

TUSCALOOSA COUNTY COMMISSION
MEETING

OCTOBER 7, 2020

TUSCALOOSA COUNTY §
STATE OF ALABAMA §

This being the date and hour to which the Tuscaloosa County Commission adjourned; the County Commission met pursuant to such adjournment with Probate Judge Rob Robertson presiding as Chairman. The following members were present:

Stan Acker
Jerry Tingle
Mark C. Nelson
Reginald Murray

Commissioner Mark C. Nelson moved, seconded by Commissioner Reginald Murray, the County Commission voted unanimously to approve the minutes of September 16, 2020.

Commissioner Jerry Tingle moved, seconded by Commissioner Mark C. Nelson, the County Commission voted unanimously to change the regularly scheduled County Commission Meetings in November due to the election. The November 2020 meeting schedule is as follows:

November 11, 2020 at 9 a.m.

The Commission will resume the normal meeting schedule of the first and third Wednesdays at 9 a.m. for December 2020.

Commissioner Mark C. Nelson moved, seconded by Commissioner Stan Acker, the County Commission voted unanimously to approve a subdivision regulation waiver request for P&K Ventures, District III, in the City of Tuscaloosa Planning Jurisdiction.

Commissioner Reginald Murray moved, seconded by Commissioner Jerry Tingle, the County Commission voted unanimously to approve a subdivision regulation waiver request for resurvey of part of lots 39-43 Factory Addition, District IV, in the City of Tuscaloosa Planning Jurisdiction.

Exhibit 10-2, Page

Commissioner Stan Acker moved, seconded by Commissioner Mark C. Nelson, the County Commission voted unanimously to approve a right-of-way use agreement with C-Spire, as presented by County Attorney Robert Spence.

Exhibit 10-3, Pages

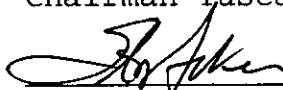
Commissioner Jerry Tingle moved, seconded by Commissioner Stan Acker, the County Commission voted unanimously to approve purchase of Lucas 3 CPR devices and new AED devices for the County volunteer fire departments at an estimated cost of \$400,000.00, with the expectation that this expense will be reimbursed with CARES Act funding.

Commissioner Mark C. Nelson moved, seconded by Commissioner Reginald Murray, the County Commission voted unanimously to approve funding in the amount of \$2,900.00 from the District III discretionary fund to PARA to repair the lights on the Hillcrest softball fields at Englewood Elementary.

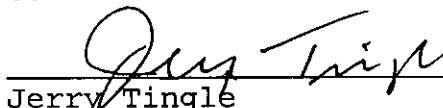
There being no further business to come before the Tuscaloosa County Commission, the meeting adjourned to Wednesday, October 21, 2020.



Rob Robertson
Judge of Probate
Chairman Tuscaloosa County Commission



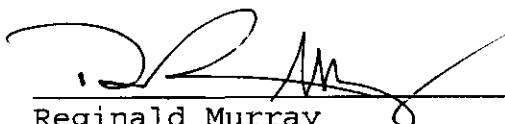
Stan Acker
Commissioner - District I



Jerry Tingle
Commissioner - District II



Mark C. Nelson
Commissioner - District III



Reginald Murray
Commissioner - District IV



TUSCALOOSA COUNTY PUBLIC WORKS DEPARTMENT
 2810 35th Street
 Tuscaloosa, Alabama 35401
 (205) 345-6600



Scott F. Anders, P.E.
 County Engineer

Tracy M. Criss, P.E.
 Assistant County Engineer

Subdivision Waiver Request
P & K Ventures, LLC
Tuscaloosa County Commission
October 7, 2020

Commission District: 3
 Owner: P & K Ventures
 Engineer / Surveyor: Chris Sentell, PLS
 Wavier Requested: The surveyor is requesting on behalf of the developer that the front minimum building line be reduced from thirty (30) feet to twenty (25) feet.

Comments:

The developer would like to reduce the County's front minimum building lines requirements for this development from thirty (30) feet to twenty-five (25) feet. The developer has agreed to dedicate an additional five (5) feet of right of way on each side of the centerline of Little Sandy Road. In order not to impact the usable building space, the developer is requesting Tuscaloosa County to consider reducing the front minimum building line building line by five (5) feet. This development is in the City of Tuscaloosa Planning Jurisdiction.

The 2013 Subdivision Regulations state the following:

5-4-24 Minimum Setback Lines

The minimum interior building setbacks lines shall be defined as the following:

- 30 feet along and adjacent to the front property line of the lot (abutting the street).
 - The developer is requesting that the front minimum building line be reduced from thirty (30) feet to twenty-five (25) feet.
- 35 feet along and adjacent to the rear property line.
 - The front minimum building line will not be reduced and will remain at thirty-five (35) adjacent to the rear property line.
- 10 feet along and adjacent to both sides of the property line on each side (20 feet total).
 - The front minimum building line will not be reduced and will remain at ten (10) feet adjacent to the side property line.

