

**SB 2361**

**SB 2361 - Telephone Directory Do Not Deliver Bill**  
**Gary Slovin**  
**Goodsill Anderson Quinn & Stifel**  
**on behalf of Local Insight Media Holdings, Inc.**  
**February 2, 2010**

Chair Gabbard and Members of the Energy and Environment Committee:

I am Gary Slovin, testifying on behalf of Local Insight Media Holdings, Inc. and its subsidiary The Berry Company LLC, or "Berry," in opposition of SB 2361, a bill relating to the distribution of telephone directories. By way of background, Local Insight owns the rights to publish the Hawaiian Telcom Yellow Pages and Berry acts as the exclusive sales and publication agent of these directories.

If enacted, SB 2361 would require telephone utilities and companies that publish or distribute telephone directories to distribute directories only to those individuals and businesses that have provided a written request to receive them. While Berry and the directory publication industry support efforts to minimize waste headed to landfills in Hawaii, SB 2361 would institute an unprecedented restriction on directory delivery, which would severely limit the advertising opportunities for thousands of small and medium sized businesses in Hawaii, eliminate or reduce numerous jobs in Hawaii and undermine the opt-out and environmental programs that Berry has already implemented.

As further detailed below, we believe Berry's operations have a positive impact on the economy in Hawaii, both directly, as a result of the people we employ in Hawaii, and indirectly, as a result of the valuable services we provide to small and medium sized businesses on Oahu, Maui, Kauai, Molokai and the Big Island. Berry agrees with the testimony presented by the Yellow Pages Association and Hawaiian Telcom at this hearing. For purposes of Berry's testimony, we would like to focus on three specific issues relating to Berry's operations in Hawaii:

**First**, the value of the print directory product to small and medium sized business in Hawaii;

**Second**, Berry's current environmental and "opt-out" programs; and

**Third**, the local jobs provided by Berry and its related community involvement.

We believe that the information contained in this testimony unequivocally demonstrates that Berry provides valuable jobs and services that benefit the businesses

and consumers of Hawaii, and that Berry does so in an environmentally conscious manner—accordingly, SB 2361 is both unnecessary and potentially harmful to small and medium sized businesses in Hawaii during these very challenging economic times.

It is important to stress that consumer demand for print directories remains strong. Industry research shows that consumers reference printed Yellow Pages products approximately **12.3 billion** times annually with nearly half of all adults in the U.S. referencing a print directory on a weekly basis and 85% of adults consulting a print directory at least once per year.<sup>1</sup>

In Hawaii, Berry represents approximately **14,000 small and medium sized businesses** that rely on the Hawaiian Telcom Yellow Pages to sustain and grow their businesses. In fact, a majority of Hawaiian Telcom Yellow Pages' advertisers are small businesses such as plumbers, electricians, flower shops, independent restaurants and auto shops with limited advertising and marketing budgets. For many of these small and highly localized businesses, Yellow Pages directory advertising is their primary or only form of advertising. We believe it would be a great disservice to these small businesses to limit, or in some cases eliminate, their ability to market their goods and services to the community.

It is also important to note that while many of these businesses may also list their information online, the sheer size of Berry's base of advertisers in the HT Yellow Pages is solid proof of a fact known to many small and medium sized businesses in Hawaii—that online advertising is a complement to, not a substitute for, the value these businesses receive from print directory advertising. Our print product remains the primary source for local information due to its broad distribution, its ease of use and the challenges faced by businesses in the digital advertising arena. These challenges include rapid technological change, the relative complexity of effectively managing an online local advertising campaign and the lack of deep broadband penetration in many of the communities we serve.

While Berry believes the print directory product is an irreplaceable source of advertising for small and medium sized businesses, we also understand the Committee's concerns relating to the environmental impact of this product. For this reason, Berry has been actively involved in environmental issues in Hawaii for many years. Our directories are 100% recyclable. They are composed of 40% post-consumer recycled materials and

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<sup>1</sup> Source: Yellow Pages Association Industry Usage Study, 2008, conducted by Knowledge Networks, SRI

are printed using environmentally-friendly soy-based inks, as well as non-toxic glues and dyes.

