

(Decision No. C96-110)

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

\* \* \*

RE: THE JURISDICTION OF THE )  
COLORADO PUBLIC UTILITIES )  
COMMISSION OVER TOWING ) DOCKET NO. 96M-031  
CARRIERS--PROCEEDINGS TO ISSUE )  
A DECLARATORY ORDER. )  
)

**COMMISSION ORDER OPENING DOCKET  
FOR ISSUANCE OF DECLARATORY RULING**

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Mailed Date: January 26, 1996  
Adopted Date: January 24, 1996  
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**I. BY THE COMMISSION:**

A. The Colorado Public Utilities Commission, on its own motion, hereby establishes this docket for the purpose of entering a declaratory order regarding the Commission's jurisdiction over towing carriers. As provided for in the below discussion, the Commission shall give notice of this proceeding to persons, firms, or corporations who, in the opinion of the Commission, would be interested in or affected by this matter. Such persons, firms, or corporations shall be permitted to file requests for or notices of intervention, in accordance with the Commission's Rules of Practice and Procedure, 4 CCR 723-1. As grounds for this action, we state:

1. In the past, the Commission has regulated towing carriers pursuant to the provisions of §§ 40-13-101 *et. seq.*, C.R.S.<sup>1</sup>

The statute (*i.e.* Article 13, Title 40) directs the Commission: to issue permits authorizing the operations of towing carriers (§§ 40-13-103 and 107); to require towing carriers to file liability insurance policies with the Commission (§ 40-13-105); to prescribe rules and regulations governing the operation of towing carriers, including prescribing the minimum and maximum rates to be charged by such carriers as well as the terms and conditions under which such carriers shall operate (§ 40-13-107); to suspend or revoke the permits of towing carriers (§ 40-13-109); and to enforce and administer the provisions of the statute (§ 40-13-110). In accordance with these statutory provisions, the Commission previously adopted the Rules and Regulations Governing Towing Carriers by Motor Vehicle, 4 CCR 723-9.

2. On or about August 23, 1994, the United States Congress adopted Public Law 103-305 ("the Act"). One provision of that

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<sup>1</sup> Under those provisions, "towing carrier" is defined as "...a person whose primary function or one of whose primary functions consists of commercially offering service on the public ways of the state whereby motor vehicles are towed or otherwise moved by use of a truck or other vehicle designed for or adapted to that purpose." See § 40-13-101(3), C.R.S.

law preempts state and local regulation with respect to the transportation of property. That provision

states, in relevant part:

- [A] State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . or any motor private carrier with respect to the transportation of property.

49 U.S.C. § 11501(h)(1). The Act became effective January 1, 1995.

3. In response to the new federal legislation, the Colorado Legislature enacted new provisions relating to the intrastate transportation of property. See House Bill 95-1068 ("HB 1068"). Generally, HB 1068 made Colorado statutes consistent with the Act by deregulating most aspects of motor carrier property transportation. However, HB 95-1068 did not amend Article 13, Title 40 in any respect. Nor has the Commission modified the Rules and Regulations Governing Towing Carriers by Motor Vehicle.

4. A substantial question exists regarding whether the Act preempts state regulation of intrastate towing carriers, such as that authorized in Article 13, Title 40 and in the Commission's Rules and Regulations Governing Towing Carriers by Motor Vehicle. Recent court decisions hold that the Act was not intended

to preempt such regulation. *426 Bloomfield Avenue Corp. v. City of Newark*, 904 F.Supp. 364 (D.N.J. 1995).<sup>2</sup> In order to allow for public comment and hearings (if we deem hearings necessary) regarding this issue, we hereby initiate the present proceeding.

It is our intent, after allowing for comment and input from interested parties, to issue a declaratory order relating to our present jurisdiction over towing carriers in light of the provisions of the Act.

B. Notice of the commencement of this docket shall be given to persons, firms, or corporations who, in the opinion of the Commission, would be interested in or affected by this matter. Persons wishing to participate in this matter shall file a notice or request for intervention, in accordance with the Commission's Rules of Practice and Procedure, 4 CCR 723-1, within 10 days following the effective date of this order. In light of the necessity for the Commission to clarify its jurisdiction in this matter in a timely manner, good cause exists to require interventions to be submitted within 10 days. We shall issue further procedural directives following the close of the intervention period.

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<sup>2</sup> The *426 Bloomfield* case points out that some state and federal courts have reached conflicting conclusions regarding the Act's preemption of state and local regulation of towing carriers.

