

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of

DOLLY, INC.

To Amend Motor Carrier Rules or in the
Alternative To Initiate Rulemaking

NO. _____

PETITION TO AMEND MOTOR
CARRIER RULES OR IN THE
ALTERNATIVE TO INITIATE
RULEMAKING

I. INTRODUCTION

1. Pursuant to WAC 480-07-240, Dolly, Inc. ("Petitioner" or "Dolly") hereby submits a Petition to amend the Commission's motor carrier rules to establish and administer a new classification of the groups of motor carriers included in the term "common carriers" and to amend WAC 480-15-181, Operations That Do Not Require a Household Goods Permit, to include such classification. Alternatively, Dolly requests that the Commission initiate a rulemaking proceeding to engage stakeholders to collaborate in the adoption of reasonable regulations to address the concerns raised in this Petition.

2. Dolly is engaged in the business of arranging small goods transportation and labor services for customers in the State of Washington and in five other states. Its full name and mailing address are:

Dolly, Inc.
Attn: Michael Howell
Chief Executive Officer
Phone: 425-443-0554
Mike@dolly.com

PETITION TO AMEND MOTOR CARRIER
RULES OR IN THE ALTERNATIVE TO
INITIATE RULEMAKING- 1

PERKINS COIE LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Phone: 425.635.1400
Fax: 425.635.2400

Dolly's representatives for purposes of this petition are:

Perkins Coie LLP

Ralph L. ("Buddy") Arnheim, CA Bar No. 170874
3150 Porter Drive
Palo Alto, California 94304-1212
Telephone: 650-838-4304
Facsimile: 650-838-4350
BArnheim@perkinscoie.com

Donna L. Barnett, WSBA No. 36794
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Telephone: 425.635.1409
Facsimile: 425.635.2409
DBarnett@perkinscoie.com

3. The following rules or statutes may be brought into issue by this Petition:
RCW 80.01.040, 80.04.160, 81.04.250, 81.28.040, 81.80.120, 81.80.130 and 81.80.290
WAC WAC 82-05-020, 480-14-141, and WAC Chapter 480-15.

II. BACKGROUND AND FACTS

4. Pursuant to RCW 80.01.040, the Commission has broad authority over the practices of all companies it regulates. The Commission also has broad authority to prescribe rules and regulations applicable to "any and all 'motor carriers,' or to any persons transporting property by motor vehicle for compensation..." RCW 81.80.290.

5. Pursuant to RCW 81.80.120, the Commission has specific authority to establish new classifications of motor carriers:

The commission may from time to time establish such just and reasonable classifications of the groups of carriers included in the terms "common carriers" and "contract carriers" as the special nature of the services performed by such carriers shall require, and such just and reasonable rules, regulations

and requirements, consistent with the provisions of this chapter, to be observed by the carriers so classified or grouped, as the commission deems necessary or advisable in the public interest.

6. In 1935 the Washington State Legislature passed RCW 81.80 for the purpose of regulating the business of operating a motor carrier of freight for compensation along the highways of this state. RCW 81.80.020.

7. Over the recent years the transportation industry (as all industries) has changed dramatically with the continued rapid innovation of digital technologies. Services such as ridesharing have contributed to an explosion in what has come to be known as the gig economy. The term “gig economy” has been described as a single project or task for which a worker is hired, often through a digital marketplace, to work on demand. *See* US Dept. of Labor Bureau of Labor Statistics, <https://www.bls.gov/careeroutlook/2016/article/what-is-the-gig-economy.htm>. The term Transportation Network Companies (“TNCs”) has been used to describe companies such as Uber and Lyft, which themselves do not conduct transportation services, but which contract with individual workers in the rideshare industry to arrange transportation services for customers. Washington State and utility commissions in other jurisdictions have adopted statutes or rules to regulate TNCs.

8. Dolly is not a TNC, but portions of its business operate similarly to TNCs in that Dolly contracts with individual workers to arrange transportation services for customers who request household and non-household items to be moved. Dolly engages in work that does not compete with traditional household goods movers, rather Dolly contracts with over 2,000 “Helpers” that provide a wide variety of services that span the meaning of common carriers, household goods carriers, and non-regulated services. Dolly “Helpers” are

independent contractors who provide “on demand micro-moving” – generally, local moves of just a few items that will fit into a consumer sized pickup truck, that happen within 24 hours of a customer request, and cost less than \$100. On demand micro-moving covers a wide range of use cases, including small office moves, retail store deliveries, partial apartment moves, Craigslist pickups, donations to local charities among many others. These services are completely different than the traditional household goods movers who only conduct household goods moves with professional movers using commercial equipment generally days or weeks after the customer request at significantly higher price points. Moreover, while there are hundreds of providers of traditional moving services in the state of Washington, Dolly is currently the ONLY provider of on demand micro-moving. Therefore, if the Commission declines to initiate a rulemaking, Dolly effectively cannot provide these services, thereby eliminating an entire category of transportation choice for consumers.

