DECISION No. R13-0943

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13R-0009TR

IN THE MATTER OF THE PROPOSED RULES OF PRACTICE AND PROCEDURE, 4 CODE OF COLORADO REGULATIONS 723-1.

RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE G. HARRIS ADAMS AMENDING RULES

Mailed Date: August 2, 2013

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I. STATEMENT

1. On January 11, 2013, the Public Utilities Commission issued the Notice of Proposed Rulemaking that commenced this proceeding. See Decision No. C13-0054. The Commission referred this matter to an administrative law judge (ALJ) and scheduled the first hearing for March 11, 2013. The purpose of the proposed rules is to describe the manner of regulation over parties providing transportation service by motor vehicle in the State of Colorado. The amended rules provide for clarity, necessity and conciseness and those rules found to be duplicative, inconsistent or burdensome should be repealed.

2. Throughout the proceeding, in addition to substantial public comment, written comments were filed with the Commission by Colorado Cab Company LLC, the Colorado Springs Police Department, the Community Assoc. Institute / Colorado Legislative Action Comm., Cowen Enterprises, the Federal Trade Commission, Hermes Worldwide, Metro Taxi &/or Taxis Fiesta &/or South Suburban Taxi &/or Northwest Suburban Taxi, Presidential Worldwide Transportation, Sunshine Taxi Inc., Towing and Recovery Professionals of Colorado, Uber Technologies, Inc., High (Hy) Mountain Transportation, Inc., Snow Limousine, Inc. and Estes Valley Transport, Inc.

3. Oral and written comments were provided during the course of the hearing. The ALJ also announced a continued hearing date to further consider the proposed rules, as memorialized in Decision No. R13-0312-I.

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

II. FINDINGS, DISCUSSION, AND CONCLUSIONS

5. In Decision No. C13-0054, the Commission described the nature and purpose of the rulemaking. This Recommended Decision will generally focus upon comments and contested issues addressed during the course of the proceeding.

6. The proposed rules, attached to Decision No. C13-0054 in legislative (i.e., strikeout/underline) format and in final format, were made available to the public through the Commission's Electronic Filings (E-Filings) system. Additionally, comments were solicited through the course of the proceeding regarding other proposals for consideration (See Hearing Exhibit 10).

7. Not all modifications to the proposed rules are specifically addressed herein. Any changes incorporated into the redline version of the rules appended hereto are recommended for adoption. Any specific recommendations made by interested parties that are not discussed below or otherwise incorporated into the redlined rules attached are not adopted.

8. The undersigned ALJ has reviewed the record in this proceeding to date, including written and oral comments.

A. Discussion of Comments

1. General Discussion

9. The Commission administers and enforces a comprehensive statutory scheme adopted by the Legislature to govern several types of transportation service. In administering the law, the Commission maintains distinctions and limitations for each type of transportation service. To permit authorized carriers of one type of service to provide a different transportation service would be contrary to the Legislative intent, unless permitted by statute.

10. The Commission prescribes reasonable rules covering the operations of motor carriers as may be necessary for the effective administration of Article 10.1 of Title 40, including consumer protection, service quality, and the provision of services to the public. See § 40-10.1-106, C.R.S. Consumer protection is also a major element of the mission of both the Public Utilities Commission and the Department of Regulatory Agencies, of which the Commission is part. Consumer protection considerations uniquely fall to the Commission in transportation matters as no other agency or interest is charged with consumer protection in these matters.

11. Public comment gathered through eight town hall sessions conducted across the State of Colorado significantly impacted the rules proposed in this proceeding. Those hearings occurred in Grand Junction, Glenwood Springs, Frisco, Durango, Alamosa, Pueblo, Colorado Springs, and Fort Collins.

12. Notably, issues emerged in this proceeding requiring fresh scrutiny in applying governing statutes. In some instances, historical reference or terminology does not meet the specificity required today. Without regard to the extent that operations may have evolved over time to conflict with statute, compliance is required.

13. As to luxury limousine service, enactment of Senate Bill 98-200 established the landscape of regulation in Colorado today. Reviewing the legislative history, there is impressively little controversy or testimony regarding the legislation. Twelve reported years of struggle among competing interests followed legislation enacted in 1985. Senate Bill 98-200 reflected a stated compromise among the limousine carriers and their association, as well as taxi carriers and drivers. No testimony was presented in opposition to the bill in the Senate committee hearing. The bill passed out of the Senate unanimously. One amendment was proposed on the floor of the House – which failed. The matter was assigned to the House Transportation Committee, but no one signed up to testify regarding the bill. Passage of the bill represented a long-fought struggle to reach a compromise with which all could live.

14. Since that time, House Bill 07-1019 was enacted to delegate further authority to the Commission. Section 40-16-101, C.R.S. was amended to eliminate the then-existing definition of a luxury limousine and operational requirements applicable to luxury limousines. Article 16 of Title 40 was later repealed with the adoption of Article 10.1 in 2011, including similar provisions.

2. Rule 6001

15. A definition of motor carrier was proposed to state that providing transportation includes advertising or otherwise offering to provide transportation. Comment was filed regarding whether this was an expansion of Commission jurisdiction and whether such expansion is beneficial. By statute, offering to provide service is equally prohibited as providing service without first obtaining the required authority or permit. See e.g. §§ 40-10.1-201, 40-10.1-202, 40-10.1-302, 40-10.1-401, and 40-10.1-502, C.R.S. The need to expand the scope

of the definition of a motor carrier to encompass activity that is already prohibited has not been established. The rule will not be modified.

16. The rules include a broad definition of a principal applied in the rules relating to periods of ineligibility and criminal background checks. The undersigned has some concern that the broad definition of principal adopted might prove overly broad in application based upon unique facts and circumstances. Illustratively, all shareholders of a corporation are within the scope of definition of a principal. A hypothetical very small minority shareholder might have perfect evidence of repetitive attempts to take every possible action to fully comply with Commission rules. Despite those actions, the person would be ineligible under the rule if those actions were circumvented by a controlling shareholder. Such circumstances may rise to the level of inequity or hardship for the minority shareholder if he is effectively ineligible to work in his chosen industry for a substantial period of time. However, it is found that the rule strikes an appropriate balance particularly in consideration of the fact that the individual may then petition the Commission for a waiver. As adopted, the public is better served by assurance that those causing revocation of an authority or permit cannot just change the operating name or method of operations and resume operations.

17. A definition of a transportation broker is now included in the rules. Arranging transportation is to be juxtaposed against providing or offering to provide transportation. A transportation broker is not an agent of a transportation provider (disclosed or undisclosed) and

cannot hold themselves out as offering to provide or providing transportation service requiring a certificate or permit.[1] Thus, an agent for an undisclosed principal transportation provider cannot be a broker. A broker arranges transportation for someone requiring it with a provider authorized to provide the service needed. Illustratively without limitation, a transportation broker sells brokerage service (e.g. their relationship with carriers, pricing, and convenience) and does not hold themselves out as providing transportation to those requiring it. As held years ago, the Commission does not regulate the arrangement of transportation for others. See Yellow Cab Cooperative Association, et. al. v. Colorado Ground Transportation Center, Inc., 654 P.2d 1331 (Colo. App. 1982).[2]

3. Rule 6005

18. Rule 6005 clarifies recordkeeping requirements regarding the retention of documents in the original format. After one year, a regulated entity may change the format of any document for the remainder of any required retention period (e.g. after one year, original paper records may be scanned and maintained electronically for the remainder of any required retention period.). This rule clarifies and reconciles document production and retention requirements.

4. Rule 6006

19. Rule 6006 explicitly requires carriers to promptly notify the Commission when specified contact information changes. Additionally, all subject to the requirement are explicitly

[1] In the field of agency law, the term undisclosed principal relates mainly to the liability of an agent for obligations incurred on behalf of a principal. If the agent does not disclose the nature of his agency (the fact that he acts on behalf of another) and thus does not disclose the name of the principal, the agent may be held personally liable for his actions. If, however, the agent disclosed his agency and the name of the principal (disclosed principal), he will normally not be held liable for commitments undertaken within his authorized agency.

