

(Decision No. R94-505)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE PROPOSED)
RULES REGARDING TOWING CARRIERS) DOCKET NO. 92R-690
BY MOTOR VEHICLE, 4 CCR 723-9.)

IN THE MATTER OF THE PROPOSED) DOCKET NO. 93R-705
RULES REGARDING TOWING CARRIERS)
BY MOTOR VEHICLE, 4 CCR 723-9.) RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ARTHUR G. STALIWE

Mailed Date: May 2, 1994

Appearances: James A. Beckwith, Esq., Arvada,
on behalf of Towing & Recovery
Professionals of Colorado,
Inc.; Bob's Auto Service, Inc.;
George D. Connolly, d/b/a Connolly's
Towing; Kramer & Houston Towing, Inc.;
Randy's High Country Towing,
Inc.;

Edward Paulsen, Aurora, D&H Towing;

Keith Hand, Denver, Mac's
Auto Recovery; and

Charles Benedetti, Staff of
the Public Utilities Commission.

STATEMENT OF THE CASE

By notice of proposed rulemaking mailed December 13, 1993, the Commission sent notice regarding proposed modifications and additions to the existing Towing Carrier Rules, 4 CCR 723-9. In its notice of proposed rulemaking, the Commission established February 22, 1994, as a hearing date.

Written comments were filed on February 4, 1994, by the Towing & Recovery Professionals of Colorado, Inc. (TRPC); and followed on February 15, 1994, by the transcript of proceedings from Docket No. 93M-474CY.

On February 22, 1994, the matter was heard by Administrative Law Judge Arthur G. Staliwe. Near the conclusion of the hearing, staff requested some additional time within which to discuss the

matter with those towing carriers who had filed comments. On or about March 11, 1994, staff filed a new proposed Rule 2.2 to the Towing Carrier Rules, as more fully set forth below.

Pursuant to the provisions of § 40-6-109, C.R.S., Administrative Law Judge Arthur G. Staliwe now transmits to the Commission the record and exhibits of said hearing, together with a written recommended decision containing findings of fact, conclusions, and order.

FINDINGS OF FACT

Based upon all the evidence and comments of record, the following is found as fact:

1. The TRPC is a Colorado trade association representing approximately 62 companies and individuals holding T-Permits from this Commission. It is not clear from the record whether the named individual towing services are members of TRPC, or appeared in addition to TRPC.

2. As pertinent to this proceeding, the evidence adduced in Docket No. 94M-474CY, plus the comments provided in this proceeding, establish that the towing industry and its equipment suppliers broadly place towing services into the following three weight categories:

- a. Light Duty - Defined as the towing of vehicles weighing less than 10,000 pounds GVW;
- b. Medium Duty - The towing of vehicles weighing between 10,000 and 26,000 pounds GVW; and
- c. Heavy Duty - The towing of vehicles in excess of 26,000 pounds GVW.

For illustrations of the difference in the size of the tow trucks used, see Appendix E of TRPC comments. Given the different sizes and strengths of equipment utilized in the three towing categories, there are significant differences in the costs of the tow trucks utilized in those categories. The comments of TRPC establish that a new one-ton wrecker used for light towing costs in the vicinity of \$40,000, while a new heavy duty wrecker weighing 80,000 pounds costs up to \$200,000. And, as indicated by TRPC, each separate category carries different levels of driver skill with resulting different driver wage scales.

3. In addition to the three weight categories, the comments in this matter establish that at least the members of TRPC use four pricing classifications:

- (a) Commercial Accounts - Such as automobile dealerships or body shops that regularly use a given towing carrier's services;
- (b) Private Property Tows - The removal of unattended trespassing motor vehicles from private property;
- (c) Police Contract Tows - Contracts similar to those used for commercial accounts, but arranged with municipal police authorities; and
- (d) Public Tows - The random, individual contracts with members of the public for the towing of motor vehicles.

As indicated by TRPC, the above are pricing classifications or categories; in each category a towing carrier may have multiple prices based upon each individual contract with an auto dealership, municipal police department, owner of private property, etc. It should be noted that each price category or classification can also have separate prices for each weight category of service, i.e., light duty towing, medium duty towing, and heavy duty towing as set forth in finding no. 2. As indicated by TRPC, their knowledge of the industry is that most light duty and medium duty towing is billed on a per hook and loaded mile basis, while heavy duty towing is traditionally billed on an hourly basis, portal to portal.

Compounding matters is the disparate nature of the towing business between those who do nothing but towing (usually in the larger cities), and those who operate a tow truck as an adjunct to another business such as a gas station or body shop. In the former case all expenses of whatsoever nature must be borne by the towing rates; on the other hand, gas stations, etc., who operate a tow truck can share expenses such as labor with other business activities, and thus have lower overall towing costs.

