

Decision No. C12-0581

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 11R-792TR

IN THE MATTER OF THE PROPOSED RULES REGULATING TRANSPORTATION BY
MOTOR VEHICLE, 4 CODE OF COLORADO REGULATIONS 723-6.

DECISION ON EXCEPTIONS

Mailed Date: May 29, 2012
Adopted Date: May 16, 2012

I. BY THE COMMISSION

A. Statement

1. On April 6, 2012, an Administrative Law Judge (ALJ) for the Commission issued Recommended Decision No. R12-0350 (Recommended Decision), adopting Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6.

2. The Commission, on its own motion, stayed the Recommended Decision to allow for a Commission review of the Recommended Decision. Decision No. C12-0435, mailed April 25, 2012. Further, the Commission extended the time to file exceptions to May 7, 2012 and the time to file responses to May 14, 2012. Decision No. C12-0471-I, mailed May 3, 2012.

3. The following interested parties timely filed exceptions to the Recommended Decision: Lone Star Towing; Parking Authority; Skyline Recovery Systems, LTD (Skyline); Klaus' Towing, Inc. (Klaus Towing); and Colorado Cab Company, LLC, Shamrock Taxi of Fort Collins, Inc., and Colorado Springs Transportation, LLC (collectively Yellow Cab). Rainbows, Inc., (453-Taxi) filed its exceptions on May 8, 2012, but did not state good cause for the late filing. Therefore, we will not address the merits of its exceptions.

4. Finally, 453-Taxi and Dynamite Towing, Inc., timely filed responses to exceptions filed by other interested parties.

B. Rules Applicable to Towing Carriers:

5. In Decision No. C11-1059, mailed September 30, 2011 (the Notice of Proposed Rulemaking), the Commission stated that, at the heart of the rules proposed in this docket are the citizens whom the Commission serves every day. The basis and purpose of these proposed rules is to enhance public safety, to protect consumers of regulated transportation utilities, to serve the public interest, and to make the rules more effective, efficient, and elegant. We reiterate these public policy goals here.

6. By way of background, many towing carriers filed written comments concerning proposed rule changes to the rates and practices pertaining to nonconsensual tows. Many of the towing carriers also testified during the hearing held by the ALJ. Several of the proposed rules, in some form, limited the total amount that a towing carrier could charge a citizen of Colorado for a nonconsensual tow and provided for easier payment options and overall consumer protection.

7. Currently no rule requires a towing carrier to release prescription medications, medical equipment or any child restraint system after performing a nonconsensual tow. Further, the rules presently do not limit the number of miles that a tow carrier can charge for a nonconsensual tow. In addition, towing carriers can charge additional fees for mountain area tows. We are also concerned that some towing carriers currently place towed vehicles in a temporary storage area instead of a secured permanent storage area following a nonconsensual tow. Finally, towing carriers, under the present rules, may refuse to accept a MasterCard or Visa credit card.

1. Rule 6508(b)(II)(D)

8. Rule 6508(b)(II)(D) was proposed by the Towing and Recovery Professionals of Colorado, which represents a significant number of the towing industry. This rule would require a towing carrier to immediately deliver the towed vehicle to a storage facility without delay and not held in a temporary storage area.

9. In their exceptions, Lone Star Towing, Parking Authority, and Klaus Towing urge the Commission not to adopt this rule. These parties state that they have customers, for example apartment complexes, that may need multiple vehicles moved so that parking lot repairs or other projects can be accomplished. These parties argue that it takes too long to tow the vehicles to their permanent storage facilities when multiple vehicles must be towed.

10. For its part, Dynamite Towing agrees with the proposed rule.

11. We agree with the ALJ that vehicles towed without the owners' permission should not be held at a temporary location but should be moved to the permanent storage facility of the towing carrier. We find that this rule is necessary to protect the owners of these vehicles and is in the public interest. We therefore deny the exceptions requesting the deletion of Rule 6508(b)(II)(D).

2. Rule 6511(b)(I)

12. Rule 6511(b)(I) deals with the charge assessed when a vehicle is retrieved by its owner before its removal from the property (commonly known as "drop charge"). The drop charge was reduced from \$70 to \$50 by the ALJ. Commission Staff originally proposed this decrease in the drop charge.

