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2 **BEFORE THE WASHINGTON STATE**  
3 **UTILITIES AND TRANSPORTATION COMMISSION**

4 In re Application of ) DOCKET TV-080054  
5 )  
6 V&K DELIVERY SERVICES, LLC, ) STATEMENT OF POSITION  
(THG-63200) )

7  
8 **INTRODUCTION**

9  
10 On January 8, 2008, Mr. Vladimir Kirichenko, Manager of V&K Delivery  
11 Services, LLC submitted an application for a temporary Household Goods Permit.  
12 In his application, as requested, Mr. Kirichenko disclosed a criminal conviction.

13  
14 On March 25, 2008, the Commission granted temporary authority under  
15 permit THG 63200. V&K began operation of its business, including  
16 transportation of household goods. Five months later, on August 26, 2008, the  
17 Commission sent Notice of Intent to Cancel Temporary Operating Authority and  
18 to Deny Application for Permanent Authority to Mr. Kirichenko.

19  
20 The Commission stated Mr. Kirichenko's temporary permit was being  
21 revoked and his permanent authority denied based on Mr. Kirichenko's  
22 conviction of "any crime," pursuant to WAC 480-15-320 and WAC 480-15-330,  
23 respectively.  
24

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(509) 838-6131

1  
2 Mr. Kirichenko truthfully disclosed in his original application and does  
3 not now dispute the Commission's finding that he was convicted of the crime of  
4 attempted residential burglary under RCW 9A.52.025.

5  
6 **STATEMENT OF POSITION**

7  
8 In response to the Commission's Notice of Intent to Revoke Temporary  
9 Authority and to Deny Permanent Authority, Petitioner Vladimir Kirichenko  
10 urges the Commission to grant him Permanent Authority as a Household Goods  
11 Carrier. Mr. Kirichenko asserts that there are sufficient mitigating circumstances  
12 to grant his application and allow him to maintain the business he has built and  
13 which provides the livelihood for him and his family. Additionally, Mr.  
14 Kirichenko argues the Committee erroneously made its decision pursuant to rules  
15 which were not effective until after Mr. Kirichenko submitted his application and  
16 further that these new rules are unconstitutional.

17 A. Mr. Kirichenko's household goods carrier permit should not be denied  
18 because Mr. Kirichenko can demonstrate he does not pose a threat.

19 Mr. Kirichenko plead guilty to the charge of attempted residential burglary  
20 on December 20, 2008, nearly six (6) years ago. Mr. Kirichenko's actions, while  
21 not proper, were isolated to the circumstances present at the time and involved  
22 another individual with whom Mr. Kirichenko had a personal and emotional  
23 connection. **Further, Mr. Kirichenko's attempt was made on his prior**  
24 **residence from which he intended only to remove his own personal**  
**belongings.** At the time of the incident in May, 2001, Mr. Kirichenko was only

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1  
2 twenty (20) years old. Mr. Kirichenko is now twenty-eight (28) years old,  
3 married and has a family. Mr. Kirichenko chose to plead guilty to the attempted  
4 residential burglary charge because of his understanding that his actions were  
5 wrong and that he needed to take responsibility for them. In the six (6) years  
6 since Mr. Kirichenko's conviction in 2002, Mr. Kirichenko has served out his  
7 sentence and parole, and has had no other contact with law enforcement  
8 whatsoever. Significantly, Mr. Kirichenko has never stolen property either before  
9 or since his criminal conviction.

10 Since obtaining his temporary license in March, 2008, Mr. Kirichenko has  
11 derived his family's livelihood solely from his operation of V&K Delivery  
12 Services, LLC and is in full compliance with the requirements for operation as a  
13 household goods carrier. As in all aspects of his life both before and since the  
14 criminal incident in 2001, Mr. Kirichenko strives to be a fully contributing  
15 member of society and asks for your understanding so that he may continue.