4. One major consideration in this rulemaking is the definition of a motor vehicle that a towing carrier can legally tow or transport, presumably without going across the line into forbidden common or contract carriage. After the hearing in this matter, staff of the Commission and the industry got together

with the Colorado State Patrol and came up with the following new proposed Rule 2.2:

PRESENT DEFINITION WITH NEW PROPOSED DEFINITION

2.2 Motor Vehicle means any motorized vehicle which is capable of moving on the public ways of the State of Colorado. The term also includes any trailer or semitrailer attached to the motorized vehicle, or any trailer or semitrailer which, due to collision, mechanical disablement, legal disability, or order of a law enforcement officer, must be towed or transported separately from the motorized vehicle from which it was attached.

For the purposes of Rule 2.2 and 15.1.1 of these rules, legal disability shall only refer to the condition of a trailer or semitrailer that, due to its weight, height, or other size characteristics, is unable to be transported when attached to the motor vehicle that was pulling it.

15.1.1 A carrier may transport any commodities that were carried in or upon a motor vehicle which, due to disability, or order of a law enforcement officer, is unable to continue to its destination. These commodities may only be transported to the carrier's place of storage or the nearest point where repacking or reshipping may be performed.

5. None of the towing carriers present at the hearing, nor those who filed separate comments, have any objections to the proposed rule changes involving equipment and accessories, and specifically the requirement for three bidirectional emergency reflective triangles in lieu of burning flares.

6. Of great concern to all present are the changes proposed for Rule 16, governing towing rates and charges. Specifically, proposed Rule 16.1 would require that every towing carrier file with the Commission a schedule of rates showing the exact rate and charge for each type of towing and storage service

provided. In turn, proposed Rule 16.6 requires the towing carrier to charge or collect the exact amount filed on its rate schedule, rather than the current requirement setting forth a maximum rate while allowing the towing carrier to charge below its theoretical maximum. Changes can only be made after notice to the Commission. These requirements are similar to the current requirements imposed on common and contract carriers.

Hotly contested is proposed Rule 16.9, which provides that the maximum rate that may be charged for a tow from private property shall be no greater than \$100, to include all accessorial services such as hook-up fees, mileage fees, title searches, etc., with an additional \$25 to be allowed for the use of dollies, a maximum daily storage fee after the first 24 hours of \$15, and a maximum drop charge of \$20. The evidence in this matter establishes that staff only has light duty towing (i.e., cars and light trucks) in mind, although the rule as written is not so limited. There are no post-hearing proposals to modify the rule to accommodate (or exclude) medium and heavy duty towing. And, the record establishes that from time to time unattended heavy trucks and tractor-trailer combinations must be removed from private property, something TRPC firmly asserts cannot be done for staff's \$100 maximum, thus giving trespassing heavy vehicles an upper hand over owners of the property being trespassed upon.

The record in this matter establishes that staff came up with these numbers using a percentage of averages method, combing filed price lists to get to a figure above the 90th percentile of current listed towing carrier rates. See Exhibit No. 3. The proposed Rule 16.9 contains no provision for periodic review by staff of the justness of the \$100, etc., amounts. Rather, staff's suggestion is that if a towing carrier finds that the costs for its services exceed the allowable rule amounts, the towing carrier should file a waiver application, wherein the towing carrier must prove that its expenses exceed the maximum allowed rate, and also come forward to prove the justness and reasonableness of its proposed rate in excess of \$100, etc. Again, this is close to the current requirement for common carriers, and a more stringent requirement than that currently imposed upon contract carriers.

As indicated by Kieth Hand of Mac's Auto Recovery, he is not able to dispatch a vehicle and driver to the scene of a trespass, hook-up the offending vehicle, and then relinquish the vehicle upon arrival of the owner for staff's \$20 drop charge. In Hand's opinion, all or parts of Rule 16.9 will be the subject of an immediate surge of waiver applications. Certainly, he will file one.

DISCUSSION

Given the new amended Rule 2.2, much of the industry concern in this case evaporated. Left, however, is the issue of rate regulation.

The Colorado statutes governing towing carrier pertinently provide:

40-13-102. Control of towing carriers.

(1) All towing carriers are declared to be affected with a public interest and subject to regulation to the extent provided in this article.

(2) A towing carrier required by this article to procure a permit shall not be construed to be a public utility under this title, nor shall such carrier be subject to regulation under article 10 or 11 of this title, nor shall any permit issued under this article be transferable to any other towing carrier.

40-13-107:

* * *

(2) The commission may prescribe minimum and maximum rates and charges to be collected by towing carriers for the towing of motor vehicles for compensation and for the storage of such vehicles. . . .

