

RETURN TO  
W.A. THOMASSON  
895 Chipata Way  
SLC, UT. 84108 3M2

00618748 Bk 1261 Pg 0010  
RUSSELL SHIRTS & WASHINGTON CO RECORDER  
1998 SEP 28 12:40 PM FEE \$50.00 BY BJ  
FOR: THOMASSON W A

980811.00576

200974

(21)

**CONSTRUCTION, OPERATING AND MAINTENANCE AGREEMENT**

7243702

This Construction, Operating and Maintenance Agreement (the "Agreement"), effective as of July 17, 1998, by and between KERN RIVER GAS TRANSMISSION COMPANY ("Kern River"), a Texas General Partnership with its principal place of business in Salt Lake City, Utah, and WILLIAMS COMMUNICATIONS, INC., formerly known as Vyvx, Inc., ("WilCom"), a Delaware corporation with its principal place of business in Tulsa, Oklahoma (collectively referred to as "the Parties").

ENT 92727 BK 4773 PG 443  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
1998 Sep 14 9:07 am FEE 50.00 BY SS  
RECORDED FOR WILLIAMS COMMUNICATIONS

**W I N E S S E I H**

WHEREAS, Kern River owns and operates a 36-inch diameter natural gas pipeline system ("Pipeline") across portions of the states of Wyoming, Utah, Nevada and California; and

WHEREAS, under certain agreements and instruments including but not limited to deeds, exclusive and non-exclusive rights-of-way easements, rights of entry, leases, licenses, and permits, Kern River has certain rights to or interests in the real property across which the Pipeline traverses; and

WHEREAS, WilCom desires to construct, own, operate and maintain a communications system, including but not limited to fiber optic cables, conduits, splicing vaults, line markers, regenerator stations, optical amplifier stations, and appurtenant facilities ("Communications Facilities") along and beside the Pipeline in the states of Utah and Nevada and as depicted on the map which is attached to this Agreement as Exhibit A; and

WHEREAS, Kern River has no objection to the construction, ownership, operation and maintenance of the Communications Facilities by WilCom, pursuant to the terms and conditions set forth in this Agreement and WilCom is willing to accept and agree to such terms and conditions; and

WHEREAS, the Parties desire that Kern River grant to WilCom a partial assignment of its rights, title and interest to utilize the real property along the Pipeline for communications purposes, except insofar as those communications rights, title and interest relate to Kern River's pipeline transportation business, in order to facilitate the construction, ownership, operation, and maintenance of the Communications Facilities by WilCom; and

WHEREAS, the Parties desire that Kern River lease to WilCom one (1) acre, more or less, of fee land at its Fillmore (Utah) Compressor Station for use as a communications site.

FILED FOR RECORD  
4:00 o'clock    m

AUG 10 1998  
    
Beaver County Recorder  
Fee \$ 52.00

00123385 Bk 00330 Pg 00860-00889  
HILLARD COUNTY RECORDER - LINDA S CARTER  
1998 AUG 10 14:48 PM FEE \$68.00 BY-INS  
REQUEST: WILLIAMS COMMUNICATIONS

BOOK 311 PAGE 624  
BK 8246PG0203

BK 8246 PG 6203

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

1. Consideration. WilCom, its partners, successors or assigns, hereby agrees to provide communications capacity to Kern River as consideration for Kern River's commitments under this Agreement. Specifically, WilCom agrees to provide communications capacity at the level currently referred to in the communications industry as "DS-3." One (1) DS-3 shall therefore be allocated on the route operated by FTV Communications LLC ("FTV Route") between WilCom's Portland, Oregon Point of Presence ("POP") and the Los Angeles, California POP with additional access to POP locations at Boise, Idaho, Salt Lake City, Utah, and Las Vegas, Nevada. WilCom will provide space to Kern River at WilCom facilities in all of WilCom's existing POPs. Such space shall include one (1) WilCom standard rack space allocation and power (including back-up power) for any facilities or equipment needed by Kern River to access and operate the allocated DS-3 circuitry. The above consideration shall be provided at no additional cost or expense to Kern River, however, Kern River shall be responsible for its own local access and communications beyond each POP listed above. Kern River shall be responsible for its own equipment. WilCom shall have no duty to operate, maintain or repair any of Kern River's facilities on the Kern River equipment side of the POP demarcation point.

Physical access to a WilCom POP will be provided to authorized Kern River employees, contractors, or agents upon twenty-four (24) hours notice to WilCom. WilCom shall use its discretion as to whether an authorized WilCom employee or agent shall accompany Kern River's employees or agents when Kern River intends to gain physical access to a WilCom POP. The reasonable costs and expenses of WilCom's authorized employee or agent shall be paid by Kern River. In emergency situations, which shall include but are not limited to loss of communications service to Kern River, the Parties agree to cooperate in order to remedy the emergency situation as expeditiously as possible.

Kern River's right to use the capacity shall be subject to reasonable conditions, restrictions, and limitations established by WilCom that are applicable to other users or that are necessary for the safe and reliable operation of the fiber optic facilities. WilCom shall not unreasonably institute or change such conditions, restrictions, and limitations and shall not unreasonably withhold or delay waiver of such conditions, restrictions, and limitations. Service provided to Kern River shall receive the same attention when degradation or an outage occurs as the payload capacity, provided such degradation or outage is directly attributable to WilCom's equipment, service, negligence, or willful conduct, or a force majeure event.