EX 10-1



TUSCALOOSA COUNTY PUBLIC WORKS DEPARTMENT
 2810 35th Street
 Tuscaloosa, Alabama 35401
 (205) 345-6600



Scott F. Anders, P.E.
 County Engineer

Tracy M. Criss, P.E.
 Assistant County Engineer

**Subdivision Waiver Request
 Resurvey of Part of Lots 39-43
 Factory Addition
 Tuscaloosa County Commission
 October 7, 2020**

Commission District: 4

Owner: Revon Bigham

Engineer / Surveyor: Ron Henderson, PE

Waiver Requested: The engineer is requesting on behalf of the developer that the front minimum building line be reduced from thirty (30) feet to twenty (20) feet and the side minimum building line be reduced from ten (10) feet to eight (8) feet. Also, the engineer is requesting that requirement of the dedication additional right of way along 29th Street be waived.

Comments:

The developer would like to reduce the County's front minimum building lines requirements for this development from thirty (30) feet to twenty (20) feet along 29th Street and the side minimum building lines be reduced from ten (10) feet to eight (8) feet. The proposed minimum building lines will be in accordance to the City of Tuscaloosa R2 Zoning. Also, the engineer is requesting that no additional right of way be dedicated along 29th Street. The purpose of this division is to consolidate three existing parcels into one parcel. This is located along Southside drive and 29th Street in an industrial area. This development is in the City of Tuscaloosa Planning Jurisdiction.

The 2013 Subdivision Regulations state the following:

5-4-24 Minimum Setback Lines

The minimum interior building setbacks lines shall be defined as the following:

- 30 feet along and adjacent to the front property line of the lot (abutting the street).
 - The developer is requesting that the front minimum building line be reduced from thirty (30) feet to twenty (20) feet along 29th Street. The front minimum building line will remain thirty (30) feet along Southside Drive
- 35 feet along and adjacent to the rear property line.
 - This lot fronts along two roads, therefore no rear minimum building line is required.
- 10 feet along and adjacent to both sides of the property line on each side (20 feet total).
 - The developer is requesting that the front minimum building line be reduced from ten (10) feet to eight (8) feet adjacent to the side property line.

5-3-2 ADDITIONAL WIDTH ON EXISTING ROADS:

Subdivisions that adjoin existing streets with inadequate right-of-way shall dedicate additional right-of-way to meet the minimum requirements.

- When a subdivision is located on only one side of the roadway, twenty-five (25) feet of right of way measured from the centerline of 29th Street to the property line would be required. The roadway currently has a total of fifteen foot of right of way measured from the centerline of 29th Street to the property line.

Ex 10-2



1018 Highland Colony Parkway, Suite 700
Ridgeland, Mississippi 39157
Telephone: 601.355.1522
Facsimile: 601.353.0950

GREGG LOGAN
Vice President - Engineering
Direct Line: 601.487.7111
Wireless: 601.573.1000
Email: glogan@telapexinc.com

September 23, 2020

Certified/Return Receipt Requested

Tuscaloosa County Commission
P.O Box 20113
Tuscaloosa, AL 35402
Attn: Melvin Vines, County Administrator

RE: C Spire Application and Proposed Ordinance for Non-Exclusive Franchise for
Tuscaloosa County, Alabama and Request for All Existing Franchise Ordinances

Dear Mr. Vines:

On behalf of Telepak Networks, Inc. dba C Spire, I submit to you this application and attached proposed Ordinance of Tuscaloosa County, Alabama 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, viaduct and public places in Tuscaloosa County.

We submit this application and proposed Ordinance in accordance with the FCC's Order *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, FCC 06-180 (2007), which provides that submission of the foregoing application commences a six month time period for formal negotiation and completion of a franchise application. If the time period expires without action by the franchising authority, an interim franchise will be deemed to have granted to the applicant based on the terms proposed in the application and proposed Ordinance. Therefore, pursuant to the Order, we submit the following information:

(1) Telepak Networks, Inc., d/b/a C Spire Fiber (Telepak), a Mississippi corporation, is the applicant;

EX10-3

(2) The names of Telepak's officers and directors are:

Telepak Networks, Inc. (d/b/a C Spire)	
Chairman and CEO	Hu Meena
Chief Financial Officer	Ben Pace
Treasurer / Secretary	Wesley Goings
Senior Vice President/Asst. Treasurer/Asst. Secretary	James H. Creekmore, Sr.
Senior Vice President	Wade H. Creekmore, Jr.
Senior Vice President Access and Deployment	Alan Jones