Emphasis supplied. As noted above, the PUC is absolutely prohibited from construing towing carriers to be public utilities (and thus subject to rate regulation under § 40-3-101, C.R.S., *et seq.*), nor shall towing carriers be subject to the level of regulation imposed upon contract carriers as found in § 40-11-101, C.R.S., *et seq.* It must be remembered that the regulation of contract carrier rates is limited to ensuring minimum rates below which the contract carrier cannot go, while allowing the contract carrier an unfettered ability to negotiate rates above the minimum.

The plan proposed in the new towing rules closely follows the requirements of §§ 40-3-103, 104, and 105, C.R.S., in terms of filing, as well as prohibition against variation from the "exact" rates, in the nature of the filed rate doctrine applicable to common carriers. See Denver & Rio Grande Western Railroad v. Marty, 143 Colo. 496, 353 P.2d 1095 (1960). Of course, this is a stricter requirement than that imposed upon

contract carriers, whose rates may fluctuate at will above the established minimum common carrier rates. See § 40-11-105(2) and (3), C.R.S.

However, pursuant to § 40-13-102(2), C.R.S., this agency is absolutely prohibited from subjecting towing carriers to the same regulation imposed upon both common and contract carriers. On their face the amendments proposed in Rules 16.1, and 16.2, are violative of § 40-13-102(2), C.R.S., and therefore void per § 24-4-103(8)(a), C.R.S., which provides:

No rule shall be issued except within the power delegated to the agency and as authorized by law. A rule shall not be deemed to be within the statutory authority and jurisdiction of any agency merely because such rule is not contrary to the specific provisions of a statute. Any rule or amendment to an existing rule issued by any agency, including state institutions of higher education administered pursuant to title 23, C.R.S., which conflicts with a statute shall be void.

Emphasis supplied. And, it appears that at least some towing carriers are acutely aware of the above. A & A Auto Wrecking v. Department of Revenue, 43 Colo. App. 85, 602 P.2d 10 (1979).

But what about the language in § 40-13-107(2), C.R.S., ". . . may prescribe . . . rates and charges to be collected by towing carriers . . .?" While the legislature has expressed a desire for the PUC to perhaps regulate towing rates, the legislature at the same time absolutely prohibited this agency from doing so in the time tested methods used for common and contract carriers. This left the staff with no choice but to declare by fiat maximum rates in proposed Rule 16.9, and then impermissibly shift the burden to towing carriers to "prove" otherwise, and also "prove" what they felt a reasonable new rate should be, just like common carriers have to do a la § 40-3-101, et seq., C.R.S. Directly or indirectly, this is a violation of § 40-13-102(2), C.R.S., and thus void per § 24-4-103(8)(a), C.R.S. A requirement that staff review the justness of the amounts on a biannual basis should help alleviate the shifting of the burden.

Adding to the confusion is the internal conflict between proposed Rules 16.1 and 16.2, which require the towing carrier to charge all alike for the same service, and Rule 16.9 which sets absolute maximums above which no towing rates from private property may go. If a towing carrier must perform a certain set

of services to remove a trespassing vehicle, which services on the open road would compel (not merely allow) recovery over \$100, do we not have a classic situation of denial of equal protection and/or confiscation of private property? It certainly seems so. In part this is the argument of the medium and heavy towing specialists, who note that they cannot run heavy towing equipment and remove large trespassing vehicles for the proposed \$100 maximum. At a minimum, the concerns of the towing industry can be partially alleviated by limiting Rule 16.9 to the towing of light vehicles.

ORDER

THE COMMISSION ORDERS THAT:

1. The proposed rules and attached Appendix A should be adopted.

2. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

3. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

- a. IF NO EXCEPTIONS ARE FILED WITHIN 20 DAYS AFTER SERVICE OR WITHIN ANY EXTENDED PERIOD OF TIME AUTHORIZED, OR UNLESS THE DECISION IS STAYED BY THE COMMISSION UPON ITS OWN MOTION, THE RECOMMENDED DECISION SHALL BECOME THE DECISION OF THE COMMISSION AND SUBJECT TO THE PROVISIONS OF § 40-6-114, C.R.S.
- b. IF A PARTY SEEKS TO AMEND, MODIFY, ANNUL, OR REVERSE BASIC FINDINGS OF FACT IN ITS EXCEPTIONS, THAT PARTY MUST REQUEST AND PAY FOR A TRANSCRIPT TO BE FILED, OR THE PARTIES MAY STIPULATE TO PORTIONS OF THE TRANSCRIPT ACCORDING TO THE PROCEDURE STATED IN § 40-6-113, C.R.S. IF NO TRANSCRIPT OR STIPULATION IS FILED, THE COMMISSION IS BOUND BY THE FACTS SET OUT BY THE ADMINISTRATIVE LAW JUDGE AND THE PARTIES CANNOT CHALLENGE THESE FACTS. THIS WILL LIMIT WHAT THE COMMISSION CAN REVIEW IF EXCEPTIONS ARE FILED.

4. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ARTHUR G. STALIWE

Administrative Law Judge

AGS:srs

THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO

RULES AND REGULATIONS GOVERNING
TOWING CARRIERS BY MOTOR VEHICLE
4 CCR 723-9

BASIS, PURPOSE AND STATUTORY AUTHORITY

The basis and purpose of the towing carrier rules is to govern the operation and activities of towing carriers and the basis and purpose of these revisions is to update these rules to reflect current conditions.

The Commission's statutory authority for the issuance of these rules is §40-13-107, C.R.S.

Notes: Colorado Revised Statute 40-2-110.5(2.5) provides that every towing carrier which has been issued a permit pursuant to §40-13-103. C.R.S. shall pay an annual identification fee of \$5.00 dollars to the Commission for each towing vehicle the carrier owns, controls, operates or manages. Fees shall be valid for the period of February 1 through January 31 of the following year and shall be valid only for those specific vehicles for which the fee has been paid.

All carriers operating commercial vehicles, as defined in § 42-4-234(1)(a), C.R.S. will need to comply with the safety standards and specifications adopted by the Department of Public Safety(Colorado State Patrol) pursuant to § 42-4-234(3), C.R.S.

Rule 1 -- Application of Rules and Regulations

These rules and regulations apply to all towing carriers, as defined in § 40-13-101(3), C.R.S., operating upon the public ways of Colorado. Every towing carrier, driver and employee shall read and become familiar with these rules and regulations and all applicable statutes and laws of the State of Colorado.

Rule 2 -- Definitions and Terms

2.1 Commission means the Colorado Public Utilities Commission.

- 2.2 Motor Vehicle means any motorized vehicle which is capable of moving on the public ways of the State of Colorado. The term also includes any trailer or semitrailer attached to the motorized vehicle, or any trailer or semitrailer which, due to collision, mechanical disablement, legal disability, or order of a law enforcement officer, must be towed or transported separately from the motorized vehicle from which it was attached.

For the purposes of Rule 2.2 and 15.1.1 of these rules, legal disability shall only refer to the condition of a trailer or semitrailer that, due to its weight, height or other size characteristics, is unable to be transported when attached to the motor vehicle that was pulling it.

- 2.3 Public Ways means every way publicly maintained and open for use by the public for the public for the purposes of vehicular travel, including, but not limited to, streets, roads and highways.
- 2.4 Owner, operator or authorized agent means any person legally entitled to possession of the motor vehicle.
- 2.5 Owner means owner, operator or authorized agent.
- 2.6 Carrier means towing carrier.
- 2.7 Vehicle means towing vehicle.
- 2.8 Private property tow means the towing of a motor vehicle which is parked, without legal authorization, from private property at the request of the property owner or his/her agent under conditions described in Rule 14.3 of these rules.

Rule 3--Permit Required

No person, unless exempted by § 40-13-103(2), C.R.S., shall operate as a carrier without a valid permit issued by the Commission. This permit does not authorize for-hire transportation requiring specific authority as set forth in Title 40, Articles 10 and 11 or as a carrier of household goods under Article 14 or as a motor vehicle carrier exempt from regulation as public utilities in Article 16, C.R.S.

Rule 4--Filing Fees

The statutory fee found in § 40-13-104, C.R.S., paid in cash, check, or money order payable to the Public Utilities Commission shall accompany an application for a permit.

Rule 5--Contents of Application for Permit

- 5.1 Every carrier shall submit an application for a permit to the Commission. The application shall contain the following information:
 - 5.1.1 The name and complete street address, city, state and zip code of the applicant and the name under which the operation shall be conducted. A post office box is not acceptable as an address.
- 5.2 If the applicant is a corporation:
 - 5.2.1 A statement of that fact and the name of the state in which it is incorporated;
 - 5.2.2 The location of its principal office in the State of Colorado and the names of its directors and officers;
 - 5.2.3 A copy of its articles of incorporation or charter; and
 - 5.2.4 A copy of its certificate of assumed trade name.
- 5.3 If the applicant is a partnership, the name, title and business address of each partner;
- 5.4 A list with a complete description of the equipment to be operated;
- 5.5 A schedule of the charges for each type of towing and storage service to be performed;
- 5.6 A statement that applicant is familiar with the Commissions' Towing Carrier Rules and Regulations;
- 5.7 A statement that applicant has obtained at least the minimum levels of insurance as set forth in Rule 11 and has requested its insurance company to file evidence of this insurance in the form and manner prescribed by the Commission;

- 5.8 A statement stating that applicant understands that the filing of this application does not constitute authority to operate;
- 5.9 Every application must be signed by the applicant or its attorney or agent with the complete address and telephone number of the attorney or agent; and
- 5.10 A statement whether or not the carrier will provide storage for towed vehicles. If storage is provided, a complete address and description of the storage facilities shall be included.

