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President

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January 24, 2008

Jim Chiles, Solid Waste Policy Report Staff Coordinator  
Minnesota Pollution Control Agency  
Municipal Division, Solid Waste Section  
520 Lafayette Road N.  
St. Paul, MN 55155-4194

Sent electronically to: [jim.chiles@state.mn.us](mailto:jim.chiles@state.mn.us)

**Re: Comment Draft of 2007 Minnesota Solid Waste Policy Report**

Dear Mr. Chiles:

The Yellow Pages Association (“the Association”) wishes to avail itself of the opportunity to submit comments on the proposed draft of the 2007 Biennial Minnesota Solid Waste Report. For the reasons set out below, the Association strongly urges that the MPCA reconsider its proposed targets for action, particularly the recommendation that directory publishers be prohibited from delivering directories to their customers except on an opt-in basis.

The recommendations in the report fail to fully take into consideration the environmental sensitivity with which the majority of directories are manufactured; the importance of directory advertising to thousands of small businesses in Minnesota, and the consequent adverse impact on Minnesota's economy. The report also fails to recognize the ongoing discussions between the directory industry and national environmental groups, such as the Product Stewardship Institute, to further enhance the directory industry's environmental record. While the report correctly notes that opt-out legislation was introduced in three states in 2007, it fails to note that all proposed legislation failed to garner significant support in any of those states. The lack of support for legislation restricting directory delivery in other states should hardly serve as the basis for adopting even more onerous, damaging, unprecedented requirements that may very well run afoul of the 1<sup>st</sup> Amendment.<sup>1</sup>

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<sup>1</sup> The purpose of this letter is not to provide a legal analysis of the MPCA proposal. That said, it is worth noting that numerous federal courts have struck down “opt-in” regimes as applied to various forms of protected speech. See, e.g., *U.S. West, Inc. v. FCC*, 182 F.3d 1224 (10th Cir. 1999); *Project 80's, Inc. v. City of Pocatello*, 942 F.2d 635 (9th Cir. 1991); *Verizon N.W., Inc. v. Showalter*, 282 F. Supp. 2d 1187 (W.D. Wash. 2003).

## The Function of the Association

The Association is a Delaware not-for-profit corporation that, along with its predecessors, has represented the interests of the directory publishing and advertising industry since 1975. Today, the Association membership consists of nearly 450 members throughout the world. These members include directory publishers, internet advertising companies, Certified Marketing Representatives, who sell Yellow Pages advertising to national accounts including Minnesota-based businesses such as Northwest Airlines, and businesses that support the Yellow Pages industry, such as information technology, paper and printing companies. The roster of publisher members is comprised of the largest Yellow Pages publishers, including R.H. Donnelley (who publishes on behalf of Qwest Communications and Embarq), AT&T Yellow Pages, and Idearc Media (publisher of the Verizon Superpages) as well as many medium-volume and smaller-volume publishers. Along with promoting the use of Yellow Pages directories, both print and electronic, the Association provides a central repository of information concerning the availability, efficacy and value of the Yellow Pages medium.

## Directory Manufacturing

Yellow Pages publishers and their suppliers have made significant investments over the past decade so that their directories are manufactured in a manner that is extremely sensitive to the environment. The directory paper industry has purchased and installed costly systems to produce recycled de-inked pulp for directory paper and newsprint. As a result, directories today are fully recyclable and contain significant amounts of post-consumer recycled content. In addition to recycled pulp, directory paper contains fiber primarily derived from “residual chips,” a byproduct of sawmills left after logs are converted to lumber. The chips become paper pulp instead of going into landfills or being burned. The industry does not use virgin pulp to produce directories.

Publishers have worked with their printing vendors to utilize soy-based inks rather than petroleum products so that the printing inks and wastes associated with printing directories are safe and recyclable. Directory publishers have reduced the weight of paper used in their directories to reduce the tonnage of directories that ultimately must be recycled or otherwise disposed of. They have aggressively managed their inventories to minimize the number of unused directories. They have invested in sophisticated and expensive pagination systems to minimize the number of pages necessary to publish directories. In short, the directory industry has gone above and beyond the requirements of Chapter 115, § 951(3).

## Industry Negotiations with National Environmental Groups

During 2007, the directory publishing industry began formal discussions with the Product Stewardship Institute (PSI), a national environmental organization representing approximately 90 state, local and private environmental groups, including Hennepin and Washington Counties and the Minnesota Solid Waste Management Coordinating Board.