[2] It is also noted that if those who carried passengers were not properly certified as common or private carriers, then those who solicited customers do violate the law by aiding and abetting the uncertified operators. Id. at 1333.

warned that the Commission may rely upon filed information until the carrier notifies the Commission of a change.

5. Rule 6007

20. Although the rule is substantially reorganized in terms of the type of transportation, the primary matter of substantive comment regards the minimum level of motor vehicle liability coverage required. Comment supports the proposed rule, raises concern regarding the impact thereof, and proposes modification further increasing required minimum levels.

21. Required minimum insurance levels protect the safety of the traveling public and have not changed in many years. As noted in Decision No. C13-0054, proposed modifications to the financial responsibility minimum levels for some motor carriers bring the minimum levels closer to current federal levels. The proposed modifications are reasonable, will be adopted, and will be further modified as addressed below.

22. Comment proposed further increases to minimum levels for vehicles carrying eight passengers or less to match federal levels. It is recommended that federal levels are minimally appropriate particularly because they have not been revisited in several years even at the federal level.

23. Despite concern regarding the immediate financial impact to those affected, the proposal to match federal levels will be adopted. There is no basis not to match federal levels for these vehicles while matching federal levels for all other categories. Comment regarding cost impact is vague and does not quantify the impact or degree. In fact, carriers currently providing service in interstate commerce are now subject to adopted requirements. In as much as the

Commission's rules need updating, it is noteworthy that federal limits for this category were adopted in 1985 – almost 30 years ago.

24. Minimum coverage of $1,000,000 is not an impressive amount of protection particularly for a catastrophic loss. Based upon eight passengers, this level would provide $125,000 per passenger on average not including damage to property or others. Combining this concern with the age of the federal level leads the undersigned to match current federal levels for this category as is recommended for every other category. Not having revisited the level before now does not justify a departure from overall adoption of federal requirements.

25. Rule 6007(a)(V) is modified to more closely align ongoing responsibilities of towing carriers with current application processes. Towing carriers must comply with workers' compensation insurance requirements. However, a variety of factors make it difficult to determine compliance with this law. A rebuttable presumption is established that once proof of insurance is on file with the Commission, insurance coverage will be required until the Commission is informed that coverage is no longer required. Two safe harbors are established to overcome the presumption.

6. Rule 6010

26. Rule 6010 prohibits an application from being filed in a name that identifies a type of transportation service that is not requested or currently authorized. In combination with rules regarding the offering of service through advertising (Rule 6016), a carrier would misrepresent authorized services and mislead the public to hold out as a business naming a service that cannot be provided. The text of the rule provides a specific example that a limited regulation carrier or a common carrier only having authority to provide call-and-demand shuttle service would be prohibited from having "taxi" in its name.

27. Comment interpreted the rule to require that authorized services be included in the company name. That interpretation goes beyond the scope of the adopted rule. There is no limitation whatsoever as to the company name if it does not reference a regulated transportation service. The language does not require "towing" to be in the name of a towing company or "taxi" in the name of a taxi company. Without limitation, the rule merely prohibits including "towing" in the name of a regulated entity that cannot provide towing service and "taxi" in the name of a transportation provider that cannot provide taxi service.

7. Rule 6016

28. Throughout Article 10.1, every instance in statute prohibiting operations equally prohibits offering to operate. See §§ 40-10.1-104, 40-10.1-201, 40-10.1-302, 40-10.1-401, and 40-10.1-502, C.R.S. Advertising a transportation service is one means, but not the only means, to offer to operate. The title of the rule will be modified to reflect an offering of service. This rule also applies the new definition of a transportation broker to distinguish transportation brokers from those providing or offer to provide transportation service.

29. Rule 6016 will aid enforcement efforts and promote consumer protection by allowing more efficient verification of a carrier's permit, contact information, and insurance coverage.

30. Comment was solicited regarding proposals expanding information required to be included in advertisements (mainly the unique identifier assigned by the Commission). There was significant comment from towing carriers in opposition to the proposed rule because of the scope and burden affecting all advertising. The proposal rule will be narrowed to require inclusion of the T-permit number in advertising in any newspaper or other publication, on radio, television, or any electronic medium.

31. In order to maintain some of the intended benefit, additional specificity will also be required in advertising. Offering to provide service must be in a name identical to one on record with the Commission (e.g. entity name or trade name). This requirement lessens need for a unique identifier being included in advertising.

32. The undersigned intends the strongest warning of the specificity required by this rule. While it seems common sense that a permit holder not advertise in a name other than which the permit is issued, experimentation in attempting to verify registration of several towing carriers proved difficult. While the inability to verify the registration status of carriers could justify requiring inclusion of the permit number in advertising, precision in advertising should approach the same benefit while avoiding or minimizing burdens. To illustrate, the rule includes the example that A and B Transportation violates this rule when advertising as A & B Transportation. While the two names might convey the same meaning, they simply are not the same or may not yield the same search results in a digital world. Searching one name in the database available to the public on the Commission's website for verifying registration of a towing carrier will not yield the other as a result. Thus, to the character, advertising must be identical to a name on file with the Commission (e.g. entity or trade name). In this manner, an appropriate balance will be struck in the adopted rules. Required inclusion of the permit number will be much narrower and more specific advertising will permit easier verification and aide enforcement.

8. Rule 6105

33. This rule addresses proceedings arising as a result of the preliminary qualification determination based on a fingerprint-based criminal history background check. The rule is

clarified to more clearly distinguish procedures applicable to a determination based upon the Commission's determination of moral character versus statutory disqualification.

9. Rule 6301

34. The definitions in Rule 6301 primarily interpret and apply the definition of luxury limousine service found in § 40-10.1-301(8), C.R.S. The statute requires service to be provided on a prearranged, charter basis.

35. A charter order establishes minimum requirements that are applied in the context of other rules. The charter order memorializes the contract underlying luxury limousine service provided on a prearranged, charter basis.

36. The rules require that a charter order for luxury limousine service on a prearranged charter basis include a period of time reasonably calculated to fulfill the purpose of the charter. To permit otherwise would be contrary to the statutory required specific period of time. Illustratively, this requirement prohibits carriers from estimating all trips to be two hours or two minutes.

10. Rule 6308

37. Rule 6308(b) maintains a distinction in rule between taxi service and luxury limousine service that only taxi service is a metered service. This longstanding distinction, previously in statute, is maintained in rule.

38. Generally, fares for taxi service are a public filed rate applied by a meter. The rate is regulated. The meter calculates the fare. There is transparency and trustworthiness in resulting fares. Generally, luxury limousine service is a luxurious service. Rates charged are not regulated and the price wholly depends upon the contract underlying the transportation service. Prearrangement provides an important consumer protection so that customers understand and

agree to the arranged service prior to it being rendered. As such, luxury limousine service cannot be a metered service.

11. Rule 6309

39. The Legislature has implemented different levels of regulation based upon consideration of different services. This rule implements requirements of prearranged service that will promote competition and protect consumers. Customers will have the means and ability to compare competing prearranged transportation service providers. Customers can research and compare services on an apples-to-apples basis while mitigating risks of misleading or deceptive practices. While minimum service quality thresholds or consumer protections may apply, providers are free to compete in other aspects.

40. Prior to enactment of S.B. 98-200, Title 40 did not define "charter party" or "chartering party." In 1998, S.B. 98-200, added a statutory definition of "chartering party" to Article 16 of Title 40, applicable to luxury limousine service. § 40-16-101, C.R.S. (1998). The definition of "chartering party" remains substantially identical today. See §40-10.1-301(3), C.R.S. Notably, the definition of luxury limousine service enacted in S.B. 98-200 is identical to the same definition today. Compare §40-16-101(3.3), C.R.S. (1998) to §40-10.1-301(8), C.R.S.