Rule 6--Change of Name and Address

Changes of name and address not involving change in ownership or control must be made upon written notice to the Commission.

Rule 7--Change of Location of Storage Facility

When a storage location is changed or additional locations are put into use, written notice and a complete address and description must be provided to the Commission.

Rule 8--Operation and Lease of Vehicles

- 8.1 No carrier shall permit or authorize any other person, whether a carrier or not, to operate any vehicle or to conduct any operations, other than those of the carrier's, under its permit.
- 8.2 Every carrier shall own or lease all vehicles operated under its permit.
- 8.3 All leases of equipment shall be in writing and signed by the lessor and lessee.
- 8.4 All leases of equipment shall contain at least the following information:
 - 8.4.1 Date the agreement was entered into;
 - 8.4.2 The lessor (truck owner) and lessee (permit holder) names;
 - 8.4.3 The make, year, and vehicle identification number of the leased vehicle;
 - 8.4.4 The period of time the lease is in effect;

- 8.4.5 The consideration that the lessee will pay the lessor;
 - 8.4.6 Neither party may cancel the lease without serving the other party with a written notice of cancellation; and
 - 8.4.7 The lessee has the leased vehicle insured by its insurance company and for the type and amount of insurance as required by Rule 11.
- 8.5 During the period of the lease, the lessee shall have full discretion and complete control of the leased vehicle and will be fully responsible for its operation, in accordance with all applicable laws and regulations, as if the lessee were the owner. This would include, but not be limited to, compliance with marking requirements, safety of the vehicle, its equipment and accessories.
- 8.6 A copy of the lease agreement shall be carried in the leased vehicle at all time.

Rule 9--Marking of Towing Vehicles

- 9.1 No towing carrier shall operate any vehicle, owned or leased, upon the public ways of the State of Colorado without first marking or affixing on each side of the vehicle, in letters and numbers, which shall be not less than two and one-half inches in height, the following:
- 9.1.1 Name of the carrier as set out in its permit
 - 9.1.2 City and state of the carrier's general office; and
 - 9.1.3 Colorado PUC T-000 (permit number shall be placed after the T).
- 9.2 All markings shall be completely removed from all vehicles which are permanently withdrawn from service.

Rule 10--Identification Card

- 10.1 All carriers shall obtain from the Commission an identification card and place it in each vehicle.
- 10.2 The identification card may not be replaced. Replacement or additional cards will be furnished by the Commission upon written request.

- 10.3 Upon demand, the identification card shall be presented by the driver to any law enforcement officer, Port of Entry officer or authorized personnel of the Commission.
- 10.4 Any alteration or amendment shall render the card null and void.

Rule 11--Insurance--Surety Bond

- 11.1 Every carrier shall obtain and keep in force at all times a public bodily injury and property damage liability insurance policy, a cargo liability(on-hook [while car is in tow] physical damage) policy which may include a deductible, and for carriers that are required by Rule 12.1 to provide storage, a garage keeper's liability policy, which may include a deductible or a surety bond providing the same coverage and issued by an insurance or surety company authorized to do business in the State of Colorado by the Commissioner of Insurance.
- 11.1.1 The insurance forms for the public cargo garage keepers' and property damage liability insurance shall be filed on forms prescribed by the Commission.
- 11.2 The full coverage for each type of liability policy shall be in amounts of no less than the following:
- 11.2.1 Public liability for injury or death to any one person -- \$100,000.00;
- 11.2.2 Total public liability for injury or death to all persons -- \$300,000.00;
- 11.2.3 Public liability for property damage -- \$100,000.00; or
- 11.2.4 A combined single limit liability (CSL) policy of -- \$500,000.00.
- 11.2.5 Cargo liability(on-hook [while car is in tow] physical damage) and garage keepers' liability insurance which shall provide coverage to the extent of the carriers' legal liability for loss or damage to the property of any person or persons, other than the insured, which is carried in, upon or attached to the towing vehicle, its trailers or dollies or while the property is in the care or custody of the carrier (including while in storage).
- 11.3 The original policy for the required liability insurance shall be retained by the carrier and be available for

inspection by any authorized representative of the Commission.

