

# Mitigation form WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

## APPLICATION FOR MITIGATION OF PENALTIES – TV-171212

1. I have read and understand RCW 9A.72.020, which states that making false statements under oath is a class B felony (printed below). I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, application for mitigation of the penalties, for the following reasons:

### **1. Dolly Has Acted in Good Faith to Comply with Order 04**

2. The Commission has repeatedly stated that its “ultimate objective in any enforcement action is to obtain compliance with applicable law.” See *WUTC v. CenturyLink*, Docket UT-140597, Order 03, Final Order Approving Settlement Agreement ¶ 10 (Feb. 22, 2016); accord, e.g., *WUTC v. Ride the Ducks*, Docket TE-151906, Order 08, Order Approving Settlement Agreement with Conditions ¶ 8 (May 3, 2016).
3. Dolly has sought to comply with Commission laws and rules without the need to impose or enforce penalties. This is evidenced by its many communications with Commission Licensing Staff which culminated in Dolly submitting applications to obtain operating authority from the Commission. See *Dolly Inc. - Application for Household Goods Moving Authority*, Docket TV-180605 (July 17, 2018). Commission Licensing Staff is still in the process of reviewing Dolly’s operating authority permit application.

### **2. A Penalty is Not Necessary to Compel Compliance with Order 04**
4. In Docket A-120061 the Commission states that, “Generally, the company would request mitigation if it agrees the violations occurred, but believes circumstances exist to warrant a lesser penalty” See Docket A-120061, Other Order, Enforcement Policy of the Washington Utilities and Transportation Commission ¶ 19 (January 4, 2013). The Policy states the Commission will consider whether, “the company explains other circumstances that convince the Commission that a lesser penalty will be equally or more effective in ensuring compliance by the company with applicable statutory and regulatory requirements.” *Id.*

**A. Compliance With Order 04 Has Been A Complicated Process That Began in March 2018**

5. Well before Order 04 was even filed, Dolly inquired about the Commission’s permitting process on March 26, 2018,<sup>1</sup> and again on May 29.<sup>2</sup> Also on May 29, 2108 Commission Staff Assistant Attorney General (“AAG”) Jeffrey Roberson followed-up with Dolly to provide advice regarding the permit application process.<sup>3</sup> This advice included recommending that Dolly “request an exemption from some of the Commission’s rules” that AAG Roberson believes do not apply to Dolly’s business model. *Id.* While Dolly appreciated AAG Roberson’s gesture, it nevertheless acknowledges the complications inherent with Dolly complying with Order 04.

**B. Dolly Has Not Been Granted Sufficient Time to Obtain Operating Permits Before Imposing Penalties**

6. As evidenced by AAG Roberson’s communication with Dolly, Dolly’s permit application process was atypical. This additional complexity demanded more time than Dolly anticipated to complete the application. Dolly submitted applications for operating permits to Commission Staff on July 6.<sup>4</sup> The penalties, if enforced, would have the effect of punishing Dolly for the complicated application process expressly acknowledged by AAG Roberson. Commission Staff also clearly recognized Dolly’s application process would take more time than the ten days Order 04 allowed because their investigation did not begin until June 15 and continued until July 10.

**C. Commission Licensing Staff Has Not Been Granted Sufficient Time to Review Dolly’s Permit Applications**

7. Since the Commission issued Order 04, Dolly has filed household goods and common carrier permit applications with the Commission; exactly what Order 04 requests even though Commission Licensing Division staff now assert that Dolly is not required to obtain a common carrier permit.<sup>5</sup> Dolly began compliance with Order 04 within the timeframe the Order permits and has worked diligently towards that end since then. As of the date of this filing, Dolly’s

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<sup>1</sup> See Attachment A dated March 26, 2018: Email to Commission Licensing Services Division requesting guidance regarding the application permit process.

<sup>2</sup> See Attachment B dated May 29, 2018: Email to Commission Licensing Services Division requesting guidance regarding the application permit process.

<sup>3</sup> See Attachment C dated May 29, 2018: Email from AAG Mr. Jeffrey Roberson suggesting that Dolly request exemptions from specific regulations.

<sup>4</sup> See Attachment D.