The capacity provided to Kern River is intended by Kern River to be exclusively used to serve Kern River's, or its affiliate's, internal requirements, and is not to be used for resale. However, Kern River may use a portion of its capacity to service

any "communications sharing agreements" it has with other pipelines and gas producers, and such use shall not be considered a resale. (Communications sharing agreements are arrangements where Kern River provides capacity secured under this agreement in exchange for telecommunications capacity to be used by Kern River on another communications system.) If Kern River has any level of excess capacity that it is not utilizing, WilCom shall have the right to use such capacity at no cost on prior notice to and written approval by Kern River. To the extent Kern River later requires the temporary or permanent use of such capacity, WilCom shall cease its use of the capacity required by Kern River within a reasonable period of time.

2. Assignment and Lease of Property for Communications Facilities. To the extent that Kern River has rights, title or interests that can be assigned to WilCom for its use of the real property along the Pipeline for communications purposes, Kern River shall assign those rights, title, or interests to WilCom, retaining only those rights which are necessary to Kern River's pipeline transportation business. The partial assignment agreement is set forth in Exhibit B. WilCom requires such assignment in order to construct and maintain the communications capacity and attendant facilities necessary to operate the Communications Facilities. Kern River shall also lease to WilCom a portion of its property and communication rights in and around the Fillmore, Utah Compressor Station for use by WilCom as a communications site. The lease agreement is set forth in Exhibit C.

WilCom, its successors, agents, contractors and assigns, agrees to cooperate fully with Kern River at such times that Kern River needs to access the right-of-way or Pipeline facilities. In particular, WilCom understands that Kern River has the right and obligation to have unfettered access to the right-of-way and Pipeline facilities at all times. Therefore, WilCom agrees to move any personal property such as equipment, vehicles, or trailers that would prevent Kern River from reasonably accessing said right-of-way and Pipeline facilities upon reasonable demand. WilCom further agrees that the easement area shall not be used in any manner which would: (a) prevent the timely and easy movement of anything from the easement area; or (b) prevent Kern River's reasonable reconnaissance of or access to the right-of-way by aerial and/or ground patrol of the area. Except in cases of an emergency, Kern River agrees to give WilCom reasonable notice when it requires WilCom to move, alter, or otherwise reconfigure its Communications Facilities to provide Kern River with unrestricted access to the right-of-way.

3. Construction, Operation, and Maintenance Requirements. Unless otherwise provided for in this Agreement, the Communications Facilities shall be constructed, operated, and maintained in compliance with the requirements set forth in Exhibit D, which may be amended from time to time upon mutual agreement of the Parties.
4. Design and Specifications. Kern River reserves the right to review and approve the design and specifications of the Communications Facilities prior to construction so

as to ensure compatible coexistence with the Pipeline and appurtenant facilities. Kern River shall not unreasonably delay or withhold such approval.

- 5. Right-of-Way and Permits Acquisition. Kern River shall provide WilCom with a list, including tract numbers or other property identification, of all Kern River rights, title and interests effected, assigned or conveyed under this Agreement. Such list shall subsequently be attached and made part of this Agreement as Exhibit E.

It is agreed that for those parcels or properties along the Pipeline right-of-way where Kern River has no rights, title or interest or does not possess rights that can be partially assigned, leased or transferred to WilCom for communications purposes, WilCom shall be exclusively responsible for the acquisition of those rights-of-way and permits for the Communications Facilities to be constructed alongside the Pipeline, and:

- (a) Within a reasonable time following the completion of right-of-way acquisition, WilCom will provide Kern River with hard copies of WilCom's landowner line list. This list will include, but not be limited to, the following information: tract numbers, landowner names, landowner addresses and phone numbers, county tax assessor identifications, and the recording book and page number of WilCom's acquisition documents evidencing the acquisition of communications rights along the Pipeline right-of-way.
- (b) The WilCom manager responsible for the acquisition of such right-of-way will meet with applicable Kern River district managers prior to the initiation of contacts with landowners in their districts, to ensure that the acquisition process proceeds with due concern for the promotion of good landowner relations.
- (c) Upon Kern River's request, WilCom will provide reports on all contacts made with such landowners.

- 6. Ingress and Egress. To the extent permitted by WilCom's rights, title, and interests in the property (either by assignment or procurement of rights from individual landowners or governmental agencies), WilCom hereby grants rights of ingress and egress to Kern River to and from all rights-of-way and easements for the Communications Facilities for purposes of Kern River's maintenance of the Pipeline. To the extent permitted by Kern River's rights, title, and interests in the property or in which WilCom will construct, operate, and maintain its Communications Facilities, Kern River hereby grants rights of ingress and egress to WilCom to and from all rights-of-way and easements for purposes of WilCom's installation, operation, maintenance, and removal of the Communications Facilities.

- 7. Utility Encroachments. WilCom will be solely responsible for providing the necessary utility connections required for the construction, operation, and

maintenance of the Communications Facilities. Utility encroachments are addressed by Kern River's standard Encroachment Permit, Form KRGT 1009 (10-94). This Form must be completed prior to installation of said utilities, and requires, among other things, that the utility lines be reasonably routine in nature and cross Kern River's Easement at or near ninety-degree (90) angles.