- 11.4 The carrier shall cause to be filed with the Commission certificates of insurance in the forms and amounts stated in Rule 11.1 and 11.2 and shall be executed by an authorized agent of the insurer.
- 11.5 All filings must be submitted with the same name, initials, trade name or corporate name and address listed on the application for the permit.
- 11.6 Subsequent changes of name, address or policy number shall be reflected on the certificates of insurance by having the insurer file a written endorsement with the Commission.
- 11.7 Each certificate of insurance required to be filed with the Commission shall be kept in force and effect unless and until cancelled by a 30-day written notice by the insurer to the Commission. The notice of cancellation of carrier insurance policies or surety bonds shall be filed on a form prescribed by the Commission.

Rule 12--Storage Facilities

- 12.1 For any vehicle towed pursuant to rule 14.3, a carrier shall use an adequately secured storage facility where motor vehicles may be safely stored. This facility may be either an outside, fenced enclosure or in a building where the motor vehicle will be protected from pilferage or other damage. The carrier need not own the facility.
- 12.2 The outside area shall be enclosed by any, or a combination of, wood, corrugated tin, aluminum or fiberglass sheets, chain link or webbed wire at least six feet high with a locked gate.

Rule 13--Equipment and Accessories

All vehicles shall meet with the following minimum requirements:

- 13.1 Tires not less than 700x15 in size;

- 13.2 Tires on the front wheels shall have a tread groove pattern depth of at least $\frac{4}{32}$ of an inch when measured at any point on a major tread groove;
- 13.3 Except as provided for in Rule 13.2, all other tires shall have a tread groove pattern depth of at least $\frac{2}{32}$ of an inch when measured at any point on a major tread groove;
- 13.4 Front tires shall be no less than an 8 ply-rating;
- 13.5 Vehicles with single rear wheels shall have tires that are not less than 8 ply-rated;
- 13.6 Vehicles with dual rear wheels shall have tires that are not less than 6 ply-rated;
- 13.7 Rims shall be secured by not less than eight lug bolts for single rear wheels and not less than five lug bolts for dual rear wheels;
 - 13.7.1 All lug bolts are required to be present and in good condition at all times.
- 13.8 Fender coverings for front and rear wheels;
- 13.9 Winching, lifting, towing and carrying equipment must include at least one of the following combinations:
 - 13.9.1 A power-driven winch and crane with a capacity of not less than 6,000 pounds with a winch cable capable of withstanding a test of not less than 10,000 pounds at breaking point and a cradle, with a tow plate or sling, equipped with safety chains and chains with J-hooks of sufficiently heavy construction and maintained in a manner to insure the safe lifting of the towed vehicle; or
 - 13.9.2 A wheel-lift system with a stinger, L-arm brackets, safety chains and nylon tie-down straps, or a mechanical wheel retainer device forming an integral part of the L-arm bracket of sufficiently heavy construction to secure the towed vehicle to the wheel-lift unit, and maintained in a manner to insure the safe lifting and towing of the towed motor vehicle; or
 - 13.9.3 A rollback system with a winch and cable as described in Rule 13.9.1, safety chains, tie-down equipment and truck bed of sufficiently heavy

construction and maintained in a manner to insure the safe loading and transporting of the motor vehicle.

- 13.10 Each vehicle shall be equipped with the following operational electric lights:
- 13.10.1 On the front, at least two head lamps, an equal number on each side, two turn signals, one on each side and two clearance lamps, one on each side;
 - 13.10.2 On the rear, at least two tail lamps, one on each side, two stop lamps, one on each side, two turn signals, one on each side, two clearance lamps, one on each side and two reflectors, one on each side;
 - 13.10.3 The turn signals must have a four-way flasher system capable of flashing simultaneously as a hazard warning with the ignition turned on or off;
 - 13.10.4 On each side, at or near the front, one-side marker lamp and at or near the rear, on each side, one side-marker lamp;
 - 13.10.5 At least one signal lamp mounted either on the highest and most visible point or on the cab of the vehicle, which shall be capable of displaying, in all directions, a flashing, oscillating or rotating yellow light. The light shall have sufficient intensity to be visible at 500 feet in normal sunlight and shall be actuated in accordance with § 42-4-212.5(2) C.R.S.
 - 13.10.6 One spot light, mounted behind the cab, capable of lighting the scene of disability and the motor vehicle to be moved. The back-up lights of the vehicle may not be used in lieu of the spot light;
 - 13.10.7 One portable, combination light system capable of being securely attached on the rear of the towed motor vehicle. It must consist of, with an equal number on each side, two tail lamps, two stop lamps and two turn signals and be operated in conjunction with the same lights on the towing vehicle.

