

SB 107
Energy & Technology Committee
Connecticut General Assembly

Testimony of
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Co-Chair Bob Duff, Co-Chair Lonnie Reed, and members of the Energy & Technology Committee; I appreciate the opportunity to provide this testimony on SB 107, a bill that, among other things, restricts the distribution of Yellow Pages phone directories to First Class mail.

My name is Amy Healy and I am Vice President of External Affairs & Compliance for YP. YP is a local search and advertising company formerly known as AT&T Interactive and AT&T Advertising Solutions. YP launched in May 2012, bringing the two companies together with the mission of helping local businesses and communities grow. YP's flagship consumer brands include the YPSM app and YP.com, which are used by nearly 60 million visitors each month¹. YP Real Yellow PagesSM directories are used nearly 4 million times daily by consumers to seek out local businesses.²

YP supports nearly 125,000 businesses in Connecticut. The vast majority of these customers are small businesses. YP has nearly six-thousand employees, 126 of which work and live in Connecticut. It is on their behalf, that YP respectfully opposes S. B. 107.

As I mentioned in my introduction, YP offers a wide variety of print and digital solutions for our small business customers. YP employs thousands of marketing consultants to help these small business clients determine the most effective media mix to make their phone and cash registers ring. We maintain that the small business owner is best equipped to determine what advertising mix works for them – not what reflects governmental interest. SB 107 interferes with that small business owner's decision by artificially inflating the cost of print Yellow Pages advertising. Although out of favor for some, print Yellow Pages directories continue to be a valuable source of information for consumers and an indispensable marketing tool for local businesses.

Setting aside the First amendment concerns for a moment, SB 107 contains several practical problems that make it unworkable for directory publishers. The vast majority of directories YP distributes in CT are delivered by hand. If SB 107 were enacted, YP conservatively estimates that our distribution costs in CT would more than double, severely impacting YP's ability to compete against

¹ Comscore, Jan. 2014

² Burke Industry Study, 2012

other local print media including free community newspapers and classified newspaper advertising. Many small local post offices are also not equipped to handle large pallets of directories and from our experience, mailing directories during peak periods would not be a priority for the USPS in comparison to non-bulk parcels. Essentially, local postmasters could then control the quantity and the drop schedules of YP directories at their local post offices. Finally, First Class mail is limited to 1lb or less while some YP directories weigh more than a 1lb.

I last appeared before a legislative committee in Hartford on February 5, 2009. Before the General Law Committee, I spoke in opposition to legislation that would have mandated a specific opt-out system for telephone directories. The Committee did not vote to pass the legislation after hearing about the Yellow Pages Industry's new self-regulatory opt-out system. So much has happened in this industry since then. As we've transformed our business, YP has also made incredible strides environmentally. Starting with the New Haven directory distributed in December, YP stopped publishing residential white pages. This program is being rolled out in all large markets in Connecticut in 2014 saving more than 350 tons of paper. We've reduced the trim size of our directories and the number of directories delivered to multi-unit dwellings and large office complexes. We promote the national opt-out site, www.yellowpagesoptout.com on the cover of all of our directories nationwide. YP has honored thousands of opt-out requests in CT since the launch of the national site. YP has also implemented a program called Smart Distribution where we no longer deliver print directories in areas where our research shows that usage is likely to be very low. All of these steps have resulted in YP reducing the amount of paper we distribute in CT by more than 70% since 2001 and those savings will continue to grow in 2014.

YP is proud of our record in Connecticut as a responsible corporate citizen.

Constitutional Concerns:

SB 107's prohibition of the door-to-door distribution of YP's print directory raises serious First Amendment concerns. As the Local Search Association will state, a unanimous U.S. Court of Appeals decision held that YP directories are noncommercial speech entitled to full protection under the First Amendment.³ The United States Supreme Court has long held that the door-to-door distribution of information is vital to our nation's constitutional tradition of free and open discussion.⁴ The High Court has thus invalidated restrictions on these activities for over 70 years.⁵

Courts have been particularly critical of attempts to regulate the distribution of written information to a residence as opposed to face-to-face or in-person solicitations. Face-to-face solicitations are more intrusive and intimidating than the mere distribution of written information that does not

³ *Dex Media West, Inc. v. City of Seattle*, 696 F.3d 952 (9th Cir. 2012). The Ninth Circuit has declined to rehear the decision.

⁴ *Watchtower Bible and Tract Society of N.Y., Inc. v. Village of Stratton*, 536 U.S. 150, 162 (2002).

