

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In re Application of

Permit to Operate as a Motor Freight
Common Carrier

DOLLY, INC.,

Petitioner

DOCKET NUMBER: _____

DOLLY, INC., PETITION FOR EXEMPTION
FROM WASHINGTON ADMINISTRATIVE
CODE SECTIONS 480-14-250(1), 480-14-
250(1)(e) AND 480-14-110

TABLE OF CONTENTS

I. NAME OF PETITIONER..... 1

II. RELIEF REQUESTED 1

III. FACTS..... 2

IV. STANDARD FOR GRANTING EXEMPTIONS 3

V. GROUNDS FOR RELIEF 4

A. Insurance-Form Requirement, WAC 480-14-250(1)(e)..... 5

B. Authorized-Insurer Requirement..... 6

C. Prohibition on Another’s Use of Permit..... 7

VI. PROPOSED CONDITIONS 8

VII. CONCLUSION..... 9

TABLE OF AUTHORITIES

Cases

In re Application of Dolly, Inc. for Authority to Operate as a Household Goods Moving Company and Motor Freight Common Carrier,
UTC Dkt. No. TV-190594 (Sept. 9, 2019)..... 4

In the Matter of Amending WAC 380-30 Relating to Passenger Transportation Companies,
UTC Dkt. No. TC-161262, General Order R-590, Order Repealing, Amending and
Adopting Rules Permanently (July 31, 2017) 4

Statutes

RCW 80.01.040..... 1

RCW 81.80..... 1

Regulations

WAC 480-07-110..... 1, 4

WAC 480-14-020..... 1, 3

WAC 480-14-110..... 1, 7, 8, 9

WAC 480-14-250..... passim

I. NAME OF PETITIONER

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II. RELIEF REQUESTED

3 Dolly seeks exemptions from three provisions under the Commission’s regulations:
WAC 480-14-250(1), WAC 480-14-250(1)(e), and WAC 480-14-110.

4 The Commission has jurisdiction to grant this Petition under RCW 80.01.040, RCW 81.80, and Commission rules. WAC 480-07-110(1) provides that the Commission “may grant an exemption from, or modify the application of, any of its rules in individual circumstances if the exemption or modification is consistent with the public interest, the purposes underlying regulation, and applicable statutes.” Likewise, WAC 480-14-020(2) permits “changes and modifications” to Commission rules that the “[C]ommission may deem advisable from time to time, and also . . . such exemptions as may be considered just and reasonable in individual cases.”

III. FACTS

5 Dolly is a Seattle-based “transportation network company” (TNC) that provides a digital
platform for transporting goods locally. It currently operates in 20 states and the District of
Columbia.¹

6 Rather than owning vehicles and employing drivers as a moving company would, Dolly
contracts with local truck owners—“Helpers”—who use the platform to connect with customers
who need goods transported.

7 Dolly requires that all Helpers demonstrate that they have their own auto liability
insurance that meets or exceeds Washington State requirements.

8 In addition, as the chart below shows, Dolly carries a commercial general liability
insurance policy from First Mercury Insurance Company (Crum & Forster) covering up to \$1
million per occurrence and \$2 million in aggregate, an excess liability policy from James River
Insurance that extends our liability coverage to \$4 million per occurrence and \$5 million in
aggregate, and an auto liability insurance policy from Fair American Select Insurance Company
with a combined single limit of \$1 million. These insurance policies function as contingent
liability insurance in excess of Helpers’ policies. Together, Dolly’s insurance policies provide
over ten times the insurance coverage required by the regulations.

Insurance Type	Insurance Provider	Dolly’s Commercial Insurance Coverage Limits		WAC 480-14-250 Minimum Coverage Limits (As Applied to Dolly’s Business Model)	
Commercial General Liability	First Mercury (Crum & Forster)	Each Occurrence	\$1,000,000	Liability and Property Damage	\$300,000 (GVWR under 10k pounds and non-hazardous substances transported)
		Damage to Rented Premises	\$50,000		
		Personal and Advertising Injury	\$1,000,000		
		General Aggregate	\$2,000,000		
		Products – Completed Operations Aggregate	\$2,000,000		

¹ Further facts are contained in the Declaration of Michael Howell in Support of Petition for Exemption from Commission Rules and in Support of Application of Dolly, Inc., for Permit to Operate as a Common Carrier filed concurrently with this Petition (Howell Declaration).