As you may be aware, Berry conducts high profile recycling campaigns each year in conjunction with distribution of the new year's directories. The 2010 five-week recycling campaign is currently underway, and will conclude Sunday, February 14. Our campaigns are conducted in partnership with local community organizations. Berry's partner this year – and in 2009 – is the Lokahi Giving Project, which helps staff directory recycling drop off locations at four shopping malls in and around Oahu. In the Neighbor Islands, we organized a directory recycling contest among more than 50 local schools, awarding top directory recycling collectors with monetary donations that were used to fund important school projects. To give you an example of the impact of our recycling programs – last year, Berry collected more than 105 tons of outdated directories in Hawaii.

Additionally, Berry is conscious of the need to ensure “on-island” processing of the outdated directories so as to ensure that minimal resources are consumed in the recycling effort. To this end, Berry is partnering with local recyclers to transport the collected directories to a local recycling company, Island Shell LLC, where the directories are turned into oil-absorbent materials, Green Lava Hydro Mulch and InCide Pest Control Cellulose Insulation. These products are then sold and utilized locally. The City and County of Honolulu also utilize disposed directories in the MSW stream as H-Power fuel, allowing for lower fossil fuel imports.

It is important to emphasize that Berry already provides consumers with a choice when it comes to receiving directory products – including the choice to “opt-out” of receiving the directory. Berry's “Yellow Pages Your Way” program allows consumers to access an online portal, located at [htyellowpages.com](http://htyellowpages.com), or call a toll free number to elect to opt-out of directory distribution or to request a different format of distribution, such as CD-ROM. Berry then manages the consumer's preferences through its directory distribution process. This program is being promoted both through the directory industry's trade association, the Yellow Pages Association or YPA, including the YPA's opt-out site, [yellowpagesoptout.com](http://yellowpagesoptout.com), and within the Hawaiian Telcom Yellow Pages directory. The inside front cover pages of the Oahu Hawaiian Telcom Yellow Pages and White Pages directories include a full page advertisement for the Yellow Pages Your Way program, including clear instructions on how to opt out of future directory deliveries. The directories also include recycling and

environmental information. The same information regarding the Yellow Pages Your Way program and recycling and environmental information will also appear in Hawaiian Telcom Yellow Pages' Neighbor Island directories.

Berry has implemented these opt-out procedures and self-regulatory environmental initiatives due in part to extensive dialogue with environmental groups, including the Product Stewardship Institute (PSI), a national environmental organization representing approximately 90 state, local and private environmental groups including the state of Hawaii. The Yellow Pages Your Way program allows Berry to compete for usage among the public while also allowing customers a choice about which directory, if any, they wish to continue to receive. In contrast, the opt-in approach contained in SB 2361 would deny Berry the opportunity to make their products known to potential users, let alone to distribute their products and compete for users. The costs associated with the marketing efforts necessary to secure the consumer's pre-approval prior to delivering the directory would be prohibitive and would reduce competition in the marketplace. In turn, yellow pages advertising would become more expensive and less effective for Hawaii's small and medium business advertisers. Finally, consumers would also suffer, as information regarding the products and services they need would be less accessible.

It is also worth noting that SB 2361 would be in direct conflict with Hawaii Administrative Rule § 6-80-63 which **requires** telecommunications carriers like Hawaiian Telcom to "publish and distribute to customers of all telecommunications carriers the local white and yellow page telephone directories." As the Committee may be aware, these regulatory requirements are common throughout the 50 states due to the long standing view that directories serve the public interest, especially for low income and rural households who may not have internet access, as they contain highly sought and critical information regarding emergency services, emergency preparation guides, contact information for government officials and information regarding service inquires relating to telephone service and other local utilities.

In addition to these environmental initiatives, Berry and Hawaiian Telcom each have a lengthy history of creating other direct and indirect positive impacts on Hawaii. Berry currently employs 51 employees in Hawaii. Due no doubt in part to Berry's work environment and community involvement described below, Berry was recently named as a "2010 Best Places to Work" winner by Hawaii Business Magazine.