C. Intervening parties shall, at the time of filing a notice or request for intervention, indicate whether they request an evidentiary hearing in this matter. If a hearing is requested, the requesting party shall explain why evidentiary hearings are necessary (e.g. the nature of the evidence which must be placed into the record in order to allow the Commission to determine its jurisdiction over towing carriers). Persons filing interventions in this matter are directed to submit suggestions regarding further procedures in this case. For example, these suggestions shall address whether the party requests an opportunity to file briefs, the proposed timing of such briefs, etc.

## II. ORDER

### A. **The Commission Orders That**

1. This docket is opened for the purposes described above.
2. This order shall be sent as notice to persons, firms, or corporations who, in the opinion of the Commission, would be interested in or affected by this matter.
3. Any person desiring to intervene in this proceeding shall file an appropriate pleading, in accordance with the Commission's Rules of Practice and Procedure, 4 CCR 723-1, within 10 days following the effective date of this order.

4. Further procedural directives shall issue following the close of  
the intervention period specified in ordering  
paragraph 3.

5. This Order is effective upon its Mailed Date.

B. ADOPTED IN OPEN MEETING January 24, 1996.  
THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Commissioners

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

**CERTIFICATE OF SERVICE**

DOCKET NO. 96M-031  
DECISION NO. C96-110

I, Bruce N. Smith, Director of The Public Utilities Commission of the State of Colorado, certify that I served a true and correct copy of the above Commission Decision -- entered in the above numbered matter of record -- upon each of the persons whose names and addresses appear below, by mailing the same in sealed envelopes properly addressed, with sufficient postage prepaid to carry the same to its destination on the date noted on this certificate at Denver, Colorado.

**ORDER SENT TO ATTACHED TOWING CARRIER LIST**

ROUTE:

1  
2  
3  
4  
6/Docketing  
9  
10  
10.1  
20  
21  
30  
31/2 copies  
40/5 copies  
50  
60  
Black Book  
Operating Rights Unit  
DMS (plus certificate)

ORDER-AGI

WITNESS MY HAND AND THE SEAL OF  
THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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BRUCE N. SMITH  
DIRECTOR

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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(Page 1 of 5 Pages)

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Nancy Agro, Esq.  
DEITCH LEGAL SERVICES  
P. O. Box 2113  
Durango, CO 81302

John J. Conway, Esq.  
Contract Carrier Conference  
Suite No. 300  
4704 Harlan Street  
Denver, CO 80212

Richard J. Bara, Esq.  
Suite No. 315  
1155 Sherman Street  
Denver, CO 80203

Richard L. Corbetta, Esq.  
Suite No. 702  
1290 Broadway  
Denver, CO 80203

James A. Beckwith, Esq.  
Suite No. 7  
7910 Ralston Road  
Arvada, CO 80002

William C. Danks, Esq.  
Cherry Creek National Bank Building  
Suite No. 303  
3033 East 1st Avenue  
Denver, CO 80206

Paula M. Connelly, Esq.  
Gorsuch Kirgis L.L.C.  
Suite No. 1100  
1401 - 17th Street  
Denver, CO 80217-0180

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BRUCE N. SMITH  
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Mark A. Davidson, Esq.  
LeBoeuf, Lamb, Greene & MacRae  
Suite No. 2800  
633 - 17th Street  
Denver, CO 80202

Tennyson W. Grebenar, Esq.  
One Tabor Center  
Suite No. 2800  
1200 - 17th Street  
Denver, CO 80202-5835

Steven H. Denman, Esq.  
Denman & Associates, P.C.  
Suite No. 702  
1290 Broadway  
Denver, CO 80203

Dale E. Isley, Esq.  
WILLIAMS & ISLEY, P.C.  
1225 Mellon Financial Center  
1775 Sherman Street  
Denver, CO 80203-4315

David E. Driggers, Esq.  
JONES & KELLER, P.C.  
Suite No. 1600  
1625 Broadway  
Denver, CO 80202

Marc L. Jacuzzi, Esq.  
One Tabor Center  
Suite No. 2100  
1200 - 17th Street  
Denver, CO 80202-5835

James F. Frost, Esq.  
Suite No. 3800  
1999 Broadway  
Denver, CO 80202-5738

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Isaac H. Kaiser, Esq.  
BERENBAUM, WEINSHIENK & EASON, P.C.  
Suite No. 2600  
370 - 17th Street  
Denver, CO 80202

Kenneth L. Levinson, Esq.  
BALABAN & LEVINSON, P.C.  
Station No. 475  
1624 Market Street  
Denver, CO 80202

Irvin M. Kent, Esq.  
Suite No. 101  
3404 South Eagle  
Aurora, CO 80014

Lee E. Lucero, Esq.  
LEE E. LUCERO & ASSOCIATES, P.C.  
Suite No. 203  
651 Chambers Road  
Aurora, CO 80011