Auto Liability	Fair American Select	Combined Single Limit	\$1,000,000		
Umbrella	James River	Each Occurrence	\$3,000,000		
		Aggregate	\$3,000,000		

9 First Mercury Insurance is not on the admitted list with the Office of the Insurance Commissioner. It possesses an A.M. Best Rating Services credit rating of “A” and is a member of the Surplus Lines Associates of Washington. The company’s minimum capital and surplus is \$1.25 billion to \$1.5 billion.

10 Fair American Select Insurance Company is not on the admitted list with the Office of the Insurance Commissioner. It possesses an A.M. Best Rating Services credit rating of “A+” and is a member of the Surplus Lines Associates of Washington. The company’s minimum capital and surplus is \$2 billion or greater.

11 James River is not on the admitted list with the Office of the Insurance Commissioner. James River possesses an A.M. Best Rating Services credit rating of “A” and is a member of the Surplus Lines Associates of Washington. The company’s minimum capital and surplus is \$750 million to \$1 billion.

12 To date, Dolly has been unsuccessful in reaching an agreement with Commission Staff that would enable it to obtain a common-carrier permit without fundamentally changing its business model. However, Commission Staff previously indicated that they would, under certain conditions, recommend the Commission grant exemptions from the insurance rules addressed in this Petition.²

IV. STANDARD FOR GRANTING EXEMPTIONS

13 The Commission’s rules regarding motor freight common carriers “are subject to such changes and modifications as the commission may deem advisable from time to time, and also to such exceptions as may be considered just and reasonable in individual cases.” A company applying for an exemption must explain its request. WAC 480-14-020.

² Letter from Mathew Perkinson, Assistant Director, Transportation Safety, filed in UTC Docket No. TV-190594 (Sept. 9, 2019) (“Perkinson Letter”).

14 The Commission evaluates requests for exemptions under the “public interest standard.”
WAC 480-07-110(2)(c) states:

Factors the commission may consider in making this determination include whether the rule imposes an undue hardship on the requesting person of a degree or a kind different from hardships imposed on other similarly situated persons, and whether the effect of applying the rule to the requesting person would be contrary to the underlying purposes of the rule and the public interest.

V. GROUNDS FOR RELIEF

15 TNC-like models are becoming increasingly common in today’s service markets. As
Public Counsel has noted, “there is a need to adapt traditional regulatory frameworks to meet
the realities of a 21st Century economy.”³

16 The Commission has also recognized this reality, and this has led it to begin changing
how it regulates TNC-like models. In a recent rulemaking regarding auto transportation
companies, the Commission acknowledged that, whereas it previously expected those
companies to use their own vehicles and employees, “TNCs use a different model, relying on a
network of individuals the companies maintain are acting as independent contractors who use
their own vehicles.” The Commission observed that “TNCs’ nascent, rapid success in the
market has shed new light on a long-standing regulatory paradigm.”⁴

17 Despite these changes in the marketplace, the public should not have to experience any
lowering of regulatory standards when it comes to safety and reliability. As Public Counsel
wrote, “[w]hile the way consumers connect with service providers is changing, the need to
ensure that transportation service providers are safe and reliable does not and will not change.”⁵

18 To that end, where Dolly operates, it implements safeguards that are equivalent to, or
more protective than, what Washington law requires of traditional common carriers. Before

³ Initial Comments of Public Counsel, *In re Application of Dolly, Inc. for Authority to Operate as a Household Goods Moving Company and Motor Freight Common Carrier*, UTC Dkt. No. TV-190594, ¶3 (Sept. 9, 2019).

⁴ *In the Matter of Amending WAC 380-30 Relating to Passenger Transportation Companies*, UTC Dkt. No. TC-161262, General Order R-590, Order Repealing, Amending and Adopting Rules Permanently, ¶16 (July 31, 2017) (emphasis added).

