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MEMORANDUM IN SUPPORT

May 16, 2022

To: Members of the Hudson Valley Delegation of the New York State Legislature
From: Michael N. Romita, President & CEO of the Westchester County Association
Re: Repeal of DOT Survey Law: A.9894 / S.8472 Chair Paulin & Senator Mannion In Assembly Transportation Committee In Senate Transportation Committee

AN ACT to amend the Highway Law and the Transportation Corporations Law in relation to the Department of Transportation lifting the surveying requirement in certain situations.

The Westchester County Association (“WCA”) is the region’s professional roundtable. Our members rely on us to advocate for policies that foster economic development in the region and meet the needs of our communities. WCA’s members include hundreds of the region’s foremost businesses and nonprofits which collectively employ hundreds of thousands of workers. Amongst the WCA’s primary focus areas is encouraging access to reliable and affordable broadband to allow all residents to participate in the tech economy. As such, we regularly support legislation which encourages digital infrastructure deployment without unnecessary expense or delay.

The State has taken several actions since 2019 which have caused a significant backlog in the deployment of fiber-optic facilities throughout New York State and, as such, have delayed the availability of broadband services to many New York residents and businesses. In 2019, New York became the first state in the nation to charge fees on fiber cables used for broadband deployment when the fiber is placed on state highway rights-of-way. In 2020, in addition to the new fee, the DOT added a new requirement to the expanded consolidated permit application for the deployment of fiber used for broadband deployment. Specifically, this new requirement requires an applicant to provide certified engineering surveys for all infrastructure (both the applicant’s infrastructure and third-party infrastructure) located in the State’s own rights-of-way (ROW) -- even when the applicant proposes to install or modify facilities on infrastructure that already exists in the rights-of-way. This unnecessary, costly and burdensome step adds significant expense and time to the deployment process and there is no reasonable or rational need for such a survey in this circumstance. Fortunately, the State Legislature repealed the “fiber fee” law as part of the recently enacted 2022-23 State Budget. However, DOT still requires certified surveys.

The proposed legislation is necessary so broadband providers can keep projects on schedule and so that investment is not lost to neighboring states when the projects in New York are excessively delayed. Indeed, a better solution is to eliminate all requirements for certified surveys as New York seeks to invest billions towards broadband builds across the State to close the digital divide and to catapult New York toward the top of the list of the states that lead the technology curve. This is particularly true in Westchester, where there exist some 40,000 homes without reliable internet service and where 20,000 homes rely solely on a smartphone for on-line access.

For these reasons, the Westchester County Association strongly supports this legislation and urges swift passage.