KIMBALL & NESPOR, P. C.  
Charles J. Kimball, Esq.  
Julieann Kimball-Nespor, Esq.  
Suite No. 1500  
1775 Sherman Street  
Denver, CO 80203

Richard S. Mandelson, Esq.  
BAKER AND HOSTETLER  
Suite No. 1100  
303 East 17th Avenue  
Denver, CO 80203

Richard P. Kissinger, Esq.  
Suite No. 900  
3773 Cherry Creek North Drive  
Denver, CO 80209

E. Hil Margolin, P.C.  
Suite No. 730  
730 - 17th Street  
Denver, CO 80202

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Robert W. Nichols, Esq.  
Suite No. 200  
2060 Broadway  
Boulder, CO 80302

J. Albert Sebald, Esq.  
Suite No. 1700  
1660 Lincoln Street  
Denver, CO 80264

Dudley P. Spiller, Jr., Esq.  
P. O. Box 17180  
Denver, CO 80217

John (Jack) B. Stuelpnagel, Esq.  
8055 East Bethany Place  
Denver, CO 80231

Jon C. Sutterlin, Esq.  
Raso & Sutterlin, P.C.  
200 East Abriendo  
Pueblo, CO 81004

James K. Tarpey, Esq.  
LeBoeuf, Lamb, Greene & MacRae  
Suite No. 2800  
633 - 17th Street  
Denver, CO 80202

Telluride Town Attorney  
Town of Telluride  
P. O. Box 397  
Telluride, CO 81435

Harold D. Torgan, Esq.  
6001 Happy Canyon Drive  
Englewood, CO 80111

Robert S. Wham, Esq.  
1666 South University Boulevard  
Denver, CO 80210

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Charles M. Williams, Esq.  
WILLIAMS & ISLEY, P.C.  
1225 Mellon Financial Center  
1775 Sherman Street  
Denver, CO 80203-4315

William Andrew Wilson, Esq.  
One United Bank Center  
Suite No. 2530  
1700 Lincoln  
Denver, CO 80203

Mark W. Williams, Esq.  
BERRYHILL, CAGE & NORTH, P.C.  
Alamo Plaza, Suite No. 600  
1401 - 17th Street  
Denver, CO 80202

John T. Wirth, Esq.  
HARDING & OGBORN  
Suite No. 1000  
1200 - 17th Street  
Denver, CO 80202-0300

Joseph B. Wilson, Esq.  
Gorsuch Kirgis L.L.C.  
Suite No. 1100  
1401 - 17th Street  
P. O. Box 17180  
Denver, CO 80217-0180

Jack P. Wolfe, Esq.  
512 North Terry Street  
Longmont, CO 80501

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**REMAILED ON FEBRUARY 1, 1996:**

T-2075  
C M Auto Electric Towing  
P. O. Box 192  
Wellington, CO 80549

T-127  
Meadow Lark Auto Repair  
Attn: Mr. Gary Knight  
12514 West Saratoga  
Morrison, CO 804656, and

1475 Brentwood  
Lakewood, CO 80215

T-170  
Merit Truck Wrecker Service  
Corporation  
5365 Newport Street  
Commerce City, CO 80022

T-1992  
North Main Sinclair  
Attn: Mr. Thomas A. Crane  
2131 Meadow Street  
Longmont, CO 80501

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**REMAILED ON FEBRUARY 2, 1996:**

T-497  
Audubon Exxon  
1809 Couch Place  
Colorado Springs, CO 80909

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**REMAILED ON FEBRUARY 6, 1996:**

T-2549  
AAA Towing  
288 28 Road  
Grand Junction, CO 81503

T-2638  
American Wrecker Service  
3066 "D" Road  
Grand Junction, CO 81504

T-1671  
Blaine Ward Towing  
111 Mel Rey Road  
Glenwood Springs, CO 81601-2547

T-2566  
Elizabeth Towing  
144 Pine Street  
Elizabeth, CO 80107

T-250  
Mt Vernon Conoco  
6825 West 5th Avenue  
Lakewood, CO 80226

T-2537  
Precision Collision Repair  
30006 West Hwy 40  
Steamboat Springs, CO 80477

T-1732  
Robert's Texaco and Sporting  
Goods  
806 South Park  
P. O. Box 604  
Woodland Park, CO 80863

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**REMAILED ON FEBRUARY 6, 1996:**

T-2544  
Steve's Auto Restorations  
1075 West Sherman  
Ridgway, CO 81432



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BRUCE N. SMITH  
DIRECTOR