Directors: Hu Meena – Chairman
Wade H. Creekmore, Jr.
James H. Creekmore, Sr.
Wesley Goings

Shareholder: Telapex, Inc., 100%

(3) Telepak's business address is 1018 Highland Colony Parkway, Suite 300, Ridgeland, MS 39157;

(4) Telepak's contact for this application is:

Gregg Logan, VP of Engineering
Telapex, Inc.
1018 Highland Colony Parkway, Suite 700
Ridgeland, MS 39157
6014877111 office, 6015731000 wireless, 6014877231 fax, email:glogan@telapexinc.com

Contact information for construction and operation of Telepak's system shall be contained within the attached proposed Ordinance;

(5) The geographic area that the applicant proposes to serve includes various areas within Tuscaloosa County as chosen by Telepak in its sole discretion. In most cases such areas will be adjacent to or connecting to Telepak's existing facilities;

(6) Provided Telepak is offering Video Services over the Facilities, Telepak will provide upon request one (1) video channel for noncommercial PEG Access subject to the terms and conditions in the adopted ordinance;

(7) The requested term of the agreement is for an initial term of ten (10) years from the Effective Date, unless otherwise lawfully terminated (the "Initial Term"). At the end of the Initial Term this Agreement shall automatically renew for successive ten (10) year terms (each, a "Renewal Term") unless either Party gives the other Party written notice of termination at least twenty-four (24) months prior to the end of the Initial Term or any Renewal Term, as applicable;

(8) Telepak currently does not hold any existing authorization to access the county's public rights-of-way;

Ex 10 B

(9) Telepak agrees to pay the lesser of five percent (5%) of Gross Revenues received by Telepak from sale of the Video Services to Subscribers within the Service Area; or the lowest percentage payable by a third-party provider of Video Services within the service area.

The information provided herein is for application purposes and may be updated or modified by the adopted ordinance.

We also request that the Tuscaloosa County provide copies of any existing franchise ordinances with other providers that have been approved in the County Commission's minutes.

If you need any additional information, or have any questions, please do not hesitate to contact me at the information provided above. We look forward to working with you.

Sincerely,



Gregg Logan

Cc: Melvin Vines, County Administrator (via email: Mvines@tuscco.com)

Chase Bryan

Anita Clark

Katie Wallace, Esq.

Ben Moncrief

Enclosure: Proposed Ordinance

Ex 10-3

CONSTRUCTION, RIGHT-OF-WAY USE & FRANCHISE AGREEMENT

THIS CONSTRUCTION, RIGHT-OF-WAY USE and FRANCHISE AGREEMENT (this "Agreement") is entered into on this 7 day of NOVEMBER, 2020 (the "Effective Date"), by and between the COUNTY OF TUSCALOOSA, ALABAMA (the "County"), and TELEPAK NETWORKS, INC. AND ITS AFFILIATES d/b/a C Spire ("C Spire"). County and C Spire are sometimes referred to individually herein as a "Party" and collectively as the "Parties."

WHEREAS, the County is the owner of certain rights-of-way located along streets maintained by and under the control of the County (the "Rights-of-Way"), and the County is authorized to grant corporations the non-exclusive right to construct, operate, and maintain a telecommunications system within the County; and

WHEREAS, C Spire is qualified to do business in the State of Alabama, has been granted a Certificate to provide utility services in the State of Alabama by the Alabama Public Service Commission and desires to provide Telecommunications Services and Video Services within the County; and

WHEREAS, the County and C Spire desire to enter into this Agreement concerning the installation and maintenance of telecommunications facilities within the County's Rights-of-Way, and certain other matters more fully contained herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, the Parties hereto do hereby agree as follows:

1. **Definitions.** For the purposes of this Agreement, the following terms, phrases, words, and abbreviations shall have the following meanings:

(a) "Facilities" means all fiber optic cable, conduit, 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 under this Agreement.

(b) "Other Services" means services lawfully provided by C Spire within the County in addition to Telecommunications Services including, without limitation, broadband services, internet access services and Video Services.

(c) "Person" shall mean any person, firm, partnership, association, corporation, limited liability company, or organization of any kind.

(d) "Public Ways" shall mean the area on, below, or above any real property in County in which the County has an interest including, but not limited to any street,

road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area, or real property owned by or under the control of County, including other dedicated Rights-of-Way for travel purposes and utility easements.

(e) "Services" collectively refers to Other Services and Telecommunications Services.

(f) "Subscriber" means a Person who lawfully receives Services with C Spire's express permission within the County.