41. In 1994, the Commission adopted rules to implement § 40-16-101(3), C.R.S. The only reference to charter in the decision was the statutory definition of a luxury limousine to describe the manner of hire for the vehicle. Decision No. C94-1185 at 2. In 1998, the Commission adopted rules "to update the existing Exempt Carrier Rules and to have the rules conform with new legislation enacted into law by Colorado Senate Bill 98-200 concerning luxury limousines." Decision No. C98-1092 at 1. In 2002, the Commission adopted rules to

update rules governing motor vehicle carriers exempt from regulation. Decision No. R02-0200. The word "charter" did not appear in any of these rules.

42. Since 2004, the rules have implicitly assumed that the "chartering party" is the party to the contract for transportation underlying the service (i.e. charter) and is being transported.[3]

43. In 2004, the Commission adopted rules "to describe the scope and manner of Commission regulation over exempt carriers in the State of Colorado." Decision No. R04-0163. With these rules, the Commission first referenced charter in implementing the then-statutory definitions of prearranged and luxury limousine service. See Decision No. R04-0163, Attachment A at 12. Although not defined in rule, the statutorily-defined term "chartering party" was applied. The context makes clear that the person "arranges…or reserves the service…**with** the chartering party." Id. (emphasis added). Service is presumed not to be prearranged if a person:

> (I) accepts payment for the transportation **from the chartering party** at the point of departure; or
>
> (II) makes the luxury limousine **available to the chartering party** at the point of departure; or
>
> ….
>
> (IV) **loads the chartering party** or its baggage into the luxury limousine; or
>
> (V) **transports the chartering party** in the luxury limousine.
>
> Id. (emphasis added).

44. In 2005, the rules found at 4 Code of Colorado Regulations (CCR) 723-6, 9, 15, 23, 31, 33, and 35 were repealed and reenacted. Decision No. R05-0450 at 1.

[3] The undersigned notes that application of the terms clarified in this discussion may conflict with discussions during the course of hearings because the chartering party was sometimes incorrectly assumed to be the contracting party and not necessarily transported pursuant to the underlying contract.

In rules governing exempt carriers, features of vehicles "waiting to pick up a chartering party" are defined. Id. at Attachment A, page 61. Required prearrangement and the presumptions were continued without modification. Id. at Attachment A, page 63. These rules also referenced the "number of passengers in the chartering party." Decision No. R05-0450 at 28. Also, the statutory definition of chartering party at §40-16-101, C.R.S. was interpreted to mean "a chartering party can consist of a person." Id. at 39.

45. In 2011, Article 16 was repealed in its entirety and Article 10.1 was enacted. H.B. 11-1198. The definitions of luxury limousine service, charter basis and chartering party remain. § 40-10.1-301, C.R.S.

46. Prearranged, charter basis is dependent upon an underlying contract for transportation. § 40-10.1-301(1), C.R.S. A careful review of the statute does not limit or define the counter party with whom the transportation provider must contract. While the chartering party may be a party to the contract underlying the transportation service, the undersigned can find no basis in law requiring that the counterparty to that contract must be the chartering party so long as all other applicable requirements are met (e.g. the chartering party has the exclusive right to direct operation of the vehicle). This conclusion accommodates commented practices of out of state transportation companies not authorized to provide or offer to provide luxury limousine service in Colorado. Such companies may contract directly with an authorized transportation provider in Colorado to form the basis upon which the service is provided.

47. A charter order is critical to Commission enforcement and consumer protection. The order documents the contract underlying the transportation service (which might be oral or written) as well as compliance with Commission rules and Colorado law (e.g. service provided on a prearranged, charter basis). Timely creation and presentation of a charter order evidences

prearrangement. The carrier providing the order information to the counter party evidences agreement to the terms and conditions of the transportation. The customer can enforce the agreement and assist Commission personnel in the enforcement of rules.

48. Addressed below, some information from the charter order is also required to be provided to the chartering party. In this manner a chartering party can also identify the carrier transporting them should they find a need to confirm charter information for travel, verify permit information, file a complaint with the Commission, or contact the applicable insurance carrier.

49. The regulatory scheme for luxury limousine service has substantially changed over time. In today's focus, the Commission focuses on consumer protections in addition to protection of the public interest. Inclusion of price in the charter order is a particularly important protection because rates are not regulated. There is no independent means or basis for anyone to determine the total price for a charter.

50. Service cannot be fully prearranged for a specific period of time if charges are not determined prior to the passenger entering the vehicle. While many hypothetical examples are possible, customers cannot necessarily know prearranged charges based upon metered contingencies – a characteristic unique to taxi service.

51. Solely for illustration, and without comprehensively addressing the scope or extent of the terms and conditions, Hearing Exhibit 3 states: "The Company reserves the right to determine final prevailing pricing. Please note the pricing information published on the website may not reflect the prevailing pricing." Hearing Exhibit 3 at 4. Thus, in absence of memorialized prearrangement, it is clear that a consumer has no assurance of pricing for transportation service under these terms and conditions. The provision creates a substantial potential for abuse.

52. The Legislature selected a time charter as the basis upon which limited regulation of motor carriers of passengers is based. §40-10.1-301, C.R.S. They could easily have chosen to adopt a spot charter for point-to-point transportation as the basis. They did not. As such, the Commission cannot ignore the plain language of statute and allow limited regulated carriers to provide service pursuant to a spot charter, rather than a time charter. Charters must be for a specific period of time.

53. Prior rules did not specify a means for parties to the underlying contract for transportation to amend their contract, and consequently the charter order, after commencement of performance. The rules contemplate a more practical approach where the parties to the contract underlying the charter order may or may not include the chartering party.

54. Rule 6309(b) first provides specific acknowledgement that a charter order may be amended by mutual agreement of parties to the contract for transportation. As such, an amendment during the period of the charter does not create a new charter and does not change the point of origin for the transportation. All applicable requirements apply to the charter order after amendment that applied before.

55. Another operating limitation that distinguishes the provision of prearranged service from call-and-demand service is limiting the ability to stage in an area of demand. Illustratively, a luxury limousine sitting at the front door of a hotel without a charter order is more consistent with call-and-demand service than prearranged service. Thus, luxury limousines cannot stage in an area more typical of taxi service (e.g. a taxi stand). This balance is struck by identifying hotels, motels, restaurants, bars, recognized taxicab stands designated by local government, and designated passenger pickup points at airports, and then limiting the ability of a luxury limousine to stage without having a charter order for service.

While admittedly not a 100% solution, a spatial barrier is adopted to maintain distinctions of service and further Commission enforcement.

56. Staff proposes expanding an area adjacent to traditional taxi transportation points of origin to discourage unlawful activity and to improve enforcement of Commission rules. Substantial comment addressed luxury limousine operations where service was offered at or near the originating point of service.

57. A luxury limousine arriving far in advance of a scheduled pickup infers a purpose other than to provide the chartered service. While it is possible that a driver may find it most efficient to arrive at a pickup location earlier than to leave the area and return later, this must be balanced with the requirement that service be prearranged and not on call-and-demand for passersby. Additionally, it is noteworthy particularly in congested areas, that arriving excessively early has the potential to limit parking otherwise available to the public. Attempting to maintain a balance of these concerns, the permitted time in advance of pickup will be extended, but only to 45 minutes.

58. The undersigned is concerned that the circumstances described in the town hall meetings may not match experience in downtown Denver. In smaller towns across Colorado, expanding the margin from 100 feet to 200 feet is more likely to require luxury limousine carrier's to park an additional 100 feet away. However, in downtown Denver, expanding the margin by 100 feet may require luxury limousines to park a half a mile away due to the proximity of other restricted areas and limited availability of parking.

59. In comment, it was suggested that if a stationing area was available in downtown then a larger barrier may not impose hardship. While no specific example is available in comment, if a parking space was found in downtown Denver that permitted positioning luxury

limousines in compliance with a 200 foot margin, it would likely be the hottest parking space in town. No specific available stationing area has been shown. While the Commission must be concerned with enforcing transportation rules, it must also be careful of imposing unnecessary burden upon lawful providers as well as the potential for unintended consequences. Examples were also given during hearing where it may be perfectly reasonable for a luxury limousine provider to park at or near a restaurant to wait for a later trip.