<sup>5</sup> See Attachment E dated July 10, 2018: Email from Mr. Michael Dotson informing Dolly’s counsel that Dolly, “will receive Common Carrier authority with [a] Household Goods Moving permit.”

permit applications have been submitted and are currently under review by the Commission's Licensing Services Division. In fact, the Commission has allowed Dolly until August 18, 2018, to provide additional information supporting its application.<sup>6</sup> Dolly submitted its revised application early on August 11.

8. There is no question that Dolly is working diligently and in full cooperation with Staff to perfect its current application and to obtain the authority required by the Commission. Under these circumstances, it appears that Staff's Motion is seeking to punish Dolly for exercising its right to contest Staff's earlier assertion of regulatory jurisdiction over Dolly's business activities; it certainly is not necessary to force compliance. Dolly and the Commission's Licensing Staff are working cooperatively and should conclude the licensing process within the timeline proposed by Commission Licensing Staff.<sup>7</sup>

### **Conclusion**

9. The Commission controlled the timeline for Dolly's compliance with Order 04 from the moment Dolly finalized its applications for operating authority on July 9. As of the date of this filing, the Commission's Licensing Division has not made a final determination regarding the disposition of Dolly's permit application.<sup>8</sup> Imposing penalties without mitigation is contrary to the Commission's objective of obtaining compliance with applicable law. This result would be both an illogical and unfair result.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated: August 20, 2018, at Seattle, Washington



Armikka R. Bryant, WSBA No: 35765

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<sup>6</sup> See Attachment F dated July 18, 2018: Email from Mr. Michael Dotson Dolly notifying Dolly that its application was under review and required clarification in two areas; the relationship between the application's UBI number and corporate name and justification for specific requests for waivers from Commission rules.

<sup>7</sup> See Attachment F.

<sup>8</sup> See Attachment F.

Director of Legal and Government Affairs Dolly, Inc.  
901 5th Avenue, Suite 600  
Seattle, Washington 98164-2086  
Office: 206-413-5312  
Fax: 833-817-6581  
Email: armikka@dolly.com

RCW 9A.72.020:

“Perjury in the first degree. (1) A person is guilty of perjury in the first degree in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor’s mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony.”



Attachment A

Armikka Bryant &lt;armikka@dolly.com&gt;

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**Federal Motor Carrier Safety Administration Registration DOT Number**

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**Armikka Bryant** <armikka@dolly.com>  
To: transportation@utc.wa.gov

Mon, Mar 26, 2018 at 2:12 PM

Hi,

I represent a company that is seeking to apply for a HHGC permit. It appears there are several kinds of DOT numbers/permits available from the Federal Motor Carrier Safety Administration Registration. Will you please let me know what kind of DOT permit we need to complete the HHGC application?

Thank you,

**Armikka Bryant**

**Dolly** | Director of Legal and Government Affairs  
901 Fifth Avenue  
Suite 600  
Seattle, WA 98104-3188  
[646.303.3533](tel:646.303.3533)  
[armikka@dolly.com](mailto:armikka@dolly.com)  
[dolly.com](http://dolly.com)

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# Attachment B

Armikka Bryant &lt;armikka@dolly.com&gt;

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## US DOT Number Licensing Question/Assistance

3 messages

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**Armikka Bryant** <armikka@dolly.com>  
To: sstillwe@utc.wa.gov

Tue, May 29, 2018 at 10:44 AM

Hi Suzanne,

I represent Dolly, Inc., a company that created and owns a proprietary software application that establishes a marketplace which connects people who need an item moved either within the same location or from one location to another location with people who have the capacity to move the item.

Dolly does not own any vehicles and the individuals who move the items are independent contractors, not employees.

However, we would like to apply for household goods carrier, common carrier, and solid waste collection permits. It appears we are required to have a US DOT number but we do not own, lease, or rent any trucks.

Are you able to assist us with completing the application, or do we not qualify due to the lack of the US DOT number?

