

SB 201

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



LORETTA J. FUDDY, A.C.S.W., M.P.H.
ACTING DIRECTOR OF HEALTH

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In reply, please refer to:
File:

SENATE COMMITTEE ON ENERGY AND ENVIRONMENT
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

S.B. 201, RELATING TO SOLID WASTE MANAGEMENT

Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.
Acting Director of Health

February 3, 2011
2:45 p.m.

1 **Department's Position:** The Department of Health appreciates the intent of this measure to reduce
2 paper waste by limiting the distribution of yellow pages phone books to those consumers who have
3 specifically requested them, but respectfully opposes this bill.

4 **Fiscal Implications:** The bill imposes substantial administrative and enforcement duties on the
5 department without new staff and little resources.

6 Distributors under this bill will be charged a \$100 initial registration fee and an annual "recovery
7 fee" of 14 cents for each yellow pages phone book plus \$148 per ton distributed in a calendar year, in
8 addition to record keeping, displaying and annual reporting requirements.

9 **Purpose and Justification:** This bill requires distributors of yellow pages phone books to register with
10 the department and report annually the quantity of yellow pages phone books distributed each calendar
11 year, imposes initial registration fees and annual "recovery fees," and to prominently display
12 information about the opt-out registry on their directories where residents and businesses may choose to
13 opt out from receiving the yellow pages.

1 The department in principle supports the reduction of solid waste and litter through the select
2 distribution of yellow pages phone books to consumers who wish to receive them. However, this bill
3 asks the department to duplicate similar opt-out initiatives adopted by the publishing industry like the
4 Yellow Pages Association’s Opt-Out web page (www.yellowpagesoptout.com). In addition, several
5 local yellow pages publishers in Hawaii now offer take-back programs for both old and
6 unused/unwanted yellow pages and white pages phone books.

7 This bill imposes a substantial burden on the department, with no additional staff and with little
8 resources. It requires the department to administer and enforce the program, design forms, collect
9 registration fees and annual “recovery fees,” determine exemptions, provide an annual report to evaluate
10 the program, and most notably to create and maintain a statewide “opt-out registry” or database of every
11 resident and business who wishes to not receive a yellow pages phone book. Furthermore, the bill
12 requires the department to furnish distributors a copy of the opt-out registry at least thirty days prior to a
13 yellow pages distribution. This alone is an administrative burden on the department because each local
14 publisher within the state has their own distribution timeline.

15 The department also believes it more equitable for such opt-out programs to include white pages
16 as well as yellow pages phone books.

17 Thank you for the opportunity to testify on this measure.

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S. B. 201

BEFORE THE

COMMITTEE ON ENERGY AND ENVIRONMENT

AND THE

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TESTIMONY OF AMY HEALY

VICE PRESIDENT, PUBLIC POLICY AND SUSTAINABILITY

YELLOW PAGES ASSOCIATION

FEBRUARY 2, 2011

Chairman Gabbard, Vice Chair English and members of the Committee on Energy and Environment; Chairman Baker, Vice Chair Taniguchi and members of the Committee on Commerce and Consumer Protection:

My name is Amy Healy and I am the Vice President of Public Policy and Sustainability for the Yellow Pages Association (YPA). YPA is an international trade association representing print and electronic directory publishers, local search companies and industry suppliers. Our members include Yellow Pages publishers that account for 95 percent of the Yellow Pages revenue generated in the U.S. and Canada. Our members also include the industry's national and local sales forces, Yellow Pages advertisers, and suppliers, such as printing and paper companies. On behalf of its members, YPA respectfully opposes SB 201.

It was almost exactly a year ago that I presented testimony before the Committee on Energy and Environment with respect to 2010 Senate Bill 2361. When I testified before the Committee last year, I shared with the members of the committee that all Hawaii Yellow Pages publishers had recently implemented comprehensive consumer choice programs to ensure that individuals that do not want print directories can make the choice to stop receiving them. A lot has transpired since then and I appreciate this opportunity to share with the Committee our industry's commitment to addressing concerns about unwanted phone books.

Our Commitment to Environmental Responsibility

In 2009, YPA, together with the Association of Directory Publishers, adopted comprehensive Joint Environmental Guidelines that call on our respective members to reduce paper consumption, support sustainable recycling efforts, and offer consumers a choice of how they receive directory information, including the ability to opt-out from all directory deliveries. Our members have made great strides in all of these efforts. For example, overall consumption of paper has been reduced by about 30% in the last five years due to fewer and smaller directories, more targeted distribution and significant investments in state of the art pagination and publishing systems.

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. In

contrast, newspapers and standard mail together make up more than 14 times that amount (3.5 percent and 2.2 percent, respectively).¹

Reducing Our Environmental Footprint

Working with the industry's paper suppliers, the industry utilizes paper that does not require of any trees to be cut. Almost 40% of typical directory paper is comprised of post-consumer waste (including old telephone directories and newspaper) and the balance typically comes from sawmill waste - sawdust and woodchips that would otherwise be burned or land filled.