60. In recognition of the concerns expressed that led to the proposed modification as well as luxury limousine providers in the Denver metro area, a new 200 foot standard will be established in areas outside of Denver and the current standard will be maintained in Denver.

61. Rule 6309(e) was proposed to require luxury limousine carriers to provide charter orders to airport officials immediately upon request. However, the rules do not define an airport official. This explicit provision for an unknown group of people will not be adopted. The obligation will remain as to an enforcement officer pursuant to Rule 6005(b). Thus, if an airport official is an enforcement officer, the obligation would of course remain. The requirement will not be extended.

62. Rule 6309(i) establishes minimum disclosure requirements of a luxury limousine carrier to the chartering party. Substantial comment raised concern regarding specific requirements proposed. Carriers, and persons they contract with, sometimes do not want to disclose transportation charges to their driver or a chartering party that did not contract for service.

63. Rather than requiring disclosure of pricing to the driver or the chartering party, a proposal was made to include the date and time of original arrangement in the charter order and to require disclosure of those details of arrangement (i.e. without affecting required disclosure to

the contracting party). The alternative is reasonable and will be adopted. The original date and time of arrangement is an indication of prearrangement while mitigating concerns expressed. See 6301(b).

64. Where a chartering party is not a party to the contract for transportation they have a lesser need to know pricing because they are not paying for the transportation. The charter order is identifiable by Commission enforcement personnel and can be further verified with the records of the company or perhaps the contracting party that paid the charges. The undersigned finds this approach strikes an appropriate balance.

12. Rule 6501

65. Commenters suggest clarification and modification of the definition of a "property owner" as applied to common area parking and who may serve as an owner's agent to authorize a nonconsensual tow in the shoes of the property owner. The Commission does not define the owner of real property; rather, existing law is applied in the context of nonconsensual tow.

66. Comment identifies aspects of property ownership commonly affecting different types of property. Some property consists of common elements where all property owners own an undivided interest. However, documents creating such ownership, or applicable Colorado law, provide authority to act with regard to such property. Illustratively, each homeowner in a common interest community may own an undivided interest in common areas, but they may not necessarily have the right to act as to the use of the property. Rather, by statute or governing instrument, such powers might be exercised by the board of directors of the association of homeowners. In such instance, the board acts on behalf of owners and may (to its benefit or peril) choose to hire an agent to act on its behalf (e.g. property managers or a towing carrier).

67. Comment addresses specific issues where parking areas are homeowner deeded. In such instance, the deeded owner acts and may choose (again to their benefit or peril) to hire an agent to act on the owner's behalf regarding the parking area.

68. Some clarification is attempted in response to comment through illustrative examples, rather than definition. The request to exempt some private property owners from these rules is rejected. The circumstances surrounding a nonconsensual tow from private property are equally applicable to all private property. Sufficient basis or cause for exemption has not been shown.

13. Rule 6504

69. The process to challenge a disqualifying criminal history record will be clarified to distinguish disqualification based upon moral character from statutory disqualifications. Modifications proposed to Rule 6503 implemented amendments to § 40-10.1-402, C.R.S., enacted in 2012. The amendment permits, but does not require, the Commission to deny applications based upon criminal background checks of persons related as specified to a towing carrier.

70. The basis for Commission determination is not explicitly mandated in the amendment to § 40-10.1-402, C.R.S. The undersigned interprets the discretionary disqualification in the towing arena to be similar to the implementation of criminal background checks in Rule 6105 pursuant to § 40-10.1-110, C.R.S. There, the Commission has discretion to disqualify drivers based upon moral character, in addition to two statutory disqualifications. It is found that concerns regarding moral character are a reasonable basis to apply the discretion granted the Commission in § 40-10.1-402, C.R.S. Particularly in light of the strong public policy

expressed through § 24-5-101, C.R.S., and the exercise of Commission discretion, the undersigned applies § 40-10.1-402 in terms of moral character, similar to § 40-10.1.110, C.R.S.

71. Concerns regarding those transporting passengers are similar to concerns regarding interaction with those conducting towing operations. The public engages in business transactions with towing carriers. Towing carriers may be authorized as agents of property owners to authorize tow of a vehicle. Towing carriers may interact with customers in remote or isolated situations often late at night. Towing carriers may interact with the public in connection with a drop fee during the process of a tow and the retrieval of vehicles. Towing carriers are entrusted with the care of motor vehicles and personal possessions. The Commission has adopted criteria to determine moral character pursuant to § 40-10.1.110, C.R.S. They will be extended in this context.

14. Rule 6506

72. Comment addresses requirements to use equipment otherwise required to be on a tow truck. It is argued that requirements proposed are redundant to currently existing obligations otherwise required by Colorado law.

73. While the obligation may be redundant, in part, it is the enforcement of the obligation that differs. Requiring use of operational electric lights during the entirety of a tow, including on private property, promotes the safety of persons driving or walking near the vehicle in tow as well as towing company personnel.

74. Enforcement by the Commission furthers safety and protection of the public affected by towing operations. The proposed rule will be adopted.

15. Rule 6508

75. Significant comment encouraged retention of provisions for towing carriers to act as authorized agent for a property owner.

76. The undersigned believes the modification was proposed to require third party involvement in towing authorization. However, there was significant comment in support of retaining the provision not only by towing companies but also by those representing property owners (particularly homeowner associations). As stated in the adoption of the current rule: "The potential proverbial bad apple need not dictate onerous burdens upon the entire industry." Decision No. R10-0778, issued July 27, 2010, at 20.

77. The fact that a crime might be committed pursuant to such authorization or an occasional unauthorized tow may occur in violation of Commission rule, does not overcome the broad support of retaining the procedures.

78. Although law enforcement sought involvement of a third party, comment supports alternative requirements that a towing company document towing authorization upon inquiry. During the course of the proceeding, comment was sought on an alternative proposal to require a towing carrier acting as agent authorizing a tow to have a copy of the contract in the towing vehicle. Larger tow companies in particular find this would expose commercially sensitive information and impose a significant burden that would outweigh the benefit of documenting authorization on the spot.

79. In lieu of requiring immediate production of the contract, a lesser additional obligation will be imposed only as to tows authorized by the tow company on behalf of property owners. If a towing carrier performs a tow pursuant to a contract in accordance with Rule 6508(a), then specified documentation of the towing carrier's authority must be carried in the tow truck. Somewhat of a log could be maintained to document the authorization which would be available for inspection by Commission personnel and law enforcement. This will satisfy concerns regarding confidential business information included in contracts. This will also provide an alternative means of documenting authorization without imposing the burden and risk to a towing company of having to make the entire contract available.

80. Significant comment addressed potential signage for parking lots. Law enforcement encourages notice to drivers and notes that several citizens' motor vehicles have been towed when they did not realize they were subject to tow due to lack of notice. Although no comment opposes notice, significant comment addresses the level of burden imposed and issues around implementation. A new definition of parking lot is included in Rule 6501 and applied here. The undersigned seeks to strike a balance for property owners dealing with unauthorized parking and consumers parking where they believe they are authorized. Notification requirements will be required as a condition of authorization for a non-consensual tow. Although particular signage is not required, safe harbors will be established based upon signage that a vehicle is parked without authorization.

81. As a condition of consent to perform a nonconsensual tow, it is found that the traveling public should have reasonable notice of the circumstances pursuant to which their motor vehicle (other than an abandoned vehicle) may be towed from private property. Based upon reasonable expectations and aesthetics addressed in comment, the safe harbor will

differentiate residential parking lots from others. As to residential areas, a reasonable person would more likely be aware of parking limitations and whether persons they visit authorize parking. However, particularly as to businesses welcoming business invitees, it is less clear. For example, a person more reasonably believes they can park their vehicle in a parking lot open and available 24 hours per day that has no barriers to entry or signage imposing restrictions.

