Decision No. R20-0499

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19R-0485TR

IN THE MATTER OF THE PROPOSED RULES REGULATING VEHICLE BOOTING COMPANIES, 4 CODE OF COLORADO REGULATIONS 723-6.

RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE CONOR F. FARLEY ADOPTING RULES

Mailed Date: July 10, 2020

TABLE OF CONTENTS

I. STATEMENT

1. On September 12, 2019, the Public Utilities Commission (Commission) issued the Notice of Proposed Rulemaking (NOPR) that commenced this proceeding.[1] In the NOPR, the Commission proposed to adopt rules that permanently implement the requirement in Senate Bill (SB) 19-236 for the Commission to regulate Vehicle Booting Companies. The purpose of Rules 6806 through 6819 of the Commission's Rules Regulating Transportation by Motor Vehicle,

[1] *See* Decision No. C19-0748 issued in Proceeding No. 19R-0485TR on September 12, 2019.

4 *Code of Colorado Regulations* (CCR) 723-6, is to preserve the health, safety, welfare, and property of the public. As stated in the NOPR, the Commission made the proposed rules, provided with the NOPR in legislative (*i.e.*, strikeout/ underline) format and in final format, available to the public through the Commission's Electronic Filings (E-Filings) system. Finally, the Commission established October 11, 2019, as the deadline for written comments filed by members of the public, scheduled a hearing for October 28, 2019, and referred this proceeding to an administrative law judge (ALJ). The proceeding was subsequently assigned to the undersigned ALJ.

2. Before it issued the NOPR, the Commission established a representative group of participants with an interest in the subject of this rulemaking to participate in the public rulemaking proceedings on the proposed rules, as required by § 24-4-103(2), C.R.S. The members of the representative group received notice of the NOPR, as evidenced by the certificate of service for the NOPR.

3. The following members of the public filed comments before the October 11, 2019, deadline established in the NOPR: Owner-Operator Independent Drivers Association, Inc. (OOIDA); Wyatt's Towing; Towing Done Right, LLC, doing business as Park It Right (Towing Done Right); Colorado Booting; Colorado Security Services, doing business as Colorado Parking Services (CSS); and Dark Sky LLC (Dark Sky) (comments filed at this first stage of this proceeding referred to as Original Comments).

4. The ALJ held the hearing on October 28, 2018 starting at 9:00 a.m. On that day, state government offices in the Denver Metro Area, including the Commission, delayed their opening until 10:00 a.m. due to inclement weather. As a result, the ALJ convened the hearing at 9:00 a.m., but then took a recess until 10:00 a.m. At that time, representatives of Towing Done

Right, Colorado Booting, Dark Sky, and Wyatt's Towing attended the hearing. No other person or entity presented written or oral comments at the hearing.

5. On December 3, 2019, the ALJ issued Recommended Decision No. R19-0961 and attached the rules in redline legislative format and in final format.

6. Colorado Booting and Parking Done Right filed exceptions to Recommended Decision No. R19-0961. Parking Done Right attached seven exhibits to its exceptions. According to the Commission, "[b]oth the exceptions and attachments offer some information that is new to this proceeding."[2]

7. On February 7, 2020, the Commission issued Decision No. C19-0083 that granted the exceptions and remanded the proceeding "so that the ALJ can consider the information and arguments presented in the exceptions."[3] Citing the inclement weather on the day of the public comment hearing held on October 28, 2019, Decision No. C19-0083 "direct[ed] the ALJ to hold an additional public comment hearing to discuss the issues and information presented in these exceptions."[4]

8. On February 13, 2020, The ALJ issued Decision No. R20-0098-I that: (a) established a deadline of March 16, 2020 for additional written comments on the proposed rules; and (b) scheduled an additional hearing to take public comments regarding the proposed rules for April 2, 2020, at 9:00 a.m. Notice of the April 2, 2020, public comment hearing was published in the February 25, 2020 issue of *The Colorado Register* pursuant to the Administrative Procedure Act.[5]

[2] Decision No. C20-0083 issued in Proceeding No. 19R-0485TR on February 7, 2020 at 2 (¶ 3).
[3] *Id*. at 2 (¶ 5).
[4] *Id*. at 2-3 (¶ 5).
[5] § 24-4-103, C.R.S.

9. On March 13, 2020, Parking Done Right filed a Motion to Continue the Hearing (Motion) because counsel for both companies was scheduled to appear at a hearing in Adams County District Court on April 2, 2020 "on a case that cannot in all likelihood be continued."[6] Counsel for Parking Done Right further stated that no other counsel for Parking Done Right was available to appear at the April 2, 2020 hearing in this proceeding.[7] As a result, counsel for Parking Done Right requested in the Motion that the April 2, 2020 public comment hearing be continued to a future date.

10. By minute entry during the Commission's weekly meeting held on March 18, 2020, the Commission referred the Motion to the ALJ.

11. On March 24, 2020, the ALJ issued Decision No. R20-0188-I stating that, in light of the COVID-19 pandemic and the resulting state of emergency issued by Governor Polis on March 19, 2020: (a) the April 2, 2020 public comment hearing would be convened for the sole purpose of continuing the hearing to a later date; (b) interested persons who desire to provide comments at a public comment hearing should **not** attend the April 2, 2020 public comment hearing; (c) those interested persons would be given the opportunity to provide comments at the future continued public comment hearing that will be scheduled as noted above; and (d) the Motion to Continue Hearing filed by Parking Done Right would be addressed by a separate decision on or after April 2, 2020. The ALJ took this action because notice of the April 2, 2020 hearing was provided through the Colorado Register pursuant to the Administrative Procedure Act and there was a reasonable question about whether the April 2 hearing could be continued pursuant to an interim decision.

[6] Motion at 1 (¶ 2).
[7] *Id*. at 1 (¶¶ 2-3).

12. On April 2, 2020, the ALJ convened the public comment hearing that was webcast via https://puc.colorado.gov/webcasts. The ALJ noted the state of emergency, the directives regarding social distancing from federal, state, and local authorities. The ALJ then continued the hearing until May 14, 2020 and requested that any additional written comments be filed by May 7, 2020. Finally, the ALJ denied as moot the Motion to Continue Hearing filed by Parking Done Right due to the decision by the ALJ at the April 2, 2020 public comment hearing to continue the hearing.

13. On April 29, 2020, the ALJ issued Decision No. R20-0318-I that memorialized the decisions made at the April 2, 2020 remote public comment hearing. Specifically, Decision No. R20-0318-I scheduled the continued remote public comment hearing for May 14, 2020 starting at 9:00 a.m., requested additional written comments be filed by May 7, 2020, and denied as moot the Motion to Continue filed by Towing Done Right.

14. Towing Done Right and ITSA Solutions, LLC (Barnacle Parking Enforcement) filed additional written comments by the May 7, 2020, deadline (all comments filed after remand referred to as Comments on Remand). Towing Done Right filed supplemental information in support of its Comments on Remand on May 13, 2020. Colorado Booting filed Comments on Remand on May 14, 2020.[8]

15. The ALJ held the remote public comment hearing on May 14, 2020 starting at 9:00 a.m. At that time, representatives of Towing Done Right, Colorado Booting, Barnacle Parking Enforcement, and Wyatt's Towing attended the hearing and provided oral comments. No other person or entity presented written or oral comments at the hearing.

[8] Colorado Booting titled the document filed on May 14, 2020 "Exceptions Filed By Colorado Booting LLC," which the ALJ construes as Colorado Booting's Comments on Remand.