Thank you,  
Armikka Bryant  
Dolly | Director of Legal and Government Affairs  
901 Fifth Avenue  
Suite 600  
Seattle, WA 98104-3188  
646.303.3533  
[armikka@dolly.com](mailto:armikka@dolly.com)  
[dolly.com](http://dolly.com)

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**Stillwell, Suzanne (UTC)** <suzanne.stillwell@utc.wa.gov>  
To: Armikka Bryant <armikka@dolly.com>  
Cc: "Dotson, Michael (UTC)" <michael.dotson@utc.wa.gov>

Tue, May 29, 2018 at 11:54 AM

Yes, please submit each industry application without a DOT number. Include a letter explaining the situation with each application. Sincerely, Suzanne Stillwell

**Suzanne Stillwell**

Licensing Services Manager

360-664-1224

[SStillwe@utc.wa.gov](mailto:SStillwe@utc.wa.gov)**Utilities and Transportation Commission**

Respect. Professionalism. Integrity. Accountability.

[www.utc.wa.gov](http://www.utc.wa.gov)

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**From:** Armikka Bryant [mailto:[armikka@dolly.com](mailto:armikka@dolly.com)]  
**Sent:** Tuesday, May 29, 2018 10:45 AM  
**To:** Stillwell, Suzanne (UTC) <[suzanne.stillwell@utc.wa.gov](mailto:suzanne.stillwell@utc.wa.gov)>  
**Subject:** US DOT Number Licensing Question/Assistance

[Quoted text hidden]

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**Armikka Bryant** <[armikka@dolly.com](mailto:armikka@dolly.com)>  
To: "Stillwell, Suzanne (UTC)" <[suzanne.stillwell@utc.wa.gov](mailto:suzanne.stillwell@utc.wa.gov)>  
Cc: "Dotson, Michael (UTC)" <[michael.dotson@utc.wa.gov](mailto:michael.dotson@utc.wa.gov)>

Tue, May 29, 2018 at 11:54 AM

Thank you very much!

**Armikka Bryant**  
**Dolly** | Director of Legal and Government Affairs  
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Seattle, WA 98104-3188  
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[Quoted text hidden]



# Attachment C

Armikka Bryant &lt;armikka@dolly.com&gt;

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## Application

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**Roberson, Jeff (UTC)** <jeff.roberson@utc.wa.gov>  
To: Armikka Bryant <armikka@dolly.com>

Tue, May 29, 2018 at 1:33 PM

Hey Armikka,

Suzanne Stillwell told me you had a question about applying for a permit. I asked her to convey that you needed to complete the application and send a letter explaining your circumstances. I looked a bit more into it, and, in the interest of saving Mike Dotson and you some emails, I'm going to direct you to some WACs: 480-07-110; 480-14-020, -180, and -250; 480-15-035, -186, -302, and -305; and WAC 480-70-006, and -091. I can't give you legal advice, but I can say that it looks like Dolly needs to request an exemption from some of the Commission's rules. The cites I just provided should get you started (I can't say the list is exhaustive, especially with solid waste).

Cheers,

Jeff





# Attachment D

Armikka Bryant &lt;armikka@dolly.com&gt;

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## UTC Permit Applications

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**Barnett, Donna L. (Perkins Coie)** <DBarnett@perkinscoie.com>  
To: Armikka Bryant <armikka@dolly.com>

Tue, Jul 17, 2018 at 11:46 AM

I filed online in Docket 171212 using the web portal, so there is no email but I received the attached confirmation that it was received. I followed it up on Monday with payment, and that email is attached.

**Donna Barnett | Perkins Coie LLP**

**PARTNER**

10885 N.E. Fourth Street Suite 700

Bellevue, WA 98004-5579

1.425.635.1419

**PERKINS**coie

**From:** Armikka Bryant [mailto:[armikka@dolly.com](mailto:armikka@dolly.com)]  
**Sent:** Tuesday, July 17, 2018 10:34 AM  
**To:** Barnett, Donna L. (BEL) <[DBarnett@perkinscoie.com](mailto:DBarnett@perkinscoie.com)>  
**Subject:** UTC Permit Applications

[Quoted text hidden]

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NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

----- Forwarded message -----

From: Records Service Center <[Sharepointadmins@utc.wa.gov](mailto:Sharepointadmins@utc.wa.gov)>  
To: "Barnett, Donna L. (Perkins Coie)" <[DBarnett@perkinscoie.com](mailto:DBarnett@perkinscoie.com)>  
Cc:  
Bcc:  
Date: Fri, 6 Jul 2018 23:17:38 +0000

Subject: UTC Electronic Submission Received, Confirmation ID 10900

Your electronic submission has been received by the Washington Utilities and Transportation Commission. Please save this email, and reference the confirmation ID when contacting the Commission.

