

Decision No. C13-1480

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13R-0009TR

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

**DECISION ON APPLICATION FOR REHEARING,
REARGUMENT, OR RECONSIDERATION
AND AMENDING RULES**

Mailed Date: November 29, 2013
Adopted Date: November 26, 2013

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an application for rehearing, reargument, or reconsideration (RRR) of Decision No. C13-1259 (Decision), filed by Colorado Cab Company, LLC, Colorado Springs Transportation, LLC, Shamrock Taxi of Fort Collins, Inc., Shamrock Charters, Inc., and SuperShuttle International Denver, Inc. (Yellow) on October 30, 2013. The Decision addressed exceptions to Recommended Decision No. R13-0943 and modified some of the rules on our own motion.

2. Yellow asserts in its RRR is that the Decision adopts rules that fail to maintain the statutory and policy distinctions between luxury limousine service and taxicab service. More specifically, Yellow argues that Rule 6301(b)—which allows the customer and the limousine service to agree to a method or a reasonable estimate of the charge, rather than only the total charge—does not comply with the statutory “prearrangement” requirement and reduces consumers’ protection against excessive charges. Yellow also takes issue with Rule 6301(f), which states that “prearranged” means that the charter order for luxury limousine service is

entered into prior to provision of the service. It argues that this rule allows luxury limousines to obtain walk-up and street-hail customers and therefore operate their service in a manner similar to taxicabs. Yellow contends that the term “prearranged” should require a larger time differential between the completion of the charter order and the limousine’s arrival at the pick-up location, and that the Recommended Decision’s proposed rule—that the charter order be completed before the limousine is at or near the point of departure—be adopted. Finally, Yellow argues that restaurants and bars should be points from which the 100-foot zone where limousines may not be staged, which would prevent the luxury limousine operators from setting up informal limousine stands and encroaching upon taxicab services.

3. Section 40-10.1-301(8), C.R.S., defines luxury limousine service as “specialized, luxurious transportation service provided on a prearranged, charter basis.” The term “prearranged” is not defined in Title 40. Section 40-10.1-301(1), C.R.S., explains that “‘charter basis’ means on the basis of a *contract* for transportation whereby a person agrees to provide exclusive use of a motor vehicle to a single chartering party for a specific period of time during which the chartering party has the exclusive right to direct the operation of the vehicle, including selection of the origin, destination, route, and intermediate stops.” *Emphasis added.* The statutes do not define further “contract for transportation,” and thus we relied on Title 40, Colorado common law, Colorado consumer protection laws, and the Uniform Commercial Code to conclude that negotiation of a method or a reasonable estimate complies with the requisites for formation of a charter order or a contract for luxury limousine service, as alternatives to agreeing upon a total charge.¹ We also found that the term “prearranged” addresses the point in time

¹ Decision No. C13-1259, ¶ 16, fn. 18. Yellow does not contest the Commission’s interpretation of “contract” under Colorado law that allows parties to enter into a contract on the basis of a price method or estimate. RRR, p. 8.

when the parties must enter into a contract for transportation, rather than qualifying the nature of terms required to form a contract for transportation.² Based upon public policy considerations and to promote the use of innovative technologies to enter into contracts, we adopted Rule 6301(f) that defined “prearranged” to mean “that the charter order for luxury limousine service is entered into prior to provision of the service.”

4. The plain meaning of the statutory term “prearranged” does not require any particular time differential between the formation of the charter order and the provision of the service, only that the charter order must be arranged before the service is provided. We note that Yellow does not offer any legal authority in support of its argument to the contrary.

5. Yellow correctly states that “luxury limousine service does not include taxicab service.”³ Taxicab service, in turn, is defined as “passenger transportation in a taxicab on a call-and-demand basis.”⁴ The statutes do not distinguish limousine services and taxicab services on the basis of definiteness of the price term or the length of time between arrangement and the provision of the service.

