

August 15, 2024

Virginia State Corporation Commission
1300 E. Main St.
Richmond, Virginia 23219

Re: *Ex Parte*: In the matter concerning the regulation of towing fees
CASE NO.: PUR-2024-00104

Dear Commissioners:

This comment is filed on behalf of Consumer Federation of America (CFA) and the Virginia Poverty Law Center (VPLC). CFA is a national association of non-profit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education. CFA's director of consumer protection, Erin Witte, was included on the Service List for this *ex parte* proceeding. VPLC is a statewide legal services nonprofit formed in 1978 that uses advocacy, education, and litigation to break down systemic barriers that keep low-income Virginians in the cycle of poverty. The State Corporation Commission (Commission) was directed to examine the regulation of certain towing fees in the Commonwealth of Virginia and identify policy options for the Commission to assume all or part of such regulation.¹

CFA and VPLC encourage the Commission to assume regulation of towing fees in Virginia in accordance with our policy recommendations set forth below. Our comments recommend that the Commission (1) through research, set a standardized maximum rate for the Commonwealth that accounts for the impact on consumers, (2) provide clear and public guidelines about the methodology for calculating and implementing changes to towing rates, and (3) ensure that the Commission is authorized to pursue violations and resolve consumer disputes.

Background on Virginia Towing Fees

Private property towing amounts to the seizure of a person's vehicle at the sole discretion of a private company (usually an individual tow truck driver) without the consent of the vehicle's owner. Access to a vehicle is critical for employment, healthcare, childcare, and participation in the economy, yet individual tow truck drivers are deputized as pseudo-law enforcement agents to jeopardize that access by seizing vehicles at their discretion. The authority to tow vehicles from private property stems from a contractual agreement between the property owner (a landlord, real estate company, etc.) that identifies the conditions under which the vehicle is to be towed. These contractual conditions are rarely made publicly available, and are sometimes only partially explained to consumers who may use the parking lot. This results in consumer vehicles being seized for the purported failure to comply with an agreement to which they are not a party, and sometimes without warning or explanation. Tow companies and their drivers have enormous leverage to exploit a fraught situation and extract high fees from consumers who need their

¹ Virginia Senate Bill No. 450, available at <https://lis.virginia.gov/cgi-bin/legp604.exe?241+ful+SB450>

vehicles returned. Crucially, consumers who lose their vehicles also lose access to everything inside their vehicle, such as medicine, laptops, cell phones, personal identification documents, car seats for their children and other personal effects.

Towing fees vary widely across the Commonwealth, and in many situations, consumers have few options for recourse when they have been overcharged. The baseline towing fee structure set forth in the Virginia Code is riddled with confusing exceptions and additional permissible “fees” that increase the actual cost of the tow by over 50%. Even the baseline fee structure for private property tows is inapplicable when the vehicle has been towed in a city or county that has adopted its own towing fee regulation.

Virginia Code § 46.2-1233.1 sets a statutory cap on private property tows of \$150, plus two additional \$30 fees if a vehicle is charged between 7:00 p.m. and 8:00 a.m. and/or on a weekend or holiday, plus a \$20 “fuel surcharge fee.” However, section 46.2-1233.1 does not apply when a city or county has used its authority under Virginia Code § 46.2-1233 to “set reasonable limits” on towing fees. This statute does not provide any guidance to setting the towing fee other than “the fair market value of such removal,” which notably excludes an analysis of the effect that towing fees have on the consumers who are forced to pay for them.

Section 46.2-1233 becomes even more complex when addressing regulations in Planning Districts 8 and 16², which **require** these localities to establish towing fees of “no less than \$135 and no more than the maximum in § 46.2-1233.1”, plus two additional fees of “no less than \$25 and no more than the maximum in § 46.2-1233.1” if a vehicle is charged between 7:00 p.m. and 8:00 a.m. and/or on a weekend or holiday.