16. Being fully advised in this matter, the ALJ now transmits to the Commission the record in this proceeding along with a written recommended decision in accordance with § 40-6-109, C.R.S.

II. DISCUSSION

A. Introduction

17. In rendering this Decision, the ALJ has carefully reviewed and considered all the comments filed in this Proceeding and provided at the public comment hearing, even if this Decision does not specifically address every comment made, or every nuance of each comment. In addition, until SB 19-236, the Commission had never regulated the booting industry and, consequently, the current proposed rules are the Commission's first rules that apply to booting. As a result, additional refining of these rules will almost certainly become necessary in the future as the booting industry and the Commission gain experience in the regulation of, and the application of the rules to, the booting industry.

B. Jurisdiction of the Commission to Regulate Vehicle Booting Companies

1. Comments

18. In its Exceptions, Towing Done Right argued that "[v]ehicle booting is not a public utility that the Public Utilities Commission has the authority to regulate." As support, Towing Done Right stated that "[t]he business of vehicle booting is not one that falls under the definition of public utility as it is not a common carrier or any of the corporations listed in 17 C.R.S. 40-1-103(1)(a)."[9] Towing Done Right concludes that "the Public Utilities Commission [] does not have substantial evidence for the need and authority to regulate Vehicle Booting Companies which hardly even exist."[10]

[9] Towing Done Right's Exceptions at 4.

[10] *Id*.

2. Analysis

19. The ALJ disagrees with Towing Done Right's argument that the Commission does not have jurisdiction to regulate vehicle booting companies. Section 40-10.1-801, C.R.S. specifically provides the Commission with such jurisdiction and further states that "[t]he commission may promulgate rules as necessary and reasonable to implement this Part 8, including rules regarding signage and drop fees."[11] As a result, and irrespective of whether they are public utilities, the Commission has the jurisdiction to regulate vehicle booting companies. In addition, the ALJ finds and concludes that the rules addressed in this Recommended Decision are necessary and reasonable to implement Section 40-10.1-801, C.R.S. because they provide the reasonable detail necessary to implement the provisions of that statute.

C. Procedure

1. Comments

20. In its Exceptions and in its Comments on Remand, Towing Done Right suggests that the Commission sent the Notice of Proposed Rulemaking issued in this proceeding almost exclusively to towing companies, and not to booting companies.[12] Towing Done Right argues that towing companies and booting companies are competitors, and that towing companies have advocated for rules in this proceeding that would put booting companies at financial risk. Towing Done Right suggests that the process employed in this proceeding has been unfair, concluding that "[t]he Commission mistakenly assumed the towing industry would represent the interests of this entirely independent area of commerce."[13]

[11] Section 40-10.1-801(4), C.R.S.

[12] Towing Done Right's Exceptions at 2 ("The representative body of interested parties, notified directly of the notice of public rule and setting of the public hearing, are 99% towing industry representatives."). *See also* Towing Done Right's Comments on Remand at 4.

[13] Towing Done Right's Exceptions at 2.

2. Analysis

21. The ALJ disagrees with Towing Done Right's comments in its exceptions concerning the procedure employed in this proceeding. The Commission followed the procedure mandated by statute and its rules in providing notice of this proposed rulemaking proceeding. Towing Done Right does not argue otherwise. In addition, the fact that towing companies were included on the list of entities and individuals who received the NOPR in this proceeding does not, by itself, establish that the procedure used in this proceeding was contrary to the law. In fact, at least some companies (including Towing Done Right) perform both towing and booting operations. Finally, the fact of the matter is that only one towing company that does not currently perform booting operations (Wyatt's Towing) submitted comments in this proceeding. The remainder of the comments were submitted by companies that currently boot vehicles. Accordingly, the ALJ finds and concludes that Towing Done Right's argument that the procedure employed in this proceeding was unfair is unsupported.

D. Proposed Rule 6810 – Applicability

22. Proposed Rule 6810 addresses the applicability of the Vehicle Booting Rules. It specifies that: (a) "Rules 6800–6810 apply to all vehicle booting companies" (6810(a)); (b) municipalities, counties, or state or federal agencies may adopt and enforce additional or more stringent requirements in their agreements with vehicle booting companies than those requirements imposed by the Commissions' rules (6810(b)); (c) vehicle booting companies must obtain a permit from the Commission before engaging in booting operations (6810(c)); and (d) vehicle booting companies may only engage in booting operations on public property pursuant to a written agreement with a municipality, county, or state or federal agency providing the company with permission to do so (6810(d)).

1. Comments

23. Towing Done Right states in its original comments that a towing permit issued pursuant to Rule 6503 should authorize the holder to both tow and boot vehicles. No separate permit should be required to boot vehicles.[14] Otherwise, no commenter took issue with, or proposed revisions to, the proposed language in Proposed Rule 6810(a)–(d).

24. OOIDA proposes to add a subsection to Rule 6810 stating, "[n]o vehicle booting company may boot or immobilize a motor vehicle or commercial motor vehicle that is occupied, unless authorized by a law enforcement officer."[15] As justification, OOIDA refers to Rule 6508(b)(II), which states that "a towing carrier may not come into contact with, hook-up to, or tow a motor vehicle that is occupied, unless the towing carrier is performing rescue or recovery operations for said occupant(s)."[16] OOIDA states that the prohibition in the Towing Rules serves an important public interest in preventing injuries and damage to vehicles and should be incorporated into the Booting Rules.

25. Colorado Booting states that it can be difficult to determine with certainty whether certain types of motor vehicles, such as recreational vehicles or vehicles with tinted windows, are occupied. Colorado Booting states that, if such a rule is adopted, the prohibition be limited to vehicles in which the front seat is occupied.[17]

26. For similar reasons, Barnacle Parking Enforcement advocates for removing the prohibition against booting occupied vehicles. As justification, Barnacle Parking Enforcement states that illegal parking on private property by commercial trucks while the truck drivers rest in

[14] Towing Done Right Comments at 9.
[15] OOIDA Comments at 2.
[16] *Id.*
[17] Colorado Booting Exceptions at 2; Colorado Booting's Comments on Remand at 3.

their trucks to comply with hours of service limitations has become a significant problem. According to Barnacle Parking Enforcement, prohibiting the booting of occupied vehicles without the authorization of law enforcement will place too great of a strain on the resources of law enforcement. The result will be that private property owners will face difficulty in enforcing their private property rights if companies that immobilize vehicles with boots or other immobilization devices (like the Barnacle) cannot immobilize occupied vehicles.[18]

27. Colorado Booting also requested that the rules specify whether an individual can place a boot on a vehicle. Specifically, Colorado Booting asks whether the rules would apply to an individual who purchases a boot and then places it on a vehicle blocking the individual's driveway.[19] Colorado Booting notes that boots are available for purchase by individuals.[20]

2. Analysis

28. As to Towing Done Right's request to delete the requirement of a specific permit for booting operations, the towing rules do not state that a towing permit authorizes both the towing and booting of vehicles. As a result, the Towing Rules would have to be amended to state as much if Towing Done Right's proposal were adopted. In addition, § 40-10.1-801, C.R.S., is a statute that is separate from the statutes governing towing companies. This supports the conclusion that booting is a separate and distinct service from towing and that vehicle booting companies thus must possess a booting permit to engage in booting operations. Accordingly, the ALJ shall not adopt Towing Done Right's request to delete the separate permit requirement in Proposed Rule 6810.