8. Costs Reimbursable to Kern River. WilCom shall be solely responsible for all costs of construction, operation, maintenance, and removal of the Communications Facilities. All reasonable costs incurred by Kern River that result from WilCom's construction, operation, maintenance or removal of the Communications Facilities (except costs incurred in fulfilling Kern River's responsibilities set forth in Exhibit D) shall be reimbursable by WilCom upon receipt of and pursuant to the terms of an invoice. To the extent commercially practicable, Kern River agrees to provide WilCom with prior notice of the expected amount of such costs and to discuss with WilCom methods of reducing the amount of reimbursable costs. Such costs may include, but not necessarily be limited to, the following:
- (a) The actual costs, including material, contract costs, and reasonable overhead, to repair/replace Pipeline facilities due to construction, operation and/or maintenance of the Communications Facilities by WilCom, their agents or contractors.
  - (b) The actual cost of materials, net of realized discounts, plus freight and taxes.
  - (c) The actual costs of fabrication charges by third parties on materials, net of realized discounts, plus applicable taxes and transportation to the job site.
  - (d) The actual cost for all independent contractors as may be required.
  - (e) The actual cost of delays in Kern River's construction, operations and maintenance caused by installation of the Communications Facilities.
  - (f) The actual cost for regulatory fees, permit fees, local, state and federal taxes (other than income and corporate taxes), and internal or external legal fees relating to the aforementioned.
  - (g) The costs of Kern River's employees, including home office employees, to the extent such employees are assigned to or devote time to the construction, operation, maintenance, or removal of the Communications Facilities. Such costs shall include: (i) the pro rata portion of wage, salary and benefit costs (gross pay, payroll taxes and usual company fringe benefits), on a time devoted basis, and (ii) transportation, meals, lodging and similar costs incurred by Kern River as a result of the assignment of employees to the construction, operation or maintenance of the Communications Facilities. All such charges shall be computed in a

reasonable manner in accordance with Kern River's standard policy.

- (h) Any gas lost in performing repairs or replacement of the Pipelines, provided that WilCom may make payment of the gas in kind within thirty (30) days of the date Kern River notifies WilCom of the amount of the loss.
- (i) Kern River's administrative and general overhead costs shall be charged in accordance with Kern River's established procedure with regard to Kern River construction projects and on a basis no less favorable than that charged to other parties.
- (j) Any other costs related to the construction, operation, maintenance or removal of the Communications Facilities that Kern River contributes on WilCom's behalf, of a direct or indirect nature, including costs of surveying, inspecting, and staking.
- (k) All costs will be accumulated and recorded in accordance with the Federal Energy Regulatory Commission's ("FERC's") Uniform Systems of Accounts.

WilCom, after fifteen (15) days' notice in writing to Kern River, shall have the right, during normal business hours, to audit, at its own expense, all books and records of Kern River relating to reimbursement of costs as provided for in this Agreement. WilCom shall have one (1) year after final payment is made to Kern River in which to make such an audit. After such one (1) year period, Kern River's records shall be presumed to be correct.

- 9. As-Built Drawings: Within one (1) year following the substantial completion of the Communications Facilities addressed in this Agreement, WilCom shall provide Kern River with a copy of its "as-built" drawings of said Communications Facilities.
- 10. Late Payment. Should either party fail to make payment of any invoice submitted to it within forty-five (45) days after the date it receives an invoice, the invoicing party shall be entitled to collect the amount of such invoice, together with the current FERC interest rate, or, if lower, the maximum applicable non-usurious rate of interest. Such interest shall accrue on unpaid amounts, including on unpaid interest compounded daily, beginning on the payment due date (which shall be no earlier than thirty days after the date the invoice is issued) and shall terminate when such invoice is paid. If the amount of an invoice shall be disputed in good faith, the billed party shall promptly pay the portion of the invoice not in dispute. Acceptance of such payment by the invoicing party shall not prejudice any claim by such party as to the disputed portion of the invoice.
- 11. Limitation of Liability. In the event of damage caused by Kern River to the Communications Facilities, provided the damage occurs when an authorized WilCom inspector is on site, Kern River's liability to WilCom shall be limited to the

cost of repair of the facilities damaged. In the event of damage caused by Kern River to the Communications Facilities in the absence of an authorized WilCom inspector on site, Kern River's liability shall be limited to any general or special damages proximately caused by Kern River and the cost of repair of the facilities damaged. In no event shall Kern River be liable to WilCom or customers of WilCom for damages due to business interruption, incidental damages, or consequential damages, and WilCom shall indemnify and defend Kern River for such claims.

In the event of damage caused by WilCom to the Pipeline, provided the damage occurs when an authorized Kern River inspector is on site, WilCom's liability to Kern River shall be limited to the cost of repair of the facilities damaged, provided that WilCom' employees, agents or contractors did not deliberately disregard instructions from Kern River's inspector, or engage in grossly negligent or willful conduct which proximately caused the damage. In the event of damage caused by WilCom to the Pipeline in the absence of an authorized WilCom inspector on site, or due to gross negligence, willful conduct, or deliberate disregard of instructions from an authorized Kern River inspector, WilCom's liability shall be limited to any general or special damages, including property damage or personal injury, proximately caused by Kern River and the cost of repair of the facilities damaged. WilCom shall also be liable for any damages to Kern River or accompanying property due to including fire caused by WilCom's operations. In no event shall WilCom be liable to Kern River or customers of Kern River for damages due to business interruption, incidental damages, or other consequential damages and Kern River shall indemnify and defend WilCom for such claims.

12. Indemnity/Damages.

- (a) WilCom hereby agrees to hold harmless and indemnify Kern River, its officers, directors, agents and employees (collectively, "Kern River Indemnified Parties") against any loss, cost, damage, expense (including attorney's fees) and any and all liability for property, personal injury or both, incident to or resulting from the actions or omissions of WilCom, its agents, affiliates, employees, contractors or subcontractors, arising out of or incident to the terms of the Agreement, whether or not caused by the joint or concurrent negligence of the Kern River Indemnified Parties.
- (b) Kern River hereby agrees to hold harmless and indemnify WilCom, its officers, directors, agents and employees (collectively, "WilCom Indemnified Parties") against any loss, cost, damage, expense (including attorney's fees) and any and all liability for property, personal injury or both, incident to or resulting from the actions or omissions of Kern River, its agents, affiliates, employees, contractors or subcontractors, arising out of or incident to the terms of the Agreement, whether or not caused by the joint or concurrent negligence of the WilCom Indemnified Parties.