- 13.11 The portable combination light system must be in operation whenever a motor vehicle is towed on the public ways of this State.
- 13.12 Every vehicle shall be equipped with two separate brake systems in the following manner:
- 13.12.1 A mechanical parking brake system that will hold in the applied position by means other than fluid pressure, air pressure or electric energy. It must be capable of holding the vehicle or a combination of motor vehicles on any grade upon which it is being operated and under any conditions of loading or lifting. A micro-lock brake system may be used to supplement but may not be substituted for the mechanical parking brake;
- 13.12.2 A service brake system that is capable of stopping the vehicle and/or combination of motor vehicles in a distance 40 feet at a speed of 20 miles per hour.
- .01 The service brake system must be maintained so that there are no fluid or air leaks.
- .02 All brakes shall have a lining with a thickness not less than 3/32 of an inch for drum brakes or 1/8 of an inch for disc brakes.
- 13.13 Vehicles shall be equipped with engines, transmissions, differentials, driveline components, brake systems, frames and suspensions of sufficiently heavy construction and maintained in a manner to safely winch, lift or tow any motor vehicle tendered to the carrier.
- 13.14 Every vehicle shall be equipped with the following accessories:
- 13.14.1 One shovel;
- 13.14.2 One broom;
- 13.14.3 One steering wheel tying device free from cracks, fraying or deterioration. Flexible bunji cord type straps are not acceptable;
- 13.14.4 One fire extinguisher, fully charged, having an Underwriters' Laboratories (UL) rating of 5 B:C or more, or two fire extinguishers, each of which has a (UL) rating of at least 4 B:C;
- 13.14.5 ~~At least one of the following combinations of:~~
- ~~.01 At least one of the following combinations of:~~
- ~~Three liquid burning flares, three fusees,~~
- ~~each must be capable of burning at least~~

~~twenty minutes and two red flags with suitable standards;~~

~~-.02 Three electric emergency lanterns and two red flags with suitable standards;~~

~~-.03 Three red emergency reflectors and two red flags with suitable standards; or~~

~~-.04 Three red bidirectional emergency reflective triangles.~~

13.14.6 Motor vehicles that are so extensively damaged as to require dollies are not to be accepted for towing unless the carrier is equipped with dollies of sufficiently heavy construction and maintained in a manner to insure the safe loading and towing of a motor vehicle or the vehicle has a flat bed with which to effect removal of the damaged motor vehicle.

13.14.7 Dead-man blocks and other tie down equipment sufficient to hold the vehicle in place while equipment is required only if the carrier performs rescue and recovery operations.

Rule 14--Towing of Motor Vehicles

For the purpose of Rule 14, owner of private property shall include a lessee, or his agent authorized in writing. A towing carrier, its employees, partners, officers, directors, stockholders or independent contractors working for and/or with the towing carrier shall not be allowed to act as an agent for the owner of private property.

A carrier shall not tow any motor vehicle unless one of the following conditions is met:

14.1 The carrier is directed, in writing, by a law enforcement officer; or

14.2 The towing service is requested by the owner of a motor vehicle. Except for telephone requests, a signed authorization by the owner must be received by the carrier specifying the final destination of the motor vehicle before it may be towed and the carrier shall provide a copy of the authorization to the owner and a copy of all charges the carrier will make before the tow begins. This would include, but not be limited to, any extra charges because the carrier would be unable to deliver the motor vehicle, at that time,

to a repair or body shop during normal working hours. Mileage and days for storage charges may be estimated; or

- 14.3 The motor vehicle is to be towed from private property upon the direction of the owner of the property.
 - 14.3.1 The authorization shall be in writing and shall identify the motor vehicle by make and license plate and include the date, time and place of removal.
 - 14.3.2 The authorization shall be made, filled out in full, and signed by the owner and received by the carrier at the time the motor vehicle is to be removed from the private property.
 - 14.3.3 No carrier may accept blank directions presigned by the owner.
 - 14.3.4 The written authorization shall be retained by the carrier for six months and be made available for inspection by the owner of the motor vehicle or his authorized representative.
- 14.4 If any of the conditions as stated above are not met by the carrier, it may not charge, collect or retain any fees or charges for the unauthorized services it performed.
- 14.5 The carrier must tow all motor vehicles to the storage facility which has been named by the carrier in accordance with Rule 5.10 or Rule 7, unless one of the following requirements is met:
 - 14.5.1 The carrier is otherwise directed, in writing, by a law enforcement officer; or
 - 14.5.2 Except for towing services requested by telephone pursuant to Rule 14.2, the carrier receives an authorization signed by the owner of the motor vehicle specifying that the vehicle will not be placed in storage, but is to be placed at a final designated location.