(g) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(h) "Telecommunications Services" 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.

(i) "Telecommunications System" means C Spire'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.

(j) "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 typically provided by a Multi-channel Video Programming Distributor ("MVPD") and made available to all Subscribers within the County generally, but not to include over-the-top services such as Hulu, Netflix or Sling.

(k) "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.

(l) "Gross Revenues" means any revenue derived by C Spire from the operation of the Telecommunications System to provide Telecommunications Services and/or Video Services to Subscribers within the County, adjusted for non-payment. Gross Revenues shall include (i) Video Services fees for any of C Spire's Video Services or Video Services Tier and (ii) Telecommunications Services fees for C Spire's local calling plan offering. Gross Revenues shall also include (i) recurring charges for Video Services, including late fees; (ii) event based charges for Video Services, including pay-per-view and video-on-demand charges; (iii) monthly recurring charges for the rental of Video Services Equipment and Video Services accessories; (iv) customer service charges related to the provision of Video Services, including activation, home installation, and repair; (v) advertising revenue and home shopping commissions and (vi) administrative charges related to the provision of Video Services, including service order and service

termination charges. Gross Revenues shall not include (i) any taxes on Services furnished by C Spire by any municipality, state, or other governmental unit and collected by C Spire for such governmental unit; (ii) amounts passed back to the Subscribers through retail discounts, refunds, rebates or other direct promotions; (iii) non-collectible amounts due Franchisee or its customers after commercially reasonable efforts are made to collect; (iv) non-operating revenues such as interest income or gain from the sale of an asset; (v) site acquisition, construction management or supervision fees related to or incurred in support of the installation of the Facilities; (vi) contributions of capital by any third party to reimburse Franchisee in whole or in part for the installation of the Facilities; (vii) revenues from the sale or lease of customer premise equipment and/or accessories unrelated to Video Services; (ix) charges for Other Services that are aggregated and bundled with amounts billed to Subscribers; and/or (x) other charges unrelated to Video Services or Telecommunications Services that are aggregated or bundled with amounts billed to Subscribers.

2. **Grant.** County grants C Spire the non-exclusive right and license to construct and operate a Telecommunications System in the Rights-of-Way and a non-exclusive franchise to provide Services to Subscribers located within the County. Subject to the terms of this Agreement and applicable law, C Spire may erect, install, construct, operate, maintain, repair, replace, expand, and reconstruct its Telecommunications System in any Rights-of-Way.

3. **Term.** The license granted under this Agreement shall be for an initial term of ten (10) years from the Effective Date, unless otherwise lawfully terminated (the "Initial Term"). At the end of the Initial Term this Agreement shall automatically renew for successive ten (10) year terms (each, a "Renewal Term") unless either Party gives the other Party written notice of termination at least twenty-four (24) months prior to the end of the Initial Term or any Renewal Term, as applicable. The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term."

4. **Installation of Facilities.** C Spire shall not install any new Facilities in any Public Way without having received a permit from the County. C Spire 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 the County and property owners whose property adjoins any Public Ways. C Spire agrees to the following conditions, limitations, and restrictions related to the installation of its Facilities in, on or through any portion of the Rights-of-Way:

(a) C Spire shall hold a pre-construction meeting with County at least ten (10) days prior to beginning any construction to advise County of its planned activities.

(b) C Spire agrees to supply the County with digital drawings of construction plans ten (10) days prior to construction and digital as-built drawings within six (6) months of the completion of any construction. Final drawings will be supplied in Autocad 2000 using NAD 83 coordinates, GIS format, or such other digital formats as are reasonably acceptable to the Parties.

(c) C Spire agrees to "white-line" its proposed cable locations as part of the construction process and for a distance that is expected to be completed for that same day.

(d) C Spire lines, where feasible, shall have at least a 12" separation vertically and where feasible at least 24" separation horizontally from all County utility lines, including gas lines, water lines and sewer lines.

(e) C Spire agrees, where feasible, to stay three (3) feet away, measured horizontally, from power poles unless it is utilizing such poles pursuant to a pole attachment arrangement.

(f) C Spire or C Spire's contractor will request locates and County shall provide locates of its facilities as required by Alabama's 811 law and regulations. C Spire will not locate County's utility lines or those of any third party physically or on maps or drawings. C Spire hand hole and clean-up crews will set hand holes and complete clean-up for each section within 2-3 workdays after placement of conduit, weather permitting.

(g) C Spire shall clear the streets of any drill mud, debris and other obstructions that accumulate as a result of C Spire's construction activities and will not permit its activities to create a hazard to any persons or property. In the event that any such drill mud, debris or other obstruction caused by C Spire's activities encroaches upon the street, C Spire shall take immediate corrective action to remove the same.

