

**AN ORDINANCE OF THE CITY OF BYRAM, 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 CITY OF BYRAM, 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 city limits of BYRAM, 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 City of BYRAM, 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 City of BYRAM, Mississippi does hereby find and adjudicate that the incorporated proposal of Telepak for the operation of a telecommunications facility in BYRAM, Mississippi is in the best interest of the citizens of the City of BYRAM, Mississippi and that the following franchise agreement is reasonable and in the best interests of the City of BYRAM, Mississippi. The City of BYRAM, Mississippi is authorized under the provisions of Sections 21-27-1, 21-13-3, and 77-9-713 of the Mississippi Code of 1972, as amended, to grant the franchise and the ordinance should be adopted.

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 May __, 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 City 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 Service and Video Services, including, without limitation, private network services, broadband services, internet access services, voice mail, call waiting, call forwarding, and distance learning services.

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 City 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 City with written notice thereof along with drawings of the proposed locations of its Facilities ("Construction Notice"). The City 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 City 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 City 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 City ordinances. The City 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 City with as built drawings of Telepak's current Telecommunications System. The City agrees that Telepak is under no obligation to build its Facilities to cover the entire City, to serve any particular Person located in the City, 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

1. Franchise Fee.

(a) Telepak shall pay to the City 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 City; or (ii) the lowest percentage payable by a third party provider of Video Services to Subscribers within the City.¹

(b) Telepak shall also pay to the City 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 City.

(c) The Franchise fee payments set forth in (a) and (b) 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 City on the due date. Telepak shall pay City an additional charge of one percent (1%) per month, for each month the total amount due to the City is not received by City by the due date.

(d) All amounts paid shall be subject to audit by City 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 City's reasonable out of pocket costs associated with the audit. Any underpayments shall be paid to City within ten (10) business days after notification to Telepak.

2. Transfer of Franchise.

Telepak must notify the City 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 City, 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 City.

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 City 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 City shall locate its utility lines promptly as required by the

¹ City will cooperate with Telepak to determine the lowest rate payable by other providers of Video Services to Subscribers in the City prior to execution of this Agreement.

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, City 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 City 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 City 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 City.

SECTION IX-ENFORCEMENT AND TERMINATION OF AGREEMENT

1. Notice of Noncompliance.

If the City 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 City 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 City of the steps being taken and the projected date of completion.

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 City 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.

Mayor of the City of BYRAM
P. O. BOX 720222
BYRAM, MS 39272

With a copy to:

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

**Senior Vice President
Telepak Networks, Inc.
1018 Highland Colony Parkway, Suite 400
Ridgeland, MS 39157**

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

City of BYRAM, Mississippi



RICHARD WHITE, Mayor

WITNESS:

Telepak Networks, Inc.

Gregg Logan, Senior Vice President

WITNESS:

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

<u>ALDERMAN COOK</u>	voted: <u>YEA</u>
Alderman <u>MOSER</u>	voted: <u>YEA</u>
Alderman <u>HOSEY</u>	voted: <u>YEA</u>
Alderman <u>CAMPBELL</u>	voted: <u>YEA</u>
Alderman <u>MACK</u>	voted: <u>YEA</u>
Alderman <u>MOORE</u>	voted: <u>YEA</u>
<u>ALDERMAN SMITH</u>	<u>ABSENT</u>

The Mayor then declared the ordinance adopted this the 30 day of ~~May, 2014~~ NOV., 2017

 MAYOR

ATTEST:

Angela E. Richly CITY CLERK