16 Mr. Kirichenko's Petition is supported by statements from ten (10)  
17 customers or other persons familiar with Mr. Kirichenko and his work listed as  
18 Exhibits A-J below:

- 19 A) Letter of recommendation from Serpro Logistics, client of V&K,  
20 dated September 5, 2008;
- 21 B) Letter from America the Beautiful Dreamer;
- 22 C) Comment from Party Tacoma dated October 5, 2007;
- 23 D) Letter from Richard W. Keene dated June 23, 2006;
- 24 E) Letter from Cheryllyn and Tony Day dated June 7, 2006;
- F) Letter from Dennis and Kay McLaughlin dated August 9, 2006;
- G) Comment from Jackie Lyons;

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- 2 H) Letter from Cutler Law Offices dated December 19, 2005;
- 3 I) Letter from Lake City Assembly of God Church dated September
- 4 17, 2004; and
- 5 J) Letter from David Mechals dated May 31, 2006;
- 6

7 These statements overwhelmingly note Mr. Kirichenko's professionalism,  
8 work ethic and conscientious nature. Mr. Kirichenko understands the value of his  
9 business reputation and strives to advance that reputation. The Commission's  
10 concern that those contracting for household goods movement expect to have a  
11 mover who has not violated the security of another's home is valid and is one  
12 which Mr. Kirichenko respects. As these statements make clear, Mr. Kirichenko  
13 strives to provide excellent service to his customers so that he may continue to  
14 enjoy the fruits of the reputation he has built over the past six (6) months.

15 In summary, Mr. Kirichenko urges the Commission to reconsider its  
16 revocation and denial of his Household Goods Permit. Mr. Kirichenko's sole  
17 criminal conviction is nearly six years old, and his subsequent actions  
18 demonstrate both his acceptance of responsibility for the crime and his intent to  
19 remain a contributing member of society. Mr. Kirichenko's criminal conviction is  
20 based on an isolated event related to his previous residence, and Mr. Kirichenko  
21 urges the Commission's recognition of the fact that he took full responsibility for  
22 his actions, has matured, is responsible for the support of his family and therefore  
23 should not be punished further for his poor judgment on one particular day six  
24 years ago. In short, Mr. Kirichenko does not pose a threat to any resident of the  
State who may use his services.

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2 B. The Commission's ruling is based on an application of Regulations  
3 which did not take effect until after Mr. Kirichenko's application  
4 was submitted.

5 In 2007, the Commission undertook numerous revisions to WAC 480-15  
6 regarding Household Goods Carriers. Among other revisions, the Commission  
7 specifically amended WAC 480-15-280, -320, and -330 which took effect  
8 January 27, 2008. Mr. Kirichenko's application was made January 8, 2008. The  
9 revisions to the regulations are neither curative nor remedial in nature, but instead  
10 effect a substantive change. Therefore, the prior regulations govern Mr.  
11 Kirichenko's application.

12 The effective date of an administrative regulation does not bar its  
13 retrospective application so long as the regulation is curative or remedial in  
14 nature. State v. MacKenzie, 114 Wn.App. 687, 699, 60 P.3d 607 (2002);  
15 Letourneau v. Dept. of Licensing, 131 Wn.App. 657, 665-666, 128 P.3d 647  
16 (2006). However, if the regulation affects a substantive right, it may not be  
17 retrospectively applied.

18 The 2007 amendments were not enacted with a curative or remedial focus.  
19 Rather, the proposed rules were adopted to:

20 Simplify rules where possible. Update rules to accommodate  
21 current technology. Align rules more closely with the federal  
22 interstate household goods carrier rules where reasonable.  
23 Eliminate prescriptive language to allow more flexibility.  
24 Maintain consumer protection.

WSR 07-21-148.

Under the new regulations, *any* criminal conviction may be the basis of  
cancellation of an applicant's permit. WAC 480-15-320. However, under the old

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2 rules, the Commission could only cancel a permit based on the public interest,  
3 fraud or misrepresentation in the application or cause under WAC 480-15-450.  
4 Because the old rules do not allow for cancellation of a permit for a criminal  
5 conviction (rather, the rules allowed only for denial of a permit based on certain  
6 criminal convictions), this change affects Mr. Kirichenko's and all other  
7 applicant's substantive rights and therefore may not be retrospectively applied.

