

In Response to the Legislature's Request for a Report on Towing Practices and Prices

The AG's office was charged with consulting with the DFR, DMV, DPS, OPR and the State Treasurer, but the request did not include bringing the rest of the stakeholders to the table, only as self-selecting public input. I believe to get a comprehensive look at the issues around towing in Vermont, a more thorough process is required. Understanding the needs of property owners, public service employees (law enforcement officers, dispatchers, and Fire & Rescue), tow companies, directly affected vehicle owners, and indirectly affected motorists (stuck in traffic) is important to any study suggesting changes in the way Vermont approaches how tow services operate.

There are a variety of segments in the towing business

Direct to customer, where a vehicle owner contacts a company or motor club directly for service.

Private Property Impound, where a property owner either directly contacts, or contracts with, a towing company

Municipal Parking Enforcement

Law Enforcement (LE) Impound, for violators such as DUI

Law Enforcement Emergency Light Duty, for accidents and some breakdowns

Law Enforcement non-emergency, breakdown tows, and obvious abandoned vehicle removals

Law Enforcement Emergency Heavy Duty (HD) Accident Recovery and Remediation

In Vermont, service for all these segments is performed by small business owners who make investments in equipment based on: the markets they are trying to serve and some estimation of what the need will be for service, on competition, and the very unpredictable nature of when motorists will be in need. Equipment and parts prices have increased steeply in recent years due to inflation and anti-competitive corporate practices in the manufacturing world. The nature of towing is that it is a 24 hour/365 days per year business. There are no companies in Vermont that are able to sustain running the four shifts of employees needed to operate a 24 hour/7 days a week business without extraordinary effort/hours of its employees. The rates of calls for service also varies widely by geographic region, a tow company owner in Chittenden county might spread their overhead expenses over 10 calls per unit of time, while a tow owner in Essex county will likely only get one call in the same period; to cover their insurance, truck payments, property taxes, etc.

Direct to customer service is based on a consensual agreement between the motorist and tow company and there is no reason for government to regulate those transactions. When Congress deregulated the trucking industry it specifically prohibited the states from setting prices for transportation, although some states have gotten around this by using safety as a primary issue.

Private Property Impound exists because property owners are exercising their rights to use or control their property. Generally, municipalities regulate how property owners must mark their

property to adequately inform vehicle owners. The prices and circumstances around customer service for PPI towing is sometimes regulated by the municipality.

Municipal parking enforcement is typically highly structured by the city government. A study of the rates in Chittenden County would show that the rates vary by municipality, primarily by the need to attract service providers, particularly in the middle of the night during snow storms.

Law enforcement Impound rates may be set by the municipality. The VT State Police does not set rates for this work but does maintain a clause that allows station commanders to drop a towing company from their rotation due to overcharging. Tows from the highway have no guarantee of payment outside the legal system due to the federal highway being exempt from any municipal ordinances.

Law Enforcement Emergency Light Duty is critical to keeping the roadways open. Towing companies are expected to respond 24 hours a day within minutes and are often on scene with FIRE and RESCUE. Like the other first responders, towers are operating outside the safety of OSHA protections and the work is frequently very technical in nature, recovering vehicles from areas off the roadway. There is also no guarantee of payment since there is no time to establish a contractual relationship with the vehicle owner. A significant portion of this work goes unpaid, and the tower is stuck with disposing of the vehicle after storing it for the duration of the lengthy abandoned vehicle process.

Law Enforcement non-emergency is when a motorist is assisted by dispatch or an officer in securing services. Unattended vehicles may, or may not, be claimed by the owner.

Law Enforcement Emergency Heavy Duty Accident Recovery and Remediation involves tremendous resources to handle the weights and sizes of the vehicles involved. It is further complicated by the fact that a single accident can involve multiple owners and multiple insurance companies for the different sections of truck and cargo (as was the case in the example provided by David Malloy in the invoices he submitted for this study, the reduced bill was due to the splitting of the charges among the different parties). HD towers are often requested by law enforcement to perform complex jobs quickly and at great expense with no guarantee of payment. While DOT safety laws have reduced the volume of commercial accidents over the decades, the complexity and price of HD towing equipment has skyrocketed, and the expectations of quick clearance has also increased over the years. Additionally, requirements for environmental protection have become more stringent and are often a major portion of any heavy duty wreck clean up.