⁵ Initial Comments of Public Counsel, *supra* note 3, ¶ 3.

Helpers can access the platform, they must pass extensive motor vehicle and criminal background checks and prove they have an active auto insurance policy that meets state requirements. Dolly also has its own commercial auto and liability policies, which provide coverage that is ten times the amount required under relevant regulatory requirements. In short, Dolly is committed to safe, reliable, and fairly priced service while fulfilling a need for consumers to get help with local goods transportation.

A. Insurance-Form Requirement, WAC 480-14-250(1)(e)

19 Commission regulations require proof of active liability and property damage insurance policies using “a Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance (Form E), Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond (Form G), or a written binder evidencing the required coverage.” WAC 480-14-250(1)(e).

20 Dolly applied for an exemption to this requirement in August 2019, and Commission Staff recommended granting that exemption on certain conditions.⁶

21 Like other TNC-like businesses, Dolly’s business model does not allow it to satisfy the letter of this rule. Because Dolly does not own the vehicles that Helpers use to make deliveries arranged on Dolly’s platform, it cannot obtain a Form E or Form G. Changing Dolly’s business model to accommodate the strict letter of this requirement would undermine the efficiency of Dolly’s operations without adding any protection to the public.

22 Nonetheless, as Dolly explained in its previous Petition for Exemption, Dolly possesses insurance that complies with the intent of the rule—and the substantive requirements of WAC

⁶ Perkinson Letter, *supra* note 2. Those conditions were that:

- (1) The Company obtains insurance from a highly-rated non-admitted company authorized by the OIC to issue surplus lines insurance (A.M. Best A- or above rating); and,
- (2) The Company allows only persons or entities whose common carrier permit(s) Dolly has verified, to transport property pursuant to a bid generated by Dolly

As discussed below, Dolly’s current insurance satisfies the first condition. With respect to the second condition, Dolly has submitted a legal memorandum explaining its position that the regulations and statute do not contemplate this requirement.

480-14-250(1)(a) and (b)—by covering both auto liability and physical property damage with policy limits that far exceed the minimum limit requirements of WAC 480-14-250(1)(b) .

23 Despite Dolly possessing insurance that more than adequately covers liabilities arising from common carrier services arranged on its platform, the form requirement in WAC 480-14-250(1)(e) would prevent the company from operating. This constitutes an undue hardship on Dolly as well as on the customers who use Dolly’s services and the large retailers that rely on those services.

24 In short, Dolly’s insurance policies satisfy the purpose of the rule—to protect the public from loss or damage while goods are transported—by providing coverage that exceeds the levels required in the rule, thereby ensuring that the public is no worse off.

B. Authorized-Insurer Requirement

25 Second, a different provision under the same rule requires an applicant’s insurance to be issued by a company “authorized to write such insurance in the State of Washington.” WAC 480-14-250(1) .

26 Dolly’s provider of umbrella insurance, James River, is not “admitted” with the Office of the Insurance Commissioner. Nor is its provider of commercial general liability insurance, Crum & Forster Specialty, or its provider of auto liability insurance, Fair American Select.

27 Staff previously wrote that Dolly must seek an exemption from WAC 480-14-250(1) . Staff added that, if Dolly did so, Staff would recommend the Commission grant such an exemption on the condition that Dolly obtain insurance “from a highly-rated non-admitted company authorized by the [Office of the Insurance Commissioner] to issue surplus lines insurance (A.M. Best A- or above rating).”⁷

28 As Staff recognized, insurance that satisfies this condition would satisfy the purpose of the rule and serve the public interest:

The Federal Motor Carrier Safety Administration accepts surplus lines insurance (*see* CFR Title 49 Part 387.315) for interstate motor carriers. The purpose of the insurance rule is to protect the public from loss or damage caused by the Company while

⁷ Perkinson Letter, *supra* note 2.

providing service. Surplus lines insurance responds to that need and is a viable option for high-risk or unique lines of business where risk is less certain. Accordingly, Staff finds that the [Common Carrier] Exemption Petition may be consistent with the public interest, the purposes underlying regulation, and applicable statutes, so long as the Company first and unequivocally accepts the above-specified conditions as a prerequisite to the issuance of a common carrier permit to the Company.⁸

29 Dolly's current insurance satisfies this condition.

30 Further, Dolly has obtained greater insurance coverage since Staff issued its opinion. Dolly now has the same amount of commercial general liability and auto liability coverage as before—now from Crum & Forster and Fair American, respectively—and also holds umbrella insurance from James River in the amounts of \$3 million per occurrence and \$3 million aggregate.

