

C SPIRE

**AN ORDINANCE OF THE COUNTY OF MADISON, MISSISSIPPI
GRANTING A NON-EXCLUSIVE FRANCHISE
TO TELEPAK NETWORKS, INC.
TO LAY, CONSTRUCT, MAINTAIN, REPLACE, REPAIR, AND OPERATE
FIBER OPTIC CABLE
AND APPURTENANT TELECOMMUNICATIONS FACILITIES
IN, UNDER, OVER, AND ACROSS AND ALONG ALL STREETS, AVENUES,
ALLEYS
HIGHWAYS, ROADS, BRIDGES, VIADUCTS AND PUBLIC PLACES
IN THE COUNTY OF MADISON, MISSISSIPPI**

WHEREAS, Telepak Networks, Inc. dba C Spire Fiber ("Telepak"), is a Mississippi corporation, incorporated or organized, among other things for the purpose of constructing telephone lines and furnishing intrastate telecommunications services in the State of Mississippi. Telepak obtained a certificate of public convenience and necessity to provide such telecommunications services in Mississippi on October 14, 1999, in Mississippi Public Service Commission Docket No. 99-UA-621, and

WHEREAS, Telepak is in the process of constructing certain telecommunications facilities as authorized by the Mississippi Public Service Commission in Docket No. 99-UA-621. A portion of these facilities will be located within the county of Madison, Mississippi, and

WHEREAS, Section 77-9-711 of the Mississippi Code of 1972, as amended, grants companies such as Telepak the authority to construct telecommunications facilities along and across public highways and streets, but not in a manner so as to be dangerous to persons or property or to unreasonably interfere with the common use of such highways and streets, and

WHEREAS, Section 77-9-713 of the Mississippi Code of 1972, as amended, authorizes the County of Madison, Mississippi the authority to regulate the manner in which such facilities shall be constructed and maintained along and within the rights-of-way of the municipality's streets, and

WHEREAS, the County of Madison, Mississippi does hereby find and adjudicate that the incorporated proposal of Telepak for the operation of a telecommunications facility in the County of Madison, Mississippi is in the best interest of the citizens of the County of Madison, Mississippi and that the following franchise agreement is reasonable and in the best interests of the County of Madison, Mississippi.

**THEREFORE BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF THE
COUNTY OF MADISON, MISSISSIPPI AS FOLLOWS:**

TELECOMMUNICATIONS FRANCHISE AGREEMENT

BETWEEN

THE COUNTY OF MADISON, MISSISSIPPI

AND

TELEPAK NETWORKS, INC.

October __, 2014

The County of Madison, Mississippi ("County") and Telepak Networks, Inc., a Mississippi corporation ("Telepak"), enter into this Telecommunications Franchise Agreement ("Agreement") as of October __, 2014 (the "Agreement Date"). County and Telepak are sometimes collectively referred to herein as the "Parties" and individually as a "Party."

UNDERSTANDING

- A. Telepak has applied for a franchise from the County for the purposes of laying, constructing, maintaining, replacing, repairing, and operating a Telecommunications System (as defined herein) which may be used to provide Telecommunications Service (as defined herein), Video Services (as defined herein), and/or Other Services (as defined herein) to customers located in the County as determined by Telepak.
- B. Telepak has provided the Board of Supervisors with a franchise proposal, which the County, its representatives and Telepak have discussed and adjusted in accordance with the needs and interests of the County and its citizens, taking into account the costs.
- C. The Board of Aldermen, after evaluating Telepak's final proposal in the form of this Agreement, and after hearing the comments of interested parties, has determined that Telepak has the financial, legal and technical ability to fulfill the obligations under this Agreement. The County has further determined that it will serve the public interest to grant Telepak a franchise on the terms and conditions of this Agreement.

Based on the above understanding, the Parties enter into this Agreement.

AGREEMENT

SECTION I-DEFINITIONS

1. Definitions.

For the purpose of this Agreement, the following terms, phrase, words, and abbreviations shall have the following meanings:

“Affiliates” means an entity which, owns or controls, is owned or controlled by, or is under common ownership with Telepak.

“Agreement” means this Telecommunications Franchise Agreement, as amended.

“Agreement Date” means October __, 2014.

“Basic Video Services Tier” means the Video Services tier which includes the retransmission of local television broadcast signals and which is also the tier to which the largest number of Subscribers are currently purchasing.

“Facilities” means all fiber optic wires, poles, wires, telecommunications, amplifiers, electronics, transmission and reception equipment, pedestals, towers, dishes, supporting hardware, and related equipment and fixtures necessary and desirable to construct and maintain the Telecommunications System and to provide Services (as defined herein) under this Agreement.