82. Signage only at entrances will meet the safe harbor for residential and smaller parking lots. For parking lots having more than ten freestanding lampposts that are accessible to motor vehicles, other than residential lots, the safe harbor will also require a number of signs equal to the number of lampposts be posted in conspicuous locations evenly distributed across the parking lot. Thus, notice is intended to be more meaningful at the parking location across larger lots.

83. Notably, this safe harbor does not preclude property owners providing notice by other means such as notice in person or by posting a sign on each lamppost stating the restrictions that will be enforced (e.g. 24 hours per day or during posted hours) and providing contact information for the towing company. Establishing a safe harbor does not limit or interfere with notice by traditional markings such as for handicap parking and fire lanes or parking in areas not designated for parking (e.g. blocking access).

84. While there is potential for additional burden to provide notice, it is noteworthy that signs meeting applicable local ordinances will be sufficient to meet the safe harbor. Some local governments already require signage (e.g. the City and County of Denver). Finally, establishing safe harbors will strike a balance to increase the likelihood that those parking will be aware of restrictions.

16. Rule 6509

85. Rule 6509 is modified to make clear that a tow invoice is required upon commencement of a tow. Thus, whether the tow ends with recovery of a drop fee on the premises or a tow to a storage facility, the tow invoice must exist upon commencement of the tow. A copy of that tow invoice must then be provided to the customer upon the drop of the vehicle or release from the storage facility, as applicable.

86. Rule 6509(c) was proposed to provide a minimum of 10 minutes for someone to pay a drop fee before a vehicle could be towed from a parking lot. Extensive comment opposed the proposal particularly noting an unnecessary risk to the safety of towing company personnel. Comment also suggests that the concern leading to the proposal may have been the improper demand for cash payment, which is already a violation of the Commission rule.

87. While the undersigned was initially inclined to permit an opportunity to obtain funds, surrounding concerns and comment leads to the conclusion not to adopt the proposal. By increasing the likelihood that consumers are aware of the opportunity to pay a drop fee and ensuring notification of all available means for payment, the need for consumers to leave the premise to obtain a means of payment is lessened. Thus, the risk to those performing the tow is lessened.

88. Requirements will be imposed to provide additional assurance that an owner, authorized operator, or authorized agent of the owner of the motor vehicle will be informed of the ability to pay a drop fee and acceptable forms of payment. Comment was solicited on a proposal to post notice in the form of a sticker on the window of the vehicle being towed. Extensive comment at hearing expressed concerns about posting of stickers as well as potential safety risks if driver vision is impaired while driving after release of the vehicle. These concerns

convince the undersigned that a different proposal more reasonably balances the concerns of all affected. Rather than requiring posting of a sticker, required minimum prescribed content will be provided in writing on a card that must be provided to the owner, authorized operator, or authorized agent of the owner of the motor vehicle if they are on the property after the commencement of the tow of their vehicle but before the vehicle has been towed off the property. This will provide a more uniform means for delivering a consistent message required by the rule for the benefit of consumers. Towing carriers will be alleviated of creating content of the message by providing Commission-prescribed content and will need only document delivery to the consumer. Also, the need for time to obtain cash will be minimized by notification that payment may be made by credit card.

89. Comment was solicited regarding a proposal to require the taking of photographs prior to the commencement of a tow. Comments regarding the level of burden imposed, particularly as to the ability or requirements affecting tows at night, convince the undersigned that the proposal should not be adopted.

90. Rule 6509(d) was proposed to mandate requirements for the posting of stickers to implement the Allen Rose Tow Truck Safety Act. Upon further review of the statute, the protections afforded are permissive. The rule will be amended accordingly.

17. Rule 6511

91. A clarification to rule 6511(a) was requested in comment to make clear that the term “abandoned” referenced a vehicle abandoned on public property rather than being abandoned after the tow occurred. The request is reasonable and will be adopted.

92. A drop fee is a charge for release of a motor vehicle after commencement of a tow and before the motor vehicle is removed from the private property. Rule 6511(b) is clarified as

to the commencement of the tow. Further, the rule clarifies the obligation of a towing carrier to halt a tow in progress after commencement and before the motor vehicle is towed from the property.

93. At Rule 6511(b)(I), a footnote notes awareness of the Commission that some local jurisdictions have established a lesser maximum drop fee amount by municipal ordinance. Some commenters argue the footnote should be removed or effectively seek the Commission to make a determination regarding local government jurisdiction. The Commission takes no position and makes no determination regarding those actions and merely acknowledges the existence.

94. Rule 6511(b)(III) explicitly states that failure to comply with notification requirements results in the inability of the towing carrier to charge fees for services rendered.

95. At Rule 6511(i), the provision is consolidated that no fees shall be charged or retained for a tow in violation of Commission rule or Colorado law. Comparable provisions previously appeared in multiple sections (i.e. 6007 and 6008) regarding charges in connection with a tow in violation of Commission rule. Particularly from industry representatives, comment argues the provision is draconian and unfair as to unintentional or technical violations.

96. Towing carriers are obliged to understand and comply with Commission rules whereas the general public affected by these rules is not. Additionally, the Commission's ability to address violations of Commission rules provides limited ability to alleviate consequences to those affected by a towing carrier's violation of rule. While penalties may be pursued by Commission Staff to enforce the rules, the benefit therefrom goes to the state treasury and deters future violations. However, the most the Commission can do directly for the consumer for the inconvenience and consequences absorbed is total disgorgement of fees. Particularly in absence

of damage to property, there is little likelihood that it will be economic for a consumer affected by a rule violation to pursue additional remedies. Disgorging benefit also focuses the proper incentive upon towing carriers to fulfill their obligations to the public.

18. Rule 6512

97. Extensive comment was provided regarding the conditions of release of a vehicle and to relinquish certain specified items of personal property from a vehicle being stored (state or federal issued identification, credit cards, cash, cellular phone, prescription medicines, medical equipment, medical devices, any child restraint system, or any other property directed to be released by a law enforcement officer, under any circumstances).

98. Primarily, it should be recognized that nonconsensual towing operations are not for punishment of unauthorized parking. The general obligation of the towing carrier is to protect and safeguard towed property until the status quo can be restored.

99. In comment, it was claimed that towing carriers assume some higher responsibility to ensure that a towed motor vehicle is only returned to the owner or others after verification of their authority from the vehicle owner. Further, comment and briefing was explicitly requested to document or support this position. Nothing was provided.

100. There are many hypothetical scenarios to demonstrate difficulties someone might incur to document authority as to a motor vehicle. A spouse cannot show ownership of a motor vehicle owned by the other spouse. A person having rented a motor vehicle is not the owner of the vehicle. A child driving a car owned by one or both of their parents cannot show ownership. The difficulties arising from these circumstances would only be compounded by geography (i.e. a college student across the country from their parents who own the car) or when a nonconsensual tow occurs when owners are not available.

101. To the extent that a car could be unlawfully retrieved from a storage of a towing carrier complying with Commission rules, it seems no less a crime than any other type of crime. The risk of a theft occurring in implementation of the rule seems far less likely than the certain burden to every authorized operator retrieving a vehicle.

102. No showing has been made to support any higher obligation than to safekeeping and to restore the status quo. If an authorized operator of a motor vehicle parks a motor vehicle without authorization, that individual should be permitted to retrieve the same vehicle from storage after a non-consensual tow. The rule strikes a balance of what documentation a reasonable person may have available to document their connection to support retrieval of a vehicle.

103. As an accommodation to the concerns raised by towing carriers and to further document representations made, a carrier may also choose to require the individual retrieving the motor vehicle to execute an attestation in a Commission-prescribed form that the operator is authorized to take possession and operate the motor vehicle.

104. Modifications are proposed to Rule 6512(f) to require a towing company to relinquish certain items of personal property. The proposed rule expands those items to include state and federal issued identification, credit cards, cash, or property directed to be released by a law enforcement officer. A broad scope of comment was provided.

105. Some comment supports the amendment. Some comment seeks to limit access to the expanded list of items to normal business hours and points to problems associated with "immediate" compliance. Some comment contends the open ended authority to a law enforcement officer is too broad. Others suggest the question is more a matter of a

carrier's discretion and that costs of doing business will increase as a result. The risks associated with returning the items to anyone demanding them could also be problematic.