Berry is in the business of generating leads for small and medium sized businesses. Our goal is to be a "trusted advisor" to our advertisers, helping them to effectively market their products and services through not only our print directories, but also our integrated suite of online advertising services such as websites and search engine marketing. Consistent with this goal, Berry routinely provides free local seminars aimed at educating small businesses on the digital landscape and how best to market themselves online.

As for other community involvement, and in addition to the recycling projects noted previously which resulted in funding for schools to buy computers and fund other much needed projects, Berry and its employees are active members of the Aloha United Way and have participated in local Habitat for Humanity building projects.

As demonstrated throughout this testimony, the Hawaiian Telcom Yellow Pages directories are an extremely valuable tool to the more than 14,000 small and medium sized businesses in Hawaii who continue to rely on the directory to sustain and grow their businesses. Online advertising services simply cannot serve as a substitute for the print product. This fact, combined with the demonstrated commitments made by Berry to its Hawaiian workforce, consumer choice and the environment clearly show that SB 2361 is unnecessary. The unintended consequence of this bill could be to severely harm numerous small and medium sized businesses throughout Hawaii.

Based on this testimony, and that of our colleagues at the Yellow Pages Association and Hawaiian Telcom, we respectfully request that SB 2361 be held in your committee.

Thank you for the opportunity to testify on this measure.

S. B. 2361

A BILL REQUIRING WRITTEN AUTHORIZATION TO DISTRIBUTE

LOCAL TELEPHONE DIRECTORIES

**COMMITTEE ON ENERGY AND ENVIRONMENT**

Amy P. Healy, Director, Public Policy

Yellow Pages Association

February 2, 2010

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Chairman Mike Gabbard, Vice Chair J. Kalani English and members of the Committee on Energy and Environment:

My name is Amy Healy and I am the director of public policy for the Yellow Pages Association (YPA). YPA is the largest trade association representing directory publishers and suppliers in the U.S. Association members include Yellow Pages publishers, who produce products that account for 95 percent of the Yellow Pages revenue generated in the U.S. and Canada. Members also include the industry's national and local sales forces, and associate members, a group of industry stakeholders that include Yellow Pages advertisers, vendors and suppliers such as printing and paper companies. On behalf of its members, YPA respectfully opposes SB 2361. Having said this, it is important to explain to the Committee that the directory industry has and continues to take the issue of unwanted phone books very seriously. I am pleased to share with the members of the committee that Yellow Pages publishers already have opt-out systems in place to ensure that individuals that do not want a directory can make the choice to stop receiving them. Our members are committed to providing customers a choice as to the number of directories they receive – or none at all. Delivering a directory to a consumer that doesn't want one creates no value for the advertiser, the directory publisher or the consumer.

For nearly 130 years, the Yellow Pages Industry has shared a commitment to provide quick and accurate local search information to consumers and millions of small businesses. As an active member of local communities across the country, our members also share a commitment to

bring environmental, social, and economic benefits to the places where they live and work. In Hawaii alone, the directory industry employs more than 100 people with total payrolls of several million dollars. This translates into sizeable sums in income, property and other taxes to the state and provides much needed high quality sales leads for thousands of local businesses.

### Consumer Choice

SB 2361 requires directory companies to send a prepaid request card to each person, household, entity, or business from which distribution authorization is sought and that a telephone directory distributor shall not distribute telephone directories to any person, household, entity, or business without having first received the signed request card from an authorizing person at the household or business.

As mentioned previously, Yellow Pages publishers have launched consumer choice programs that allow people to choose not to receive a directory and are promoting the options to consumers by placing the opt-out contact information in the front section of directories as well as on directory websites. In addition, in early 2009, YPA, working in conjunction with national environmental and government groups, launched [www.yellowpagesoptout.com](http://www.yellowpagesoptout.com). This site allows a consumer to input their zip code and find the opt-out information for the publishers serving their area. I encourage members of the committee to share this site with their constituents. YPA continues to work with our environmental and government partners on enhancements to the industry's consumer choice program.