“FCC” means Federal Communications Commission.

“Franchise” means an initial authorization or renewal issued by the County whether such authorization is designed as an agreement, franchise, permit, license, resolution, contract, certificate or otherwise, which authorizes the construction and operation of the Telecommunications System for the purpose of offering Services to Subscribers.

“Gross Revenues” means any revenue derived by Telepak from the operation of the Telecommunications System to provide Telecommunications Services and Video Services to Subscribers in the Service Area, adjusted for non-payment. Gross Revenues shall include Video Services fees for Telepak’s Basic Video Services Tier and Telecommunications Services fees for Telepak’s local calling plan offering. The term Gross Revenues shall not include any taxes on services furnished by Telepak or franchise fees imposed by any municipality, state, or other governmental unit and collected by Telepak for such governmental unit.

“Other Services” means services lawfully provided by Telepak in the Service Area in addition to Telecommunications Services and Video Services, including, without limitation, private network services, broadband services, internet access services, voice mail, call waiting, call forwarding, and distance learning services.

“PEG Access” means the public, educational and governmental access to a channel on the Telecommunications System dedicated by Telepak to the County under this Agreement.

“Person” means an individual, partnership, association, joint stock company, trust, corporation, limited liability company, or governmental entity.

“Public Way” means the surface of, and the space above and below, any public street, highway, bridge, alley, sidewalk, easement or other public right-of-way, including, without limitation, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses held by the County in the Service Area.

“Services” collectively refers to Telecommunications Services, Other Services and Video Services.

“Service Area” means the areas of the County where Subscribers are reasonably accessible from the distribution network of the Telecommunications System. It is expressly understood that the Service Area does not include municipalities and other incorporated areas located in Madison County, Mississippi as those areas are not under the jurisdiction of the Board of Supervisors of the County.

“Subscribers” means a Person who lawfully receives Services with Telepak’s express permission.

“Telecommunications Service” means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of facilities used.

“Telecommunications System” means Telepak’s Facilities, consisting of a set of closed transmission fiber optic paths and associated signal generation, reception, and control equipment or other communication equipment that is designed to provide Services to Subscribers.

“Telepak” means Telepak Networks, Inc., or its lawful successor or assigns.

“Video Services” means the one-way transmission to Subscribers within the County of video programming (programming provided by, or generally considered comparable to programming provided by, a television broadcast station) or other programming services (information that Telepak makes available to all Subscribers generally).

SECTION II-GRANT OF FRANCHISE

1. Grant.

The County grants to Telepak a non-exclusive franchise authorizing Telepak to construct and operate a Telecommunications System in the Public Ways and to offer Services within the Service Area. Subject to the terms of this Agreement and applicable law, Telepak may erect, install, construct, operate, maintain, repair, replace, expand, and reconstruct its Telecommunications System in any Public Way.

2. Term.

The Franchise granted under this Agreement shall be for an initial term of twenty-five (25) years from the Agreement Date, unless otherwise lawfully terminated (the "Initial Term"). At the end of the Initial Term this Agreement shall automatically renew for two (2) consecutive periods of ten (10) years (each a "Renewal Term") unless Telepak gives the County notice of its intention not to renew at least six (6) months prior to the Initial Term or any Renewal Term. The Initial Term and any Renewal Term(s) are sometimes collectively referred to herein as the "Term." At the end of the Term either Party may commence negotiations for a renewal of the Franchise by giving the other Party written notice not more than two (2) years prior to the end of the Term.

SECTION III-SYSTEM CONSTRUCTION

1. System Construction.

(a) When Telepak wishes to construct a portion of its Telecommunications System it shall provide County with written notice thereof along with drawings of the proposed locations of its Facilities ("Construction Notice"). The County shall have five (5) business days from its receipt of the Construction Notice to notify Telepak of any issues, else the Construction Notice shall be deemed approved and Telepak may thereafter begin construction. If the County notifies Telepak of any issues with the Construction Notice within the five (5) business day period, the Parties shall promptly meet (no more than five (5) business days later) to discuss the requested adjustments to Telepak's construction plans and work in good faith to resolve any issue within five (5) business days of their first meeting. Thereafter, Telepak will deliver to the County a revised Construction Notice reflecting the agreed upon changes to its construction plans and from that point Telepak shall be permitted to move forward with its construction. The foregoing shall constitute the permitting/approval process for Telepak's Facilities notwithstanding any other County ordinances, rules, or regulations. The County shall not charge Telepak any permitting fees of any kind during the Term.

