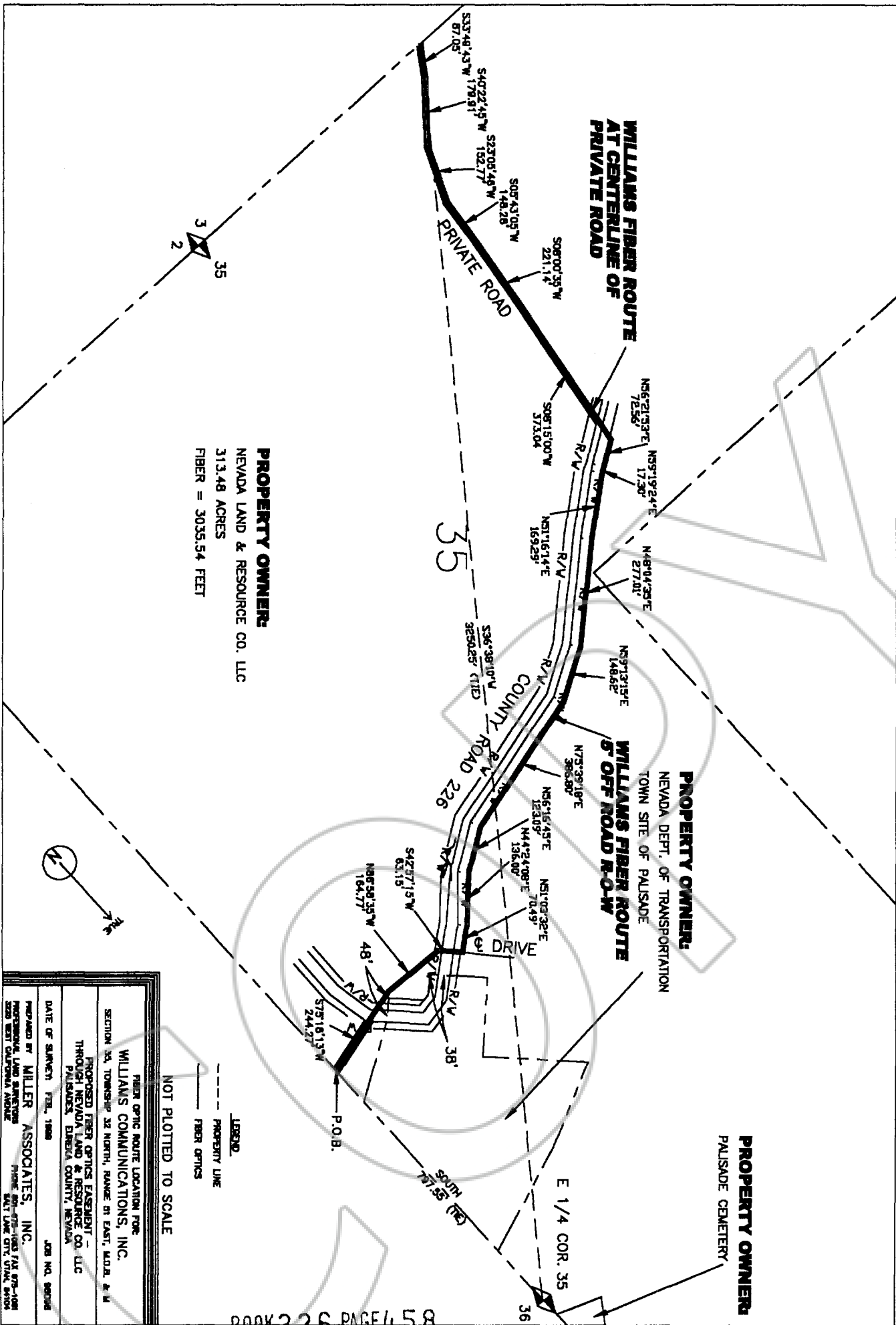
The foregoing Agreement was acknowledged before me this 20th day of APRIL,
1999, by PETE RUTLEDGE the VICE PRESIDENT
of/for Nevada Land & Resource Company, LLC, a Delaware Limited Liability Company.