It is also important to note that Yellow Pages advertising is sold on usage and value – not circulation. The high return-on-investment that Yellow Pages provides to local Hawaiian businesses is driven by consumers referencing the Yellow Pages prior to making a purchase and is the reason so many small businesses choose Yellow Pages as an integral, and sometimes only, component of their marketing mix.

Over the past few years, legislation to restrict the delivery of local telephone directories has been considered in ten states, including Hawaii in 2008. Legislators were not motivated to move the legislation forward once they were made aware of the self-regulatory efforts of the Yellow Pages industry, the reliance of millions of small businesses on directory advertising to grow their businesses, and the thousands of good local jobs provided by the directory publishing industry and its suppliers.



## Industry Environmental Guidelines

Since early 2008, The Yellow Pages industry has operated under an environmental stewardship program known as the Joint Environmental Guidelines. The Guidelines commit all signatories to implement directory distribution policies that allow people to choose not to receive a Yellow Pages directory. In addition to source reduction, the guidelines also focus on dedicating resources to local recycling efforts and a commitment to environmentally sound production (soy and vegetable based inks vs. petroleum, for example). For more information, please visit [www.yellowisgreen.org](http://www.yellowisgreen.org) and click on Guidelines.

## Recycling

With regard to recycling, YPA members, including The Berry Company and Yellowbook in Hawaii, commit large amounts of resources and funding to local community based recycling efforts as well as to national environmental groups. As a result, the U.S. Environmental Protection Agency says that Yellow Pages directories represent just 0.4 percent of the municipal solid waste stream. Newspapers and standard mail, on the other hand, together make up more than 14 times that amount (3.5 percent and 2.2 percent, respectively).<sup>1</sup>

## Conclusion

It is important to note that the fact is people DO use the printed product. Our research shows adults referenced the printed Yellow Pages approximately 12.3 billion times in 2008 with nearly half of all adults referencing the print product on a weekly basis and 85 percent of adults consulting a print directory at least once per year.<sup>2</sup> Yellow Pages products also continue to provide a high return-on-investment for advertisers. Despite this reliance on directory products by consumers and small businesses, our members certainly don't want to distribute directories to people who don't want them. To address changing consumer habits, directory publishers have produced an array of local search products including Internet Yellow Pages, mobile Yellow Pages as well as directories on CD-ROM. The Yellow Pages industry will continue to work with government agencies and environmental groups to improve the manner in which it provides local search information to consumers.

Finally, the language in SB 2361 restricts commercial speech to an extent that may very well run afoul of the 1<sup>st</sup> Amendment. The comparison between *The Midweek* tabloid's quest to qualify for Periodicals mailing privileges and a directory publisher's annual distribution of its product is not a relevant comparison.

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<sup>1</sup> U.S. Environmental Protection Agency, Municipal Solid Waste Generation, Recycling, and Disposal in the U.S., November 2009.

<sup>2</sup> 2008 Yellow Pages Association Industry Usage Study conducted by KN/SRI.

Thank you for your consideration of this testimony. Please do not hesitate to contact me with any questions.

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**SB 2361  
Relating to Waste Stream Reduction**

**Ken Hiraki  
Vice President – Government & Community Affairs**

**February 2, 2010**

Chair Gabbard and Members of the Energy and Environment Committee:

I am Ken Hiraki, testifying on behalf of Hawaiian Telcom on SB 2361, "A Bill Relating to Waste Stream Reduction." SB 2361 would require telephone utilities and companies that publish or distribute telephone directories to distribute directories only to those individuals and businesses that have provided a written request to receive them. Hawaiian Telcom opposes this measure.