[18] Transcript of May 14, 2020 Public Comment Hearing at 95-99.
[19] Colorado Booting Comments at 1; Transcript of October 28, 2020 Public Comment Hearing at 15-17.
[20] Transcript of October 28, 2020 Public Comment Hearing at 17.

29. OOIDA's argument concerning the booting of occupied vehicles is valid. As with towing operators that attempt to tow an occupied vehicle, booting vehicle companies that attempt to boot an occupied vehicle could lead to damage to the vehicle and injury to both the occupant of the vehicle and the individual applying the boot. A prohibition against placing a boot on an occupied vehicle unless authorized to do so by a law enforcement official is the most reasonable means of mitigating the risk and is in the public interest. Accordingly, OOIDA's proposal shall be adopted with the modification that "or immobilize" and "or commercial motor vehicle" shall be deleted from OOIDA's proposed language for the reasons stated below.

30. Colorado Booting's comment that it can be difficult to determine with certainty whether certain types of vehicles are occupied is fair. However, limiting a vehicle booting company's duty to determine whether the front seat is occupied, particularly with recreational vehicles, could lead to poor results. For example, if the vehicle booting company was only required to confirm that the front seat was vacant, the driver of a recreational vehicle who was sleeping in the back of the vehicle could wake up after the placement of the boot and attempt to drive the vehicle with a boot installed, which would likely cause damage to both the vehicle and the boot. It could be reasonable under those circumstances for the vehicle booting company to loudly and repeatedly knock on the door to the living area of the recreational vehicle (as opposed to the driver-side or passenger-side door) to determine whether it is occupied. As a result, the rule shall specify that a vehicle booting company must make reasonable efforts under the circumstances to determine whether a vehicle is occupied.

31. Barnacle Parking Enforcement's request to delete the prohibition against booting occupied vehicles shall be denied. As an initial matter, Barnacle Parking Enforcement does not use boots to immobilize vehicles. And, no vehicle booting company has advocated against the

prohibition on booting occupied vehicles recommended by OOIDA. While Barnacle Parking Enforcement's concerns regarding parking commercial trucks on private property are legitimate, the ALJ finds and concludes based on the record in this proceeding that eliminating the prohibition on booting occupied vehicles is not in the public interest.

32. Finally, Colorado Booting's request to specify in the rules whether an individual can place a boot on a vehicle shall be denied. As an initial matter, Colorado Booting has not requested any specific revisions to the Proposed Rule based on its request. Further, § 40-10.1-801(1)(a), C.R.S., states in relevant part that "a person shall not operate or offer to operate as a vehicle booting company in intrastate commerce without first having obtained a permit from the commission." Similarly, "vehicle booting company" is defined in § 40-10.1-101(22), C.R.S., as "a private corporation, partnership, or sole proprietor in the business of immobilizing a motor vehicle through use of a boot." The Proposed Rules accurately reflect the requirements for, and limitations on, every "person" who "operate[s] or offer[s] to operate as a vehicle booting company in intrastate commerce" contained in §§ 40-10.1-101(22) and 40-10.1-801, C.R.S. Accordingly, no revisions to the proposed Rules based on Colorado Booting's comment shall be made.

E. Proposed Rule 6811 – Definitions

33. Proposed Rule 6811(b) mirrors the definition of "vehicle booting company" provided by § 40-10.1-101(22), C.R.S. Proposed Rule 6811(a) provides a definition of "boot or booting" that follows from the definition of "vehicle booting company" insofar as it means "to place a wheel immobilization device."

1. Comments

34. OOIDA, Wyatt's Towing, Colorado Booting, Dark Sky, and Towing Done Right request that the definition of "vehicle booting company" be expanded to include all companies that use any type of device to immobilize a vehicle. They also propose to amend the definition of "boot or booting" to include any vehicle immobilization device, not just a device that attaches to a vehicle's wheel in order to immobilize the vehicle.[21] Finally, OOIDA also proposes to add a definition of "commercial motor vehicle" for the purpose of "clarify[ing] that these proposed rules would in fact apply to commercial motor vehicles."[22] Each proposed amendment is addressed in turn.

2. Analysis

a. Vehicle Immobilization Companies/Devices

35. As noted, OOIDA, Wyatt's Towing, Colorado Booting, Dark Sky, and Towing Done Right propose to expand the definitions of "vehicle booting companies" and "boot or booting" to encompass all vehicle immobilization devices and companies that place such devices. In particular, the intent of OOIDA, Wyatt's Towing, Colorado Booting, Dark Sky, and Towing Done Right in proposing these changes is so that the Commission's "booting rules" will apply to "The Barnacle" and "The Club," both of which are vehicle immobilization devices.[23] The Barnacle attaches to the windshield of a vehicle and thereby blocks the driver's view of the road. The Club attaches to the steering wheel and prevents the driver from safely using the steering wheel. According to OOIDA,

> If the CO PUC is unable to address this issue as a result of an overly narrow legislative definition, it would create a tremendous loophole and undermine

[21] OOIDA Comments at 2; Wyatt's Towing Comments at 1-2; Colorado Booting Comment at 1; Dark Sky at 1; Towing Done Right Exceptions at 2.

[22] OOIDA Comments at 1.

[23] *See*, *e.g.*, Towing Done Right's Exceptions at 2.

> the effectiveness of the entire proposed rule. In short, business engaged in immobilizing motor vehicles could simply change the method in which they immobilize a vehicle and subvert the proposed rule.[24]

36. The proposals by OOIDA, Wyatt's Towing, Colorado Booting, Dark Sky, and Towing Done Right requires interpretation of §§ 40-10.1-101(22) and 40-10.1-801, C.R.S. The goal of statutory interpretation is to give effect to the intent of the General Assembly. The language of the statute must be read and considered as a whole, and it should be construed to give consistent, harmonious, and sensible effect to all its parts.[25] Words and phrases must be given their plain and ordinary meaning.[26] Where statutory language is unambiguous, resort to other rules of statutory interpretation is unnecessary and the language is applied as written.[27]

37. If the statutory language is ambiguous, however, additional tools of statutory construction are employed.[28] These tools include the consequences of a given construction, the end to be achieved by the statute, and the circumstances surrounding the statute's adoption.[29] One of the best guides is the context in which the statutory provisions appear.[30]

38. A statute is ambiguous if it is reasonably susceptible to multiple interpretations that lead to different results.[31] "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole."[32]

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[24] *Id.* at 2.

[25] *Safehouse Prog. Alliance for Nonviolence, Inc. v. Qwest Corp.*, 174 P.3d 821, 826 (Colo. App. 2007).

[26] *In re Miranda*, 289 P.3d 957, 960 (Colo. 2012).

[27] *Foiles v. Whittman*, 233 P.3d 697, 699 (Colo. 2010).

[28] *Larrieu v. Best Buy Stores, L.P.*, 303 P.3d 558, 561 (Colo. 2013).

[29] *Bostelman v. People*, 162 P.3d 686, 690 (Colo. 2007); *Williams v. Kunau*, 147 P.3d 33, 36 (Colo. 2006).

[30] *St. Vrain Valley Sch. Dist. RE-1J v. A.R.L.*, 325 P.3d 1014, 1019 (Colo. 2014).

[31] *See A.M. v. A.C.*, 296 P.3d 1026, 1030 (Colo. 2013).

[32] *People v. Diaz*, 347 P.3d 621, 625 (Colo. 2015).