Deanne Runacres
Notary Signature and Seal



EXHIBIT "A"

SHEET 1 OF 3



PROPERTY OWNER:
 NEVADA LAND & RESOURCE CO. LLC
 313.48 ACRES
 FIBER = 3035.54 FEET

PROPERTY OWNER:
 NEVADA DEPT. OF TRANSPORTATION
 TOWN SITE OF PALISADE

PROPERTY OWNER:
 PALISADE CEMETERY

LEGEND:
 - - - - - PROPERTY LINE
 ——— FIBER OPTICS
 NOT PLOTTED TO SCALE

FIBER OPTIC ROUTE LOCATION FOR	
WILLIAMS COMMUNICATIONS, INC.	
SECTION 26, TOWNSHIP 32 NORTH, RANGE 01 EAST, M.D.A. & M.	
PROPOSED FIBER OPTICS EASEMENT -	
THROUGH NEVADA LAND & RESOURCE CO. LLC	
PALISADE, ELDERA COUNTY, NEVADA	
DATE OF SURVEY: FEB. 1988	JOB NO. 89008
PREPARED BY: MILLER ASSOCIATES, INC.	PHONE: 801-475-1000 FAX: 878-1000
2200 WEST CALIFORNIA AVENUE	
SALT LAKE CITY, UTAH 84119	

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EXHIBIT "A"

SHEET 2 OF 3

WILLIAMS COMMUNICATIONS INC.

10 FOOT FIBER OPTIC EASEMENT FOR:

NEVADA & RESOURCE CO. LLC (NV-EU-004)

A 10 FOOT WIDE EASEMENT, SAID EASEMENT BEING 5 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

BEGINNING AT A POINT WHICH IS SOUTH 797.55 FEET FROM THE EAST $\frac{1}{4}$ CORNER OF SECTION 35, TOWNSHIP 32 NORTH, RANGE 51 EAST, M.D.B. & M., SAID POINT ALSO BEING ON THE WEST LINE OF SECTION 36 AND RUNNING:

THENCE SOUTH 75°18'13" WEST 244.27 FEET;
THENCE NORTH 86°58'35" WEST 164.77 FEET;
THENCE SOUTH 42°57'15" WEST 63.15 FEET;
THENCE SOUTH 51°03'32" WEST 70.49 FEET;
THENCE SOUTH 44°24'08" WEST 136.00 FEET;
THENCE SOUTH 56°16'45" WEST 123.09 FEET;
THENCE SOUTH 75°39'18" WEST 386.80 FEET;
THENCE SOUTH 59°13'15" WEST 148.62 FEET;
THENCE SOUTH 48°04'35" WEST 277.01 FEET;
THENCE SOUTH 51°16'14" WEST 169.29 FEET;
THENCE SOUTH 53°14'51" WEST 17.30 FEET;
THENCE SOUTH 56°21'53" WEST 72.56 FEET;
THENCE SOUTH 08°15'00" WEST 373.04 FEET;
THENCE SOUTH 08°00'35" WEST 221.14 FEET;
THENCE SOUTH 05°43'05" WEST 148.28 FEET;
THENCE SOUTH 23°05'46" WEST 152.77 FEET;
THENCE SOUTH 40°22'45" WEST 179.91 FEET;
THENCE SOUTH 33°49'13" WEST 87.05 FEET TO A POINT ON THE NORTH LINE OF SECTION 3 AND TERMINATING, SAID POINT BEING SOUTH

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EXHIBIT "A"

SHEET 3 OF 3

36°38'10" WEST 3250.25 FEET FROM SAID EAST 1/4 CORNER OF SECTION
35.

LINEAR FEET = 3035.54

COPY

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OFFICIAL RECORDS
RECORDED AT THE REQUEST OF
Williams Communications
99 APR 21 PM 1:40
EUREKA COUNTY NEVADA
M.N. REBALEATI, RECORDER
FILE NO. FEES \$17.00

172165

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