8 The prior Regulations should be followed such that unless Mr.  
9 Kirichenko's application is cancelled pursuant to one of the reasons in former  
10 WAC 480-15-320, the Commission's cancellation of Mr. Kirichenko's permit is  
11 arbitrary and capricious, and a violation of Mr. Kirichenko's fundamental right to  
12 make a living.

13 C. The Commission's regulation allowing for denial or cancellation of  
14 a permit for conviction of "any crime" is unconstitutional.

15 Mr. Kirichenko argues the regulations under which the Commission has  
16 made its decision are unconstitutional because they are overly broad and seek to  
17 deprive Petitioner of his fundamental rights under both the U.S. Constitution and  
18 Washington State Constitution. Under substantive due process analysis,  
19 government action must be at least rationally related to the government purpose,  
20 if not narrowly tailored to that purpose. See, Spokane Arcade, Inc. v. City of  
21 Spokane, 1998 WL 485670 (1998).

22 Here, the use of *any* criminal conviction as the basis for denial or  
23 revocation of a household goods carrier permit is not rationally related to the  
24 government purpose. Arguably, conviction for the crime of jaywalking could be  
the basis for disqualification for a permit. Because the crime of jaywalking is not

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1  
2 rationally related to the consumer protection purpose of the regulations, the  
3 regulation is facially unconstitutional.

4  
5 CONCLUSION

6 Mr. Kirichenko urges the Commission to allow his household goods  
7 permit. Mr. Kirichenko's only criminal conviction is six years old, and Mr.  
8 Kirichenko has fully served the sentence for that conviction. Mr. Kirichenko is a  
9 responsible and law abiding citizen who does not pose a threat to his customers.  
10 Further, the regulations upon which the Commission has based its decision are  
11 both erroneously applied and unconstitutional.

12 DATED this 21st day of November, 2008.

13  
14   
15 JEFFREY A. HERBSTER, WSBA #23841  
16 WINSTON & CASHATT  
17 Attorneys for V&K Delivery Services, LLC  
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 21st day of November, 2008, the foregoing was caused to be served on the following person(s) in the manner indicated:

Washington Utilities and Transportation Commission 1300 S. Evergreen Park Dr. S.W. Olympia, WA 98504	VIA REGULAR MAIL <input type="checkbox"/> VIA CERTIFIED MAIL <input type="checkbox"/> HAND DELIVERED <input type="checkbox"/> BY FACSIMILE <input type="checkbox"/> VIA FEDERAL EXPRESS <input checked="" type="checkbox"/>
Three copies + 1 electronic version	
Michael A. Fassio Assistant Attorney General 1400 S. Evergreen Park Dr. S.W. Olympia, WA 98504	VIA REGULAR MAIL <input type="checkbox"/> VIA CERTIFIED MAIL <input type="checkbox"/> HAND DELIVERED <input type="checkbox"/> BY FACSIMILE <input type="checkbox"/> VIA FEDERAL EXPRESS <input checked="" type="checkbox"/>

\_\_\_\_\_  
Autumn Fischer  
Paralegal for Jeffrey A. Herbst, Counsel for Petitioner



**APPENDIX TO STATEMENT OF POSITION**  
**Docket TV-080054**

- A) Letter of recommendation from Serpro Logistics, client of V&K, dated September 5, 2008
- B) Letter from America the Beautiful Dreamer
- C) Comment from Party Tacoma dated October 5, 2007
- D) Letter from Richard W. Keene dated June 23, 2006
- E) Letter from Cherilyn and Tony Day dated June 7, 2006
- F) Letter from Dennis and Kay McLaughlin dated August 9, 2006
- G) Comment from Jackie Lyons
- H) Letter from Cutler Law Offices dated December 19, 2005
- I) Letter from Lake City Assembly of God Church dated September 17, 2004
- J) Letter from David Mechals dated May 31, 2006

FROM

(FRI) SEP 5 2008 16 )/ST. 18:52/No. 6824710706 P 1



1910 W Airfield Drive  
Bldg B, Suite 350  
DFW Airport, TX 75261  
www.serprologistics.com  
(469) 948-1700

September 5, 2008

To Whom It May Concern:

V&K Delivery Service, LLC has been contracted with Serpro Logistics since July of 2007. V&K Delivery Service is a true logistics partner. We have been very pleased with their professionalism, top-scale service, as they continually go above and beyond to get the job done.