\* Please do not reply to this message. This is an automated message, and the originating account cannot receive emails.

Electronic submission details:

Confirmation ID: 10900

Docket No: TV-171212

Company: Dolly, Inc.

Filing Description: Application for Common Carrier and Household Goods Carrier Permit and related Petition for Exemption of Commission Rules

Documents Filed:

File Name: 171212 Dolly Appl HHG (7-6-18)(R).zip

Description: Application for Common Carrier and Household Goods Carrier Permit and related Petition for Exemption of

Commission Rules  
Confidentiality: None

Documents Filed:  
File Name: 171212 Dolly Appl HHG (7-6-18)(C).pdf  
Description: Application for Household Goods Carrier Permit  
Confidentiality: Confidential

Documents Filed:  
File Name: 171212 Dolly Appl HHG (7-6-18)(R).pdf  
Description: Redacted version of 171212 Dolly Appl HHG (7-6-18)(C).pdf  
Confidentiality: None

----- Forwarded message -----

From: "Barnett, Donna L. (Perkins Coie)" <DBarnett@perkinscoie.com>  
To: "transportation@utc.wa.gov" <transportation@utc.wa.gov>  
Cc: "Weis, Amanda (Perkins Coie)" <AWeis@perkinscoie.com>  
Bcc:

Date: Mon, 9 Jul 2018 20:24:43 +0000

Subject: CONFIDENTIAL per WAC 480-07-160 TV-171212 - CC and HHGC applications

Attached please find applications for a common carrier and household goods carrier permits in behalf of Dolly, Inc. Please also note that the attached applications, as well as the following documents (also attached), were filed last week in the above-referenced docket and payment has been made via the Commission's website:

1. Filing letter,
2. Application for Household Goods Carrier permit, with exhibits,
3. Application for Common Carrier permit,
4. Petition for Exemption of Commission Rules, and
5. Cert. of Service

Please note the attached contains information designated as confidential per WAC 480-07-160 on the basis that it contains valuable commercial information, including trade secrets or confidential marketing, cost, or financial information.

Please contact me if you have any questions.

Sincerely,

Donna Barnett

Donna Barnett | Perkins Coie LLP

PARTNER

10885 N.E. Fourth Street Suite 700

Bellevue, WA 98004-5579

1.425.635.1419

E. <<mailto:%20AWeis@perkinscoie.com>> [AWeis@perkinscoie.com](mailto:AWeis@perkinscoie.com)

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**8 attachments**

 **noname.eml**  
3K


 **171212 Dolly Letter (7-6-18).pdf**  
602K


 **171212 Dolly Pet-Exmpt (7-6-18).pdf**  
161K

 **171212 Dolly Appl CC (7-6-18).pdf**  
602K

 **171212 Dolly Appl HHG (7-6-18)(C).pdf**  
3539K

 **171212 Dolly Appl HHG (7-6-18)(R).pdf**  
2340K

 **171212 Dolly COS (7-6-18).pdf**  
83K

 **noname.eml**  
10035K



# Attachment E

Armikka Bryant &lt;armikka@dolly.com&gt;

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**FW: CONFIDENTIAL per WAC 480-07-160 TV-171212 - CC and HHGC applications**

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**Barnett, Donna L. (Perkins Coie)** <DBarnett@perkinscoie.com>  
To: "Armikka Bryant (armikka@dolly.com)" <armikka@dolly.com>

Tue, Jul 10, 2018 at 12:56 PM

**Donna Barnett | Perkins Coie LLP****PARTNER**

10885 N.E. Fourth Street Suite 700

Bellevue, WA 98004-5579

1.425.635.1419

**PERKINS**coie

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**From:** Dotson, Michael (UTC) [mailto:[michael.dotson@utc.wa.gov](mailto:michael.dotson@utc.wa.gov)]

**Sent:** Tuesday, July 10, 2018 12:09 PM

**To:** Barnett, Donna L. (BEL) <[DBarnett@perkinscoie.com](mailto:DBarnett@perkinscoie.com)>

**Cc:** Weis, Amanda (BEL) <[AWeis@perkinscoie.com](mailto:AWeis@perkinscoie.com)>

**Subject:** RE: CONFIDENTIAL per WAC 480-07-160 TV-171212 - CC and HHGC applications

Hello Donna, thank you for your application. A couple of things before I get it going. First off, you actually will receive Common Carrier authority with your Household Goods Moving permit, so you do not need to separately apply. If you would like separate permits that's fine, but it is not necessary. I can refund your \$275 payment for that one, just let me know how you would like to proceed.