13. Lone Star Towing, Parking Authority, Skyline, and Klaus Towing all request that the drop charge remain at the current \$70 and provided narrative supporting their positions.

We agree with the arguments presented by these interested parties and grant the exceptions to return the drop charge to \$70.

3. Rule 6511(f)

14. Rule 6511(f) affects the mileage charges that a towing carrier may charge for nonconsensual tows. Subparagraph (I) of the rule was modified from a formula-based mileage surcharge to a flat amount surcharge of \$4.30 per mile. Subparagraph (II) is new and it limits the amount of miles that can be charged for a nonconsensual tow.

15. Concerning Subparagraph (I), Lone Star Towing, Parking Authority, and Skyline all urge the Commission not to amend the rule. These interested parties argue that the formula-based surcharge should remain in effect, to compensate towing carriers for rising fuel costs or, should the cost of fuel decrease, to ensure that the towing carriers are not overly compensated. We agree that the formula based surcharge calculation is a just and reasonable approach. Thus, concerning Subparagraph (I), we grant the exceptions by reinstating the formula-based surcharge calculation and renumbering accordingly.

16. Concerning Subparagraph (II), Staff of the Commission proposed eliminating the mileage charge altogether in the Notice of Proposed Rulemaking. The Commission received many comments regarding this proposed rule. Further, towing carriers were asked to provide costs and revenues associated with towing. After analyzing responses to this questionnaire, Staff determined that the average length of tow was 12 miles for nonconsensual tows along the I-25 corridor and 16.5 miles in other parts of the State. The ALJ used the 12 miles and 16.5 miles respectively as the maximum mileage distance that a tow carrier could charge for nonconsensual tows.

17. Parking Authority, Skyline, and Klaus Towing argue that the 12 and 16.5 mileage maximums are too little and are not fair. They explain that there are times when they must tow vehicles for much greater distances.

18. We agree with the ALJ that the 12 mile maximum for nonconsensual tows along the I-25 corridor and 16.5 mile maximum for nonconsensual tows in other parts of the State are fair and provide consumer protection to towed individuals. We find that this mileage limit will protect the citizens of Colorado from unreasonably long tows. For example, a Denver area tow carrier should not perform a nonconsensual tow from Colorado Springs and tow the vehicle 70 miles and charge the citizen for all 70 miles. Thus, concerning Subparagraph (II), we deny the exceptions.

4. Rule 6512(a)

19. Rule 6512(a) pertains to acceptable forms of payments that a tow carrier must accept. The pertinent portion of the rule says that a towing carrier shall immediately accept the payment of the drop charge, towing, storage, and release charges if payment is offered in cash or credit card. The towing carrier may accept other forms of payment, but at a minimum shall accept MasterCard and Visa.

20. Parking Authority and Klaus Towing both filed exceptions to this rule. Parking Authority argues this rule is not needed. In the alternative, it argues that towing carriers should have thirty days to implement the technology, processes, and banking requirements to comply with the rule. For its part, Klaus Towing states that the cost to implement this service to citizens that have their vehicle towed without consent is too expensive and that most tow carriers are small businesses that do not have negotiating power. Klaus Towing suggests raising other charges to cover the costs of credit card fees.

21. We believe that the common use of credit cards and the public interest requires that towing carriers accept credit cards, MasterCard and Visa at a minimum. However, we grant the exceptions, in part, by specifying that towing carriers will have up to and including August 31, 2012 to become compliant with the rule.

C. Rules Applicable to Taxicab Carriers

1. Rule 6105

22. Rule 6105(j)(III) pertains to the notice provided to drivers regarding their initial qualifications after they have submitted fingerprints to the Commission.

23. Yellow Cab points out that the ALJ, in ¶ 75 of the Recommended Decision, states that the Commission should not only notify the driver regarding fingerprint results but also notify the carrier. However, the rules, as proposed by the ALJ, do not include such language. Yellow Cab urges the Commission to add this language to the rules, at least until a reliable web-based search is available. 453-Taxi, in its response to exceptions, agrees with Yellow Cab on this point.

