

## President's Message

BY STEVE DEVORE



Steve DeVore

### FOCUS ON GROWTH

Each of us, as circulation leaders, is engaged in the goal of circulation growth. Keith Foutz and his circulation team at The Bulletin in Bend, Oregon have been particularly successful in circulation growth, with a growth of 13 percent over the last three years. I thought it

would be informational and encouraging to pass on some of Keith's thoughts and strategies. In the spirit of full disclosure you should know that Keith and I do work for the same company, Western Communications Inc.

We all know that Bend is a growing city, which would provide a growth opportunity for any newspaper. However, The Bulletin has not only increased in circulation, but has increased in market share. This is a rare accomplishment in the world of newspapers today. Keith is quick to point out that much of The Bulletin's success is the result of having good cooperation between departments and having an extremely strong product to market. Department heads are invited into each other's meetings, giving everyone a sense of what is required to create the best product and service. The Bulletin does not assume to know what readers want, but conducts market research on a regular basis, to determine what content would mirror the community and be the most informative and entertaining. For example, Bend is a unique blend of retirees and young people, and research indicated that a Health and Fitness section would be well received. So, they now have a strong Health and Fitness section. Another product, Go! Magazine, is directed at 18 to 34 year olds with content determined by research.

Advertising is a very strong department, giving the subscriber great advertising choices and providing plenty of space for editorial. Each edition is strong in advertising and news, increasing the perceived value to the subscriber that \$10.50 per month is a bargain. On any given Sunday, The Bulletin averages a mini-

num of 25 preprints that validates that perception.

The production department is state-of-the-art, using computer-to-plate technology and a six year old KBA press, to turn out a high-quality product. One key Keith feels is very important is that each weekday morning the editor, the production director, the IT director and the circulation director meet to discuss page flow and out-the-door time. This meeting allows them to fine tune and problem solve daily.

The Bulletin does not discount. They believe that there is strong value in their product and no need to discount. Keith believes our products are underpriced now, but we need to do a better job promoting our value/benefits. He is adamant on quality starts over quantity starts and would rather have one prepaid order than ten "bill me's". The philosophy is to spend as much to retain as we do to acquire. He worked at a paper once that was involved in heavy discounting and it was his job to wean the customers off the discount programs. It is not an easy process. His advice on changing from a discount program to full price is as follows:

**Consistently run ROP ads pointing out the value of the paper.**

**Tier pricing to slowly bring the customer up to full price.**

**Offer premiums instead of discounts.**

About 70 percent of new orders come from a strong contract kiosk program. Locations include Ray's Supermarkets, Fred Meyer and Safeway, with other locations on the way. New orders are accepted as prepaid only. Strong incentives for carriers are standard, as is a carrier recognition program that has helped to reduce carrier turnover and improve customer service. People new to the area are identified through MMS (Marketing Management System). They are then targeted through sampling with flyers, direct mail and telemarketing.

Keith feels it is very important to have as many "touch points" with a new customer as possible. On the first day of a new subscription, his staff calls the new customer to make sure the delivery was where it should have been. A letter is sent out from Keith thanking them for subscribing and telling them they

*President's Message continued on page 4*

# Legally Speaking

L. Michael Zinser • NICE General Counsel

This month's column reports on a huge independent contractor victory for USA TODAY and an independent contractor victory for the Burlington County Times.

## **1. USA TODAY delivers independent contractor victory!**

The EDD began an audit of USA TODAY's entire California operation in 2001 and determined that all newspaper carriers delivering USA TODAY in California were USA TODAY employees, not independent contractors. The EDD made its status determination despite the fact that it found that USA TODAY's newspaper carrier relationships were "in close compliance" with the newspaper carrier-specific regulations (Section 4304-6) and that the only two factors that the EDD believed weighed in favor of employee status were, according to the EDD, that USA TODAY assigned routes and the fees were not negotiable.

As a result of the audit, the EDD assessed USA TODAY over \$400,000 in unpaid unemployment compensation contributions and personal income taxes, as well as a nearly \$75,000 in penalties for negligently failing to classify the newspaper carriers as employees based on the fact that the EDD had ruled in 1996 that one newspaper carrier who had applied for unemployment compensation benefits was a USA TODAY employee. USA TODAY appealed the assessment and the penalty.

After two weeks of hearings, an Administrative Law Judge ("ALJ") granted USA TODAY's appeal. The EDD argued that workers' compensation case law, which sets out a more demanding standard to overcome, should apply in determining unemployment compensation cases. However, the ALJ stated that:

[i]n determining whether the newspaper carrier workers were independent contractors or employees it seems most appropriate to go directly to the specific regulations governing the definition of employment in the newspaper distribution industry. Namely, section 4304-1 Title 22 California Code of Regulations with specific applications set forth in section 4304-6.