Our overall consumption of paper has been reduced by more than 30% in the last five years due to the industry's efforts to produce fewer and smaller directories, more targeted distribution, and significant investments in state of the art pagination and publishing systems that more efficiently use paper. In addition, environmentally friendly soy-based inks, rather than petroleum-based inks are used.

Consumer Choice

Most significantly, however, our industry fully recognizes that delivering a directory to a consumer that doesn't want one creates no value for the advertiser, the directory publisher or the consumer. The high return-on-investment that Yellow Pages provide 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. Unlike newspapers and magazines, Yellow Pages advertising is sold on usage and value – not circulation - so we have no incentive to spend the significant sums it costs to manufacture or deliver directories to consumers that do not want them.

Yellow pages are the original search engine and, even with the widespread availability of electronic local search alternatives, paper directories continue to be the leading choice for many consumers for finding local business and community information. In addition, our directories contain highly sought and critical information, including contact information for first responders, emergency preparation guides, methods for contacting elected officials and other government agencies, and other important community information. Directories are also a valuable resource

¹ U.S. Environmental Protection Agency, Municipal Solid Waste Generation, Recycling, and Disposal in the U.S. (November 2009).

for finding information about phone service - from international dialing instructions to telephone repair, and from telephone service for the disadvantaged to avoiding disconnection.

Independent research shows that, notwithstanding the increasingly “wired” population, paper directories are still used by more than 70% of consumers, often in connection with online searches. Indeed, yellow pages are referenced more than 12 billion times a year. Even though print yellow pages continue to provide value to consumers and remain the predominant means by which local businesses inform the public of their products and services, the industry recognizes that not everyone wants a print directory or wants more than one print directory.

That is why yesterday, February 1, 2011, our industry took another major step toward providing consumers with an easy to use tool to choose which directories - if any - they want to receive. While our publishers have long permitted consumers to opt-out of delivery, we heard from consumers and policymakers alike that individual publisher opt-out websites were too cumbersome to use or, in some cases, consumers didn’t know which publishers delivered directories to their homes. We listened to our critics.

Our new industry consumer choice website, www.yellowpagesoptout.com allows a consumer to quickly see which directories are scheduled for delivery to the consumer’s zip code. After completing a short registration process, the consumer can then easily choose to opt out of specific directories or all directories. The consumer will then receive an email confirmation of his or her request. The site is free, easy to use, secure, private, available throughout the nation, and doesn’t cost the taxpayers of Hawaii (or any other state) a dime. It also doesn’t cause the significant First Amendment concerns raised by SB 201.

SB 201 Raises Serious Constitutional Concerns

Over the past few years, legislation to restrict the delivery of local telephone directories has been considered about a dozen states, including Hawaii in 2008 and 2010. 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.

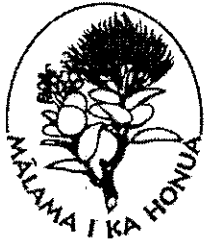
S.B. 201 is patterned after the City of Seattle’s recently enacted phone book ordinance. The bill, like Seattle’s ordinance, creates a complicated, one-of-a-kind, duplicative, government run opt-out site that provides no value to any one and will only serve to confuse consumers.

Furthermore, by singling out the directory industry for discriminatory treatment and imposing mandatory licensing requirements on publishers' (and their local advertisers') ability to communicate, the proposed bill, like the Seattle ordinance, raises serious free speech concerns. The Committees should be aware that the Seattle ordinance is currently the subject of a federal civil rights lawsuit pending in the U.S. District Court for the Western District of Washington.² Indeed, because of the First Amendment concerns raised in this litigation, on January 31, 2011, the City of Seattle amended its ordinance to eliminate the per ton directory distribution fee and modify the licensing regime.

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. Our advertisers rely on us to reach consumers and consumers rely on us to find the goods and services they need. Of course, the direct benefit to the State through income, property, and other taxes paid by our members, is dwarfed by the economic activity resulting from use of the yellow pages.

I thank you for the opportunity to provide information and I encourage members of the Committees to give the industry's consumer choice website, www.yellowpagesoptout.com, a try.

² *Yellow Pages Association, et. al v City of Seattle*, Case No. 10-CV-1857 JLR.



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SENATE COMMITTEE ON ENERGY AND ENVIRONMENT SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

February 3, 2011, 2:45 P.M.
(Testimony is 2 pages long)

TESTIMONY IN SUPPORT OF SB 201 WITH PROPOSED AMENDMENT

Aloha Chair Gabbard, Chair Baker, and Members of the Committees:

The Sierra Club, Hawaii Chapter, with 8,000 dues paying members and supporters statewide, **supports** SB 201. This measure would require telephone book distributors to register with the Department of Health, report certain information on an annual basis, and creates an opt-out registry program.

