

Service Date: May 6, 2019

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

In re Application of

DOLLY, INC.

For a Permit to Operate as a Motor Carrier of
Household Goods and a Permit to Operate as a
Motor Freight Common Carrier

DOCKET NO.: TV-180605

DOLLY, INC. PETITION FOR RULE
EXEMPTION

I. INTRODUCTION AND REQUESTED RELIEF

1 The Washington Utilities and Transportation Commission (“WUTC” or “Commission”) is an agency of the State of Washington established pursuant to chapter 80.01 RCW and charged by the legislature with the authority to regulate in the public interest the rates, services, facilities, and practices of businesses in the state offering the transportation of goods to the public for compensation.

2 Pursuant to Washington Administrative Code Section WAC 480-07-110(1) provides that the WUTC “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.” WAC 480-07-110(2)(c) describes the standard for determination, as follows:

Standard for determination. The commission uses the public interest standard to determine whether to grant an exemption from, or modification to, a commission rule. 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.¹

3 WAC 480-15-035 provides that companies may petition the Commission requesting exemptions to rules contained in Chapter 480-15 WAC and also that the Commission may grant an exemption from the provisions of any rule in WAC chapter 480-15, if the request is consistent with, “the public interest, the purpose of the underlying regulation, and applicable statutes.”

4 When determining the requisite “public interest” test, WAC 480-07-110 states the Commission will consider whether the:

- A. 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
- B. Effect of applying the rule to the requesting person would be **contrary to the underlying purposes of the rule** and the public interest.” Emphasis added.

5 Applying the above standards, Dolly respectfully petitions the Commission to grant exemptions to the following regulations:

- A. WAC 480-14-490 (tariff and rates, general);
- B. WAC 480-15-530 (public liability and property damage insurance);
- C. WAC 480-15-550 (cargo insurance);
- D. WAC 480-15-555 (criminal background checks for prospective employees);
- E. WAC 480-15-710 (bill of lading); and
- F. WAC 480-15-750 (weight)

II. BACKGROUND

6 Dolly, Inc. (“Dolly” or “the Company”) is a Delaware corporation with its principal of business in Seattle, Washington. Dolly created a wholly owned proprietary software application that establishes a marketplace that connects people who need an item moved between two locations or within the same location with people who have the capacity to move the item. Dolly does not transport any items or enter into any agreements to do so. Consumers use Dolly’s Internet-based and smart phone app-based technology to connect with individuals (“Helpers” and “Hands”) who are willing to transport the item.

¹ See also WAC 480-15-035.

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Dolly does not own any vehicles or employ any individuals to perform any moving services. Instead, Dolly’s software platform provides a marketplace for facilitating the micro-move; no Dolly employees or agents perform the move. The Commission has consistently viewed the public interest standard as protecting, “the interests of customers of regulated utilities, not those of unregulated competitors.” See *Cost. Mgmt. Srvc., Inc. v. Wash. Util. and Transp. Comm’n (Cost Management Services)*, Dockets UG-061256, et al, Order 06, ¶ 24 (Oct. 12, 2007)). In the case of transporting items, if companies like Dolly did not exist, consumers resort to hiring a day laborer from a parking lot or posting an advertisement in a public forum. Both of those scenarios result in goods being transported by unregulated individuals who have undergone no screening or vetting process. In other words, the public interest favors the Commission Dolly’s permit application over leaving the market to be served by *unregulated* competitors.

III. ARGUMENTS SUPPORTING EXEMPTION

1. Dolly Requests to be Exempt from WAC 480-15-490

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WAC 480-15-490 states that, “all household goods carriers are required to follow the terms, conditions, rates and all other requirements imposed by the commission-published tariff.” The rule presents an undue hardship on Dolly because the Company proposes to comply with an individual tariff filed pursuant to WAC 480-15-520 submitted in conjunction with its household goods carrier permit application. In the event the Commission does not approve the Company’s individual tariff, Dolly further requests to be exempt from rule 480-15-490 because its internet and smart phone app performs many of the same functions and processes imposed in the Commission-published tariff for the services that Dolly offers. Additionally, Dolly’s business model is dependent on its proprietary smart phone app and website providing guaranteed price quote that are more affordable for Washington consumers than the prices published in Tariff 15-C, Section and 3 and Dolly requests the Commission exempt the Company from that section and adopt Dolly’s individual tariff Item 85 which explains Dolly’s pricing model.²

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² Dolly will file an individual tariff explaining Item 85 as soon as the Commission approves Dolly’s request to file an individual tariff.