We are happy to recommend V&K Delivery Service.

Should you need any further information, please feel free to contact me.

Sincerely,

Mark Foley  
General Manager





This is from AMERICA the BEAUTIFUL DREAMER, at South Hill Mall in Puyallup.

I have used V & K Delivery for many months now.

He has done an exceptionally great job with all the customers I have sent him out to do.

He is very conscientious of his work and the property he is taking my products to.

If you ever need to know more....Please feel free to call me at

**AMERICA the BEAUTIFUL DREAMER**

**253-840-4996**



**Sherry**  
Manager

Bedroom Suites  
Futon Sofa Collections  
Youth Bedrooms

South Hill Mall  
3500 S. Meridian #800  
Puyallup, WA 98373

(253) 840-4996

[www.atbd.com](http://www.atbd.com)

EXHIBIT

B

seattle-tacoma craigslist > tacoma >  
labor & moving

email this posting to a friend

**Re: NEED YOUR FURNITURE  
DELIVERED OR MOVE?  
GREAT COMPETITIVE  
RATE**

please flag with care:

miscategorized

prohibited

spam/overpost

best of craigslist

Reply to: jimmy@partytacoma.com  
Date: 2007-10-05, 2:46PM PDT

Vladimir and his helper did a great job  
Extremely difficult job Moving a 1500lb 3 door commercial freezer thru 4  
door ways and making sure not to tear up a brand new floor  
\*\*\*\*\*I highly recommend these guys-- 2 other movers came in  
looked at the job and walked out saying it was impossible  
Thanks Jimmy PartyTacoma.com  
I love Craigslist

**V & K DELIVERY SERVICE!**  
Managed & operated by owner .

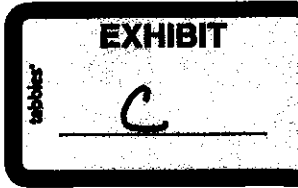
**LOOKING FOR BEST SERVICE AND BEST RATES CALL V & K  
DELIVERY SERVICE!!!!**

**WE HAVE A LONG WORKING EXPERIENCE ON FURNITURE  
DELIVERY & ASSEMBLING FOR LOCAL RESIDENTS.  
WE HAVE BEEN IN THIS BUSINESS FROM 1999.**

**GIVE US A CALL ANYTIME FOR FREE ESTIMATE !!!!!  
CALL AT 253-534-5737 OR EMAIL Z2007VKYK@YAHOO.COM**

**Delivery tracking GPS in all trucks.Able to provide real time proof of  
delivery .  
Furniture pads,always used to insure safety of furniture .**

**24hr Notices Welcome!**



Richard W. Keene  
P.O. Box 30970  
Spokane, WA 99223

23 June 2006

Gevorg Melkonyan  
Vladimir Kirichenko  
Diamond Floor Covering  
Spokane, WA

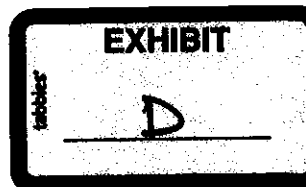
Dear Gevorg and Vladimir:

Please know how pleased I am with the tile work you performed for me. Your clean, quick, and efficient workmanship has added a delightful new look in my kitchen. This will be appreciated for many years to come.

Thanks again.

Yours sincerely,

*Richard W. Keene*



June 7, 2006

To Whom It May Concern,

Diamond Floor Coverings just finished putting down a natural stone floor in our kitchen and laundry room. We are very impressed with the quality of work they have done. They were very courteous and made sure we understood everything that they were going to do. They unhooked and moved the appliances out, then put them back when they were done. They even offered to put our trim back up for us since we did not have the right tools! They were total awesome!

Gevorg Melkonyan and Vladimire Kirichenko did the most of the work and have excellent work ethics. They went above and beyond what the job required to make sure it was exactly what we wanted. We will definitely use them again and recommend you try them too. We think they are the best tile men in the Spokane. Fell free to call us if you need a further recommendation.

Two very happy customers!