24. We note that Rule 6105 allows the carriers to contact the Commission concerning the qualification status of individual drivers. Further, Staff of the Commission and the Colorado Office of Information Technology (OIT) are close to implementing a web-based database, which will allow carriers to access information about potential drivers. We therefore do not believe that this proposed change will promote a more effective process. We deny Yellow Cab's exceptions on this ground.

25. Rule 6105(l) is similar to Rule 6105(j)(III). It pertains to the notice provided for a previously qualified driver whose subsequent conviction meets the criteria listed in subparagraph (f)(II) of this rule.

26. Yellow Cab believes that the Commission should not only notify the drivers that are disqualified following an initial qualification, but to notify the carrier as well, at least until a reliable web-based search is available. 453-Taxi agrees with Yellow Cab on this point.

27. We note that Rule 6105 allows the carriers to contact the Commission concerning the status of individual drivers. Further, taxi drivers frequently change the companies for which they drive. Therefore, it would be problematic for the Commission to notify the disqualified driver's current carrier. Further, as discussed above, Staff and the OIT are close to implementing a web-based database, which will allow carriers to access information about their drivers. We therefore do not believe that this proposed change will promote a more effective process. We deny Yellow Cab's exceptions on this ground.

2. Rules 6255(a)(III)-(VII)

28. Rules 6255(a)(III) – (VII) apply to the seven counties with the largest population density. The rules require a GPS-based dispatch system in order to accomplish two objectives: 1) recording and reporting hours-of-service and automatically locking out drivers who reach on-duty hours-of-service maximums; and 2) recording and reporting trip information.

29. In its exceptions, Yellow Cab expresses a concern regarding the technological and practical ramifications of the proposed rules. Yellow Cab states that its dispatch system tracks the locations of the taxicabs that are logged on through GPS and records the periods that the cab is logged on. Yellow Cab further states that it monitors hours-of-service regularly. Yellow Cab states that it knows of no software available in the market that will accurately and automatically log off a vehicle when a driver reaches hours-of-service maximums and will keep a driver logged off for at least eight hours.

30. Yellow Cab states that it has converted to a dispatch system that appeared to have the capability to add customized software. In addition to the interlock hardware, the new system would enable the carrier to lock out the meter in a taxicab when the driver reached the hours-of-service maximums. Yellow Cab states that it has received a proposal for the software portion of the system and is reviewing that proposal. Yellow Cab explains that the next step is to solicit specifications and a bid to incorporate the interlock hardware that will enable the dispatch system to log off and lock out a driver that reaches the hours-of-service maximums. Yellow Cab states that, if a vendor's response meets specifications and performs accordingly, it will have the system that complies with the proposed rules. However, Yellow Cab states that this is at least a year away.

31. Yellow Cab argues that the automatic log-off and log-on requirements are beyond the current technological capabilities, are not the best solution to the hours-of-service concerns, and will be extraordinarily expensive. It encourages the Commission not to adopt the proposed rules. In the alternative, Yellow Cab argues that the Commission should extend the mandate to at least one year and preferably eighteen months.

32. We believe that the proposed rule is in the public interest because it will protect the traveling public from drivers who are too tired to safely operate a taxicab. Nevertheless, we also agree with Yellow Cab that providing taxicab companies approximately eighteen months to incorporate the requirements is fair and reasonable. We grant the exceptions, in part, by allowing the carriers up to and including December 31, 2013 to implement the necessary dispatch system but leave the requirements as they are now in the proposed rules.

D. Other Rule Modifications

33. In this section of the Order, we will finally address the rules that the Commission will modify on its own motion.

34. In the Recommended Decision, the ALJ deleted Rule 6008(b). However, the ALJ's discussion in ¶ 44 of the Recommended Decision indicates that the rule should not be deleted.

35. We agree with the ALJ that deleting Rule 6008(b) has serious consequences to the ability of motor carriers to address administrative errors or omissions affecting their authorities. Thus, on our own motion we reinstate Rule 6008(b) and renumber it accordingly.