The ALJ found that the following facts evidenced independent contractor status under the newspaper carrier-specific regulations:

All of the carriers had a written agreement with USA TODAY that evidenced that the parties intended to have an independent contractor relationship, and the parties complied with the terms of the agreement;

The carriers were not given W-2 forms, but rather were issued 1099s;

The carrier agreement states that the carriers could deliver in any order and by whatever manner, means, method or mode the carriers chose;

The carrier agreements required the carriers to post a bond and indemnify USA TODAY;

The carriers were paid a flat fee; USA TODAY did not provide employee benefits to the carriers;

The carriers did not have to report to anyone before or after delivery;

All pickups were made away from USA TODAY premises;

There was no set pickup time;

There was no dress code;

The carriers did not sport the USA TODAY logo on their clothes or vehicles;

The carriers did not need to obtain permission to use substitutes;

USA TODAY did not require the carriers to use any specific type of transportation to make deliveries;

The carrier agreements could not be terminated without cause without providing 30 days' written notice;

California Newspaper Publishers' Association representative Bryan Clark testified that it was industry practice in California for newspaper carriers to operate as independent contractors;

The recruitment advertising used independent contractor terminology; and USA TODAY negotiated both the route and the fee paid.

The ALJ held that the requirement to deliver newspapers in a set area, in a timely manner and in a dry readable condition did not evidence employee status, and the requirement that the delivery be made to the customer's satisfaction is a reasonable provision that ensures that the carrier is providing the service which the carrier has agreed to provide. The ALJ rejected the EDD's proposition that the carriers are employees because the delivery of newspapers furthered USA TODAY's

business, noting that:

[a]ny work which a principal retains one to do for the principal would satisfy that proposition. Rather it is the right to control the manner and means of accomplishing the work (which in the process necessarily furthers the principal's business interest). In this case, that right of control has been given away by [USA TODAY] in written form by a formal contract and in practice by application of the C.L. factors.

## **2. Keystone State still independent friendly**

Reversing the determination of the Pennsylvania Department of Labor and Industry claims investigator, the Pennsylvania Employment Compensation Board of Review ("Board") determined that a newspaper carrier, Cappelletti, delivered newspapers as an independent contractor, rather than a Burlington County Times employee. The Board relied on the following facts in making its independent contractor finding:

Cappelletti's written agreement with Burlington County Times designated the relationship to be that of an independent contractor;

Cappaletti purchased newspapers at a wholesale price and resold them at a retail price. He was not paid an hourly wage;

There were no taxes deducted from Cappelletti's pay;

Cappelletti was issued a 1099;

Cappelletti could pick up his newspapers at any time he chose;

Cappelletti did not have set work hours; Cappelletti determined the sequence of delivery;

Burlington County Times did not train Cappelletti;

Burlington County Times did not supervise Cappelletti's newspaper delivery;

Cappelletti was not required to attend meetings with Burlington County Times;

Cappelletti was required to provide and maintain his own vehicle to make the deliveries;

Burlington County Times did not prevent Cappelletti from delivering newspapers for competitors;

Cappelletti could use substitutes and assistants;

Cappelletti was responsible to pay all of his own delivery-related expenses;

Burlington County Times did not give Cappelletti any employee benefits.

*Editor's note: The Zinser Law Firm represented both USA TODAY and Burlington County Times.*

# International Cruise Conference Planned

By: Dale Irvine *Secretary/Treasurer*



*The MS Oosterdam, one of Holland America's newest vista class ships will be the site for the 2007 NICE Sales Conference.*



The 2007 Northwest International Circulation Executives Sales Conference will be a truly international conference and for the first time, held onboard a cruise ship. The Oosterdam is one of Holland America's newest ships with all of the luxuries expected from a premium cruise line. This conference is slightly earlier than normal to accommodate the ship's sailing schedule. The Oosterdam will depart Vancouver, Canada, May 2, 2007 with stops in Victoria, B.C. and Astoria, Oregon, before arriving in Seattle May 5th. Russ Davis, our first vice president, has lined up three outstanding speakers; Mark Henschen, Steve Wagenlander and Michael Zinser. There will also be the popular roundtable and hot idea sessions, plus, time to visit Victoria and Astoria.