(c) The following exceptions and limitations apply to the indemnification obligations set forth in Subparagraphs 16.a and 16.b:

- (i) That such indemnification shall not apply with respect to any Kern River or WilCom Indemnified Party in those cases where such claim, loss, cost, damage, expense, property damage or personal injury was caused solely by the negligence or willful misconduct of such Indemnified Party while performing Kern River's or WilCom's obligations under this Agreement;
- ii. In the event that applicable law limits in any way the extent to which indemnification may be provided to an indemnitee, this Paragraph 16 shall be automatically amended, in keeping with the express intent of the Parties, as necessary to render all the remainder of this Agreement valid and enforceable to provide that the indemnifications provided shall extend and be effective only to the maximum extent permitted by such law.

13. Insurance. The Parties shall, at all times cause to be carried and maintained in force, statutory Worker's Compensation insurance and Employer's Liability insurance covering the employees of the respective Parties or of their designees, agents, affiliates, contractors or subcontractors engaged in work on such projects, in compliance with all applicable state and federal laws. The Employer's Liability insurance shall provide for a limit of liability of not less than \$1,000,000 per occurrence. In addition, the Parties shall cause to be carried and maintained in force, Comprehensive General Liability primary insurance with a combined single limit of \$1,000,000 per occurrence for bodily injury and property damage and with excess liability coverage in the amount of \$10,000,000. The Comprehensive General Liability insurance shall be endorsed to provide blanket contractual liability and name the other Party as an additional insured.

If motorized vehicles are used in the operations of the Parties, contractors secured by the respective Parties, or a subcontractor, pursuant to the scope of work outlined in this Agreement, the Parties shall carry and maintain Comprehensive Automobile Liability insurance, written to include the following endorsements and minimum limits:

<u>Endorsements</u>	<u>Limits</u>
Owned vehicles	Combined Single Limit per
Non-Owned Vehicles	per occurrence
Hired Vehicles	of \$2,000,000

The Parties may self insure all or any of the above coverages, except for the excess liability coverage.



14. Term. This Agreement shall become effective on the date of execution hereof and shall continue in force and effect until terminated as follows:

- (a) Upon default by a Party in the performance of any provisions, conditions or requirements herein, the non-defaulting Party may give notice in writing to the defaulting Party specifying in detail the default alleged.
  - (i) If the default is a material default, as defined in this Agreement, and, after notice of the default, is not cured within thirty (30) days, then this Agreement may be terminated by written notice at the non-defaulting Party's option.
  - (ii) If the default is not a material default, as defined in this Agreement, then upon due notice from the non-defaulting Party, the defaulting Party has the right to cure the default within ninety (90) days of the date of such notice, or, if cure cannot be completed within the ninety (90) day period, to notify the non-defaulting Party that it will undertake promptly to attempt to cure the default in a reasonable time.
  - (iii) For the purposes of this Agreement, "material default" shall mean: (A) with respect to the defaulting Party's obligation to pay money, the defaulting Party's failure to pay undisputed sums under this Agreement where the product of the amount owed times the number of days past due exceeds \$50,000, or (B) with respect to other breaches that materially affect, or could be reasonably expected to materially affect, the non-defaulting Party. Any other occurrence or omission by either Party as outlined in this Agreement is not a material default and shall be treated accordingly under the terms of this paragraph.
- (b) A Party dissolves, liquidates or terminates its separate corporate existence, or the Party is dissolved, liquidated, or its separate corporate existence terminated by final order of a court of competent jurisdiction or other valid governmental action, provided that the Party may assign its rights and obligations hereunder before or contemporaneously with any dissolution, liquidation, or corporate termination.
- (c) By mutual agreement of the Parties in writing.
- (d) This Agreement shall terminate on December 31, 2045, unless sooner terminated in accordance with the provisions of Section 14 in this Agreement.

Termination of this Agreement shall not relieve either party from any obligation accruing or accrued to the date of such termination or deprive a party not in default of any remedy otherwise available to it.

- 15. Compliance with Laws. This Agreement and all of its terms and conditions, and the respective obligations of the Parties, are subject to all valid and applicable laws, orders, rules and regulations of duly constituted authorities having jurisdiction.

It is agreed by the Parties that any incidental killings (primarily with respect to the Desert Tortoise) ("incidental takes") occurring in furtherance of any construction, operation or maintenance of the Communications Facilities, whether effectuated by agents of WilCom or Kern River, shall be the sole responsibility of WilCom and its agents. Any costs, fees, fines or sanctions imposed by federal or state authorities for incidental takes shall be paid by WilCom.

- 16. Notices. Unless otherwise specifically provided in this Agreement, any notice or other communication shall be in writing and may be sent by (a) personal delivery (including delivery by a courier service), (b) facsimile transmission to the following telephone numbers or (c) registered or certified mail, postage prepaid, addressed as set forth below:

If to Kern River (U.S. Mail):

Kern River Gas Transmission Company  
P.O. Box 58900  
Salt Lake City, UT 84158  
Attn: Director, Operations (Main Line South)  
Phone: (801) 584- 6176  
Fax: (801) 584- 7919

If to WilCom (street address):

Williams Communications, Inc.  
One Williams Center  
Tulsa, Oklahoma 74172  
Attn: Director, Fiber Services  
Phone: (918) 573-2715  
Fax: (918) 573- 6389

If to Kern River (street address):

Kern River Gas Transmission Company  
295 Chipeta Way  
Salt Lake City, UT 84158  
Attn: Director, Operations (Main Line South)  
Phone: (801) 584- 6176  
Fax: (801) 584- 7919

If to WilCom (U.S. Mail):

Williams Communications, Inc.  
P.O. Box 22067  
Tulsa, Oklahoma 74121  
Attn: Director, Fiber Services  
Phone: (918) 573-2715  
Fax: (918) 573- 6389

Either party may change its address for purposes of this section by giving the other party written notice of its new address.