36. Rule 6103(d)(II)(D) pertains to important safety criteria for the traveling public concerning the regulation of hours of service of drivers. We find that public safety and consumer protection requires a slight modification to Rule 6103(d)(II)(D). The rule, as modified, will clarify that a motor carrier shall neither permit nor require a driver to drive, nor shall any such driver drive, for a minimum period of eight consecutive hours after having been on duty eighty (80) hours in any eight consecutive days and that in no instance shall a driver's hours of service exceed eighty (80) hours in any rolling eight consecutive day period. We find it necessary to clarify that the hours of service apply to any rolling eight-day period.

37. Rule 6106(d) pertains to violations of Commission Rules and fines. The ALJ, at ¶ 79 of the Recommended Decision, discusses the importance of ensuring that violations of Rule 6103(d)(II)(C) are subject to a \$500 penalty. However, Rule 6106(d), as adopted by the ALJ, does not reflect this. We therefore modify Rule 6106(d) to correct this.

38. Rule 6254, in its heading, refers to a population density of 45 people per square mile, but the text of the rule itself and the Recommended Decision, ¶ 130, refer to a population density of 40 people per square mile. Therefore, on our own motion, we will modify the heading of Rule 6254 to refer to a population density of 40 people per square mile.

39. Similarly, the heading of Rule 6255 refers to a population density of 200 or more people per square mile, but the text of the rule itself and the Recommended Decision, ¶ 141, refer to seven specific counties. Therefore, on our own motion, we will modify the heading of the rule so that it will refer to the specific counties affected.

40. Finally, Rule 6256(a)(V), as adopted by the ALJ, states that carriers must maintain the address of the customer's destination. It appears that the ALJ inadvertently deleted the rule, although his discussion at ¶ 192 of the Recommend Decision indicates this should not have been the case. Therefore, on our own motion, we will reinstate Rule 6256(a)(V).

II. ORDER

A. The Commission Orders That:

1. Exceptions to Recommended Decision No. R12-0350 (Recommended Decision) filed by Lone Star Towing on April 26, 2012 are granted, in part, and denied, in part, consistent with the discussion above.

2. Exceptions to the Recommended Decision filed by Parking Authority on April 27, 2012 are granted, in part, and denied, in part, consistent with the discussion above.

3. Exceptions to the Recommended Decision filed by Skyline Recovery Systems, LTD, on April 27, 2012 are granted, in part, and denied, in part, consistent with the discussion above.

4. Exceptions to the Recommended Decision filed by Klaus' Towing, Inc., on May 7, 2012 are granted, in part, and denied, in part, consistent with the discussion above.

5. Exceptions to the Recommended Decision filed by Colorado Cab Company, LLC, Shamrock Taxi of Fort Collins, Inc., and Colorado Springs Transportation, LLC., on May 7, 2012 are granted, in part, and denied, in part, consistent with the discussion above.

6. The request filed by Rainbows, Inc., on May 8, 2012 to submit exceptions out of time is denied.

7. The Commission adopts the rules contained as Attachment A to this Order consistent with the above discussion.

8. The adopted rules in legislative (strikeout/underline) format [as Attachment A] and in final version [as Attachment B] are available directly through the Commission's E-Filings system at: http://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=11R-792TR; or by searching the E-Filings system from <http://www.dora.state.co.us/pls/efi/EFI.homepage>. (Once at the *Electronic Filings* (E-Filings) system page, the rules can be accessed by selecting "Search" and entering this docket number (11R-792TR) in the "Proceeding Number" box and then selecting "Search.")

9. The rules shall be effective 20 days after publication in the Colorado Register by the Office of the Secretary of State.

10. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules.

11. A copy of the rules adopted by the Order shall be filed with the Office of the Secretary of State for publication in the Colorado Register. The rules shall be submitted to the appropriate committee of the Colorado General Assembly if the General Assembly is in session

at the time this Order becomes effective, or for an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

12. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Order.

13. This Order is effective upon its Mailed Date.

**B. ADOPTED IN THE COMMISSIONERS' WEEKLY MEETING
May 16, 2012.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

JAMES K. TARPEY

Commissioners

COMMISSIONER MATT BAKER
RESIGNED EFFECTIVE MAY 11, 2012.