(b) Upon completion of any construction of the Telecommunications System during the Term, Telepak shall provide the County with as built drawings of Telepak's current Telecommunications System. The County agrees that Telepak is under no obligation to build its Facilities to cover the entire County, to serve any particular Person

located in the County, or otherwise. The decision of when and where to construct its Facilities is solely within the discretion of Telepak as is the determination of what Services to provide during the Term.

(c) Within ten (10) days of the Agreement Date the City provide Telepak with written notice of one Person to be Telepak's point of contact during the Term of this Agreement (the "Project Manager"). The Project Manager shall have the authority to approve Construction Notices and to otherwise deal with Telepak under the terms of this Agreement. The Project Manager may be changed by the City at any time upon ten (10) days prior written notice to Telepak.

2. Conditions on Commencement of Upgrading.

The County acknowledges that Telepak has based its plans and cost estimates on reasonable access to Public Ways, poles, conduits, Subscriber premises, and other space for Telepak's Facilities. Telepak reserves the right to adjust its construction plans and timing or rescind this Agreement in the event that Telepak faces substantial interference or delay in such access. Throughout the Term of this Agreement, Telepak shall be entitled expand and upgrade its Telecommunications System as it deems reasonably necessary. In addition, County will allow Telepak access to poles owned by County at no cost for the purpose of attaching its Facilities, provided there is room for such pole attachments and Telepak pays for the costs of installation, removal, and maintenance of its Facilities on such County owned poles, if any.

SECTION IV-PUBLIC, EDUCATION AND GOVERNMENT ACCESS CHANNEL

1. PEG Access Channel.

At any time after the completion of the initial construction of the Telecommunications System under Section III(1), the County may request Telepak to provide the County one (1) video channel for noncommercial PEG Access use. Telepak shall provide the PEG Access channel within one hundred and eighty (180) days of County's request.

2. Regulation of PEG Access Channel.

The County shall establish reasonable regulations governing use by the public of the PEG Access channel and the content broadcast over the channel. Telepak shall have the right to prohibit the broadcast of inappropriate or illegal programming over the channel in its sole reasonable discretion and in accordance with applicable law. The County shall be solely responsible for all costs, expenses, and equipment necessary for and related to producing or transmitting content over the PEG Access channel. Telepak shall have no obligation, financial or otherwise, other than the obligation to provide access to one video channel for noncommercial PEG Access use.

3. Return of PEG Access Capacity to Telepak.

In the event that unused capacity exists on the PEG Access channel, Telepak may request the County to return that capacity to Telepak for Telepak's use. The County shall not unreasonably deny such request.

SECTION V-REGULATION BY THE CITY

1. Franchise Fee.

(a) Telepak shall pay to the County a Franchise fee equal to the lesser of: (i) five percent (5%) of Gross Revenues received by Telepak from sale of the Basic Video Services Tier to Subscribers within the County; or (ii) the lowest percentage payable by a third party provider of Video Services to Subscribers within the County (and not located in a municipality or town located in the County).

(b) Telepak shall pay the County a Franchise fee equal to two percent (2%) of Gross Revenues received by Telepak from the sale of Telecommunications Services (local calling plan only) to Subscribers within the County (and not located in a municipality or town located in the County).

(c) The Franchise fee payments set forth in (a) above shall be computed quarterly as of the last day of March, June, September, and December of each year, and shall be due and payable sixty (60) days after the close of each quarter. Each payment shall be accompanied by a brief report from Telepak showing the basis for the computation. Each payment must be received by the County on the due date. Telepak shall pay County an additional charge of one percent (1%) per month, for each month the total amount due to the County is not received by County by the due date.

(d) All amounts paid shall be subject to audit by County no more than once each calendar year upon at least ten (10) business days prior written notice to Telepak. If any audit reveals an underpayment by Telepak of five percent (5%) or more during any annual audit period, Telepak shall be responsible for County's reasonable out of pocket costs associated with the audit. Any underpayments shall be paid to County within ten (10) business days after notification to Telepak.

2. Transfer of Franchise.

Telepak must notify the County not less than sixty (60) days prior to any proposed sale or transfer of this Franchise. Telepak shall not sell, assign, transfer or dispose of its interest in the Franchise or the Agreement without the prior written consent of the County, which consent will not be unreasonably withheld. Notwithstanding the foregoing, Telepak may assign this Agreement to a purchaser of its voting stock or all or substantially all of its assets without consent but with written notice to County.