(h) If streets and other Public Ways are damaged by C Spire, its employees, agents or contractors in installation or subsequent maintenance and repair of its Facilities, C Spire, upon written notice from the County and at C Spire's sole expense, shall promptly repair and restore such streets or public ways to the same or better condition than such streets or public ways were in prior to such damage, and to the reasonable satisfaction of the County.

(i) C Spire shall contact affected property owners to discuss any repairs, dress-up or clean-up of such owners' property necessitated by the installation of C Spire's fiber optic cable, and shall perform any necessary repair, dress-up or clean-up to such property at C Spire's sole expense.

(j) At all times during and after the installation of fiber optic lines, C Spire shall respond to all emergency locates to locate its fiber optic lines as required by Alabama's 811 law and regulations.

(k) At all times, C Spire shall be responsible for safety at, about and around its work and shall, at its sole expense, provide safe and adequate traffic control when necessary and at its own expense provide full and complete warnings to safeguard the public and to prevent injury or damage, including, but not limited to, any and all signage, cones, markings, lighting and otherwise deemed, in the sole discretion of C Spire, to be

adequate and C Spire shall assume all liability for any injury or damage in any way related directly, or indirectly to the provision or non-provision or inadequate provision of such controls, warnings, etc., and shall, at its sole expense, defend the County any and all actions in any way related to any injury or damage claimed to be the result of inadequacies in traffic control, warnings, or otherwise.

(l) C Spire shall have the authority to trim trees and natural growth on the Rights-of-Way which may affect its Telecommunications System in the Service Area to prevent interference with C Spire's Facilities in accordance with the County ordinance regarding tree cutting and removal.

(n) C Spire shall, on the request of any Person holding a permit to move a building temporarily raise or lower its aerial Facilities, if any, to facilitate the moving of such buildings. The expense of such temporary removal or raising or lowering of such aerial Facilities shall be paid by the Person requesting the same, and C Spire shall have the authority to require such payment in advance. C Spire shall be given at least sixty (60) days' advance notice to arrange such temporary aerial Facility alterations.

(o) The County shall not charge Telepak any permitting fees of any kind during the Term.

(p) The decision of when and where to construct its Facilities is solely within the discretion of C Spire as is the determination of what Services to provide and where to provide them within the County during the Term.

Throughout the Term of this Agreement, provided C Spire complies with the foregoing requirements, C Spire shall be entitled to expand and upgrade its Telecommunications System as it deems reasonably necessary.

5. **Relocation of Facilities.** Whenever the County shall grade, regrade, or change the line of any street or Public Way or construct or reconstruct any sewer or water system therein and shall, with due regard to reasonable working conditions, order C Spire to relocate or protect its Facilities located in said street or Public Way, C Spire shall relocate or protect its Facilities at its own expense; provided, however, if the County compensates any Person for similar work then C Spire shall be similarly compensated. Further, where the County has determined that the location of C Spire's Facilities is unsafe, interferes with traffic control devices, or otherwise may be harmful to the public health, safety, and welfare as determined in the reasonable judgment of the County, C Spire shall move such Facilities to an alternate location as directed by the County. The County shall give C Spire reasonable notice of plans to grade or change the line of any street or Public Way or to construct or reconstruct any sewer or water system therein or of any demand that the Facilities be relocated for the reasons set forth herein. C Spire may also be required to relocate its Facilities where public utilities or other users of the Public Way require access; provided, however, that nothing herein shall be construed as a waiver of C Spire's rights under applicable law. Any such movement shall be at the expense of the third party. With respect to location of its existing public utility lines, the County agrees that during the period of C Spire's installation of fiber optic lines pursuant to this Agreement, the County will locate all County

public utility lines as required by Alabama's 811 laws. It shall be the duty of C Spire or its contractor(s) to request the County to locate the public utility lines.

6. **Damage to Existing Utilities.** C Spire hereby agrees that (a) during the installation process, and (b) at any time after such installation, C Spire will immediately notify the appropriate utility provider in the event that C Spire, or any of its related entities, employees, agents or contractors damages a utility line, including private service lines. Provided that the party owning the lines has complied with Alabama's 811 law and regulations then any repairs to such utility lines and private service lines must be made immediately, and at C Spire's sole expense, and shall only be made by appropriately licensed and bonded contractors.