106. The adopted rule strikes an appropriate balance. Illustratively, if an authorized operator of a motor vehicle leaves their driver's license in a vehicle that is towed, they might not be able to retrieve the vehicle from storage without first obtaining a new license. It is far more reasonable to permit the driver to retrieve their identification from the vehicle to retrieve the vehicle or to lawfully drive another vehicle until the towed vehicle is retrieved. The proposal to permit access to retrieve identification will be adopted. Notably, this provision permits a carrier to charge for access to a stored motor vehicle outside of business hours under Rule 6511(h).

107. Similarly, where a driver leaves their wallet in a car that is towed, it only seems reasonable to permit them to access cash or credit cards to pay for release of the vehicle. The adopted rule will narrow the original proposal to permit access for payment. Some comment raised concern that costs and burdens would be imposed upon towing carriers to provide access afterhours to permit access to cash or credit cards. The narrowed adoption considers these comments. Although access must be provided without additional charge, access is solely for means to pay for retrieval of the motor vehicle. Inability to charge for access to the vehicle does not mean that the carrier is not entitled to charge for retrieval of the motor vehicle outside of business hours under Rule 6511(h).

108. The final proposed rule to be addressed provides access to a cellular telephone from a vehicle towed or being towed. This provision will also be narrowed. There are practical differences resulting from the loss of use of a cellular telephone because it is locked in a vehicle at commencement of a tow as opposed to retrieval of the vehicle from storage. The telephone might be a person's only telephone. Confidential information might be stored on the device.

Information necessary for the conduct of business might be on the device. However, in the instance where someone is present at the time of the tow, but unable to pay the appropriate drop charge, there is a strong public safety interest in permitting the person access to their telephone. Often late at night and perhaps in areas not well travelled, a person now stands without transportation. Access to a telephone without additional charge promotes public safety as they arrange for safe travel and payment for the release of their vehicle. Once the tow is complete, the concern is more as to convenience or risk already assumed by storing the telephone in their vehicle. Thus, access will be permitted for retrieval of cellular telephones during times subject to a drop fee, but not thereafter.

109. Comments submitted demonstrate that the proposal to permit law enforcement officers to direct release of property is not sufficiently narrowly crafted under the Commission's jurisdiction to warrant adoption.

B. Conclusion

110. Attachment A to this Recommended Decision represents the rule amendments adopted by this decision with modifications to the prior rules being indicated in redline and strikeout format (including modifications in accordance with this Recommended Decision).

111. Attachment B to this Recommended Decision represents the rule amendments adopted by this decision in final form.

112. It is found and concluded that the proposed rules as modified by this Recommended Decision are reasonable and should be adopted.

113. 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 Transportation by Motor Vehicle, 4 Code of Colorado Regulations 723-6, contained in redline and strikeout format attached to this Recommended Decision as Attachment A, and in final format attached as Attachment B, are adopted.

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

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

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

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

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

Doug Dean,
Director

Decision No. C13-1259

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 ADDRESSING EXCEPTIONS AND MODIFICATIONS UPON COMMISSION MOTION

Mailed Date: October 10, 2013
Adopted Date: September 17, 2013

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I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of exceptions to Decision No. R13-0943 (Recommended Decision) filed by Uber Technologies, Inc. (Uber) on August 22, 2013. Colorado Cab Company, LLC (Colorado Cab); Hy Mountain Transportation, Inc., Snow Limousine, Inc., Ramblin' Express, and Estes Valley Transport, Inc. (collectively Hy Mountain); White Dove Limousine, Inc.; Hermes Worldwide, Inc.; and International Association of Transportation Regulators (IATR) timely filed responses to the exceptions. In addition, the Office of Legal Counsel, on behalf of the Governor, and other interested participants filed comments on aspects of the Recommended Decision. Being fully advised in this matter and consistent with the discussion below, we address the exceptions and comments, as well as modify the recommended rules on our own motion.

B. Procedural Background

2. On January 11, 2013, the Commission issued a Notice of Proposed Rulemaking (NOPR), to describe the manner of regulation over transportation utilities, enhance public safety, protect consumers, serve the public interest, and make the rules more effective and efficient. Decision No. C13-0054, at 3.

3. The Commission referred this matter to Administrative Law Judge (ALJ) G. Harris Adams. The ALJ held public hearings on March 11, 2013, and April 16, 2013. The ALJ issued the Recommended Decision and recommended rules on August 2, 2013.

4. By Decision No. C13-1092-I, mailed September 4, 2013, the Commission entered into the record email communications between the ALJ and employees of the California Public Utilities Commission, as well as a link to a proposed decision of the California Commission. We permitted comments responding to these documents on or before September 11, 2013.

These actions addressed Uber's contention under § 24-4-103(8.1)(c), C.R.S., that not all information considered by the Commission was in the record and that participants did not have the opportunity to respond to this information. Uber and Colorado Cab timely filed comments.

5. The exceptions, comments, and responses to exceptions address only the recommended rules governing luxury limousine providers. We adopt the recommended rules governing other regulated transportation carriers, subject to modifications discussed below and as stated in the revised rules.

C. Request for Oral Argument

6. Uber requests that the Commission hear oral argument regarding its exceptions. We find that the written submissions sufficiently advise us to arrive at a just and reasonable decision in this matter; therefore, we deny Uber's request.

D. Interested Participant Positions

7. Uber contends that the proposed rules do not comply with procedural requirements under Colorado's Administrative Procedure Act (APA), § 24-4-101, C.R.S., *et seq*.[1] These alleged infirmities include failures to: include communications between the ALJ and employees of the California Commission in the record; provide participants the opportunity to address these communications; evaluate rules addressing any scientific or technological issues; and, notify members of the legislature of any proposed penalty increases. Uber also argues that the recommended rules impermissibly prohibit the use of price estimates and restrict the methods by which limousines may calculate its charges. Uber also challenges the rules limiting where a luxury limousine may be positioned and when it may arrive before a service is provided.[2]

[1] Exceptions filed by Uber on August 22, 2013, pp. 8-9; Comments filed by Uber on September 11, 2013, p. 5.

[2] *Id.*, pp. 23-25.

In response, Colorado Cab and other participants argue that the recommended rules are required to protect consumers and to comply with the statutory distinctions between luxury limousine and taxicab services.[3] These participants conclude the Commission's processes substantially comply with the APA's procedural requirements and urge the Commission to adopt the rules as recommended.

8. The Office of the Governor commented that consumers are protected sufficiently if luxury limousines carriers are permitted to quote a reasonable estimate of charges and that the state should not regulate the basis for calculating rates. It urges the Commission to adopt rules so that both taxicab and luxury limousine carriers can be successful, while ensuring a level playing field that embraces technological change. Other interested participants commented on the recommended rules applicable to luxury limousine carriers, some urging the Commission to adopt the rules, and others arguing that the rules are not in the public interest.

E. Luxury Limousine Rules

9. To operate under the reduced regulatory structure granted luxury limousine service under the Public Utilities Law, a provider must meet the definitions stated in § 40-10.1-301, C.R.S. "Luxury limousine service" is a "specialized, luxurious transportation service provided on a prearranged, charter basis." The statutes do not define "prearranged." "Charter basis" is defined as follows:

> "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.[4]

[3] Response to exceptions filed by Colorado Cab on September 5, 2013, p. 6;

[4] § 40-10.1-301(1), C.R.S. (emphasis added).

A luxury limousine service "does not include taxicab service,"[5] which is defined as follows:

> "Taxicab service" means passenger transportation in a taxicab *on a call-and-demand basis*, with the first passenger therein having exclusive use of the taxicab unless such passenger agrees to multiple loading.[6]

10. We modify the recommended luxury limousine rules to preserve public safety and consumer protection and to promote innovative and efficient methods of providing service. Because Uber's exceptions requests maintain the current rules[7] and do not propose rule revisions or provide a statutory analysis supporting rule revisions, the Commission proceeds on its own motion to modify the recommended rules.[8]

1. Rule 6301(f) – Definition of "prearranged charter basis"

11. Recommended Rule 6301(f) focuses upon the meaning of "prearranged," and says:

> "Prearranged charter basis" means that the charter order for luxury limousine service requested for a chartering party is entered into prior to the luxury limousine carrier being at or near the point of departure and before any charge for ancillary services.

