

1 **2021 NYSAC Legislative Conference**
2 **Standing Committee on Economic Development, Environment & Energy**
3 **Resolution #1**

4 **Resolution Requesting the Rescinding of the New York State Fiber Right of**
5 **Way Fee**

6 **WHEREAS**, the 2019-2020 New York State budget contained language that enacted a
7 right-of-way use and occupancy fee for any fiber optic cables located in or crossing a
8 state-controlled right of way and authorized the New York State Department of
9 Transportation (DOT) to enter fee-bearing permits with fiber optic installers; and

10 **WHEREAS**, the 2019-2020 state budget also added Section 7 of the Transportation
11 Corporation Law, allowing the DOT to charge fiber optic corporations installing and
12 operating the utility lines for fair-market use and occupancy of the state right-of-
13 way; and

14 **WHEREAS**, in early 2020 organizations, businesses, legislators and residents of
15 northern New York became aware of the fee because the DOT started charging
16 the fee; and

17 **WHEREAS**, in the rural counties of the North Country it is virtually impossible to
18 install fiber optic cables for any distance without utilizing or crossing a state right-of-
19 way, and development requirements within the Adirondack Park almost entirely
20 preclude installation of broadband in any location other than an existing state right-of-
21 way; and

22 **WHEREAS**, the coronavirus pandemic has caused more people to be working from
23 home and more students to be learning from home, and has increased the use of
24 telemedicine, thus magnifying the need for additional broadband services in unserved
25 and underserved areas so rural residents can engage in everyday activities; and

26 **WHEREAS**, Governor Cuomo, in his 2021 State of the State address championed his
27 Connectivity Agenda which includes, among other provisions, enactment of a
28 requirement for affordable internet for low-income families and a series of actions to
29 promote broadband build-out and market competition; and

30 **WHEREAS**, the Governor said, “Without affordable broadband, people are not just
31 disconnected, they are disenfranchised. Broadband must be available to everyone,
32 everywhere, and, in New York, we will make sure it is;” and

33 **WHEREAS**, the DOT fiber right-of-way fee is acting as a significant financial deterrent
34 to broadband build-out in rural areas, with some projects already cancelled and others
35 put on hold due to the fact that these fees will cost providers hundreds of thousands,
36 and in some cases, millions of dollars annually; and

1 **WHEREAS**, earlier laws have been enacted that hinder the expansion of broadband
2 into unserved and underserved communities; and

3 **WHEREAS**, legislation has been introduced in the Legislature to repeal these
4 counterproductive sections of law that prevent the expansion of affordable broadband
5 services in unserved and underserved communities across New York.

6 **NOW, THEREFORE, BE IT RESOLVED**, the New York State Association of
7 Counties (NYSAC) formally opposes the enactment of the DOT right-of-way fees on fiber
8 optic cable and urges the Governor and the New York State Legislature to rescind the
9 right-of-way use and occupancy fees on fiber cable immediately so that the Governor's
10 pledge can be fulfilled and the expansion of the fiber network in the North Country can
11 continue in order to serve critically unserved and underserved areas; and

12 **BE IT FURTHER RESOLVED**, NYSAC supports passage of New York Senate Bill
13 8858/Assembly Bill 10932 (2020) to repeal Section 10, subdivision 24-e of the Highway
14 Law and Section 7 of the Transportation Corporation Law in relation to reducing the
15 cost of expanding broadband access; and

16 **BE IT FURTHER RESOLVED**, copies of this resolution be sent to the counties of
17 New York State encouraging member counties to enact similar resolutions; and

18 **BE IT FURTHER RESOLVED**, NYSAC shall forward copies of this resolution to
19 Governor Andrew M. Cuomo, the New York State Legislature, and all others deemed
20 necessary and proper.