These earnest discussions have included efforts to arrive at voluntary agreements on source reduction of telephone directories, as well as enhanced recycling and environmentally sensitive

manufacturing practices. After months of dialogue, including two stakeholder meetings held at regional U.S. Environmental Protection Agency offices, the Yellow Pages Association together with the Association of Directory Publishers, agreed to environmental guidelines that include provisions to allow residents to opt-out from delivery of a publisher's directories. A copy of these Joint Environmental Guidelines is attached. This unprecedented voluntary agreement has been applauded by the myriad environmental groups working with the PSI on its Phone Book Project.

Under the opt-out approach a customer may request not to receive directories from a specific publisher. It does not affect the ability of publishers to compete for usage among the public. In contrast, under the MPCA's opt-in approach publishers are denied 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 are prohibitive and would reduce competition in the marketplace resulting in higher costs to advertisers and less useful directories being provided to the public. It is imperative that publishers have the opportunity and time to implement the opt-out procedures. The proposals in the MPCA's report would accomplish little other than to hinder the significant progress made by the industry and environmental groups in 2007.

### Minnesota Statute

The MPCA's assertion that existing Minnesota law (Minn. Stat. 115A§ 951) has failed to achieve the desired results because of unclear statutory wording is somewhat perplexing. It is our understanding that the law clearly prohibits a person from placing telephone directories into the solid waste stream. To the extent that residents are not complying with the law, it would be reasonable to inquire as to what barriers to compliance or enforcement may exist, rather than to create an entirely new and dubious regulatory scheme that attempts to shift the onus onto directory publishers.

It would be reasonable, for example, for the Agency to inquire as to whether and to what extent citizens are encouraged to recycle directories through standard curbside recycling. It would also be reasonable for the Agency to inquire as to the rationale for exempting waste haulers from any recycling obligations. To the extent that the current law would benefit from clarification to reflect the intent of the Legislature, the Association does not oppose such a course. Before embarking on a different strategy, correction of the existing statute and reasonable enforcement efforts may well achieve the desired results.

### Importance of Directory Advertising to Local Economies

For many small businesses, print Yellow Pages advertising represent their most significant marketing endeavor and their greatest source of customer leads. The majority of the Yellow Pages industry's 3 + million advertisers are small businesses with limited advertising and marketing budgets. Yellow Pages advertising is important to their businesses.

According to the United States Small Business Administration, small business are the heart of Minnesota's economy. The more than 500,000 small businesses in the State employ 52% of the

State's non-farm labor force.<sup>2</sup>

Nationally, advertising helped generate more than \$5.2 trillion in sales and economic activity. Advertising provides useful information to consumers by providing important and useful information to a broad range of purchases in households and businesses – a critical function in a market economy.<sup>3</sup> We believe it would be a great disservice to the small business community, and to the State as a whole, to impose discriminatory distribution requirements that put Yellow Pages advertising at a distinct disadvantage compared with other local advertising media such as direct mail, community newspapers and catalogs.

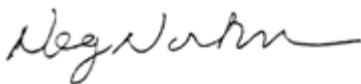
Directories are also crucial information resources for Minnesota residents and businesses. Apart from valuable information that allows customers to find a plumber, a lawyer, a doctor or an auto mechanic, our members' directories contain important information on how to contact their government representatives, who to call in an emergency, and even how to place an international call. The Minnesota Public Utilities Commission recognizes the importance of telephone directories. It has promulgated rules requiring telephone directories to be regularly published and distributed to all customers served by the directory. *See*, Rule 7810.2900.

For these reasons, I respectfully request that the proposals to restrict directory distribution in Minnesota be withdrawn from the MPCA's report which will be sent to the Minnesota Legislature in February.

Although the Yellow Pages industry and the businesses and consumers we serve were apparently not included among the stakeholders consulted in connection with the draft report, I welcome the opportunity to discuss this issue with you further.

Very truly yours,

Neg Norton



Enclosure

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<sup>2</sup> Small Business Profile: Minnesota, published by U.S. Small Business Administration (2007).

<sup>3</sup> *See, The Comprehensive Economic Impact of Advertising Expenditures in the U.S.*, Global Insight, (first published August 14, 2007).