The Recommended Decision says that "[p]rearrangement provides an important consumer protection so that customers understand and agree to the arranged service prior to it being rendered"[9] and that it "will promote competition and protect consumers."[10]

[5] § 40-10.1-301(8), C.R.S.

[6] § 40-10.1-101(19), C.R.S. (emphasis added).

[7] See, for example, Uber Exceptions, at 28. The Commission denies Uber's exceptions to the extent they request only maintaining the pre-existing rules.

[8] See § 40-6-109(2), C.R.S

[9] Recommended Decision, at ¶ 38 (addressing recommended Rule 6308).

[10] *Id.*, at ¶ 39 (addressing recommended Rule 6309).

Uber objects to this recommended definition on the grounds of vagueness, not necessarily for policy reasons.[11]

12. We modify Rule 6301(f) to allow use of innovative methods of communication between luxury limousine providers and customers. "Prearranged" addresses the point in time by which the parties must enter into a "charter order." By defining "prearranged" to require the completion of a charter order "prior to the luxury limousine carrier being at or near the point of departure," the recommended rule may restrict the use of new technologies and communications that allow for completion of a contract after the carrier is at or near the point of departure. Modifying this definition to "prior to provision of the service" complies with the statutory term "prearranged" and promotes innovative means of communication and formation of contracts. We agree with the ALJ's recitation of policy interests at issue here, but we conclude that our modified definition promotes competition and innovation without impairing consumer protection. Therefore, we modify and clarify[12] Rule 6301(f) as follows:

> "Prearranged" means that the charter order for luxury limousine service is entered into prior to provision of the service.

2. Rules 6301(b) and 6308(b) -- Charter Order and Pricing Terms

13. Luxury limousines furnish services pursuant to a "charter order," which is a "contract for transportation" that provides a chartering party exclusive use of the vehicle for a specific period of time.[13] During that period, the chartering party has the exclusive right to direct operation of vehicle, including origin, destination, route, and intermediate stops.[14]

[11] See Uber Exceptions, at pp. 22-23.

[12] We also clarify that we are defining "prearranged" and not intruding upon the definition of "charter order."

[13] § 40-10.1-301(1), C.R.S.

[14] *Id.*

The ALJ recommended further definition of "charter order" that includes a requirement to list the "total charge" for the service. Recommended Rule 6308(b) also addresses pricing methodology, by precluding a device "for calculating any component of rates based upon time and mileage, other than a clock."

a. Definiteness of price terms

14. We examine whether a "contract for transportation" under § 40-10.1-301(1), C.R.S., and the public interest mandate a definite, total charge, as compared to allowing estimates or criteria upon which the ultimate fare will be calculated. The Recommended Decision favors a definite charge, stating that:

- "Inclusion of price in the charter order is a particularly important protection because rates are not regulated. There is no independent means or basis for anyone to determine the total price for a charter."[15]

- "Service cannot be fully prearranged for a specific period of time if charges are not determined prior to the passenger entering the vehicle. While many hypothetical examples are possible, customers cannot necessarily know prearranged charges based upon metered contingencies – a characteristic unique to taxi service."[16]

15. Participants supporting the recommended rules and a definite, total charge argue that, for the service to be "prearranged," the total charge must be known by the passenger in advance, and including the total charge protects consumers from unknown and excessive fares.[17] Uber objects, asserting that its current practice of estimating the charge should not be prohibited.

[15] Recommended Decision, at ¶ 49.

[16] *Id.*, at ¶ 50.

[17] See Response by Colorado Cab Company, LLC, et al., at 11, 16.

16. Colorado common law and its consumer protection laws, the Uniform Commercial Code, and the Public Utilities Law demonstrate that a reasonable estimate complies with the requisites for formation of a valid contract. Further, the statutory term "prearranged' addresses a point in time when the parties must enter into a contract for transportation, not the definiteness of contract terms.[18]

17. Participants and commenters advocate that consumer protection is a prominent policy interest, and we agree. Another important policy interest is removing unnecessary impediments to formation of contracts and allowing the market to function efficiently. We balance the policies of consumer protection and promoting unimpaired formation of contracts to permit the use of a method or specific criteria for calculating a charge method or a reasonable estimate of the charge. We also allow reasonable estimates of a fare, upon the conditions that the estimate is made in good faith and incorporates the reasonable expectations of the parties.[19] To promote consumer protection and prevent abusive practices, we do not approve the application of criteria for the ultimate calculation of a fare that a passenger would not know, understand, or expect reasonably under the circumstances when the parties entered into the contract.

[18] New York Life Ins. Co. v. K N Energy, Inc., 80 F.3d 405, 409 (10th Cir. 1996); Shreck v. T&C Sanderson Farms, Inc., 37 P.3d 510, 513 (Colo. App. 2001); Restatement (Second) of Contracts, § 33 (1981); Section 6-22-103, C.R.S.; Section 6-16-104.6, C.R.S.; Section 4-2-305, C.R.S.; Section 4-2-305(2), C.R.S.; Section 4-1-201(19), C.R.S., and Official Comment 19; Official Comment 3 to § 4-2-305; and Section 40-10.1-505, C.R.S.

[19] Standards of honesty in fact and reasonable commercial conduct apply to the use of methods, formulas, and estimates. For example, a licensed limousine service should expect that certain times of day, holidays, and special occasions and events in Colorado result in longer drive times and thus should not be able to increase materially an estimated fare due to reasonably anticipated traffic. As another example, an estimated fare should account for certain holidays and events that increase the demand and thus price for limousine services.

18. The relative ease of market entry for luxury limousine services also enables competition to serve as a mechanism for consumer protection: if a carrier overcharges, then competitors are available as alternative providers. Therefore, we modify recommended rule 6301(b) to say, in part:

> A charter order shall state the charge method or a reasonable estimate of the charge.

b. Factors to calculate fares

19. An issue related to the use of methods and estimates is the type of factors or criteria a carrier may use to calculate a fare. There appears to be no dispute that, before a ride is provided, any number of factors, which may include time, distance, traffic conditions, holidays, demand for services, amenities, and the like, may be used to negotiate or quote a fare. We agree.

20. The issue in dispute is whether luxury limousine services may use a formula or method that applies actual or measured time and distance, as well as other factors, to calculate the ultimate charge or is precluded from use of a device "for calculating any component of rates based upon time and mileage, other than a clock."

21. The Public Utilities Law does not preclude the use of criteria such as distance to calculate a limousine fare. The definition for "charter order" makes time a necessary component, but is silent as to other criteria that may be applied. Indicative of the non-comprehensive nature of this section's listing of necessary terms is that it does not include price, which clearly is an essential term to a contract for luxury limousine services.

22. The statutes distinguish taxicabs by whether they provide service on a call-and-demand basis, which does not raise issues of fare calculation through measured distances. Though advocates for Rule 6308 cite metering as a characteristic distinctive of taxicabs, the transportation statutes do not mention meters or metering by taxicabs or any other transportation provider.

23. Allowing the use of distance when parties enter into a "contract for transportation" conforms to common business sense. For example, a luxury limousine service, or any form of transportation service, that provides a ride from Colorado Springs to the central mountains of Colorado over a three-hour span incurs higher costs than three-hour use of a vehicle to visit multiple locations in downtown Colorado Springs.