39. Here, §§ 40-10.1-101(22) and 40-10.1-801, C.R.S., clearly and unambiguously apply to "vehicle ***booting*** companies" that are "in the business of immobilizing a motor vehicle ***through the use of a boot***."[33] They do not apply to vehicle ***immobilization*** companies that are in the business of immobilizing a motor vehicle through the use of any device that accomplishes that outcome. Moreover, a "boot," as that term is used in § 40-10.1-101(22), C.R.S., is a device that is applied to the wheel of a vehicle to immobilize the vehicle. A "boot" is not a general term that denotes ***all*** devices used to immobilize a vehicle irrespective of whether they are applied to a wheel. The amendment proposed by OOIDA, Wyatt's Towing, Colorado Booting, Dark Sky, and Towing Done Right is, therefore, denied.

b. Commercial Motor Vehicles

40. As noted, OOIDA requests the addition of a definition of "commercial motor vehicle" to Proposed Rule 6811. OOIDA also asks that Proposed Rule 6817 be amended "by adding the words 'or commercial motor vehicle' after 'motor vehicle' in 6817(a), 6817(a)(II), and 6817(a)(III)."[34] The purpose of these proposed amendments is to clarify that the rules apply to the booting of commercial motor vehicles.

41. Rule 6001(ddd) defines "Motor Vehicle" as "any automobile, truck, tractor, motor bus, or other self-propelled vehicle or any trailer drawn thereby." This definition, which is the same as the definition provided in § 40-10.1-101(11), C.R.S., "applies throughout this Part 6, except where a specific rule or statute provides otherwise." "Part 6" is the part of the Commission's Rules that apply to "regulated entities providing transportation by Motor Vehicle."[35]

[33] § 40-10.1-101(22) (emphases added).
[34] OOIDA's Comments at 1.
[35] Rule 6000.

42. Rule 6001 does not contain a definition of "Commercial Motor Vehicles." Instead, it directs the reader to Rule 6101 for a definition of that term. Rule 6101(b) states that a "Commercial Motor Vehicle" is:

> a self-propelled or towed vehicle used in commerce on the public highways and is operated by a Fully Regulated Intrastate Carrier or a Limited Regulation Carrier that: has a Manufacturer's Gross Vehicle Weight Rating or Gross Combination Weight Rating of at least 10,001 pounds or is designed or used to transport more than 15 Passengers including one Driver.

This definition, and the others in Rule 6101, "apply to all Motor Carriers subject to these safety rules," which are Rules 6100-6117.

43. Elsewhere, Rules 6008(a)(I) and 6008(a)(II) refer to "commercial Motor Vehicle liability insurance coverage" and "commercial Motor Vehicle liability coverage" to identify the type of insurance coverage (commercial) that all "Motor Carriers" must keep in force while they operate pursuant to authority granted by the Commission. Rule 6015(b) specifies that "Commercial Motor Vehicles" that are subject to federal regulation concerning the "identification of vehicles" pursuant to 49 U.S.C. § 14506 are not subject to the vehicle marking/identification requirements in Rule 6015(a).

44. Notably, while the Commission's Towing Rules contain numerous references to "motor vehicle," they do not contain any reference to "commercial motor vehicle." In fact, the Towing Rules define "Towing" as "the act of transporting a motor vehicle or trailer on or behind a tow truck,"[36] and "Nonconsensual tow" as "the transportation of a motor vehicle by tow truck if such transportation is performed without the prior consent or authorization of the owner or operator

[36] Rule 6501(p).

of the motor vehicle."[37] No distinction is drawn in the Towing Rules between the towing of commercial motor vehicles and motor vehicles.

45. Based on the foregoing, it is apparent that the Commission intended the more general definition of "Motor Vehicle" in Rule 6001(nnn) to apply to all of the Transportation Rules, and the application of the more specific "Commercial Motor Vehicle" definition to be limited to the Safety Rules. This conclusion is based on the structure and plain meaning of the rules, and the fact that, with one irrelevant exception noted above, the remainder of the Rules – including the Towing Rules – do not employ or refer to "Commercial Motor Vehicles." The ALJ thus concludes that it is appropriate to maintain the structure of the Transportation Rules and not introduce the same or a similar definition of "Commercial Motor Vehicle" from the Safety Rules into the Booting Rules. This conclusion is reinforced by the fact that introducing such a definition of "Commercial Motor Vehicle" into the Booting Rules could introduce ambiguity into the meaning of the Transportation Rules as a whole, and/or the Towing Rules in particular. Accordingly, the ALJ shall not adopt OOIDA's requests to add a definition of "Commercial Motor Vehicle" to Proposed Rule 6811, or "or commercial motor vehicle" after "motor vehicle" in Proposed Rules 6817(a), 6817(a)(II), and 6817(a)(III).

F. Proposed Rule 6812 – Permit Applications

46. Proposed Rule 6812 establishes the application process for obtaining a permit to provide vehicle booting service pursuant to § 40-10.1-801, C.R.S. Among other things, it states that an applicant must file an application fee that will be "determined by the Director and approved by the Department of Regulatory Agencies Executive Director's Office."[38]

[37] Rule 6501(i).

[38] Proposed Rule 6812(a)(1).

1. Comment

47. Dark Sky and Colorado Booting request that the application fee be specified in the Proposed Rule 6812.[39] Colorado Booting also asks that a time limit for the Commission's consideration of a pending application be specified in the rule.[40] As noted above, Towing Done Right argues that a towing permit issued pursuant to Rule 6503 should authorize the holder to both tow and boot vehicles. According to Towing Done Right, no separate booting permit should be required.[41]

2. Analysis

48. The application fee of $150 is specified in § 40-10.1-111(c)(I), C.R.S. As a result, it is necessary to remove the language from the proposed rule that an applicant must pay an annual application fee "as determined by the Director and approved by the Department of Regulatory Agencies Executive Director's Office."

49. In addition, Proposed Rule 6812(a)(II)– (IV) shall be amended to specify the requirements for: (a) "the filing of proof of compliance with worker's compensation insurance coverage in accordance with the 'Worker's Compensation Act of Colorado', articles 40 to 47 of title 8." of the Colorado Revised Statutes; and (b) compliance with "the financial responsibility requirements of [] Title 40."[42] The requirements for filing proof of compliance with the worker's compensation insurance coverage requirement are the same as those required of towing carriers.[43] The amendment addressing financial responsibility provides clarity to booting vehicle companies by specifying that general liability coverage of $100,000 or a surety bond providing the same level

[39] Dark Sky Comments at 1; Colorado Booting Comments at 2.
[40] Colorado Booting Comments at 2.
[41] Towing Done Right Comments at 9.
[42] § 40-10.1-801(3)(a), C.R.S.
[43] *See* Rule 6008(a)(V).

of coverage satisfies their financial responsibility requirements. Finally, the amendment specifies the requirements for filing proof of financial responsibility, which are the same as those required of movers.[44]

50. The requests by Dark Sky and Colorado Booting shall be denied. Including the application fee in the rules when it is specified in § 40-10.1-111(c)(I), C.R.S. would require a rule change in the event that that statute is amended to change the application fee, or § 40-10.1-111(c)(I), C.R.S. is moved elsewhere in the Colorado Revised Statutes. Similarly, Colorado Booting has not suggested or otherwise established that the Commission permit application process for limited regulation carriers, towing carriers, household goods movers, transportation network carriers, or large market taxicab service carriers takes an unreasonable amount of time. Finally, Towing Done Right's request to eliminate the requirement for a separate booting permit is denied for the reasons stated above.