6. Yellow’s own proposal, requiring completion of the contract before the limousine is at or near the point of departure, shows that “prearranged” does not address the definiteness or nature of contract terms, because even Yellow’s proposed language would not prevent the parties from negotiating a method or an estimate.

7. We agree with Yellow, however, that walk-ups and street hails should be reserved to taxicabs, and that luxury limousines and their customers should engage in the contracting process contemplated by § 40-10.1-301, C.R.S. We therefore amend Rule 6301(f) to state:

² Decision No. C13-1259, ¶ 16.

³ Section 40-10.1-301(8), C.R.S.

⁴ Section 40-10.1-101(19), C.R.S.

“‘Prearranged’ means that the charter order for luxury limousine service is entered into electronically or telephonically prior to provision of the service, or entered into in writing prior to the arrival of the luxury limousine at the point of departure.”

8. Rule 6309(e), stating where and when luxury limousine carriers can position their vehicles, plays an important role in maintaining the distinction between luxury limousines and call-and-demand taxicabs. We believe Yellow’s request, which would add restaurants and bars as points from which the 100-foot zone should be measured, unduly restricts luxury limousines from providing services in downtown Denver, town centers, and restaurant areas. However, for the sake of clarity and to have one, consistent standard govern the areas where luxury limousines must not be stationed, we amend the rule to remove the language proscribing the stationing of limousines “in front of or across the street from a hotel or motel,” and add language to apply the 100-foot zone not only to taxicab stands and pick-up points at an airport, but also to hotels and motels. Rule 6309(e) shall state as follows: “A luxury limousine carrier shall not station a luxury limousine within one hundred feet of a recognized taxicab stand, a designated passenger pickup point at an airport, a hotel, or a motel without the completed charter order in the vehicle.” We also clarify the last sentence of rule 6309(e) to say: “A luxury limousine carrier shall not station a luxury limousine at the point of departure more than forty-five minutes prior to the pickup time noted on the charter order.”

9. Finally, Rule 6301(b) presently says that “a charter order shall state the charge method or a reasonable estimate of the charge.” This is a typographical error. To clarify that the parties may negotiate a total charge as part of the charter order, we amend the rule to say: “A charter order shall state the charge, the charge method, or a reasonable estimate of the charge.”

II. ORDER

A. The Commission Orders That:

1. The application for rehearing, reargument, or reconsideration (RRR) of Decision No. C13-1259 (Decision), filed by Colorado Cab Company, LLC, Colorado Springs Transportation, LLC, Shamrock Taxi of Fort Collins, Inc., Shamrock Charters, Inc., and SuperShuttle International Denver, Inc., on October 30, 2013, is denied, except to the extent granted in paragraph 7 of the Discussion.

2. Rule 6301(b) is modified to state, in part: “A charter order shall state the charge, the charge method, or a reasonable estimate of the charge.”

3. Rule 6301(f) is modified to state: “‘Prearranged’ means that the charter order for luxury limousine service is entered into electronically or telephonically prior to provision of the service, or entered into in writing prior to the arrival of the luxury limousine at the point of departure.”

4. Rule 6309(e) is modified to state: “A luxury limousine carrier shall not station a luxury limousine within one hundred feet of a recognized taxicab stand, a designated passenger pickup point at an airport, a hotel, or a motel without the completed charter order in the vehicle. A luxury limousine carrier shall not station a luxury limousine at the point of departure more than forty-five minutes prior to the pickup time noted on the charter order.”

5. The adopted rules in legislative (*i.e.*, strikeout/underline) format (Attachment A) and in final format (Attachment B) are available through the Commission’s Electronic Filings (E-Filings) system at:

https://www.dora.state.co.us/pls/efi/EFL.Show_Docket?p_session_id=&p_docket_id=13R-0009TR.

6. 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 Decision.

7. Subject to a filing of an application for rehearing, reargument, or reconsideration, the opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules as finally adopted. A copy of the final, adopted rules shall be filed with the Office of the Secretary of State for publication in the Colorado Register.

8. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 26, 2013**

(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

PAMELA J. PATTON

Commissioners