

Touchpoint Inc. began handling all operations for the NetPost Mailing Online Program, the controversial e-commerce program that the USPS turned over to Touchpoint. The revenue-sharing arrangement has nearly eliminated Postal Service expenses. NetPost lets First Class and Standard mail customers aggregate individual orders into larger automation compatible mailings and provides a template-driven service for small businesses sending postcards. USPS reports that NetPost volumes are continuing to climb and are estimated at 25 million pieces in 2004.

- As part of the Product Redesign efforts focusing on Periodicals and Standard Mail flats and address quality, the Postal Service conducted a study of address quality-related reasons that cause mail to be undeliverable. This study, set to be released “early” this year, looks at volume, characteristics and costs of this mail and on deficiencies in addressing by mail class and mail processing category. USPS also said it has completed extensive modeling of costs associated with processing Standard Mail and Periodicals flats. USPS will use this research in deciding the rate structure for this class of mail as part of the rate case.

- A funding decision on Phase 2 of deployment of PARS for automating the handling of undeliverable-as-addressed (UAA) mail, which would cover most of the remaining UAA letter mail, is planned for July 2005.

Approval would lead to a two-year deployment starting as early as September, assuming USPS can resolve outstanding issues relating to its ability to use the PARS technology developed by a contractor. Phase 1 testing and first article installation of the system were completed in 2004.

- Under the rubric of intelligent mail, software was developed in 2004 for the wide field of view (WFOV) camera to decode the four-state barcode, which encodes routing and tracking information on letters and flats. The WFOV camera is being deployed on all letter and flat mail automation equipment. Prototype testing of the WFOV camera’s capability to decode the four-state barcode has been completed, with live mail testing expected early this year.

- USPS plans to deploy new printers and retire aging printers this year in conjunction with the pilot testing of an Automatic Tray Label Assignment System (ATLAS) – the system developed to coordinate activities involved in the creation, distribution, printing and maintenance of the enhanced distribution label (EDL). EDL is a critical piece of the effort labeled OneCode Vision that aims to provide end-to-end process tracking and full visibility.

*To view the entire comprehensive statement, go to the USPS financial website at [www.usps.com/financials](http://www.usps.com/financials) and click on comprehensive statements of postal operations to select the statement for 2004.*

## Ninth Circuit Says Prisoners Have Right to Bulk Mail

A Washington state prison can’t throw away inmates’ mail simply because it is sent bulk rate or offers something for sale, the influential Ninth U.S. Circuit Court of Appeal said in a ruling that can be seen as a boost to the broader First Amendment rights of individuals to receive mail.

The Ninth Circuit, in affirming a federal district court decision that a ban on prisoners’ receipt of certain mail is not rationally related to a neutral government objective, found the policy that covers 15 correctional facilities in the state of Washington violates free speech rights as well as the due process rights of prisoners.

Prison Legal News (PLN), the party that sued the Washington Department of Corrections (DOC), publishes publications regarding legal issues of interest to prisoners and to courts. It publishes a national magazine with 3,000 subscribers including 120 inmates. The editor, Paul Wright, is in a Washington prison. PLN challenged the state law that prohibits inmates from receiving bulk mail unless it is a subscription publication and prohibits inmate receipt of catalogs by mail, regardless of the

mailing category. The statute does not require a notice to the inmates when this mail is not delivered. This is in contrast to the requirement that inmates be notified when other classes of mail are rejected because their specific content is prohibited.

DOC justified its practice by saying, in part, that it helped to reduce the volume of mail that needs searching, and the amount of clutter in inmates’ cells. Both outcomes would reduce the likelihood of contraband entering the facility or being used by inmates, DOC reasoned.