9. In Docket TV-150185, the Commission responded to a complaint from the Washington Movers Conference involving, “businesses on the internet who market the services of household goods (HHG) carriers to the public”. The Washington Movers Conference requested a rulemaking to regulate these internet businesses. The Commission issued a notice requesting comments regarding a potential rulemaking to regulate such businesses. Order 01 in Docket TV-150185 at ¶ 1. The Commission invited comments “that would (a) analyze the language, history, and practical effect of applicable statutes and Commission rules; (b) explain whether, and if so the extent to which, the Washington legislature has authorized the Commission to regulate “brokers” of HHG moving services; and (c) to the extent the Commission has discretion to regulate such “brokers,” present informed views on how the Commission should exercise that discretion.” *Id.* at ¶ 4. The

Commission received comments from several household goods moving companies that “urged” the Commission to initiate rules that would regulate such household goods brokers. *Id.* at ¶ 5. However, the Commission declined to initiate the rulemaking and instead narrowly addressed the issue in the complaint by categorizing one transportation company as a non-regulated “Information Provider”.

10. Since that time digital technology has continued to evolve and new businesses based on the latest technology advances have struggled with how to comply with regulations that were drafted before the new technology existed. For example, in Docket TV-161308, the Commission imposed penalties on a business that was operating under the impression that it was a non-regulated “household goods broker” rather than a household goods carrier. *See* Order 04 in Docket TV-161308. The Commission found that the business was a household goods carrier even though Staff had repeatedly referred to them as household goods brokers and even if that business only advertises household goods moves and never performs any moves itself. *Id.* at ¶ 21. The Commission acknowledged the confusion regarding the term “household goods broker”, recognizing Staff’s own use of the term and stating, “The record evidence demonstrates considerable controversy over whether entities referred to as ‘household goods brokers’ are subject to the Commission’s jurisdiction.” Order 05 in Docket TV-161308 at ¶ 15. The Commission then considered Staff’s interactions with the company regarding the term “household goods brokers” as a mitigating factor in reducing the penalty amount for the company’s failure to obtain a household goods permit. *Id.* at ¶ 18. Nonetheless, the company ultimately dissolved.

III. PROPOSED AMENDMENTS

11. Petitioner respectfully requests that the Commission amend WAC 480-14-040(1) to add to the term “common carrier”, as follows:

(1) The term "common carrier" means any person who undertakes to transport property, including general commodities, materials transported by armored car service, and/or hazardous materials, for the general public by motor vehicle for compensation, including under individual contracts or agreements, and including motor vehicle operations of other carriers by rail or water and of express or forwarding companies, and including carrier network companies and micro movers, as those terms are defined by WAC 480-14-040(6) and WAC 480-14-040(7). The term does not include household goods carriers, as defined by WAC 480-15-020, solid waste collection companies, as defined by WAC 480-70-041, or "exempt carriers."

12. Petitioner requests that the Commission amend WAC 480-14-040(6) to add the definition “carrier network companies”, as follows:

(6) The term “carrier network company” means any person who advertises, solicits, offers, or enters into an agreement with a customer for the transportation of household goods to be conducted by a micro mover, as that term is defined by the commission,

(7) The term “micro mover” means any person engaged in the business of conducting the transportation of goods, including but not limited to household goods, initiated by a carrier network company, and who conducts such transportation using a standard size pickup or other non-commercial, standard-sized vehicle.

13. Petitioner requests that the Commission amend WAC 480-15-181 to add a new subsection, as follows,

(7) advertises, solicits, offers, or enters into an agreement with a customer for the transportation of household goods, but does not conduct such moves, as in the classification “carrier network company, as defined in WAC 480-14-040(6).

(8) conducts moves initiated only by a carrier network company, as in the classification “micro mover”, as defined in WAC 480-14-040(7).

14. In the event the Commission denies Petitioners’ request to amend the motor carrier regulations as provided above, Petitioner alternatively requests that the Commission initiate a rulemaking proceeding to engage stakeholders in a collaborative effort to adopt reasonable regulations to address the concerns raised in this Petition.

IV. AUTHORITY

15. The Commission has statutory authority to amend the motor carrier rules or initiate a rulemaking pursuant to RCW 80.01.040, 81.04.160, 81.80.120, 81.80.130 and 81.80.290. The Commission has broad authority to prescribe rules and regulations applicable to “any and all ‘motor carriers,’ or to any persons transporting property by motor vehicle for compensation...” RCW 81.80.290. Additionally, the Commission has specific authority to establish a new classification of common carrier and reasonable rules, regulations and requirements as the Commission deems necessary or advisable in the public interest. RCW 81.80.120. The Commission is fully authorized to initiate a rulemaking to resolve the issues raised herein.