Additionally, per WAC 480-07-160 only Solid Waste companies may submit confidential documents, so your household goods application will be available, in full, on our public website once it is docketed. The only thing we would redact would be personally identifiable information, which currently there is none of in the application.

Thanks, let me know if you have any questions. I will wait for your response before I file the application publically.

Mike Dotson

Transportation Specialist 3

Licensing Services

Washington Utilities and Transportation Commission

PH: 360-664-1223

FAX: 360-586-1181

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**From:** Barnett, Donna L. (Perkins Coie) [<mailto:DBarnett@perkinscoie.com>]  
**Sent:** Monday, July 9, 2018 1:25 PM  
**To:** UTC DL Transportation <[transportation@utc.wa.gov](mailto:transportation@utc.wa.gov)>  
**Cc:** Weis, Amanda (Perkins Coie) <[AWeis@perkinscoie.com](mailto:AWeis@perkinscoie.com)>  
**Subject:** CONFIDENTIAL per WAC 480-07-160 TV-171212 - CC and HHGC applications

Attached please find applications for a common carrier and household goods carrier permits in behalf of Dolly, Inc. Please also note that the attached applications, as well as the following documents (also attached), were filed last week in the above-referenced docket and payment has been made via the Commission's website:

1. Filing letter,
2. Application for Household Goods Carrier permit, with exhibits,
3. Application for Common Carrier permit,
4. Petition for Exemption of Commission Rules, and
5. Cert. of Service

**Please note the attached contains information designated as confidential per WAC 480-07-160 on the basis that it contains valuable commercial information, including trade secrets or confidential marketing, cost, or financial information.**

Please contact me if you have any questions.

Sincerely,

Donna Barnett

**Donna Barnett | Perkins Coie LLP**

**PARTNER**

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Bellevue, WA 98004-5579

1.425.635.1419

**PERKINS**coie

E. [AWeis@perkinscoie.com](mailto:AWeis@perkinscoie.com)

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# Attachment F

Armikka Bryant &lt;armikka@dolly.com&gt;

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## Notice of Deficient Household Goods moving permit application - Dolly Apple Inc./Dolly Inc.

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Dotson, Michael (UTC) &lt;michael.dotson@utc.wa.gov&gt;

Wed, Jul 18, 2018 at 2:32 PM

To: "armikka@dolly.com" &lt;armikka@dolly.com&gt;

July 17, 2018

Dolly Inc.

Dolly Apple Inc.

901 5th Ave, Suite 600

Seattle, WA 98164

**Re: Notice of Deficient Application**

Docket # TV-180605

Dear Dolly Apple Inc.:

The following items need to be completed and/or corrected for prompt processing of your application for operating authority. Please address these issues and return the application, with any additional materials necessary, to the Commission by August 17, 2018. You may not operate until these issues are resolved and you have received your approved permit.

- The UBI number you provided on your application is for "Dolly Inc." "Dolly Apple Inc." has a UBI number as well, and a registration with the Secretary of State, but does not appear to have an active business license. Please either correct the application to reflect Dolly, Inc. as the applicant or contact Business Licensing Services/DOR at 1-800-451-7985 or [www.bls.dor.wa.gov](http://www.bls.dor.wa.gov) and obtain a business license for Dolly Apple Inc.. If Dolly Apple Inc. is the applicant, please supplement Mr. Bryant's letter of July 13, 2018, to provide evidence that Dolly Apple Inc. has the financial resources to operate a moving company.

- You requested exemptions from a number of rules. Per WAC 480-07-110(2)(1) please provide a full explanation of the reason for requesting the exemption for each specific rule, not including the requests for exemptions from the regulations found in chapter 480-14 WAC, which have been rendered moot by the withdrawal of your application for a Common Carrier permit.

**Who do I contact if I have questions?**

You may call 360-664-1222 or e-mail us at [transportation@utc.wa.gov](mailto:transportation@utc.wa.gov). Our fax number is 360-586-1181.

Thank you,

Licensing Services

Washington Utilities and Transportation Commission