The court found that “prohibiting inmates from receiving mail based on the postage rate at which the mail was sent is an arbitrary means of achieving the goal of volume control.” The court also observed that the discarded mail in question, which included renewal notices, surveys and other material, was actually information inmates were interested in receiving. Therefore, the fact that they did not pay for this information is not a meaningful distinction for First Amendment purposes. The Ninth Circuit also held that inmates’ due process rights were violated when they were not informed that

they had received this mail and that it was thrown away by prison personnel.

Jesse Wing, an attorney with Seattle-based MacDonald Hoague & Bayless who represented the publication, said a search of the prisons found all manner of bulk mail was being tossed out without notice to the recipients, including corporation portfolios, Department of Justice correspondence, mailings from religious, charitable and political organizations and mailings from colleges. He said the 9<sup>th</sup> Circuit ruling is broad enough to cover all bulk mail in the states under the Ninth Circuit's jurisdiction.

Although the ruling is specific to inmates at correctional facilities, William Olson, legal co-counsel to the Free Speech Coalition, sees this as a positive decision for the larger goal of Free Speech in the mail. The Free Speech Coalition is made up of nonprofit groups and their related for-profit organizations that are seeking to reduce or eliminate what they see as excessive regulatory burdens that require them to adhere to various registra-

tion requirements – from paying a fee to conducting an audit – in most states before they can solicit funds. The issue gets complicated because these groups will use their direct marketing efforts to educate and mobilize like-minded individuals as well as to raise funds.

Olson sees this as a free speech issue from the point of view of the sender and recipient, but thinks more attention needs to be focused than currently is on the rights of recipients of mail to receive the information they want. If, for example, an individual in New Jersey wants to get information on the environment from a pro-environment group and that group, for whatever reason, chooses not to submit to New Jersey's registration requirements for fundraising organizations, then the recipient's right to get that mail is taken away, Olson said.

To the extent the Ninth Circuit was coming at the case before it from the perspective of the inmates' right to receive mail, then it advances this free speech argument, he noted.

## Postal Service Against PRC Proposed Definition

The Postal Service is clearly seething over the Postal Rate Commission's latest proposal for defining "postal service" in a way that would bring some electronic services offered by USPS under PRC's rate recommendation authority.

In initial comments filed regarding Order. No. 1424, USPS said this proposal "exemplifies the type of commission action about which the Postal Service has always been concerned, and demonstrates why those concerns were justified." In contrast to the PRC's earlier proposed definition, the latest proposal "seeks to expand the commission's jurisdiction by promulgation of a definition of postal services that extends well beyond what has been formulated by the courts."

The PRC has found that the definition should not be limited to hard copy mail but should also address elec-

tronic services. Consequently, the commission concluded that "those services in which the Postal Service receives, transmits or delivers correspondence constitute postal services."

USPS says that the PRC is deviating from prevailing law in expanding its definition, but argues it has no authority to do so.

At this point, the Postal Service thinks the best course might be to abandon this exercise altogether and "leave concerned parties to research the law and ferret out the prevailing court opinions on their own." The alternative, USPS said, would be to return to the earlier proposed definition: "the delivery of letters, printed matter, or packages weighing up to 70 pounds, including acceptance, collection, processing, transmission or other services supportive or ancillary thereto."

## Points Program Mailing is Standard Mail

The USPS has outlined a case study that shows where a points program mailing, such as for an airline frequent flyer, can be found to be part of an explicit advertisement and can directly relate to that advertisement.

As with other customer support rulings issued to address the regulations that go into effect June 1 addressing what constitutes Standard mail, Customer Support Ruling PS-275 considered whether the mailing was found to contain personal mail so as to require First Class postage. The mailing did contain personal information, including mileage accumulated, flights taken by the

addressee and miles needed to attain bonus awards. So the analysis went a step further and looked at whether the personal information directly related to the advertisement for specific flights. USPS found a direct relationship because the personal details were provided to show how extra miles and points could be attained and redeemed for tickets.

And because the mailing provided no other use for the personal information, such as for the member's records or for tax purposes, support of the advertisement was considered the sole basis for that information and the mailing qualified for Standard rates.