V. NEED AND RATIONALE FOR NEW CLASSIFICATION

A. The Existing Rules Have Failed to Keep up with Technology

16. Whether the company in Docket TV-161308 or the “businesses on the internet who market the services of household goods (HHG) carriers to the public”, as described Order 01 of Docket TV-150185, are considered household goods brokers or something else, it is clear that an entirely new “micro” moving industry has developed since the time the Commission’s motor carrier regulations were adopted. Now, both traditional movers and

these “household goods brokers” seek amendments to the existing regulations. In Order 01, the Commission referenced a statement from the Commission’s Executive Director and Secretary, which states, “At this time, the commission would oppose expanding its jurisdiction to cover household goods ‘brokers’ until a clear and demonstrated need exists.” *Id.* at ¶ 2. Three years have passed since then, and the technology has continued to evolve at a rapid pace. Washington has adopted rules regulating transportation network companies, and at least one company that could not comply with the existing regulations has dissolved. The time has come to expand the Commission’s jurisdiction to cover these “household goods brokers”. The motor carrier regulations have not kept up with technology or this new industry, and new regulations are necessary to recognize and regulate “micro” movers who work exclusively in the digital marketplace.

17. The motor carrier regulations need to be updated to appropriately regulate businesses that do not conduct any moves, have no physical contact with the customer or any customer belongings, and do not even own vehicles. Currently, these companies must follow the same rules and regulations as large, traditional, commercial movers, but their operations could not be more different. A significant portion of the household goods regulations contain rules regarding equipment and driver safety, yet a company advertising and arranging for a micro move, such as Dolly, is not likely to employ any drivers or even own a vehicle, so those regulations are wholly inappropriate. An amendment is necessary because it is clear that there is no way for a business such as Dolly, working as a digital marketplace, to comply with the existing motor carrier regulations.

B. The Existing Rules Conflict with the Purpose of the Regulations

18. A rulemaking is not only necessary, it is appropriate because applying the existing regulations to digital micro movers conflicts with the purpose of the motor carrier regulations. RCW 81.80.020 states that the policy behind the motor carrier rules is to effectively regulate the rapid increase of “motor carrier freight traffic” such that highways of this state may be rendered safer, highway wear may be reduced, congestion on highways may be minimized. Eliminating the ability for micro movers to use independent, non-commercial pickup trucks for small moves increases the number of trips necessary in traditional large moving vans, which in turn increases congestion on the highways and increases wear on the highways from heavy, large commercial loads. These directly conflict with the purpose and policy of the motor carrier regulations.

C. The Existing Rules Hurt Consumers and Small Businesses

19. A rulemaking is necessary because the current regulations are not adequate to safeguard consumers who seek convenient transportation options for small household moves on short notice. Both consumers and regulators are increasingly comfortable with contracted services such as ridesharing and contracted retail delivery services such as Amazon Flex, Postmates, and Instacart, and consumers actively seek out alternative transportation arrangements that reduce cost, increase convenience, and are safe. Without a rulemaking to regulate services such as Dolly’s, consumer prices would increase because consumers would be forced to hire a larger, more costly and unnecessary form of transportation for their small goods moves. Alternatively, Dolly would be forced to charge tariff rates that are

inapplicable to the services Dolly provides and are substantially higher than the rates Dolly currently charges.

20. Without a rulemaking to regulate services such as Dolly's, small businesses would suffer because the hundreds of small businesses that partner with Dolly would be forced to find another provider, but Dolly is the only provider of on demand micro-moving. Moreover, Dolly has generated significant income for the individuals who are the micro movers who are also among those most vulnerable to income inequality. Eliminating a flexible income opportunity that they rely on would be a tremendous loss. Amending the motor carrier regulations to add new classifications for carrier network companies and micro movers will increase the transportation options available to consumers, reduce costs to consumers, provide significant income opportunity for non-tech sector labor and allow stakeholders such as the Washington Movers Conference, UTC Staff, and the Public Counsel Section of the Attorney General's Office to collaborate and recommend appropriate amendments that improve consumer satisfaction and safety. Initiating a rulemaking will allow for regulations that provide more employment opportunities for people who want to work, and appropriate safeguards to ensure the customer is protected.

VI. CONCLUSION

21. For the foregoing reasons, Petitioner respectfully requests that the Commission amend the motor carrier regulations as provided in this Petition or, alternatively, initiates a collaborative rulemaking proceeding to address the issues raised in this Petition.

DATED: September 26, 2017.

PERKINS COIE LLP

By: 

Donna L. Barnett, WSBA No. 36794
Ralph L. ("Buddy") Arnheim, CA Bar No. 170874
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Telephone: 425.635.1400
Facsimile: 425.635.2400
DBarnett@perkinscoie.com
Arnhb@perkinscoie.com

Counsel for Petitioner Dolly, Inc.