Rule 15--Responsibilities and Duties of Towing Carriers

- 15.1 In performing towing or storage services, every carrier shall exercise reasonable care for the safeguarding of the towed or stored motor vehicle and its contents from loss or damage, notwithstanding any disclaimers to the contrary.
 - 15.1.1 A carrier may transport any commodities that were carried in or upon a motor vehicle which, due to a

collision, mechanical disablement, legal disability, or order of a law enforcement officer, is unable to continue to its destination. These commodities may only be transported to the carrier's place of storage or to the nearest point where repacking or reshipping may be performed.

- 15.2 Unless a hold order has been placed on any personal property by a law enforcement officer or court of law, no carrier may refuse to release any article or personal property in the towed or stored motor vehicle to the owner of the property because of any lien the carrier may have on that motor vehicle for services rendered under Rule 14.3 above.
- 15.3 The proof of insurance required by these rules shall be considered public record and the information shall be provided by the carrier upon request to any member of the public.
- 15.4 Claims for loss or damage to the property of any person or persons, other than the insured, which is carried in, upon or attached to the towing vehicle, its trailers or dollies or while the property is in the care or custody of the carrier (including while in storage) shall be acknowledged by the carrier, in writing, within five days after receipt of the claim, informing the claimant of the claim number assigned to the claim.
 - 15.4.1 The carrier will pay, refuse payment or make a firm compromise offer within 30 days after receipt of the claim.
 - 15.4.2 This claim procedure shall be followed only on claims falling within a carrier's deductible limits for its cargo and garage keepers' liability policies. Any claims above these limits are to be presented by the claimant or carrier to the carrier's insurance company for disposition.
 - 15.4.3 All claims shall be consecutively numbered and a separate file, with the claim number, shall be established and it shall contain, but not be limited to, the claimant's name, address, make and license plate number of the towed vehicle, date of tow, copy of the tow ticket, date the claim was received, amount of claim and date of disposition of the claim.

Rule 16--Rates and Charges

- 16.1 Every carrier shall file, and keep on file with the Commission, a schedule of rates and charges showing rates and charges for each type of towing and storage service. Storage charges shall be assessed on a per 24-hour basis and not on a per calendar day basis.
- 16.2 Carriers may not change rates and charges until a revised schedule with a new effective date has been filed with the Commission. ~~The effective date must be at least one day after being received by the Commission.~~
- 16.3 All schedules shall be legibly printed or typed on one side only on paper 8 1/2 inches wide and 11 inches high.
- 16.4 All schedules shall show the full name, address, telephone number, storage lot address(s), towing permit number, if issued, and effective date.
- 16.5 The schedule shall be signed by the owner or principal officer.
- 16.6 No carrier shall charge ~~or collect~~ more for any towing and storage service than the rates and charges in its schedule on file with the Commission.
- 16.7 Every carrier shall carry in each vehicle copies of its ~~current~~ schedule of rates and charges. ~~The rates and charges charged by a carrier shall be no greater than those on file with the Commission.~~
- 16.8 If requested by the owner of the motor vehicle, a carrier must provide a copy of its schedule of rates and charges.
- 16.9 ~~The maximum rate that may be charged for the towing of a vehicle with a gross vehicle weight rating of less than 10,000 lbs from private property shall be no greater than \$100.00, which shall include charges for all services rendered including, but not limited to, hookup fees, mileage charges, gate fees, title searches, commissions paid, and all other services rendered in performing such private property tow, except for the use of dollies.~~

- 16.9.1 If dollies are required and used to perform such tows, the maximum additional which may be charged shall be \$25.00.
- 16.9.2 Mileage charges may be assessed for all distances over 15 miles.
- 16.9.3 After the first twenty-four(24) hour period of storage is exceeded, the maximum storage charge for each successive twenty-four(24) hour period shall be no greater than \$15.00.
- 16.9.4 If the owner or operator of a motor vehicle which is parked without authorization on private property attempts to retrieve said vehicle before removal of the motor vehicle from said private property, the maximum release fee(drop charge) shall not exceed \$35.00.
- 16.9.5 The transportation staff of the Commission will conduct a biannual review of the justness and reasonableness of the amounts contained in Rule 16.9 of these rules.

Rule 17--Inspection of Records and Facilities

- 17.1 Books and records concerning the towing and storage operations of any carrier shall be made available upon request during normal business hours to authorized representatives of the Commission.
- 17.2 A carrier's equipment and storage facilities shall be available for inspection without notice, during normal business hours by authorized representatives of the Commission.
- 17.3 Copies of towing bills, storage bills, written records and authorizations for tows shall be retained by the carrier for a minimum of six months.

Rule 18--Rule Exemption

In case of hardship, a carrier may file a written application for relief from any rule, stating the grounds for relief and the Commission, at its discretion, may set the matter for hearing to determine whether to grant the application.