- 17. Effect of Agreement. This Agreement reflects the whole and entire agreement between the Parties with respect to its subject matter and supersedes all prior agreements and understandings, oral and written, between the Parties with respect to its subject matter. This Agreement can be amended, restated or supplemented only by the written agreement of the Parties.

- 18. Assignability. Either party may assign its rights in this Agreement (in total or with respect to a discrete geographic portion of the route) only with the consent of the other party, which shall not be unreasonably withheld, conditioned, or delayed. Each party may assign its rights and obligations with respect to discrete geographic portions of the route to an affiliate, without the consent of the other party, but such partially assigning party shall act as guarantor of such assignee's performance until it obtains consent to such assignment. This Agreement and all of the obligations and rights established in it shall extend to and be binding upon and shall inure to the benefit of the successors and assigns of the Parties.
- 19. Choice of Law. This Agreement shall be interpreted according to the laws of the State of Utah.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

Approved as  
to Form  
*[Signature]*  
Legal Department

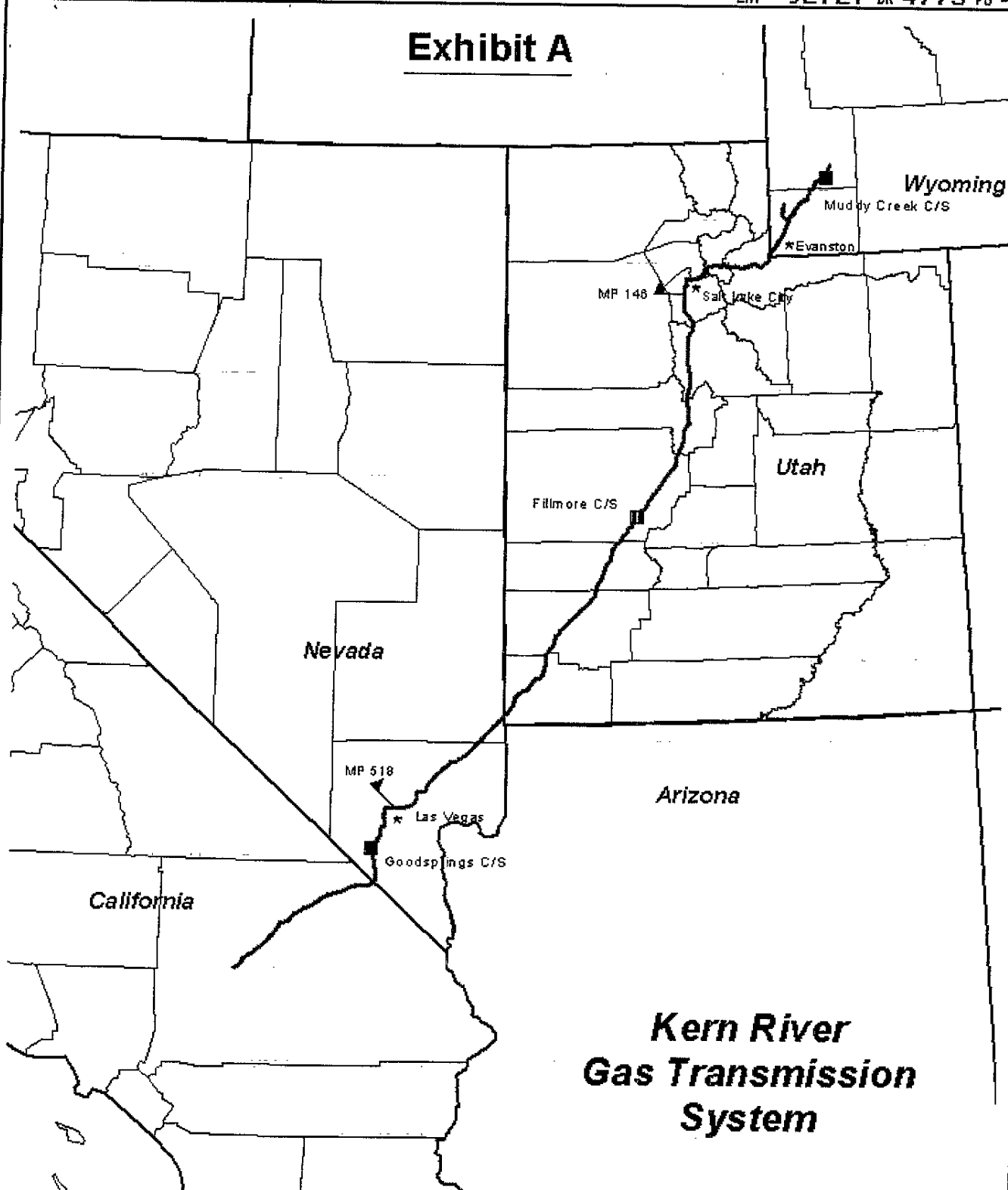
**KERN RIVER GAS TRANSMISSION COMPANY**

By: *[Signature]*  
 Name: ROBERT L. SWEDER  
 Title: VP, OPERATIONS

**WILLIAMS COMMUNICATIONS, INC.**

By: *[Signature]*  
 Name: Joseph C. Turcotte  
 Title: V.P. Ops & Engineering

# Exhibit A



## Kern River Gas Transmission System

The Communications Facilities' approximate point of origination in the Kern River right-of-way is Milepost 146 (near Bluffdale, Utah) and the approximate point of termination is Milepost 518 (near Las Vegas, Nevada).