Even though the paper in telephone books can be recycled, the energy and waste created by their indiscriminate distribution is considerable. Millions of pounds of paper are generated and transported across the state annually—only to have many of them later trashed. Senate Bill 201 would reduce this waste burden on society by establishing a program where only those who desire the telephone books receive them.

To this end, we propose amending SB 201 to be an opt-in, not an opt-out program. Social psychology instructs that most folks will elect the default option, even though they may prefer a different option. Folks want to do the right thing, but they don't always have the time to act upon that decision.

Such a revision is not just about reducing resource waste and trash generation, but also about consumer choice. If a consumer would like to receive the voluminous yellow and white pages, they simply request the books. Otherwise, residents can select their own media (such as online directories "whitepages.com," "switchboard.com," etc.) to receive information such as business listings and phone numbers.

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), 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 201 is a common-sense measure that produces and delivers telephone directories only to those that want them. The Sierra Club respectfully asks that this committee advance this smart measure.

Mahalo for the opportunity to testify.

SB 201
TELEPHONE DIRECTORY DO NOT DELIVER BILL
KEN HIRAKI
DIRECTOR – GOVERNMENT AFFAIRS
HAWAIIAN TELCOM
FEBRUARY 2, 2011

Chairs Gabbard and Baker and Members of the Committees on Energy and Environment and Commerce and Consumer Protection:

I am Ken Hiraki, testifying on behalf of Hawaiian Telcom on SB 201, “A Bill Relating to Waste Management.” SB 201 would: require telephone utilities and companies that publish or distribute telephone directories to register with the Department of Health; create an opt-out registry for residents and businesses to elect to not receive delivery of yellow pages phone books; require that all yellow pages phone books be recyclable; and create penalties for non-compliance. For the reasons described below, 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 201. 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 201, but with much lower risk to the state’s fragile economy. As such, we believe that SB 201 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 201 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 201 be held in your committee.

Thank you for the opportunity to testify on this measure.

HI SB 201 The Berry Company Testimony Relating to Solid Waste Management

The Berry Company appreciates this opportunity to describe to the Committee the steps it is already taking to manage environmental concerns relating to its print directories and to provide consumers with a choice on whether to receive print directories.

While Berry believes the print directory product is an irreplaceable source of advertising for thousands of small and medium sized businesses in Hawaii, we are also mindful of 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 are printed using environmentally-friendly soy-based inks, as well as non-toxic glues and dyes.

Consistent with its sensitivity to environmental concerns, Berry conducts high profile recycling campaigns each year in conjunction with distribution of the new year's directories. The 2011 Think Yellow, Go Green five-week recycling campaign is currently underway, and will conclude Sunday, February 20th. Our campaigns are conducted in partnership with local community organizations. Berry's partner this year -- for the third consecutive year -- is the Lokahi Giving Project, which helps staff directory recycling drop off locations at four shopping malls in and around Oahu. On the Neighbor Islands, we have organized a directory recycling contest among more than 50 local schools, awarding top directory recycling collectors with monetary donations that are used to fund important school projects. The impact of our recycling programs is significant -- last year, Berry collected more than 117 tons of outdated directories in Hawaii; in 2009, we collected 110 tons.

Additionally, Berry arranges for "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.

Media coverage related to Berry's *Think Yellow, Go Green* Recycling Programs in Hawaii reflects positive support of the program and Berry's involvement.

It is important for the Committee to understand that Berry already provides consumers with a choice when it comes to receiving directory products – including two ways to choose to “opt-out” of receiving the directory. First, Berry's “Yellow Pages Your Way” program allows consumers to access an online portal, located at www.htyellowpages.com, or call a toll free number to elect to opt-out of directory distribution or to request a different format of distribution. Berry then manages the consumer's preferences through its directory distribution process. Second, Berry is an active participant in the Yellow Pages Association's, or YPA's, new national clearinghouse opt-out site www.yellowpagesoptout.com, which was launched February 1 and provides consumers with a single site to select which phone directories they receive or opt out altogether. One official industry site will lessen confusion and ensure that consumers have a simple way to choose or opt out of any and all directories. The address for the www.yellowpagesoptout.com site is currently included as part of Berry's Yellow Pages Your Way information, with the link included on the htyellowpages.com web site as well as in Hawaii's print directories. 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 its 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 and participation in the YPA national opt-out program each enable Berry to achieve an appropriate balance between

meeting the public's need for local information and allowing consumers a choice about which directory, if any, they wish to continue to receive.

In sum, SB 201 is unnecessary, would impose unfair and unreasonable cost burdens on Yellow Pages publishers, and ultimately hurt the businesses and consumers that we serve by making yellow pages advertising more expensive and less effective for Hawaii's small and medium business advertisers. The proposed legislation would therefore likely have a significant negative impact on the local economy.