*Cherilyn + Tony Day*  
Cherilyn and Tony Day  
926-5756

EXHIBIT

tabbies  
E

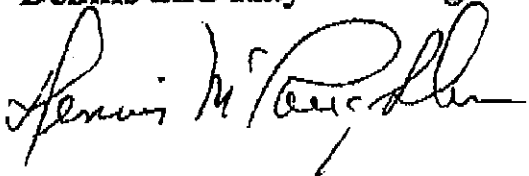
**Dennis and Kay McLaughlin  
7015 S. Moran View St.  
Spokane, WA 99224  
(509) 443-1990**

**August 9, 2006**

**Diamond Floor Covering has just completed a job for us consisting of granite tile counters and decorative backsplash in the kitchen, along with tile counters in two bathrooms. The job they did was exceptional and beyond our expectations. They were very courteous and professional through out the entire installation. They were very easy to work with and had a great understanding of what we were looking for. They are the best.**

**George Melkonyan and Vladimir Kirichenko and their crew are extremely honest and their work ethics beyond reproach. We are planning to use Diamond Floor Covering again in the very near future to tile our bathroom shower. We highly recommend them to anyone, you can't go wrong. Feel free to call us for our personal recommendation.**

**Dennis and Kay McLaughlin**



EXHIBIT

F

GEVORG MELKONYAN

VLADIMIR KIRICHENKO

DIAMOND FLOOR

COVERING

They did a good (classroom) job. I am happy with the job they did.

Jackie Ryan





**CUTLER LAW OFFICES**  
N. 711 Lincoln, Garden Level  
Spokane, WA 99201  
(509)323-4847

December 19, 2005

To Whom It May Concern:

I have known Mr. Kirichenko for a few years now. I have hired Mr. Kirichenko to do inside and outside paint job on my house. The job was completed on time and I had no complaints of any nature. I would recommend Mr. Kirichenko to anyone. If you have any questions, please do not hesitate to contact me at the above number.

Sincerely,



GRIGORY SENCHENKO  
Senior Paralegal

EXHIBIT

H

Lake City Assembly of God  
Touching Heaven  
Crangling Earth

Jimmy Burnett  
Senior Pastor  
Brian Noble  
Young Adult's Pastor  
Dan Taylor  
Children's Pastor  
Micah Chager  
Youth Ministries  
Phone:  
(509) 999-3189  
Fax:  
(509) 999-4008

September 17, 2004

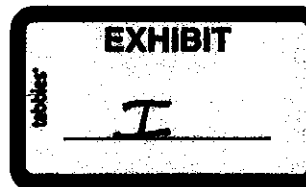
To Whom It May Concern:

Recently, Vladimir Kirichenko provided our church with temporary janitorial services. He fulfilled the contract of another employee. However, due to budget concerns, we had to make the choice to seek in-house janitorial services from our church members on a voluntary basis.

We were happy with the janitorial service that Vladimir provided. He not only did a good job, but was quick to ask questions and to make suggestions about areas that we had not noticed that needed service. He was pleasant, easy to work with and seemed to want to please.

Gail J. Jensen  
Administrative Assistant  
Lake City Assembly of God

P.O. Box 660 | 400 E. Grace St. | Merical Lake, WA 99022

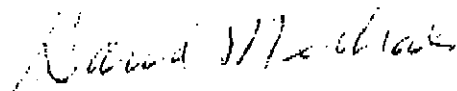


May 31, 2006

To Whom It May Concern:

Diamond Floor Covering just finished doing our bathroom in tile and I have never seen a better job done. It is quite a large bathroom consisting of a water closet, a large center floor, a jetted corner tub and a shower. We had them tile the entire floor in the stair step pattern and then do a decorative front and backsplash to the jetted tub area. They continued to do a mud pan tile floor in the shower and we extended the tile work to the ceiling!

Gevorg Melkonyan and Vladimir Kirichenko did the main body of work and I have never seen a work ethic like these men have. They are outstanding in their field and I certainly would recommend them to anyone. I dare to say these are the best tile men in the city of Spokane. Feel free to call me if you need a further recommendation.



David Mechals  
443-0878

EXHIBIT

tabbies

J