⁵ *Id.* at 160.

require direct communication with a resident.⁶ Courts have thus repeatedly struck down laws that attempt to regulate the distribution of information because they violate First Amendment protections of free speech.⁷ Because the door-to-door distribution of information implicates the full range of First Amendment protections, regulations that attempt to restrict these activities must survive strict scrutiny and must be narrowly tailored to meet a substantial government interest. This level of constitutional review is the most rigorous a court can give, and such regulations rarely, if ever, survive.⁸

In large part, these types of regulations fail to satisfy the First Amendment because they either discriminate against or single out certain types of speech⁹ or impermissibly restrict the right of a citizen to choose the manner in which they receive speech.¹⁰ S.B. 107 clearly singles out YP's printed directories for regulation, as it does not similarly restrict the door-to-door distribution of other materials or information. As a result, the law is impermissibly underinclusive with respect to the state's environmental interests because it does not address environmental concerns with respect to the distribution of other printed information.¹¹

S.B. 107 is also unconstitutional because the First Amendment permits the government to restrict speech only when the "captive audience" cannot avoid it.¹² This shows the First Amendment's preference for avoiding government paternalism that stems from a person's right to receive a communication, and the general rule that "the speaker and the audience, not the government, assess the value of the information presented."¹³ Laws that make this choice for individuals are an

⁶ *U.S. v. Kokinda*, 497 U.S. 720, 733-34 (1990).

⁷ *Ad World, Inc. v. Doylestown Tp.*, 672 F.2d 1136 (3d. Cir. 1982) (invalidating ordinance prohibiting unsolicited door-to-door distribution of advertising material contained in a tabloid); *Distribution Systems of Am., Inc. v. Village of Old Westbury*, 862 F. Supp. 950 (E.D.N.Y. 1994) (invalidating law preventing distribution of unsolicited written materials because it precluded residents from receiving materials they had a First Amendment right to receive); *Woodbury Daily Times Co. v. Township of Monroe*, 610 F. Supp. 916 (D.N.J. 1985) (invalidating an ordinance that allowed door-to-door distribution of information only if the materials were left in designated areas); *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60 (1983) (striking down federal statute prohibiting unsolicited mailing of contraceptive advertisements).

⁸ *Id.*

⁹ See *Int'l Society for Krishna Consciousness of Houston, Inc. v. City of Houston, Texas*, 689 F.2d 541 (5th Cir. 1982); *Carey v. Brown*, 447 U.S. 455 (1980); *Distribution Systems of Am., Inc. v. Village of Old Westbury*, 862 F. Supp. 950 (E.D.N.Y. 1994) (invalidating law that discriminated between mailed and non-mailed information because it gave an advantage to other forms of media in expressing its views to citizens).

¹⁰ *Project 80's, Inc. v. City of Pocatello*, 942 F.2d 635 (9th Cir. 1991) (invalidating ordinance that banned door-to-door commercial solicitation because it prohibited both wanted and unwanted speech rather than giving residents a choice).

¹¹ *Distribution Systems of Am., Inc. v. Village of Old Westbury*, 862 F. Supp. 950 (E.D.N.Y. 1994).

¹² *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 72 (1983)

¹³ *Edenfield v. Fane*, 507 U.S. 761, 767 (1993)

unnecessary and unconstitutional substitution of the government's judgment for that of its individual residents.¹⁴

Allowing a resident to determine which communications she will receive is thus a less intrusive and more effective way of protecting privacy and the environment.¹⁵ In this way, citizens remain able to make their own choices regarding the information they receive, including the ability to opt out of or recycle offensive, unwanted, or objectionable written material that arrives at their homes.¹⁶ YP has worked tirelessly to ensure that citizens have these options available to them, including YP's "opt-out" program and its efforts to facilitate curb-side recycling of its printed directories. These efforts not only alleviate the state's concerns regarding privacy and the environment, but also empower citizens to choose the manner in which they receive and process information without the unnecessary restriction of constitutional rights.

Again, I appreciate the opportunity to speak before the Committee today and look forward to answering any questions the members may have.

Thank you.

¹⁴ See *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 73-74 (1983); *Martin v. City of Struthers, Ohio*, 319 U.S. 141, 144 (1943); *South/Southwest Ass'n of Realtors, Inc. v. Village of Evergreen Park*, 109 F. Supp. 2d 926 (N.D. Ill. 2000).

¹⁵ See *Village of Scharmberg v. Citizens for a Better Environment*, 444 U.S. 620, 639 (1980); see also *Anderson v. Treadwell*, 294 F.3d 453, 464 (2d Cir. 2002).

¹⁶ *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 72 (1983); see also *Pearson v. Edgar*, 153 F.3d 397, 404 (7th Cir. 1998) (invalidating ordinance because it did not allow the individual homeowner to decide for himself whether or not to receive a communication)