G. Proposed Rule 6813 – Criminal History Checks

51. Proposed Rule 6813 establishes qualification requirements for persons applying for a vehicle booting company permit via criminal history background checks. Towing Done Right reiterates its argument that a company that has received a towing permit should not be required to obtain a separate booting permit.[45] Otherwise, no commenter has requested any changes to Proposed Rule 6813. Accordingly, and because Towing Done Right's argument has been rejected for the reasons stated above, no changes shall be made to Proposed Rule 6813.

[44] *See* Rule 6008(a)(VI).

[45] *Id*.

H. Proposed Rule 6814 – Equipment and Accessories

52. Proposed Rule 6814 addresses the way a vehicle booting company must identify their equipment and employees while in the performance of their duties. It is designed to allow the identification of the vehicle booting company responsible for installing the boot on a vehicle. The proposed rule requires the display of the name, address, permit number, and phone number of the vehicle booting company on each side of the vehicle booting company's vehicle.

1. Comments

53. CSS, Colorado Booting, and Dark Sky request the deletion of the requirement that the vehicle display the address of the vehicle booting company.[46] All characterize this as a safety issue because, unlike towing companies, vehicle booting companies are not required to have storage lots for towed vehicles and thus can be, and often are, operated from the residences of the owners of the vehicle booting companies. Providing the home address of the owner of the vehicle booting company could lead to retaliation by individuals whose vehicles have been booted. CSS and Dark Sky further comment that the Commission's permit application will require them to provide the physical address of the vehicle booting company.[47] As a result, individuals whose vehicles have been booted can obtain the address of the vehicle booting company from the Commission.

54. Towing Done Right requests the addition of a provision to Proposed Rule 6814 requiring booting company employees to "wear uniforms with contrasting lettering listing the company name clearly visible from a distance of 25 feet."[48]

[46] Colorado Booting Comments at 4; CSS Comments at 2; Dark Sky Comments at 1.

[47] CSS Comments at 2; Dark Sky Comments at 1.

[48] Towing Done Right Comments at 9.

2. Analysis

55. The proposals of CSS, Colorado Booting, and Dark Sky shall be adopted. Situations in which a vehicle has been booted can lead to anger and the desire to retaliate against the vehicle booting company. Including the address of the vehicle booting company, which can be the home address of the vehicle booting company's owner, on the company's vehicles can provide the information necessary to carry out the retaliation. The benefit of requiring the address to be included on the vehicle booting companies' vehicles is outweighed by the risks, particularly given the operator of a booted vehicle can obtain the address of the vehicle booting company from the Commission, typically significantly after the booting has occurred and anger has subsided. Accordingly, the address requirement in Proposed Rule 6814 shall be deleted.

56. Towing Done Right's request to require all vehicle booting company employees wear uniforms shall be denied. The requirement that a vehicle booting company's vehicle have the name and telephone number of the company is sufficient means for identifying the vehicle booting company.

I. Proposed Rule 6815 – Authorization for Booting

57. Proposed Rule 6815 authorizes a vehicle booting company to act as an authorized agent for a property owner and sets the minimum requirements for the vehicle booting company to operate under a written agreement with the property owner.

1. Comments

58. Wyatt's Towing requests three changes to Proposed Rule 6815. First, Wyatt's Towing requests to delete the requirement that a written agency agreement have an ending date of the agreement, stating that this proposed requirement serves no purpose.[49] Second, Wyatt's Towing

[49] Wyatt's Towing Comments at 2.

requests to delete Proposed Rule 6815(a)(1)(G) that requires the written agreement to contain a provision acknowledging the property owner's "responsibility for the actions of the vehicle booting company as its agent." As justification, Wyatt's Towing states that "[t]he Commission does not have regulatory authority over private property owners and therefore cannot require them to take responsibility for the actions of the booting company."[50] Third, Wyatt's Towing proposes to add a provision to Proposed Rule 6815 requiring a written agreement to have a list of reasons the vehicle booting company may apply a boot to a vehicle on the property, which Wyatt's Towing states would provide protection to the owners of vehicles by removing discretion from the vehicle booting company to apply boots.[51]

59. Towing Done Right states that the requirements of this rule should mirror the requirements for towing companies, but does not identify any differences or propose alternative language.[52]

2. Analysis

60. The ALJ shall deny Wyatt's Towing's request to delete the requirement that the written agreement have a specific ending date, and to add a requirement that the written agreement must specify the authorized reasons to place a boot. The ending date requirement aids in determining whether the property owner authorized the placement of a boot. As to the specification of the authorized reasons to place a boot, the Commission's Towing Rules do not contain such a requirement. The ALJ notes that Proposed Rule 6815 contains the minimum requirements for written agency agreements. Property owners and vehicle booting companies may

[50] *Id.* at 2.
[51] *Id.* at 2-3.
[52] Towing Done Right Comments at 9.

include a provision listing the authorized reasons to place a boot provided it does not conflict with the Commission's Booting Rules or §§ 40-10.1-101, 801, C.R.S.

61. The ALJ shall adopt the request by Wyatt's Towing to delete the requirement that the written agreement contain a provision acknowledging the property owner's "responsibility for the actions of the vehicle booting company" as its agent.[53] In so doing, the ALJ expresses no opinion concerning whether the Commission has regulatory authority over the contracts between vehicle booting companies and property owners concerning the booting of vehicles on the owner's property. Instead, as Proposed Rule 6815(a)(III) acknowledges, there is a well-developed body of law governing the principal-agent relationship and the duties of each to third parties. Accordingly, the ALJ concludes that it is in the public interest to delete Proposed Rule 6815(a)(I)(G) to avoid any ambiguity or confusion concerning the duties imposed by the existing law governing the principal-agent relationship. In addition, the ALJ shall make changes to Proposed Rule 6815(a)(III) to make it clearer and more consistent with Rule 6508(a)(III) of the Towing Rules.

J. Proposed Rule 6816 – Booting Notice and Invoices

62. Proposed Rule 6816 requires a vehicle booting company to use an invoice when booting a vehicle and establishes the minimum required information that must be included on the invoice. Additionally, Rule 6809 requires a vehicle booting company to place notice of a boot on a booted vehicle.

[53] Wyatt's Towing Comments at 2.

1. Comments

63. Towing Done Right requests that Proposed Rule 6816 specify that the boot record/invoice addressed therein may be maintained electronically or in hard copy. Towing Done Right states that it maintains its records electronically, and not in hard copy.[54]

64. CSS, Dark Sky, and Colorado Booting request the deletion of the requirement in Proposed Rule 6816(a)(IV) that the vehicle booting company record on the invoice the vehicle identification number (VIN) of a booted vehicle because the VIN can be obscured intentionally or inadvertently by the vehicle operator/owner or by ice on the windshield.[55] CSS also requests the deletion of the requirement in Proposed Rule 6816(a)(VI) that the printed name and signature of the individual who places the boot be on the invoice to protect the individual from retaliation. CSS suggests that initials or a code be used that identifies the individual, but does not allow the owner or operator of the booted vehicle immediately to determine his/her identity.[56]

65. As to Proposed Rule 6816(a)(VII), Dark Sky requests the deletion or modification of the requirement that the vehicle booting company obtain the signature of the "owner, authorized operator, or other authorized person to whom the motor vehicle is released [] when the boot is removed." Such a change will accommodate paperless operation, and the self or remote release of the boot without the presence of an individual from the vehicle booting company.[57] Towing

[54] Transcript of May 14, 2020 Public Comment Hearing at 22-30.

[55] CSS Comments at 2; Dark Sky Comments at 2; Colorado Booting Exceptions at 1 (Colorado Booting also states that sometimes a vehicle does not display a license plate, and requested that either the VIN or the license plate be required, but not both).