24. The same policies applied above to whether a fare may be calculated as a formula or an estimate support the use of criteria such as actual or measured distance to calculate the ultimate fare. Provided the limousine service and the customer have a reasonable, good faith understanding of the method by which the fare will be calculated, consumers are protected sufficiently. We agree that the state should not regulate the basis for calculating a fare, and restricting the criteria or formula for calculating the fare would inhibit formation of transportation contracts unnecessarily. Therefore, we do not adopt recommended Rule 6308(b).

c. Information contained in a charter order

25. Recommended Rule 6301(b) would require the following information contained within a charter order: the name and telephone number of the carrier, the name and telephone number of the other party to the contract underlying the charter, date and time of the original arrangement, the name of at least one member of the chartering party, pickup time, pickup address, stated destination, drop off time, and the total charge for the specific period of time.

26. To authorize use of innovative technologies of communication, we clarify the definition of a "charter order" to allow electronic documentation in addition to paper.

27. We agree with the ALJ that charter orders must contain the name of the carrier. A valid contract requires identification of the parties.[20] Consumer protection interests also necessitate clear identification of the carrier and the driver. For example, consumers must be able to contact the carrier or driver promptly to retrieve essential items left in the vehicle.[21] Including the carrier's and driver's names also allows consumers to report unsafe practices to the Commission or law enforcement. Further, to assist reports and investigations of illegal or unsafe practices, charter orders must contain the PUC permit number (LL number) of the luxury limousine carrier. We find these modifications necessary for consumer protection and safety.

28. We therefore adopt the following rule, removing some items from the recommended rule as unnecessary:

> (b) "Charter order" means a paper or electronic document that memorializes the contract for luxury limousine or off-road scenic charter service for a specific period of time reasonably calculated to fulfill the purpose of the contract. A charter order shall state the charge method or a reasonable estimate of the charge. A charter order also shall contain the name and telephone number of the person contracting on behalf of the passengers; the name and telephone number of at least one passenger; the name, telephone number, and PUC number of the carrier and, if different from the carrier, of the driver; pickup time, and pickup location. A copy of the charter order shall be maintained for at least one year following the provision of service.[22]

[20] The carrier's and driver's name must be sufficient to identify the provider. For example, the use of only first names would not be compliant.

[21] To ensure that passengers have the driver's name and telephone number, we modify Rule 6309(h) accordingly.

[22] We also modify recommended Rule 6309(h) to clarify that at least one passenger in the limousine has been provided with the carrier's and driver's name and telephone number, to address the situation in which a person other than the passengers has contracted for the luxury limousine service.

3. Rule 6309 – Staging Areas

29. Recommended Rule 6309 would add restaurants and bars as places from where luxury limousines may not be positioned within certain distances, and would increase the measured distance from 100 to 200 feet outside the County of Denver. Recommended Rule 6309 also specifies that a luxury limousine carrier shall not arrive at a pickup location more than forty-five minutes prior to the pickup time on the charter order. In doing so, the ALJ amended a previous requirement that a luxury limousine carrier may arrive at a pickup location within a "reasonable period" of the pickup time noted on the charter order. Uber argues that these recommended rules are not necessary for consumer protection or safety and instead will make luxury limousines less available or inconvenient in town centers.[23] Colorado Cab and other responding participants contend that the recommended rules are necessary to maintain the statutory distinction between luxury limousines and taxicabs.[24]

30. The existing limitations on where luxury limousine carriers can position their vehicles and on arrival times play an important role in maintaining the statutory distinction between luxury limousines and call-and-demand taxis.[25] As the ALJ noted, positioning a limousine in areas commonly used to hail taxicabs, such as in front or near a hotel or a taxicab stand, indicates the offering and provisioning of a call-and-demand service. Likewise, the arrival of a limousine far in advance of a scheduled departure evidences the offering of a call-and-demand service prior to providing the chartered, limousine service.[26] Therefore, to the extent Uber argues that the Commission lacks the statutory authority to promulgate staging limitations, we disagree.

[23] Exceptions filed by Uber, pp. 23-25.

[24] Response to exceptions filed by Hy Mountain, p. 2; Response filed by Colorado Cab, pp. 12-13.

[25] See §§ 40-10.1-101(19) and 40-10.1-301(8), C.R.S.

[26] Recommended Decision, ¶¶ 55-57.

31. The rules we adopt maintain the distinction between call-and-demand services without impairing unnecessarily the provisioning of luxury limousine service. The Commission declines to allow the addition of bars and restaurants to measure limousine positioning. Not only would adding bars and restaurants eliminate entire blocks and sections of downtowns or shopping areas, but also it fails to account for offices, businesses, and residences that are located in the same building as, or very near to, such establishments. Increasing the distances from 100 to 200 feet outside of Denver also unnecessarily restricts the provisioning of limousine services and is not required to distinguish call-and-demand from luxury limousine services.

32. Further, we find that rules governing where luxury limousines may be positioned should work in tandem with limitations on arrival times, not independently. Under the recommended rules, a luxury limousine may not arrive more than forty-five minutes before a scheduled departure, even if the location is outside areas where call-and-demand services are commonly requested. Combining the two limitations will maintain the statutory distinction between luxury limousines and taxicabs without interfering unnecessarily with a luxury limousine providing service in the 100-foot area of a hotel, motel, or taxicab stand. Therefore, we combine recommended Rules 6309(e), (f), and (g) into a single rule as follows:

> (e) A luxury limousine carrier shall not station a luxury limousine in front of or across the street from a hotel or motel, or within one hundred feet of a recognized taxicab stand or a designated passenger pickup point at an airport without the completed charter order in the vehicle. The stationing of the luxury limousine shall be within forty-five minutes pickup time noted on the charter order.

4. Rules 6311(b) and 6611(b)

33. Because increases to civil penalty amounts are not necessary to protect the public interest at this time, we do not adopt any of the proposed increases to existing rules listed in the recommended Rules.

F. Miscellaneous Rules

34. We amend proposed Rule 6001(ee) to clarify that a person qualifying as a motor carrier is not a transportation broker.

> "Transportation broker means a person, other than a motor carrier or as part of a motor carrier's operations, who, for compensation, arranges, or offers to arrange, for-hire transportation of passengers. A transportation broker is not an agent of a motor carrier, cannot represent itself as a motor carrier, cannot provide or offer to provide transportation service, and cannot be a party to the contract for transportation.

35. We amend Rule 6016(b) to correct a typographical error.

36. We amend recommended Rule 6257(c) to clarify that a taxicab carrier shall not charge live meter rates for trips from Denver International Airport (DIA) to one of the zones listed in Rule 6257(d). For these trips, the taxicab carrier must charge the flat zone charges listed in Rule 6257(c) with the exception of any additional airport access fees and additional passenger drop charges. We also amend proposed Rule 6257(c) to correct a typographical error.

37. Finally, we delete Rule 6503(b), regarding issuance of towing permits to carriers whose principals have disqualifying convictions. This rule duplicates Rule 6504, which pertains to criminal history record checks.

G. Procedural Matters

38. Finally, we find that this rulemaking is in substantial compliance with the Colorado APA.[27] The additional comments permitted under Decision No. C13-1092-I provide an opportunity for any interested participant to address the communications between the ALJ and employees of the California Commission. Our rules do not address any scientific or technological issues but instead are technologically neutral while allowing use of innovative methods of service. Even if the rules as adopted address scientific or technological issues, the record and this Decision contain sufficient evaluations of the rationales justifying the rules. Third, because we are not adopting any of the recommended increases to civil penalty amounts, the statute governing notifications to members of the legislature is not applicable.

II. ORDER

A. The Commission Orders That:

1. The exceptions filed on August 22, 2013, by Uber Technologies, Inc., are granted in part and denied in part, consistent with the discussion above.

2. The 20-day period stated in § 40-6-114(1), C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this decision.

3. 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/EFI.Show_Docket?p_session_id=&p_docket_id=13R-0009TR.

4. This Order is effective upon its Mailed Date.

[27] See § 24-4-103(8.2)(a), C.R.S.

B. ADOPTED IN COMMISSIONERS' DELIBERATION MEETING September 17, 2013

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

_____

JAMES K. TARPEY

_____

ATTEST: A TRUE COPY

PAMELA J. PATTON

_____

Commissioners

Doug Dean,
Director

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/EFI.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