The high costs of towing equipment, insurance, and even registration, the extraordinary needs of providing a 24/7 service, and the lack of regulation requiring everyone on the road to carry insurance coverage sufficient to cover the cost of services, leads to cost shifting and higher bills.

Towing is a market driven unregulated utility. In the circumstances when a vehicle owner is not able to make their own arrangements for towing or accident recovery, law enforcement does it for them. There is no set pricing for that in much/most of the state. Towing could be treated as a utility and regulated by the Public Utility Commission, or perhaps the model is more closely suited to the regulation of hospitals. As long as a commission set rates that guarantee a profit and a return on investment, that might well be a welcome change. Oddly, in law enforcement towing (like healthcare) there is an inverse supply and demand relationship to pricing. Due to high fixed costs, the fewer LE calls a company gets, the higher the expenses per call.

Most towing companies serve a variety of the above areas in order to have a viable business model. Non-consent law enforcement work is too inconsistent, and too seasonal, to make it work as a sole source of revenue.

Given the variety of characteristics of the areas of the state, it would be problematic to establish any statewide pricing model that fairly compensates (and incentivizes) towing companies for emergency work. The new highly regulated State Police statewide model in Massachusetts is still in its early stages, and cracks are starting to show, at least outside the metropolitan areas.

Directing the AG's office and DFR to clean up insurance company practices of refusing to compensate towers for their services on liability coverage alone would help alleviate cost shifting. Massachusetts law imposes penalties on insurance companies that act in bad faith by imposing penalties of not less than two times the claim, and up to three times, in damages.

Addressing the deficiencies in state law regarding liens and holding vehicles for payment as described in the cases attached (Brattleboro Savings and Loan Assoc. v. Laurie Ballard and Hartland Service Center & Champlain Valley RV Rentals v. Collision Unlimited) by amending 23 V.S.A. § 1004, or directing the Traffic Committee to establish rules insuring tow companies can get paid (without the use of the court system) would go a long way to making our current system function better. Ask any dispatcher, there are many calls for service that tow companies don't want to get "stuck" with, and they have a hard time getting service.

Towing practices (and pricing) have a huge effect on the rest of the traveling public. The costs of backed up traffic due to accidents in lost wages and idling vehicles is almost incalculable. Secondary accidents due to long queues are a very real problem. Florida has instituted a quick clearance law in which the tow company is given only 90 minutes to clear a wreck. If it's done faster, the state pays a bonus, slower and the tower is fined. HD duty towers participating in that program literally have millions of dollars in equipment investments to bring to the scene to make that work.

There is also a high cost to our public infrastructure with slow service in terms of the fire fighters working out on the highways helping to keep scenes safe. There are fewer and fewer volunteers willing to lose a day of work to spend nursing slide offs and wrecks on a snow day. Paid firefighters are not losing income, but time on the highway is a distraction from protecting the

communities that raise the tax dollars to pay them. The state or federal government should really be compensating local fire services for their work on the interstates.

ACGVT has proposed that towing should be regulated by the OPR. This would indeed enhance the safety of the public, and I am sure most established towing companies would support professional regulation. The effect of “raising the bar” would make it harder to enter the business, and towers could finally charge even consent tow rates commensurate with their expenses and the investments they have in their business. Commercial insurance rates are currently having a big effect on the accessibility of entering the towing business. A towing company also has to stay pretty much loss free to access any reasonable rates. Any restrictions imposed via regulation could help improve the loss history of the market as a whole, and help stabilize our insurance costs, and tow prices.

Tow operators like to help people. We also like to be part of the team that responds to emergencies, and most of us feel we are partners with the law enforcement agencies we work with, and we watch after each other’s backs. Please respect our place in that public-private partnership and “have our backs” at the legislative level also.

Respectfully submitted,

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Rod West, owns Blackfork Towing in Richmond, has been a small business owner since 1988, & has operated Blackfork since 2000, serving VT State Police, local law enforcement, and the general public. He has attended small business classes from the SBA, is a certified WreckMaster Level 6/7, is VSP Traffic Incident Management (TIM) trained, and is a NCCER certified crane operator. Blackfork is a sole proprietorship and operates specialized towing and recovery vehicles that are currently from 11 to 23 years old.