[56] CSS Comments at 2.

[57] *See* Dark Sky Comments at 2. Self-release means that the vehicle booting company provides a code to the driver of the booted vehicle who can then input the code into the boot to release it. Remote release means that the vehicle booting company releases the boot from a location remote from the booted vehicle. In both cases: (a) the driver who releases the boot must return the boot to a centralized collection point; and (b) the vehicle booting company avoids confrontations with the drivers of booted vehicles during the release of the vehicle. *See* Towing Done Right Comments at 6; Transcript of May 14, 2020 Public Comment Hearing at 92-97.

Done Right states that it has invented a boot that employs "remote release technology" that remotely releases a boot after electronic payment of the release fee.[58]

66. Alternatively, Wyatt's Towing and Colorado Booting request that Proposed Rule 6816(a)(VII) be modified to allow the vehicle towing company to indicate that the owner, authorized operator, or other authorized person to whom the motor vehicle is released refuses to sign the invoice.[59]

67. Colorado Booting, CSS, and Towing Done Right take issue with the requirement in Proposed Rule 6816(d) that the warning sign placed on the driver's side of the vehicle be a square with a length and width of at least eight inches.[60] According to Colorado Booting, such signs are currently not available on the market, and the closest size that is commercially available is six inches by eight inches. Colorado Booting also states that certain adhesives combined with plastic or vinyl signs will not stick to a window when the temperature is less than or equal to "0 degrees" and/or there is frost on the window. Finally, Colorado Booting states that making the vehicle towing company responsible for removing the warning sign and/or adhesive from the window is problematic because Colorado Booting has been accused of damaging windows when it has attempted to remove adhesive in the past.[61]

68. Similarly, CSS and Towing Done Right state that the minimum size of the warning notice should be 4 inches by 5.5 inches.[62] CSS states that using a sticker larger than 4 inches by

[58] Towing Done Right Comments at 3.

[59] Wyatt's Towing Comments at 3; Colorado Booting Comments at 5.

[60] Transcript of October 28, 2020 Public Comment Hearing at 11; CSS Comments at 2; Towing Done Right Comments at 8.

[61] Transcript of October 28, 2020 Public Comment Hearing at 7-12.

[62] Towing Done Right Comments at 8.

5.5 inches "adds to frustration by the employee having to remove the sticker."[63] Towing Done Right states that using larger warning notices makes vehicle owners irate and "create[s] liability issues by limiting visibility."[64]

69. CSS and Colorado Booting request the deletion of the limitation in Proposed Rule 6816(f) that a vehicle booting company "may apply no more than one boot . . . to a vehicle at any given time." CSS and Colorado Booting employ boots that do not cover the lug nuts of the wheel of a vehicle. Both have experienced the situation in which a single booted wheel has been removed, and a spare tire installed in its place, to defeat the immobilization of the vehicle without paying a release fee. As a result, both companies apply two boots on each vehicle to ensure against such tactics and the loss of their boots.[65]

70. Colorado Booting requests the addition of provisions specifying that boots are private property and any damage to, or theft of, a boot should be investigated as such. Further, Colorado Booting argues that a vehicle booting company should not be responsible for removing a boot that has been damaged by the driver/owner of the booted vehicle.[66]

71. Finally, Wyatt's Towing requests that a modified version of Rules 6508(III), (IV), and (V) be incorporated into the Booting Rules.[67] Rules 6508(III), (IV), and (V) state that a nonconsensual tow may not be performed unless notice is provided of parking restrictions and that a vehicle violating the restrictions will be booted, and goes on to provide the minimum requirements for providing notice through the use of signs.

[63] CSS Comments at 2.
[64] Towing Done Right Comments at 8.
[65] CSS Comments at 2; Colorado Booting Comments at 6.
[66] Colorado Booting's Comments on Remand at 2.
[67] Wyatt's Towing at 3.

2. Analysis

72. Proposed Rule 6816(a) shall be modified to specify that boot record/invoices may be maintained electronically or in hard copy. Such a requirement shall not have any impact on the content required to be recorded on the record/invoice of each boot applied by a vehicle booting company.

73. As to the content of the boot record/invoices specified in Proposed Rule 6816(a), subsection (IV) shall be modified to state that the VIN and license plate of a booted vehicle must only be recorded to the extent they are observable.

74. In addition, Proposed Rule 6816(a)(VI) shall be modified to require the initials of the individual authorizing the application of the boot, but not the name of the individual. CSS raises a valid point that inclusion of the individual's name could lead to retaliation against that individual. The risk of that happening outweighs the need for the name of the individual on the boot record/invoice, particularly when the initials of the individual are included.

75. Similarly, Proposed Rule 6816(a)(VII) shall be modified to require only the name (and not the signature) of the "owner, authorized operator, or other authorized person to whom the motor vehicle is released [] when the boot is removed," and Proposed Rule 6816(e) shall be deleted. Forcing a company that employs self-release or remote release technology to obtain the signature of the vehicle operator and to remove the warning sign on the vehicle could reduce or eliminate the savings in operating costs realized by vehicle booting companies through the use of such technology. As a result, the ALJ concludes that it is in the public interest to modify Proposed Rule 6816(a)(VII) and delete Proposed Rule 6816(e) as described above. The modification of Proposed Rule 6816(a)(VII) renders moot the request to modify the rule to address situations in which the vehicle operator refuses to sign the invoice.

76. The requirement in Proposed Rule 6816(d) that the warning sign placed on a vehicle be a square with a side length of at least eight inches shall be modified so that the length and width shall be at least six inches and eight inches. The loss of two inches in one of the dimensions of the rectangular warning sign will not materially impact its visibility. However, the ALJ concludes that lowering the dimensions of the rectangular sign to 4 inches by 5.5 inches does increase the likelihood that the driver of the booted vehicle will not see the sign before attempting to drive the vehicle.

77. Proposed Rule 6816(d) shall also be modified to specify that a vehicle booting company shall, if the circumstances warrant, place more than one warning sign on a vehicle to increase the likelihood that the warning will be seen by a driver before attempting to drive the booted vehicle. At the public comment hearing on May 14, 2020, Colorado Booting and Barnacle Parking Enforcement provided comments concerning the inherent difficulties of determining whether a recreational vehicle, a commercial truck, or a vehicle with tinted windows is occupied by a sleeping driver.[68] Under the circumstances in which such a vehicle is so occupied, placing a warning sign on the driver's window may not be sufficient to warn the driver that the vehicle is booted when he/she wakes up and accesses the driver's seat from inside the vehicle. Accordingly, specifying that the vehicle booting company shall place more than one warning sign on a vehicle if the circumstances warrant is in the public interest. Obviously, a vehicle booting company employee individual should not take unreasonable risks in placing the warning sign(s).[69]

78. Proposed Rule 6816(f) shall be modified to allow a vehicle booting company to place more than one boot on a vehicle, but will allow the company to charge only one release fee

[68] Transcript of May 14, 2020 Public Comment Hearing at 81, 96-102.

[69] *See infra* for comments by Barnacle Parking Enforcement concerning the danger of placing and releasing a Barnacle on the windshield of certain commercial trucks.

for the removal of all of the boots. The rule shall also be modified to specify that only one vehicle booting company may place one or more boots on a vehicle at a time. Such changes protect both the vehicle booting companies in not losing boots and/or not receiving payment for the booting of a vehicle, and the operator's interest in preventing a vehicle booting company from taking advantage of a situation in which his/her vehicle has already been booted.