31 Accordingly, the Commission should grant an exemption to WAC 480-14-250(1) to the extent that rule requires the applicant to have insurance from only admitted insurance companies.

C. Prohibition on Another's Use of Permit.

32 Third, the regulations state: "No person or firm may use a permit or registration receipt except the carrier to whom it was issued." WAC 480-14-110.

33 This regulation could be interpreted to prohibit Dolly's Helpers from transporting items under Dolly's common-carrier permit. Dolly would dispute such an interpretation: as an independent contractor, a Helper is not legally a "person or firm" separate from Dolly, any more than a Dolly employee is.

34 However, to the extent the Commission interprets WAC 480-14-110 to bar independent contractors from transporting items for a company with a common-carrier permit, Dolly requests an exemption from this regulation, as well.

⁸ Perkinson Letter, *supra* note 2.

35 In addition to this Petition for Exemption, Dolly has filed concurrently with this petition a legal memorandum explaining its position that the regulations and statute do not prohibit a company operating under a common-carrier permit from enlisting independent contractors to help conduct its business.⁹ For this reason, Dolly’s use of Helpers does not necessitate that Helpers each have their own common-carrier permits.

36 Moreover, imposing a requirement that Dolly Helpers each obtain a common-carrier permit would impose a hardship on Dolly and Dolly Helpers of a different degree or kind than the requirements imposed on similarly situated companies. Such companies include Pick Up Now and Amazon Flex, which are currently operating in Washington with broker permits from the Commission. These companies each use independent contractors the same way Dolly would use Helpers.¹⁰ Specifically, those independent contractors use their personal vehicles to transport goods and they do not have their own common carrier or other permits from the Commission.

37 Accordingly, to the extent that WAC 480-14-110 would otherwise prohibit Helpers from operating under a common-carrier permit issued to Dolly, Dolly requests that it be exempt from that rule, as well.

VI. PROPOSED CONDITIONS

38 To further ensure that the common-carrier rules’ underlying purpose is fulfilled—that is, to protect the public interest—Dolly would fulfill the following conditions on the requested permit exemption:

Insurance coverage. Dolly will maintain insurance policies that provide equal or greater coverage in amount and scope than that required under WAC 480-14-250(1)(a) and (b) .

⁹ See Legal Memorandum Regarding Use of Independent Contractors by Common Carriers in Support of Application of Dolly, Inc., for Permit to Operate as a Common Carrier.

¹⁰ See Howell Declaration, ¶ 25.

Proof of insurance coverage. Dolly will provide proof of its own insurance policies in the format of a certificate of insurance. Dolly will provide this proof before the permit is issued and annually thereafter. This visibility will in turn ensure that the Commission can enforce its insurance requirements. It will also ensure that Dolly is on an equal footing with more traditional common carriers, which are not exempt from WAC 480-14-250(1) and (1)(e) .¹¹

Insurance companies. Dolly will maintain insurance coverage “from a highly-rated non-admitted company authorized by the [Office of the Insurance Commissioner] to issue surplus lines insurance (A.M. Best A- or above rating).”

VII. CONCLUSION

39 For the reasons stated above, Dolly requests that the Commission grant exemptions to WAC 480-14-250(1), WAC 480-14-250(1)(e) , and WAC 480-14-110.

DATED this 20th day of August, 2020, at Olympia, Washington.

s/ Jeffrey D. Goltz

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¹¹ See Initial Comments of Public Counsel, *supra* note 3, ¶¶ 7, 9-12.