Because of the popularity of cruising, all bookings must be confirmed and paid 75 days before departure. We are also moving up the publication of the 2007 Buyer's Guide by several months. We have reserved one of the public rooms aboard the ship as a vendor display area and are planing several vendor receptions. Transportation from a Seattle airport hotel and Seattle cruise terminal parking lot has been arranged to meet the ship in Vancouver, B.C. for those of you planning to drive or fly in and out of Seattle.

Fares for inside cabins start at \$510 single occupancy or \$725 double. This means that you can bring your spouse for as little as \$215 additional. The cruise fares include most meals in one of several dining rooms or restaurants, including 24 hour room service. A \$200 per-person deposit will hold your cabin, with final payment due February 15, 2007.

I suggest booking your staterooms right away as some categories of cabins already appear to be in short supply. Passports to reenter the US will be required, unless the law is changed by Congress before the end of this year. A conference registration and booking information form are included with this newsletter. Bon Voyage.

## NAA Circulation Sales Executive

The Newspaper Association of America is looking for the 2007 Circulation Sales Executive of the Year. If you believe that someone in your circulation department deserves this award please nominate them. Nominees must work in the circulation or consumer marketing department of an NAA member newspaper.

The winner will receive a crystal "prestige award" trophy, complimentary registration for the 2007 Marketing conference and industry recognition.

The nomination form is online at : [www.naa.org/feds/circulation/salesexec](http://www.naa.org/feds/circulation/salesexec) The deadline for all nominations is Friday, October 13, 2006.

*If you have further questions, contact:*

Chuck Downing  
Circulation Director  
The Register-Guard  
541-338-2204

## ABC SEMINAR PLANNED

The News Tribune is bringing Diane Rusnak of ABC to Tacoma for a day of intensive training and invites their colleagues to attend. The event as planned, will be a day-long ABC training session on Monday, October 16th. Diane, manager of publisher relations for our region will be on hand to provide in-depth information about the latest policies and areas of current emphasis at the bureau. Registration cost has been set at just \$50 with lunch included.

This training is more than an overview of rules updates, such as we would see at a conference. This is an opportunity for your key staff members to have direct interaction with one of ABC's best managers for an extended period.

### *Topics for the day will include...*

- \*Introduction to ABC
- \*Educational programs (NIE)
- \*Third-party sales
- \*Home delivery - subscriber offers
- \*Home delivery - sale with another publication
- \*Home delivery - audit overview
- \*Single copy
- \*Hotel programs
- \*Electronic copies

For further information and to arrange attendance for your key staff members, please contact:

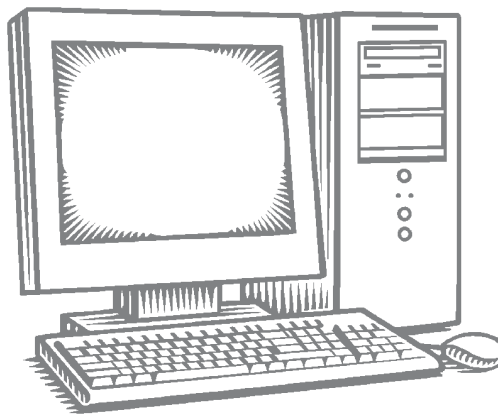
Peter Palmersheim  
Compliance Officer  
The News Tribune  
253-597-8724  
[peter.palmersheim@thenewstribune.com](mailto:peter.palmersheim@thenewstribune.com)

**President's Message continued from page 1**

have made a wise investment. A few days later, a Reader's Guide is sent out with a list of the paper's special features and contact information for various departments.

An indication of the future of newspapers is that the paid e-edition of The Bulletin has about 470 subscribers and it has not even been promoted. It will be promoted sometime in the future, but for now they are fine tuning things before the push. Pricing for the print edition is \$10.50 per month, for the e-edition only \$8.00 per month and a combined subscription is \$14.50 per month.

Keith has been in the business over 30 years and recalls some old advice that is still relevant today. "Time is an excuse to stop, but not a reason. Stops are due to less than superior service and product perception of not being relevant."



**Visit us Online at:  
[www.nicex.org](http://www.nicex.org)**

**HOW TO REACH US**

**Secretary/Treasurer:**

Dale Irvine  
PO Box 778  
La Conner, WA 98257  
360-466-2006  
[nice@galaxynet.com](mailto:nice@galaxynet.com)

**President:**

Steve DeVore  
La Grande Observer  
541-963-3161  
[sdevore@lagrandeobserver.com](mailto:sdevore@lagrandeobserver.com)

NICE, PO Box 778  
La Conner, WA 98257

Montana

Alberta

Oregon

Alaska

Utah

Idaho

Montana

Washington

Saskatchewan

British Columbia