BK8246PG0214

EXHIBIT B

PARTIAL ASSIGNMENT OF RIGHTS-OF-WAY

This Partial Assignment of Rights-of-Way ("Assignment") is entered into by and between KERN RIVER GAS TRANSMISSION COMPANY ("Kern River"), a Texas General Partnership with its principal offices located in Salt Lake City, Utah and Kern River's affiliate WILLIAMS COMMUNICATIONS, INC. ("WilCom") a Delaware corporation with its principal offices located in Tulsa, Oklahoma.

W I T N E S S E I H

WHEREAS, Kern River possesses certain rights, title and interests along its Pipeline right-of-way for communications purposes;

WHEREAS, Kern River and WilCom have entered into that certain Construction, Operating and Maintenance Agreement ("Agreement") effective as of the 17<sup>th</sup> day of July, 1998, which Agreement sets forth the terms and conditions under which Kern River is willing to allow WilCom to encroach on a portion of its right-of-way by means of partial assignment of Kern River's rights, title and interests to WilCom; and

WHEREAS, the Agreement describes certain instruments to be entered into between Kern River and WilCom, one of which instruments is this Partial Assignment, and a formal, recordable assignment is required between Kern River and WilCom to effectuate this Agreement;

NOW, THEREFORE, in consideration of ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and subject to the exceptions, reservations, covenants, and conditions contained in this Partial Assignment, Kern River does hereby QUIT-CLAIM, TRANSFER, and ASSIGN to WilCom, its successors and assigns, a portion of Kern River's right, title and interest in and to the rights-of-way, including rights-of-way for communications purposes and all other purposes generally or specifically relating to them, to authorize and consent to WilCom's use of areas lying off the center of the Pipeline but within the right-of-way for the purpose of installing, operating, and maintaining Communications Facilities. Kern River expressly reserves unto itself, however, a portion of any and all rights, title and interests necessary for the transportation of natural gas or for the purposes of its pipeline transportation business, including communications. In addition, Kern River expressly reserves unto itself all additional pipeline rights and other rights permitted by the rights-of-way and not expressly assigned to WilCom hereunder.

The Parties further agree as follows:

1. Term. This Assignment shall continue in full force and effect as to any and all of Kern River's rights, title and interests, terminating on December 31, 2045.
2. No Warranty. Kern River makes no warranty concerning either the assignability or validity of Kern River's rights, title and interest, or the suitability of the communications rights, title and interest it assigns to WilCom for the use contemplated by WilCom.
3. Use of Assigned Rights, Title and Interest. WilCom may use the rights, title or interest assigned herein for communications purposes, and for any other activities generally or specifically related to those purposes including, but not limited to, constructing, maintaining, operating and removing all or any portion of its communications system. WilCom shall obtain at its sole cost and expense any permits necessary for the construction, maintenance, operation or removal of its communications system. WilCom agrees to assume and be bound by any and all restrictions, covenants, or terms and conditions associated with Kern River's assigned communications rights, title and interest and by which Kern River is currently bound.
4. Choice of Law. This Assignment is executed and delivered within the State of Utah, and it is expressly agreed by the Parties that this Assignment shall be construed in accordance with the laws of the State of Utah.
5. Amendments. This Assignment shall not be amended except by an instrument in writing, signed by both Parties.
6. Invalidity of Provisions. The invalidity, in whole or in part, of any provisions of this Assignment shall in no way affect or impair the validity of any other provision of this Assignment.
7. Construction, Operating and Maintenance Agreement. The Parties agree that the terms and conditions of the Construction, Operating and Maintenance Agreement between Kern River and WilCom are incorporated herein by reference. To the extent there is a conflict between the terms and conditions of this Partial Assignment of Communications Rights Agreement and the terms and conditions of the Construction, Operating and Maintenance Agreement, the terms and conditions of this Partial Assignment of Communications Rights Agreement shall supersede.
8. Notices. Any written notices required by this Assignment shall be sent by mail to the respective addresses set forth below, unless a different address is given by written notice:

Kern River Gas Transmission Company  
 295 Chipeta Way  
 P.O. Box 58900  
 Salt Lake City, UT 84158  
 Attn: Director, Operations (Mainline South)  
 Phone (801) 584-7919  
 Fax: (801) 584-7919

Williams Communications, Inc.  
 One Williams Center  
 P.O. Box 22067  
 Tulsa, Oklahoma 74121  
 Attn: Director, Fiber Services  
 Phone: (918) 573-2715  
 Fax: (918) 573-6389

9. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of the Parties hereto, their successors and assigns, except for any provision expressly made personal to the Parties herein. This Assignment may be assigned in whole or in part by WilCom with the consent of Kern River, which shall not be unreasonably withheld or delayed.
10. Headings. The provision headings used in this Assignment are intended for reference purposes only, and are not to be given any substantive effect upon the terms of this Assignment.
11. Utilities. WilCom shall obtain its own electricity and other utility service for its needs along the right-of-way. Kern River shall make its auxiliary power supplies, if any, available to WilCom for use whenever WilCom's primary power supply is temporarily disrupted, cut off, or is at unacceptably low voltage. WilCom will pay to Kern River the fair market rate for electricity furnished by Kern River to WilCom. Kern River shall have no liability whatsoever and WilCom agrees to indemnify and hold Kern River harmless from all liability in the event that Kern River is unable, for any cause or reason whatsoever (including, without limitation, force majeure, the acts or omissions of Kern River, or the abandonment or termination of such facilities by Kern River) to furnish such power to WilCom. WilCom shall bear the full cost of, and responsibility for, the proper installation of all electrical connections necessitated by the foregoing, and Kern River shall be given the opportunity to observe such installation, if it so chooses.
12. Rights-of-Way. WilCom may use the rights-of-way granted herein for constructing, maintaining, operating and removing all or any portion of its communications system, and for any other purposes generally or specifically relating to WilCom's communications business, including the installation, maintenance or removal of utilities.