7. **Compliance with Codes.** All construction, installation, maintenance, and operation of the Telecommunications System or of any Facilities employed in connection therewith shall comply with the provisions of the National Electrical Safety Code as prepared by the National Bureau of Standards, the National Electrical Code of the National Council of Fire Underwriters, any standards issued by other federal or state regulatory agencies in relation thereto, and local zoning regulations. C Spire shall comply with ordinances, rules, and regulations established by the County pursuant to the lawful exercise of its police powers and generally applicable to all users of the Public Way. To the extent that local ordinances, rules, or regulations clearly conflict with the terms and conditions of this Agreement, the terms and conditions of this Agreement shall prevail. County reserves the right to lawfully exercise its police powers. C Spire will comply with the Federal Communications Commission customer service standards set forth under 47 C.F.R. 76.309(c)(1), (2)(ii)-(v), (3)-(4). The County acknowledges that due to the nature of the equipment and underground fiber installation practices of C Spire which differ substantially from this of traditional cable television service providers, compliance with 47 C.F.R. 76.309(c)(2)(i) is not practicable or required.

8. **Indemnity to County.** At all times both during and after installation, so long as C Spire's Telecommunications System is located upon any portion of the County's Rights-of-Way, C Spire covenants, warrants and agrees to indemnify and hold harmless the County, its officers, employees, agents and contractors, of and from any and all suits, damages, claims, liabilities, losses and expenses, including reasonable attorney's fees, directly or indirectly arising from or related to: (a) the installation, operation, repair or maintenance by any Person of C Spire's Telecommunications System within the County; (b) provided that the County has complied with Alabama's 811 law and regulations, any injury, loss or damage to the County's utility lines arising from or related to the installation, operation, repair or maintenance of C Spire's Telecommunications System; and (c) provided that the private service line owner has complied with Alabama's 811 law and regulations, any injury, loss or damage to private service lines arising from or related to the installation, operation, repair or maintenance of C Spire's Telecommunications System. Without the intent of limiting any of the foregoing, it is agreed that C Spire shall indemnify and hold harmless, the County, its officers, officials, employees, agents and contractors of and from any and all claims for personal injury, wrongful death, property damage, or otherwise alleged to be directly or indirectly attributable, in whole or in part, to the acts or omissions of C Spire or its officers, employees, agents, or contractors in connection with the subject of this Agreement, which indemnity shall be at the sole expense of C Spire, including the obligation to pay any and all sums required, including any settlement, judgment, attorney fees, court costs, or otherwise. In the event County believes it has a claim subject to

indemnification it must promptly give C Spire written notice of such claim. Within sixty (60) days of its receipt of written notice of the County's claim, C Spire shall notify County in writing whether it will defend such claim. If C Spire assumes the defense of such claim it shall be entitled to defend the claim in any manner it sees fit including settlement, provided no settlement imposes liability on County without County's prior written consent

9. **Franchise Fee.**

(a) **Franchise Fee.** When and if C Spire provides local Telecommunications Services to Subscribers within the County, C Spire shall pay the County a franchise fee equal to (i) two percent (2%) of the monthly service charge revenue from sales of local Telecommunications Services to Subscribers located within the County, and (ii) when and if C Spire provides Video Services to Subscribers located within the County, a video services franchise fee equal to the lesser of: (A) five percent (5%) of Gross Revenues received by C Spire from sale of the Video Services to Subscribers within the County; and (B) the lowest percentage payable by a third party provider of Video Services to Subscribers within the County (collectively, the "Franchise Fee"). The payment of the Franchise Fee shall be made on a quarterly basis and shall be due and payable no later than forty-five (45) days after the last day of each March, June, September and December throughout the Term of this Agreement. Each Franchise Fee payment shall be accompanied by a certified report from a representative of C Spire, which shows the basis for the computation of all monthly service charge revenue from providing local Telecommunications Services and Gross Revenues received by C Spire from sale of the Video Services to Subscribers located within the County limits during the period for which such Franchise Fee payment is made. If the Franchise Fee payment is not actually received by the County on or before the applicable due date set forth in this Section, interest shall accrue on the outstanding amount at the lesser of one percent (1%) per month or the highest rate allowed under Alabama law for the period of delinquency.

(b.) **Discounted Rates** If C Spire Subscribers are offered what is, in effect, a discount for "bundled" services (i.e. Subscribers obtain Video Services and some other non-video goods or service) then for the purpose of calculating Gross Revenues, the discount shall be applied proportionately to Video and non-Video goods and services, in accordance with the following example:

Assume a Subscriber's charge for a given month of Video Service alone would be \$40, for local telephone service alone would be \$30, and for high speed internet service alone would be \$30, for a total of \$100. In fact, the three (3) services are offered in effect at a combined rate where the Subscriber receives what amounts to a twenty percent (20%) discount from the rates that would apply to a service if purchased individually (i.e. \$80 per month for all three (3) services). The discount (here, \$20) for Gross Revenue computation purposes would be applied pro rata so that the Gross Revenue for Video Service are deemed to be \$32 (\$40 less 20% of \$40). The result would be the same if the Subscriber received a \$20

discount on telephone service on the condition that he or she also subscribes to Video Service at standard rates.