Hawaiian Telcom agrees with the concerns raised by Local Insight Media Holdings, Inc. and its subsidiary The Berry Company LLC in opposition of SB 2361. In particular, Hawaiian Telcom believes that the Hawaiian Telcom Yellow Pages print directories remain a vital advertising medium to small and medium sized business in Hawaii and provide relevant information to consumers throughout the state (especially those in areas without broadband internet access). We believe that adoption of the proposed bill, by restricting consumer access to an important advertising medium, would run a high risk of harming small and medium sized business throughout Hawaii during a period of exceptional economic difficulties. In addition, Hawaiian Telcom is aware and approves of the initiatives undertaken by Berry to enable consumers to opt out of receiving telephone directories and to minimize waste headed to landfills in Hawaii. We believe that those efforts are likely to achieve the same objectives as those behind SB 2361, but with much lower risk to the state's fragile economy. As such, we believe that SB 2361 is unnecessarily duplicative of the opt out and environmental efforts already implemented by Berry. Finally, we note that each of Hawaiian Telcom and Berry are significant employers in Hawaii and that each is an active participant in community activities throughout the state.

In addition to the concerns mentioned above, Hawaiian Telcom wishes to stress that directories have a long history of serving the public interest in Hawaii. They contain highly sought and critical information, including emergency services' contacts, emergency preparation guides, methods for contacting elected officials and other government agencies, and other important community information. Directories are also a valuable resource for finding information related to an individual's phone service, including how to avoid the disconnection of telephone service, telephone repair, and the telephone service for the disadvantaged. Since the Hawaiian Telcom Yellow Pages bear the Hawaiian Telcom brand, we believe these attributes of print directories redound to the benefit of Hawaiian Telcom and its telecommunications customers, thereby helping to sustain the long-standing and positive partnership between Hawaiian Telcom and local business, as well as that between Hawaiian Telcom and the state of Hawaii.

Finally, SB 2361 would restrict commercial speech to an extent that may very well run afoul of the First Amendment of the Constitution.

Based on the foregoing, we respectfully request that SB 2361 be held in your committee.

Thank you for the opportunity to testify on this measure.



# Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803  
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## SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

February 2, 2010, 3:30 P.M.

(Testimony is 1 page long)

### TESTIMONY IN SUPPORT FOR SB 2361

Aloha Chair Gabbard and Members of the Committees:

The Hawai'i Chapter of the Sierra Club supports SB 2361, which requires telephone directories to be distributed only to persons who have signed a written authorization to receive the directory.

Hawai'i is faced with a solid waste crisis. A study completed for the City and County of Honolulu by consulting group R. W. Beck, the "2006 Waste Characterization Study" (available online at [www.opala.org](http://www.opala.org)), reveals some shocking facts about Oahu's solid waste situation. Since the last waste characterization study in 1999, the trash from Oahu households increased by 30.2% from 316,491 tons annually in 1999 to 412,016 tons in 2006 (R.W. Beck, "2006 Waste Characterization Study," April 2007, at 3-11). The population increased by roughly 3% over the same period (878,906 to 906,000) -- meaning waste generation from households increased 10 times faster than population growth.

It's apparent we need to look at new measures to reduce our waste stream. SB 2361 is a common-sense measure that produces and delivers telephone directories only to those that want them. We respectfully hope you will pass this smart measure on.

Thank you for this opportunity to provide testimony.

**gabbard1 - Carlton**

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**From:** Richard Kamis [kamii@hawaii.rr.com]  
**Sent:** Sunday, January 31, 2010 11:27 AM  
**To:** ENETestimony  
**Subject:** SB 2361 - TELEPHONE DIRECTORIES

SENATE COMMITTEE ON ENERGY & ENVIRONMENT;  
STATE CAPITOL, ROOM 225  
DATE: Tuesday, February 2, 2010

To: Senator Mike Gabbard; Committee Chair, Senator J. Kalani English; Committee Vice Chair,  
and Committee Members of the Energy an Environment Committee

**RE: Testimony Supporting Senate Bill 2361: Relating to Telephone Directories**

Dear Energy and Environment Committee:

We strongly support Senate Bill 2361: Regulation of Telephone Directory Distribution and  
request your support for the Bill as well.

Respectfully,

Richard and Elizabeth Kamis  
2957 Kalakaua Avenue  
96815