SECTION VI-OPERATIONAL STANDARDS

1. Condition of Street Occupancy.

Telepak shall install all Facilities so as to minimize interference with the proper use of Public Ways, public utilities and with the rights and reasonable convenience of County and property owners whose property adjoins any Public Ways. Telepak will comply with Sections 77-13-1 et seq. of the Mississippi Code of 1972, as amended ("Mississippi One Call" statute). The County shall locate its utility lines promptly as required by the Mississippi One Call statute. Telepak will not locate the County's utility lines or those of any third party physically or on maps or drawings. Upon completion of any Facilities, Telepak will furnish an as built drawing of the Facilities located within the County to the County.

2. Restoration of Public Ways.

Telepak shall restore any disturbance it causes to any Public Way to a condition reasonably comparable to the condition of the Public Way existing before the disturbance.

3. Relocation at Request of County.

After receipt of at least ninety (90) days prior written notice, Telepak shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of Telepak when lawfully required by the County by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewer, drains, gas or water pipes, or any other type of structures or improvements by the County. Telepak shall in all cases have the right to abandon its property.

4. Relocation at Request of Third Party.

On the request of any Person holding a building construction or moving permit issued by the County, Telepak shall temporarily relocate its Facilities to permit the construction or moving of such building, provided: (a) the expense of such temporary relocation is paid by the requesting Person; and (b) Telepak receives at least ninety (90) days prior written notice to arrange for such temporary relocation.

5. Trimming of Trees and Shrubbery.

Telepak shall have the authority to trim trees or natural growth on Public Ways which may effect its Telecommunications System in the Service Area to prevent interference with Telepak's Facilities. Telepak shall reasonably compensate the County or property owner for any damages caused by such trimming, or shall reasonably replace all trees or shrubs damaged and otherwise restore any other damage caused by or resulting from its activities.

6. Technical Standards.

Telepak shall install, operate, and maintain the Telecommunications System in a good and workmanlike manner, free from defects in material and workmanship, and in accordance with applicable FCC regulations. Telepak shall install its aerial facilities, if any, in accordance with requirements of the National Electric Safety Code in effect on the Agreement Date, and in such manner that they will not unreasonably interfere with installations of the County or of a public utility serving the County.

SECTION VII-COMPLIANCE AND MONITORING

Once per calendar year during the Term of this Agreement and upon not less than thirty (30) business days notice to Telepak, County may review Telepak's books and records pertaining to the Telecommunications System and the provision of Telecommunications Service within the Service Area at Telepak's business office during normal business hours and on a nondisruptive basis, as is reasonably necessary to monitor compliance with the terms of this Agreement. Telepak shall not be required to disclose information that is reasonably deemed to be proprietary or confidential. The County agrees to treat any information disclosed by Telepak as confidential and only to disclose it to employees, representatives, and agents that have a need to know.

SECTION VIII-INSURANCE

Telepak shall maintain in full force and effect during the Term of this Agreement, comprehensive general liability insurance in the amount of One Million Dollars (\$1,000,000) combined single limit for bodily injury, and property damages. Prior to commencing construction of the Telecommunications System, Telepak shall provide the County with a certificate of insurance designating it as an additional insured. Such insurance shall be non-cancelable except upon thirty (30) days prior written notice to the County.

SECTION IX-ENFORCEMENT AND TERMINATION OF AGREEMENT

1. Notice of Noncompliance.

If the County believes that Telepak has not materially complied with any material term (other than payment of Franchise fees and changes) of this Agreement, it shall notify Telepak in writing. The notice shall state with specificity the basis for the alleged material noncompliance.

2. Telepak's Right to Cure or Respond.

Telepak shall have thirty (30) days from receipt of the notice described in Section IX(1) to respond as follows:

(a) Respond to the County contesting the assertion of noncompliance;

(b) Cure the noncompliance; or

(c) In the event Telepak's commercially reasonable efforts cannot cure the noncompliance within the thirty (30) day period, Telepak shall initiate reasonable steps to remedy the noncompliance and notify the County of the steps being taken and the projected date of completion.

3. Public Hearing.

If Telepak fails to respond to the notice described in Section IX(1) under the procedures set forth in Section IX(2), or if Telepak does not cure the alleged noncompliance within sixty (60) days after receiving notice of noncompliance, the County shall schedule a public hearing to investigate the noncompliance. Such public hearing shall be held at the next regularly scheduled meeting of the County which is scheduled at a time which is no less than ten (10) business days from the expiration of the sixty (60) day period. The County shall notify Telepak in writing of the time and place of such meeting and provide Telepak with an opportunity to be heard.