In no event shall C Spire be permitted to evade or reduce applicable Franchise Fee payments required to be made to County due to discounted bundled services.

(b.) Audit. During the Term of this Agreement, once every twelve (12) months and upon reasonable prior written notice, during normal business hours, the County shall have the right to inspect C Spire's financial records used to calculate the County's Franchise Fee, and the right to audit and to re-compute any amounts determined to be payable under this Section at County's expense; provided, however, that any such audit shall take place within two (2) years from the date County received such payment, after which period any such payment shall be considered final. If County believes it is owed any additional compensation from C Spire it will give C Spire notice of same along with a calculation of the additional amount. The Parties shall work together in good faith to resolve the matter. Any additional amounts due to either Party shall be promptly paid within thirty (30) days following resolution of the payment dispute.

10. **Public, Education and Government Access Channel.**

(a) PEG Access Channel. At any time after C Spire begins to offer Video Services on a commercial basis to Subscribers within the County, the County may request C Spire to provide the County one (1) video channel for noncommercial PEG Access use. C Spire shall provide the PEG Access channel within one hundred and eighty (180) days of County's request.

(b) 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. C Spire 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. C Spire shall have no obligation, financial or otherwise, other than the obligation to provide access to one video channel for noncommercial PEG Access use.

(c) Return of PEG Access Capacity to C Spire. In the event that unused capacity exists on the PEG Access channel, C Spire may request the County to return that capacity to C Spire for C Spire's use. The County shall not unreasonably deny such request.

11. **Liability Insurance.** At all times, C Spire shall maintain, at its own cost and expense, a general liability policy in the minimum amount of \$1,000,000.00 per occurrence and \$2,000,000 general aggregate limit for bodily injury and property damage. Such policy or policies shall designate the County as an additional insured and shall be non-cancellable except upon thirty (30) days' prior written notice to the County. The County shall be provided with a

certificate of such coverage. C Spire also currently maintains umbrella liability policies of at least \$10,000,000 in aggregate. In addition, C Spire shall secure any and all other insurance as C Spire, in its sole discretion deems appropriate. Nothing in this paragraph is intended to be a waiver of the County's immunity under State-agent immunity.

12. **Books and Records.** Throughout the Term of this Agreement, C Spire agrees to keep such books and records regarding the operation of the Telecommunications System and the provision of Telecommunications Services in the County as are reasonably necessary to ensure the C Spire's compliance with the terms and conditions of this Agreement. Such books and records shall include, without limitation, any records required to be kept in a public inspection file by C Spire pursuant to the rules and regulations of the FCC. All such documents pertaining to financial matters, which may be the subject of an audit by the County shall be retained by C Spire for a minimum period of three (3) years; provided it is understood that C Spire only retains call records for eighteen (18) months.

13. **Transfer of Ownership or Control**

(a) C Spire shall not transfer this Agreement or any of C Spire's rights or obligations in or regarding the Agreement without the prior written consent of the County. No such consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of C Spire in the Agreement or in the System in order to secure indebtedness, (ii) a transfer to any Person controlling, controlled by or under the same common control as C Spire, or (iii) a transfer to any Person purchasing all or substantially all of the assets or common stock of C Spire.

(b) C Spire shall give County prior written notice of any impending transfer of Control of C Spire or its assets under Sections 12 (a)(ii) or(iii). Furthermore, C Spire shall ensure that the Person to whom Control of C Spire or its assets is transferred is authorized by the applicable state or federal authority to occupy the Public Ways pursuant to this Agreement and assumes in writing all of the obligations of C Spire under this Agreement effective as of the date of the transfer of Control or sale. C Spire shall provide County with a copy of such assignment instrument upon request. The transfer of Ownership or Control pursuant to this section shall not be deemed to waive any rights of County to subsequently enforce noncompliance issues relating to this Agreement even if such issues predated the transaction, whether known or unknown to County.

(c) For purposes of this Section 13 "Control" means ownership of a majority interest or the actual working control and day to day management of C Spire.

14. **Compliance with Applicable Law.** C Spire shall at all times comply with all laws applicable to its provision of Telecommunications Services in the County. Notwithstanding the foregoing, the Franchise Fees paid pursuant to this Agreement shall replace and be paid in lieu of any business license fees normally assessed to Telepak pursuant to Alabama law.

15. **Enforcement and Termination.**

(a) Breach. In addition to all other rights and powers retained by the County under this Agreement or otherwise, the County reserves the right to terminate this Agreement and all rights and privileges of C Spire hereunder in the event of a material breach of its terms and conditions.