79. The request by Wyatt's Towing to incorporate into the Booting Rules a modified version of Rules 6508(III), (IV), and (V) shall be granted. Ensuring that vehicle operators are provided notice of parking restrictions and that a vehicle violating the restrictions will be booted, and the phone number and identity of the vehicle booting company that has booted the operator's vehicle, is in the public interest.

80. The ALJ shall deny Colorado Booting's request to adopt a provision stating that any damage to a boot by a vehicle driver/owner shall be investigated as damage to, or theft of, private property. Such a request is arguably beyond the jurisdiction of the Commission and is better directed to state and local law enforcement authorities. Similarly, Colorado Booting's request for a provision specifying that a vehicle booting company is not responsible for removing a boot from a vehicle that has been damaged by the driver/owner of the vehicle shall be denied. No workable provision has been proposed and the ALJ finds and concludes that under these circumstances adopting such a provision is not in the public interest.

81. Finally, the request to delete the requirement in Proposed Rule 6816(a)(IV) for the vehicle's VIN to be included on the boot record/invoice is denied. The inclusion of the VIN on the invoice is useful in both identifying the vehicle and matching the invoice to the vehicle. However, the requirement to include the VIN (and the license plate) shall apply only if it is

observable. With that qualification, it is not in the public interest to delete the requirement for the inclusion of the VIN on the boot record/invoice.

K. Proposed Rule 6817 – Rates and Charges

82. Proposed Rule 6817 establishes the rates that a vehicle booting company can charge and requires a release fee for a reduced rate before completion of a full installation of a boot. The proposed maximum rate of $120 is suggested based upon a mean average of current rates allowed by municipal ordinance in the City and County of Denver (Denver) ($100) and the Town of Avon (Avon) (75 percent of base tow rates, currently $135).

1. Comments

83. CSS asserts that the vehicle booting charge "should be in line with the current rates for a tow not including mileage and fees, since our operating costs are nearly identical."[70] Under the Commission's Towing Rule 6511, the current maximum base rates for a tow can range from $180 to $325, depending on the gross vehicle weight rating of the towed vehicle.[71]

84. Wyatt's Towing states that the capital and labor costs of operating a vehicle booting company are much lower than for a towing company and that the maximum boot release rate(s) should reflect as much.[72] Wyatt's Towing also criticizes the means by which the Commission established the rate for booting, arguing that the rate(s) should be set "that are reflective of the costs of doing business plus an appropriate profit margin."[73] Wyatt's Towing states that, in setting rates, the Commission should collect information regarding a typical booting company's cost of doing business.[74] Wyatt's Towing recommends that the Commission set separate prices for

[70] CSS's Comments at 2.
[71] Rule 6511(b)(I).
[72] Transcript at 29-30.
[73] Wyatt's Towing at 3-4.
[74] *Id*. at 4.

"traditional immobilization, which typically requires two visits to the property (one to place the boot and another to release it)," and immobilization using a self-release or a remote release boot, which does not require a visit to release the vehicle.[75] Finally, Wyatt's Towing asserts that the booting rates "should be adjusted annually by the Consumer Price Index [CPI] or [some] other index reflective of changes in operating costs."[76] Wyatt's Towing states that it has not used boots to immobilize vehicles for two to three years, but when it did, it charged $50. However, booting was not Wyatt's Towing's primary business. Instead, Wyatt's Towing used boots to immobilize vehicles in situations in which more vehicles in a lot had parked without authorization than Wyatt's Towing could tow at one time. Wyatt's Towing would boot the remaining vehicles until its tow trucks could return to the lot after towing other vehicles.[77]

85. Dark Sky agrees with Wyatt's Towing that the rate(s) should be adjusted on an annual basis through application of the CPI. Dark Sky also asserts that an extra "fee" should be imposed for "possible equipment damage" because "attempting to collect damages from someone who illegally removed [a] boot" and thereby damaged it is "almost impossible after the fact."[78]

86. Towing Done Right disagrees with Wyatt's Towing and presented information purportedly establishing that the costs of operating a vehicle booting company and a towing company are analogous.[79] Towing Done Right proposes different rates for commercial and residential booting. According to Towing Done Right, commercial booting is conducted in large

[75] *Id*.

[76] *Id*. at 5.

[77] Transcript at 21-22.

[78] Dark Sky Comments at 2.

[79] *See generally* Towing Done Right Exceptions; Towing Done Right Comments on Remand, Exs. D, E, F, G.

parking lots for commercial properties, such as shopping malls. Residential booting is conducted at apartment and condominium complexes and for home-owner associations. According to Towing Done Right, the commercial properties at which commercial booting takes place tend to be clustered closer together than the apartment and condominium complexes and developments governed by home-owner associations at which residential booting takes place. Towing Done Right contends that, because of these differences, the costs of residential booting are higher than for commercial booting, because residential booting operations require the operators to drive further between the properties they service. In addition, Towing Done Right states that the owners/managers of the apartment and condominium complexes and the home-owner associations that hire Towing Done Right to perform residential booting tend to require Towing Done Right to focus more on the education of the residents concerning parking restrictions and less on booting. Towing Done Right thus concludes that not only does residential towing have higher costs, but also lower revenues. According to Towing Done Right, if the rate for booting is set too low, Towing Done Right (and other vehicle booting companies) will not be able to make a profit and will focus instead on towing at residential properties, which is not in the public interest.[80]

87. Based on the foregoing, Towing Done Right requests that the rate for commercial booting be "at least" $150, which Towing Done Right contends is approximately the rates set by Denver in 2001 ($100) and Avon ($120) in 2008 adjusted for inflation.[81] For residential towing, Towing Done Right recommends that the rate be at least $175.[82] Currently, Towing Done Right

[80] Transcript of May 14, 2020 Public Comment Hearing at 41-47.

[81] Towing Done Right Comments at 9-10.

[82] Transcript of May 14, 2020 Public Comment Hearing at 41-42. *But see* Towing Done Right Exceptions, Ex. B (letter from the President of the Quail Crossing Townhomes HOA stating that "Park-it-Right informs us that they will not be able to stay in the remote release vehicle booting business for that [$120] and, at the time, $150 is what they require.").

charges $175 for the self-release of a boot and $225 if the vehicle operator requests Towing Done Right to release the boot in-person.[83]

88. Barnacle Parking Enforcement states that the price of immobilizing a commercial truck with a Barnacle device is significantly higher than for immobilizing a non-commercial vehicle. The reason is that the company that applies the Barnacle to the commercial truck must remain near the truck to release it when the driver returns/wakes up. While the Barnacle has self-release technology, the height of the windshield on commercial trucks can make it dangerous for the drivers of those trucks to attempt to release the Barnacle themselves. As a result, using a Barnacle to immobilize and then release a commercial truck takes more time than the immobilization and then release of other vehicles. Barnacle Parking Enforcement thus advocates for a higher rate for the immobilization and then release of a commercial truck.[84]

89. Finally, Colorado Booting is charging $140 for a boot release in Eagle County, $120 in Avon, $250 at two private properties in Vail, and $100 at a federally subsidized housing property.[85]

2. Analysis

90. After careful consideration of the comments submitted in this proceeding, the ALJ shall modify the booting rate specified in Proposed Rule 6817. Numerous comments made in this proceeding address the appropriate maximum booting rate. Those comments are not consistent in their recommendations or the reasons therefor. However, what is clear is that some vehicle booting companies have charged above the $120 rate stated in Proposed Rule 6517, one is charging $120

[83] Transcript of October 28, 2019 Public Comment Hearing at 24.
[84] Transcript of May 14, 2020 Public Comment Hearing at 97-98.
[85] Transcript of October 28, 2019 Public Comment Hearing at 27-28.

for some, but not all, booting, and two have charged below that level, albeit in one case booting was employed to serve its primary towing business (Wyatt's Towing).