4. Enforcement.

Subject to applicable law, if the County, after a public hearing, where applicable, determines that Telepak remains in material noncompliance with a material term of this Agreement, the County may pursue the following remedies:

(a) In the case of a default of a material provision of this Agreement, terminate this Agreement and revoke the Franchise; or

(b) Commence an action at law for monetary damages or seek other equitable relief. Should the County prevail in any such action, Telepak shall pay County for its legal fees and attendant costs and expenses incurred in such action.

Telepak shall not be held in default for noncompliance with this Agreement, nor suffer any enforcement or penalty, where such noncompliance or alleged defaults are caused by strikes, acts of God, acts of terrorism, power outages, acts of the County, its employees, or representatives, or other events reasonable beyond its ability to control.

5. Failure to Pay Franchise Fees and Charges.

In the event the Telepak has not paid the County Franchise fees, and late charges owing under Section V, when due, County shall send Telepak a certified letter notifying Telepak it is in default. Telepak shall have fifteen (15) business days from the date of its receipt of the letter to cure the default. In the event Telepak fails to cure the default by paying all Franchise fees and late charges due, then the County shall notify Telepak of County's intention to revoke the Franchise. The notice of intention to revoke Franchise

shall be sent certified mail to Telepak not less than ten (10) business days prior to a Board Meeting of the County. The letter shall notify Telepak of the date, time, and place of the Board Meeting and the right of the Telepak to be present and participate meeting. At the Board Meeting, the County may revoke the Franchise of Telepak if it has not cured the default in full.

6. Upon the expiration or termination of this Agreement, Telepak may enter upon the Public Ways and remove its property at its own risk and restore the Public Ways to their former grade, contour and condition.

SECTION X-THEFT OF SERVICE

It shall be a misdemeanor for any Person to create, allow to create, or make use of any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of the Telecommunications System without the express consent of Telepak. Further, without the express consent of Telepak, it shall be a misdemeanor for any person to tamper with, remove, or injure any property, equipment, or part or the Telecommunications System or any means of receiving Services. Violation of this section of this ordinance shall constitute a misdemeanor punishable by a fine not to exceed \$500.00 and/or six months imprisonment.

SECTION XI-MISCELLANEOUS

1. Actions of the Parties.

In any action by Telepak or the County mandated or permitted under this Agreement, the Party shall act in a reasonable, expeditious, and timely manner. In any instance where approval or consent is required, such approval or consent shall not be unreasonable withheld.

2. Notice.

Any notice or response required by this Agreement shall be in writing and shall be deemed given upon receipt: (a) when hand delivered; (b) when delivered by commercial courier; or (c) after having been posted in a properly scaled and correctly addressed envelope by certified or registered mail, postage prepaid, at a post office maintained by U. S. Postal Service.

Board of Supervisors of the County of Madison

With a copy to:

The notices or responses to Telepak shall be addressed as follows:

**Chief Technology Officer
Telepak Networks, Inc.
1018 Highland Colony Parkway, Suite 400
Ridgeland, MS 39157**

With a copy to:

**W. Ken Rogers, Jr.
Brunini, Grantham, Grower & Hewes, PLLC
P.O. Drawer 119
Jackson, MS 39205**

The County and Telepak may designate such other address or addresses from time to time by giving notice to the other as provided in this Section.

3. Severability.

If the legislature or a court or regulatory agency or competent jurisdiction determines that any provision of this Agreement is illegal, invalid, or unconstitutional, all other provisions of this Agreement will remain in full force and effect for the term of the Agreement or any renewal.

4. Change of Law.

In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of County or Telepak to perform any material terms of this Agreement, the Parties agree to amend this Agreement as necessary to comply with the changes in the law within thirty (30) days' of the receipts of written notice so such change in law.

5. Entire Agreement.

This Agreement represents the entire agreement between the Parties as relates to the subject matter hereof. As such no other County ordinances shall apply to Telepak's provision of Services or construction of its Facilities as provided in this Agreement. Any and all other County ordinances, rules, or regulations which conflict with the terms of this Agreement are expressly superseded.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties execute this separate page and Agreement as of the Agreement Date.

County of Madison, Mississippi

By: _____

Name: _____

Title: _____

WITNESS:

Telepak Networks, Inc.

Gregg Logan, Chief Technology Officer

WITNESS:

Supervisor _____ moved the adoption of the ordinance in its entirety, which motion was seconded by Supervisor _____. The motion to adopt was passed by roll call vote as follows:

Supervisor _____	voted: _____
Supervisor _____	voted: _____
Supervisor _____	voted: _____
Supervisor _____	voted: _____
Supervisor _____	voted: _____

The Chairman of the Board of Supervisors then declared the ordinance adopted this the
__ day of September, 2014.

_____ - Chairman

ATTEST:

_____, County Clerk