(b) Notice of Violation. In the event the County believes C Spire has not complied with the provisions of this Agreement, the County shall make a written demand that C Spire comply with any such provision, rule, order, or determination under or pursuant to this Agreement. If the violation by C Spire continues for a period of thirty (30) days following C Spire's receipt of such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the County may place the issue of termination of the Agreement before the County Commission. The County shall cause to be served upon C Spire, at least twenty (20) days prior to the date of such a County Commission meeting, a written notice of intent to request such termination, the provisions of this Agreement under which termination is sought, and the time and place of the meeting. Public notice shall be given of the meeting and issues that the County Commission is to consider pursuant to the requirements of Alabama law.

(c) Consideration of Breach. The County Commission shall hear and consider the issue and shall hear any Person interested therein and shall determine whether or not any substantial breach by the C Spire has occurred.

(d) Declaration of Forfeiture. If the County Commission shall determine the violation by the C Spire was the fault of C Spire and within its control, the County Commission may, by resolution (i) seek specific performance of any provisions which reasonably lends itself to such remedy, as an alternative to damages; or (ii) commence or action at law for monetary damages; or (iii) declare a substantial breach and declare that this Agreement shall be terminated unless there is compliance within such period as the County Commission may fix, such period not to be less than sixty (60) days, provided no opportunity for compliance need be granted for fraud or misrepresentation.

(e) No Forfeiture of Legal Rights or Remedies. Nothing herein shall be construed as a waiver or forfeiture of any right or remedy that either Party may have concerning or arising out of this Agreement, including the right to seek judicial redress for any breach or violation of the terms of this Agreement.

16. Miscellaneous.

(a) Applicable Law. This Agreement will be deemed to be a contract made under the laws of the State of Alabama and for all purposes will be governed by and interpreted in accordance with the laws prevailing in the State of Alabama, without regard to principles of conflict of laws.

(b) Entire Agreement. The terms and provisions of this Agreement constitute the entire agreement between the Parties, and there are no collateral agreements or

representations or warranties other than as expressly set forth or referred to in this Agreement.

(c) Inurement. This Agreement shall be binding upon, and shall inure to the benefit of, the respective Parties, their successors and assigns, including any and all subsequent owners of the fiber optic lines installed pursuant to this Agreement.

(d) Fees and Costs. In the event of any disputes or controversies arising from the Agreement or its interpretation, each Party will bear its own attorneys' fees and costs incurred in connection with same.

(e) No rights to private property. Nothing in this Agreement shall be construed expressly or impliedly to grant to C Spire any rights with respect to any private property.

(f) C Spire repair, inspection, etc. All of the obligations imposed by this Agreement upon C Spire with regard to construction shall be equally applicable in the event that C Spire or its agents, employees or contractors, repair, inspect, or otherwise, deal with the Rights-of-Way. All obligations, duties and responsibilities imposed upon C Spire by this Agreement shall be continuing and not limited solely to the construction period.

(g) Independent contractor. The Parties stipulate and agree that C Spire is an independent contractor and neither Party shall take any action or make any statement that could, in any way, suggest a different relationship between the Parties. It is specifically agreed that the Parties hereto are not partners or joint venturers and do not occupy any similar relationship.

(h) No guaranty, etc. by County. It is hereby agreed that neither the County nor any of its officers, officials, employees, agents or contractors have made any guaranty, representation, promise or assurance to C Spire or its officers, officials, employees or contractors, other than as expressly contained in writing in this Agreement and C Spire stipulates and agrees that it is not relying upon any promise, representation, guaranty or assurance, other than as is contained in writing in this Agreement.

(i) Notice. Any notice or response required under this Agreement shall be in writing and shall be deemed given upon receipt: (i) when hand delivered; (ii) when delivered by commercial courier; or (iii) after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, return receipt requested. The addresses of the Parties for notice are as follows:

If to County: County of Tuscaloosa, Alabama
P.O. Box 20113
Tuscaloosa, AL 35402
Attn: County Administrator _____

If to C Spire: Telepak Networks, Inc.
Alan Jones, Sr. Vice President
1018 Highland Colony Parkway, Suite 400
Ridgeland, Mississippi 39157

With copy to: Charles L. McBride Jr.
SVP- Legal & General Counsel
1018 Highland Colony Parkway, Suite 700
Ridgeland, Mississippi 39157

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

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

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

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers effective as of the Effective Date.

TELEPAK NETWORKS, INC.

Alan Jones, Sr. Vice President

THE COUNTY OF TUSCALOOSA, ALABAMA

By: _____

Name: _____

Title: _____