91. As noted above, Towing Done Right has provided a comparison of the capital and operating costs of a towing and booting company. While that comparison may accurately reflect the costs of carrying out Towing Done Right's business plan, it does not appear that all other vehicle booting companies have the same cost structure. In addition, and notwithstanding the information supplied by Towing Done Right, it seems logical that the increased use of self and remote release technology will lead to a decrease in the operating costs of vehicle booting companies.

92. The ALJ declines to set separate rates for remote release and in-person release. Such a rate structure could lead to disputes over whether the remote release mechanism had malfunctioned, thus requiring an in-person release. In addition, remote release allows the vehicle operator to regain possession of the booted vehicle much sooner than if he/she waits for an in-person release. As a result, the vehicle operator of a booted vehicle already has a significant incentive to use the remote release option. Adding a cost incentive for consumers thus appears to be unnecessary for the vehicle booting company to realize the benefit of lower operating costs resulting from the investment in self and remote release technology.

93. Likewise, the ALJ will not set separate rates for commercial and residential booting, as defined by Towing Done Right. No commenter has provided a workable definition or framework for distinguishing between commercial and residential booting for enforcement purposes. It also has not been established that the costs of providing booting services to residential properties is higher than providing the same services for commercial properties in all situations.

As a result, there is an insufficient record in this proceeding to justify setting separate rates for commercial and residential booting.

94. Based on the foregoing, the ALJ finds and concludes that information supplied in this proceeding supports changing the maximum booting rate in Proposed Rule 6817 to $160. Such a rate should provide the revenue necessary to allow vehicle booting companies to efficiently provide booting services to the public, while still being significantly lower than a comparable tow. It is important to note that the rate set in Rule 6817 is a maximum rate. Information supplied in this proceeding establishes that the consumers of booting services (owners of apartment and condominium complexes and HOAs) have negotiated significantly lower booting fees when entering into contracts with vehicle booting companies. The market for booting services in each area of Colorado will continue to operate to find the optimal fee for booting services at or below the maximum rate specified in Rule 6817.

L. Proposed Rule 6818 – Release of Motor Vehicle/Removal of Booting Device

95. Proposed Rule 6818 requires a vehicle booting company to accept payment if offered by cash or valid major credit card and identifies the individuals to whom the vehicle booting company must release a booted vehicle. This rule also provides that a vehicle booting company must remove a boot upon demand after receiving payment, but no more than 60 minutes during the vehicle towing company's normal business hours, and no more than 90 minutes at all other times.

1. Comments

96. Dark Sky states that the time limits specified in Proposed Rule 6818(b) within which a booted vehicle must be released are reasonable under normal, but not all, circumstances.[86]

[86] Transcript at 18-19.

Dark Sky performs its booting operations in the Denver metro area. Dark Sky proposes to modify the rules to provide vehicle booting companies up to 90 minutes to release a vehicle during operating hours, and 120 minutes during non-operating hours.

97. Colorado Booting operates in Eagle and Summit Counties and the proposed time limits can be unreasonable even under normal circumstances. For example, Colorado Booting states that it takes 70 minutes to drive from Glenwood Springs to Vail in good driving conditions. Colorado Booting also states that there is not sufficient business in Eagle and Summit Counties to justify hiring more than one person to be on-call during the night. As a result, it is possible that an on-call employee of Colorado Booting would not be able to release a booted vehicle within the 60 or 90-minute requirements in Proposed Rule 6818(b).[87] Finally, Colorado Booting states that I-70 through the mountains regularly experiences poor weather conditions that either require much slower driving speeds than the posted speed limits or shut down I-70 completely. Under such circumstances, it can be impossible to comply with the time limits specified in Proposed Rule 6818(b).

98. Colorado Booting also takes issue with the language in Proposed Rule 6818(a) that "[t]he vehicle booting company shall release the motor vehicle to: (I) the motor vehicle owner, authorized operator, or authorized agent of the owner of the motor vehicle." Colorado Booting states that it can be difficult, if not impossible, to verify that an individual is the "owner, authorized operator, or authorized agent of the owner of the motor vehicle."[88] However, Colorado Booting does not propose alternative language.

[87] *Id*. at 14.

[88] Colorado Booting Comments at 7.

2. Analysis

99. The ALJ shall change the time limit within which vehicle booting companies must release booted vehicles to 90 minutes and 120 minutes for business and non-business hours, respectively. The time limits on the release of vehicles in Proposed Rule 6818(b) serve the important public interest of returning the use of a vehicle to its operator as quickly as reasonably possible. However, it is also important not to create a rule that could cause vehicle booting companies to engage in dangerous driving in attempting to comply. The ALJ has been convinced that it is reasonable to provide more time to the vehicle booting companies to release a booted vehicle. This change fairly balances the interests of the public and vehicle booting companies and, thus, is in the public interest.

100. The ALJ has also added Rule 6818(b)(III) stating that "[t]he maximum time allowed may be extended based upon legitimate circumstances beyond the vehicle booting company's control (*e.g.*, road closures or extreme weather conditions)." This added provision provides assurances to vehicle booting companies that they will not be held in violation of Rule 6818 if circumstances beyond their control prevent them from doing so. The new provision will hopefully provide an incentive for vehicle booting companies not to engage in dangerous driving attempting to comply with the time limits specified in Rule 6818.

101. Finally, the ALJ shall not make any changes to Proposed Rule 6818(a)(I). Requiring a vehicle booting company to attempt to determine whether an individual seeking the release of a boot is the booted vehicle's "motor vehicle owner, authorized operator, or authorized agent of the owner of the motor vehicle" serves a valid public interest. In addition, as above, Proposed Rules 6818(a)(I) and 6819(c) indicate that the Commission will consider all circumstances surrounding the release of a vehicle before determining whether a violation of

Proposed Rule 6818(a)(I) has taken place. Finally, Colorado Booting has not proposed alternative language. Under these circumstances, while the ALJ understands that it can be difficult for a vehicle booting company to determine with certainty whether an individual is a motor vehicle owner, authorized operator, or authorized agent of the owner of the motor vehicle, no changes to Proposed Rule 6818(a)(I) shall be made.

M. Proposed Rule 6819 – Vehicle Booting Company Violations and Civil Penalty Assessments

102. Proposed Rule 6819 establishes the fines for violation of any of these Rules or the Colorado Revised Statutes.

103. No comments or proposed changes were submitted concerning Proposed Rule 6819. Accordingly, no changes shall be made to the proposed rule.

104. Pursuant to the provisions of § 40-6-109, C.R.S., it is recommended that the Commission adopt the attached rules.

III. ORDER

A. The Commission Orders That:

1. The Rules Regulating Vehicle Booting Companies contained in 4 *Code of Colorado Regulations* 723-6-6806 through 6819 attached to this Recommended Decision are adopted.

2. The rules in redline legislative format (showing changes to the originally proposed rules issued with the Notice of Proposed Rulemaking) and in final format are attached to this Recommended Decision as Attachments A and B, respectively. They are also available in the Commission's E-Filings system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=19R-0485TR.

3. 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.

4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be made available to all parties in the proceeding, 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.

5. 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)

ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge