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July 25, 2019

Renee Lauber, DCTA Planner
Dane County Towns Association
1252 Morrison Court
Madison, WI 53703

**Re: Video Franchising
Video Service Provider Fee
2019 Wisconsin Act 9**

***Timely Action Required to Maintain Fee Amounts if Your Members
Received an Annual Payment from Video Service Providers in 2018***

Dear Ms. Lauber:

Included in the State Budget Bill, which took effect on July 5, 2019, is a provision that affects municipal cable television revenue. Timely action is required if your members wish to preserve current video service provider revenue amounts. I am writing to make your members aware of this issue, and I will respond to additional questions your members may have in this regard as follows:

1. **What is the video service provider fee?**

- a. Prior to 2008, municipalities had an ability to create cable television franchise agreements with video service providers. Those franchise agreements often required the service providers to compensate the municipalities, which was designed as a way to recover costs municipalities incur in the use of the public right-of-way by these providers. Often these fees were established as a percentage of the cable service provider's gross revenue, such as 5% which was common.
- b. Beginning in 2008, by 2007 Wisconsin Act 42, the State of Wisconsin preempted municipal authority over video franchise agreements. Any existing franchise agreements at that time were allowed to continue in effect, unless the video service providers applied for a video service franchise from the State of Wisconsin. Video service providers who applied for and received a video service franchise from the State of Wisconsin, were then solely regulated by the State and no longer subject to local video franchise agreements. All video service providers operating in the State at this time, to my knowledge, have applied for and have

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received this State franchise. Municipalities no longer have the authority to grant new cable franchises. (Section 66.0420(3), Wisconsin Statutes.)

- c. Since that time, the State has continued to require video service providers to pay a fee to the local municipality in an amount described in Wisconsin Statutes Section 66.0420(7)(b). That amount was presumed to be 5%, unless the municipality's previously existing franchise agreement described a percentage that was lower, or thereafter established a lower percentage. The percentage could not exceed 5%.
2. **Now: fee reduced.** The 2019 State budget reduced the fees that video service providers are obligated to pay local municipalities, by 0.5%. That is to say, whatever percentage your members may have required last year, will now be 0.5% lower in 2020. This percentage is reduced again in 2021 by another 0.5%. (Section 66.0420(7)(b)2m, Wisconsin Statutes.)
3. **State reimbursement for lost revenue.** The State of Wisconsin has given municipalities an opportunity to recover this lost revenue from the State, however. Per newly created Wisconsin Statutes Section 79.097, your members have an ability to apply to the State of Wisconsin Department of Revenue showing the actual video service provider fee they received in 2018. The State will pay them an amount equal to 0.5% of the service provider's gross receipts received by the municipality in 2018, in 2020. In 2021, the State will do the same, if your members reapply to recover the additional lost revenue.
4. **Action required.** The bottom line is this: if your members received an annual payment from video service providers in 2018, they will receive less revenue from the video service providers beginning in 2020, but the State has agreed to cover that loss if they properly and timely request this revenue from the State. In order to recover this lost revenue, your members are required to proceed as follows:
 - a. On or before August 15, 2019, your members must report to the Department of Revenue the following information: the 2018 actual video service provider fee revenues they received and the estimated gross receipts on which the fee revenues are based.
 - b. On or before August 15, 2020, again your members must report to the Department of Revenue. This time they must report the 2019 actual fee revenues they received for video service provider fees in 2019 and the estimated gross receipts on which the fee revenues are based.
 - c. The Department of Revenue will notify your members on or before October 1 of the amount of the payment that a municipality shall receive in the following year.

If your members do not receive video service provider fee payments, and did not receive a payment in 2018, there may be a good explanation for why that is the case. In that event, no action may be required because this fee reduction will not

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affect them; though they may decide to investigate the reason why they do not receive these payments.

5. **Calendar for 2020.** As important as it is to act within the next few weeks, before August 15, 2019, it is as important that your members properly calendar this issue to remember to act again next year. If your members properly apply this year *and next year* to recover the lost video service provider fee revenue, that recovery will carry forward annually. If your members fail to do so, either this year *or next year*, that ability to recover lost revenue will be gone.

I recommend that your members take prompt action in this regard to preserve an ability to recover these reduced funds in 2020, and that your members calendar this issue to apply again in a timely manner in 2020, for 2021 and annually thereafter.

If you should have any questions or concerns regarding these matters, please do not hesitate to contact me.

Yours very truly,

MUNICIPAL LAW & LITIGATION GROUP, S.C.

Eric J. Larson

Eric J. Larson

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