*(signatures on the next page)*

EXECUTED on this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, but EFFECTIVE for all purposes as of the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

ATTEST:

Approved by \_\_\_\_\_  
to Form \_\_\_\_\_  
**KERN RIVER GAS TRANSMISSION COMPANY**

7/17/96  
Legal Department

By: Barbara Horwitz

By: [Signature]

Name: BARBARA HORWITZ

Name: ROBERT L. SLUDER

Its: Office Assistant

Its: VP, OPERATIONS

[Seal]

ATTEST:

**WILLIAMS COMMUNICATIONS, INC.**

By: [Signature]

By: [Signature]

Name: Greg S. Floerke

Name: Joseph C. Turcotte

Its: V.P., Network Support and Assistant Secretary

Its: V.P. Operations & Engineering

[Seal]



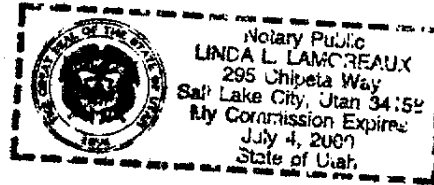
STATE OF UTAH )  
 ) ss:  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day July, 1998, by Robert L. Shuler, the vice president of Kern River Gas Transmission Company, a Delaware corporation, on behalf of the corporation.

Linda L. Lamoreaux  
Notary Public

My Commission Expires:

July 4, 2000



STATE OF OKLAHOMA )  
 ) ss:  
COUNTY OF TULSA )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day July, 1998, by Joseph C. Duceite, the V.P. Eng & Ops of Williams Communications, Inc., a Delaware corporation, on behalf of the corporation.

David King  
Notary Public

My Commission Expires:

August 13, 2001

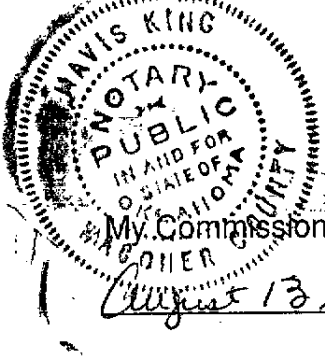


EXHIBIT DCONSTRUCTION, OPERATION, AND MAINTENANCE REQUIREMENTS

1. Authorization. WilCom hereby represents and warrants that WilCom has or will obtain all appropriate agreements, approvals, authorizations, certificates, licenses, zoning and permits from any and all individuals, agencies (public and private) for the construction, operation and maintenance activities contemplated in this Agreement.
2. Location. Unless waived by Kern River (and such waiver shall not be unreasonably delayed), the centerline of the Communications Facilities shall generally be located to the south and east of the Pipeline, five (5) feet from the boundary of the Kern River right-of-way and twenty (20) feet from the centerline of the Pipeline. The location of the Communications Facilities shall also be adjusted to minimize disturbance to Kern River's existing facilities, including cathodic protection groundbeds. In all cases, Kern River shall have the final decision on the location of the Communications Facilities, but shall not unreasonably delay or withhold consent to WilCom's requests regarding such location.
3. Permitted Work Area and Construction. WilCom shall not perform mechanized excavation or other earth-disturbing work of any kind within five (5) feet of the Pipeline at any time, except at any agreed upon crossover points. Furthermore, WilCom vehicles shall not cross above the Pipeline unless: (a) at designated crossing points; or (b) there is at least five (5) feet of soil coverage above the Pipeline at the desired crossover and no other crossing restrictions exist. Any crossing of the pipeline by Heavy Equipment must be at designated crossings and a Kern River Representative must be on site for any Heavy Equipment crossing of the pipeline.

All Pipeline locates shall be conducted by agents, contractors, or assigns of Kern River. Where appropriate in Kern River's reasonable judgment, construction fences, flags or marking tape shall be used by WilCom in order to prevent damage to the Pipeline.

Should the pipeline need to be exposed for any reason, the following shall apply. Excavating closer than five (5) feet to the pipeline shall be done by hand until the pipeline is exposed and shall be done only in the presence of an authorized Kern River representative. After the pipe has been exposed, excavation equipment must be positioned so that from the point of operations the equipment will not reach within two (2) feet of the pipeline. Final stripping on the sides and top of the pipe shall be by hand tools.

All buried lines crossing Kern River's Easement must cross at an angle of ninety (90) degrees or as near ninety (90) degrees as possible. Any crossing substantially

less than ninety (90) degrees shall be approved by Kern River prior to any excavation activity. The crossing angle must be maintained across the entire width of Kern River's Easement. Further, all buried lines crossing the pipeline shall maintain a minimum separation of twelve (12) inches between the two facilities, with the same depth carried across the entire pipeline right-of-way. As a protective measure, a three-inch (3) wide vinyl warning tape shall be buried twelve (12) to eighteen (18) inches above the crossing utility line and extend across the entire pipeline right-of-way.