A notable potential inconsistency exists for consumers who seek recourse when they are overcharged for a tow. The Virginia Consumer Protection Act (VCPA) is clear that a violation of the baseline statute, § 46.2-1233.1, is a violation of the VCPA. This provides a private right of action for the victim of a towing overcharge, entitling them to restitution, treble damages for willful conduct, and reasonable attorney’s fees and costs. See Va. Code Ann § 59.1-200(A)(32). However, the VCPA does not explicitly mention violations of the locality statute, § 46.2-1233. This means that a consumer who has been overcharged for a tow in a different locality may not have the same recourse as someone towed in a county that relies on the baseline statute.

These overlapping, conflicting and highly confusing statutory provisions create uncertainty for consumers, towing companies and regulators. Further, the current structure leaves it up to the General Assembly to adopt changes to these fees, often without sufficient (or any) data to support the change. The Commission has the expertise to perform a comprehensive analysis to identify a fair and reasonable rate for a service. Another problem with the existing statutory structure is that it does not provide or require any standardized guidelines to localities who may

² Planning District 8 includes Northern Virginia (<https://novaregion.org/>), and Planning District 16 includes the George Washington Regional Commission, comprised of the City of Fredericksburg and the counties of Caroline, King George, Spotsylvania and Stafford (<https://gwregion.org/>).

seek to adopt an ordinance that sets its own towing fees. Following a study that sufficiently evaluates a fair and reasonable rate for towing, the Commission will be in a position to provide such guidance. Finally, the gap in consumer protections through the VCPA is problematic. Consumers should have available recourse through the VCPA to ensure consistency and accountability.

Policy Recommendations

1. Through research, set a standardized maximum rate for the Commonwealth that accounts for the impact on consumers.

Should the Commission assume regulation of towing rates in Virginia, it is critical that such rate be supported by a thorough analysis of current towing practices *and* their effects on consumers.

Consumers pay a widely varying range of towing fees across the Commonwealth, some of which are permitted by statute and some that are not. The Commission should evaluate each type of fee that tow companies charge and the circumstances under which they are imposed on consumers. Some tow companies have imposed “convenience fees,” “impound fees,” and other fees which are not authorized by the Virginia Code. The Virginia Code provisions at issue do authorize tow companies to charge two fees of \$25-30 per tow, plus a \$20 fuel surcharge fee, but it is entirely unclear what purpose these fees serve or whether they are economically justifiable. The Commission should reevaluate the economic rationale for each of these additional fees, including exactly what increased cost a towing company experiences when towing a car on a night, weekend, or holiday, and whether that economically justifies continued imposition of the fees. By way of example, the \$20 fuel surcharge fee was adopted in 2022, during a time when fuel prices were at a peak, but prices have since dropped. It is unclear how the General Assembly arrived at the \$20 amount, and what data it reviewed in this calculation. Certainly, tow companies that have collected an extra \$20 fee on each and every tow have recouped any purported “losses” as a result of a temporary spike in fuel prices. It is extremely unlikely that the increased cost of fuel per tow amounted to the \$20 tow companies continue to collect. This questionable fee is a prime example of why the Commission should reevaluate all of these fees and develop a methodology for evaluating and approving such changes. Tow companies have repeatedly lobbied the General Assembly for increases in towing rates, but there is currently no procedure in place to thoroughly evaluate a fiscal justification for such increases.

The Commission should also thoroughly evaluate the impact of towing fees on consumers. There are thousands of available complaints filed with local governments and the Attorney General’s office about towing fees and practices which the Commission should review as part of its analysis. An unexpected \$230 towing fee can be a substantial burden on low-income consumers, many of whom have limited savings and other pressing debt obligations. VPLC routinely hears from consumers and from legal aid organizations across the Commonwealth about the impact of towing practices and the financial burden on low-income consumers created by towing fees. Private property tows frequently occur in rental housing parking lots, including in low-income housing communities. The urgent need to retrieve a vehicle and its contents can create an

additional debt obligation (such as on a credit card with a high interest rate) or force consumers to re-prioritize other debts to pay for the towing fee. In short, the Commission should acknowledge the fact that this is a significant expense for many consumers instead of solely focusing on the costs incurred by towing companies.

Seizing a consumer's vehicle is a situation that is fraught with frustration, confusion and is frequently dangerous. A consumer who has found themselves unexpectedly without their vehicle and its contents is understandably confused and upset and may be easily coerced into paying more to retrieve their car. The tow company is in a powerful position to extract as much money as possible from the owner of the vehicle, and the Commission should endeavor to ensure that the maximum fee for any such tow is as low as possible to avoid unnecessary and predatory towing fees.

The Commission should also ensure that there is a standardized rate across the Commonwealth rather than allowing localities to adopt their own, different towing rate. There are no guidelines in place to ensure predictability or consistency across the Commonwealth for the consumer who bears the burden of paying for the tow. The only limitation in § 46.2-1233 is that the fee be "reasonable" based on the "fair market value" of towing removal. This statutory language does not provide specific guidance to ensure any manner of consistency. Should the Commission wish to retain the ability of localities to adopt ordinances, it should be explicit that the towing rates allowed by such ordinance **may not exceed** the rates set for the rest of the Commonwealth. This adds certainty and predictability to the process for consumers, towing companies, and regulators.

Additionally, should the Commission retain the ability of a locality to adopt its own towing rates through a local ordinance, it should clarify that violation of § 46.2-1233 (or its potential future equivalent) is also a violation of the Virginia Consumer Protection Act. It is clear that the General Assembly intended to punish overcharging a consumer for a towing fee through the VCPA by adopting Va. Code Ann. § 59.1-200(A)(32), and clarification that this also applies to violation of a local ordinance which sets a towing rate would be wholly consistent with the intent of the legislature.

2. Provide clear and public guidelines about the methodology for calculating and implementing changes to towing rates.

Should the Commission assume regulation of towing rates, it should publicly set forth as much information as possible about the data it reviews and how it uses that data to arrive at a rate. It should also permit public participation in the process and require diverse perspectives. If the Commission continues to allow localities to adopt a rate that is different (and lower than) than the standard rate for the rest of the Commonwealth, it should provide guidelines to the locality for the data they must obtain and review when setting a different rate.

The Commission should also limit the frequency of rate increases for towing fees. Predictability for consumers and towing companies is difficult if the rates are subject to frequent increases, and we suggest that the Commission limit its review to not more than once every five years.

3. Ensure that the Commission is authorized to pursue violations and resolve consumer disputes.

Should the Commission assume regulation of towing rates, it should ensure that it is fully authorized to pursue violations and resolve consumer disputes about towing fees. Currently, the Virginia Attorney General has authority to review and resolve consumer complaints about towing conduct and enforce violations but has rarely used it publicly. We urge the Commission and the Attorney General to work together to ensure that any suspected violations are quickly investigated and pursued. Such violations should also be made publicly available to the fullest extent possible, so that consumers, towing companies and regulators are fully aware of bad actors who have a history of violating towing regulations. Without meaningful and routine enforcement for those that violate the law, regulatory changes to these towing rates will quickly become powerless.

The Commission should also establish a consumer complaint process that allows consumers to easily file a complaint (online, by telephone, and by mail) in multiple languages and seek an expeditious resolution through the Commission. These complaints, their contents and the outcomes should be made available to the public to the fullest extent possible.

Conclusion

These policy recommendations are made in the interests of consumers who frequently suffer from predatory towing practices that largely go unchecked in the Commonwealth, and particularly on behalf of low-income consumers for whom towing fees can be a substantial and unexpected cost. Virginia's statutory provisions regarding towing are fairly disparate and confusing, and we urge the Commission provide clarity and fairness. Consumers do not select the towing company that takes their car, they do not have any ability to negotiate the cost of the tow, and the rules that govern the ability to tow their car are arbitrary and opaque. While there is a need for legitimate towing that makes parking available and that the rights of private property owners are respected, there is an strong need for a state regulator to take meaningful steps to ensure that legitimate towing practices do not turn into predatory and unrestrained practices.

Thank you for the opportunity to submit these comments. Should you have questions, you can reach out to Erin Witte at ewitte@consumerfed.org.

Sincerely,

Consumer Federation of America
Virginia Poverty Law Center