4. Inspection. A qualified inspector or inspectors representing Kern River shall be present during any excavation, grading or other work involving surface or sub-surface disturbance performed over, across or through Kern River's Easement and such inspectors will remain on site as long as necessary to protect Kern River's interests. The number of inspectors required for the work to be performed shall be mutually agreed upon by the Parties. All costs for said inspector or inspectors including, but not limited to salary, per diem, transportation, supplies, and equipment shall be reimbursed to Kern River on presentation of the appropriate invoices. Said inspectors shall report directly to the appropriate District Manager for Kern River and shall be responsible for the safety and protection of pipeline facilities. Kern River inspectors shall have the authority to stop work in order to protect the Pipeline or Kern River right-of-way, but such stoppage shall not be unreasonably effectuated or delayed. The intention of this paragraph is to protect the pipeline facilities and is not intended to obstruct or delay the completion of the Communications Facilities. The Parties agree to operate with a mutual respect and assist each other to overcome any problems encountered on the project. So that Kern River may schedule its personnel and not delay the proposed work, the contractor awarded the project by WilCom shall be responsible for notifying Kern River through the "Blue Stakes One-Call Service" or such other one-call notification service which in the future may replace the "Blue Stakes One-Call Service," (or, if in Nevada, WilCom shall notify Kern River through the "USA North" service or such other one-call notification service which in the future may replace the "USA North" service) a minimum of two (2) regular business days before excavation or grading work commences on or near Kern River's right-of-way or easement. These required calls would be performed under WilCom's supervision.
5. Fencing. Fences may be installed by WilCom to protect the Communications Facilities or Pipeline facilities. Any fences installed shall be the sole responsibility of WilCom and any costs incurred for fence installation and maintenance shall be borne by WilCom. The type of fence shall be decided in the field by mutual agreement of the Parties.
6. Blasting. Should blasting be required for the project, a blasting plan must be submitted to Kern River at least seventy-two (72) hours in advance for review and approval. No blasting may take place without prior written consent from Kern River.

7. Cathodic Protection. Although no utility line crossings are anticipated in conjunction with this project, the Parties agree that all metallic utility lines or lines with metallic parts or structures, crossing Kern River's pipeline shall have cathodic test leads connecting both the utility and the pipeline. Kern River will install, at Kern River's expense, such test leads on its pipeline if required. However, WilCom shall reimburse any costs incurred by Kern River to remedy any interference with its cathodic protection of the Pipeline that is caused by WilCom. The Parties shall cooperate in the performance of any tests or other actions necessary to prevent, or determine the existence of, any electrical interference between the Pipeline and the Communications Facilities.
8. Restoration. Each party shall be responsible for the restoration, including but not limited to, leveling, recontouring, planting of vegetation and reseeding, cutting or clearing of trees, and the removal of weeds, of the area on Kern River's right-of-way affected by that Party's operations, including but not limited to construction, operation, repair, alteration, replacement, maintenance, and removal of facilities.

Kern River reserves the right to remove and replace any improvements if in Kern River's judgment it is reasonably necessary to do so in order to construct, alter, inspect, maintain, repair, remove or replace gas transmission facilities or communication cable facilities located within Kern River's Easement or in order to construct or install new facilities. In such event, should WilCom desire to replace or repair such improvements including any pavement removed by Kern River in the exercise of its rights, the repair or replacement shall be the sole responsibility of WilCom and shall be done at no expense to Kern River.

9. Maintenance. WilCom shall provide Kern River with at least two regular business days' notice prior to performing maintenance work within WilCom's easement area, in order that Kern River may have an inspector present, at WilCom's expense. Kern River shall provide WilCom with at least two regular business days' notice prior to performing non-emergency pipeline maintenance work within WilCom's easement area, in order that WilCom may have an inspector present. As used herein, "maintenance work" shall be that work which may involve excavation, recontouring, grading, digging, or any other activity that involves soil disturbance or probing of the land surface.
9. Emergency Work. WilCom shall provide Kern River with notice as promptly as possible by telephone to Kern River's Operations Control Department at 1-800-272-4817 of all emergency maintenance work in the Communications Facilities easement area, and shall use reasonable efforts to avoid excavation work until a Kern River inspector is on site. Kern River shall provide WilCom with notice as promptly as possible by telephone to WilCom's Operations Control Department at 1-800-265-"CBUD" (or such other number as WilCom designates by written notice) of all emergency maintenance work in the Communications Facilities easement

area, and shall use reasonable efforts to avoid excavation work until a WilCom inspector is on site.

- 11. One-Call Responses. After construction is complete and WilCom's Communications Facilities are activated, Kern River and WilCom shall each be responsible for responding to one-call notifications regarding their respective facilities. Each Party shall bear its respective costs for all associated one-call memberships and responses.

ATTEST:

Approved as to Form  
 7/17/98  
**KERN RIVER GAS TRANSMISSION COMPANY**

By: *Barbara Horwitz*  
 Name: BARBARA HORWITZ  
 Its: Office Assistant

By: *[Signature]*  
 Name: ROBERT L SLUDER  
 Its: VP, OPERATIONS

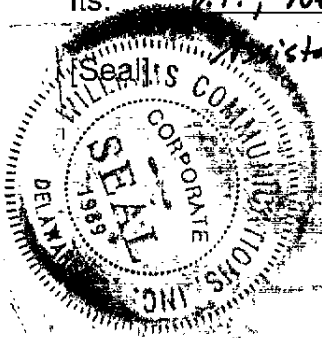
[Seal]

ATTEST:

**WILLIAMS COMMUNICATIONS, INC.**

By: *[Signature]*  
 Name: Greg S. Floerke  
 Its: V.P., Network Support and Assistant Secretary

By: *[Signature]*  
 Name: Joseph C. Turcotte  
 Its: V.P. Ops + Eng.



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**NANCY WORKMAN**  
 RECORDER, SALT LAKE COUNTY, UTAH  
 WILLIAMS COMMUNICATIONS  
 295 CHIPETA WY  
 SLC UT 84108  
 REC BY: V ASHBY DEPUTY - WI

00122385 Bk 00330 Pg 00888

CLARK COUNTY, NEVADA  
 JUDITH A. VANDEVER, RECORDER  
 RECORDED AT REQUEST OF:

W THOMASSON  
 08-11-98 10:10 PAR 21  
 OFFICIAL RECORDS  
 BOOK: 980811 INST: 00576  
 FEE: 27.00 RPTT: .00