2. Dolly Requests to be Exempt from WAC 480-15-530

10 WAC 480-15-530 outlines the public liability and property damage insurance requirements imposed on household goods carriers. The public liability and property damage coverage required by the rule refers to auto liability and physical damage. Dolly does not have these coverages because as stated above, Dolly does not own, lease, or rent any motor vehicles.

11 Dolly does however purchase auto liability insurance coverage on a contingent basis that is in excess of the Helper's personal auto coverage. Dolly believes the contingent coverage adequately protects the public in the event of loss or damage to the items being transported. Requiring Dolly to purchase primary coverage is tantamount to requiring the Company to own, lease, or rent vehicles which imposes an undue hardship to a degree "different from the hardships imposed on other similarly situated persons."

3. Dolly Requests to be Exempt from WAC 480-15-550

12 WAC 480-15-550 requires household goods carriers to possess cargo insurance based on the weight of the vehicles used to transport goods. Specifically, the coverage required is: \$10,000 policy for vehicles under 10,000lbs and \$20,000 policy for vehicles over 10,000lbs. As stated above, Dolly does not own, lease, or rent vehicles but Dolly's \$3,000,000 general liability insurance policy adequately covers the customer's goods. This coverage is far in excess of the rule's maximum \$20,000 requirement. Additionally, Dolly provides \$300 of free damage protection covering the customers goods.

13 Here, exempting Dolly from the requirement to obtain cargo insurance imposes an undue hardship on the Company and is not contrary to the underlying purposes of the rule because the customer's goods are already insured by the Company's general liability insurance policy.

4. Dolly Requests to be Exempt from WAC 480-15-555

14 WAC 480-15-555(3) imposes the requirement that household goods carriers: 1) must complete a criminal background check for every person the carrier intends to hire,³ and 2) are prohibited from hiring any person who has been convicted of any crime involving theft, burglary,

³ The carrier must also keep evidence that it has completed a criminal background check for every person the carrier intends to hire for as long as that person is employed and for three years thereafter.

assault, sexual misconduct, identity theft, fraud, false statements, or the manufacture, sale, or distribution of a controlled substance within the past five years.

15 Before a Helper is approved to use Dolly's platform, the Company uses an independent third-party company to conduct a thorough background check which scrutinizes the applicant's criminal history and driving history dating back seven years. Any applicant charged or convicted with any one of the offenses listed in WAC 480-15-555(3), among others, is not allowed to use the Dolly platform. Dolly performs these background checks even though Helpers are independent contractors, not employees, because Dolly believes the underlying purpose of the rule is to scrutinize the criminal background of individuals who enter customers' homes or take possession of customers' items. This is in contrast to Dolly's actual employees, who are primarily software engineers and marketing specialists who perform absolutely no transportation services.

16 Because the underlying purpose of the rule is to ensure individuals who committed certain criminal offenses do not have access to consumers' homes and possessions, Dolly requests to be excluded from having to perform background checks on its employees, who do not enter consumer's homes. The rule also subjects the Company to an undue hardship because background checks used for the purposes of employment must comply with the Fair Credit Reporting Act. To comply with the FCRA, an employer must obtain signed consent from the job candidate under review, acknowledging that the check is happening and that they give permission for it to occur. The FCRA permits the candidate to authorize, or provide consent to, the background check within the disclosure document. Because the background check must occur prior to employment, the Company risks exposure to federal lawsuits from current employees if they do not consent to the background check.

5. Dolly Requests to be Exempt from WAC 480-15-710

17 WAC 480-15-710 requires carriers to issue customers a bill of lading. Specifically, the rule states:

- (1) A bill of lading is a shipping document issued by the household goods carrier, signed by both the customer and the household goods carrier that establishes a legal contract with terms and conditions for a shipment of household goods.

- (2) The carrier must issue a bill of lading for each shipment of household goods it transports and must give the customer a completed copy of the bill of lading used for the customer's shipment.
- (3) The carrier must include the information in a bill of lading as described in the Commission's tariff.
- (4) The carrier must keep the bill of lading and all associated documents for three years from the date the move was completed.

18 The rule imposes an undue hardship on Dolly because the Company proposes to comply with an individual tariff filed pursuant to WAC 480-15-520 submitted in conjunction with its household goods carrier permit application. In the event the Commission does not approve the Company's individual tariff, Dolly further requests to be exempt from rule 480-15-710 because its internet and smart phone app provides the Helper and the consumer with the information necessary to document and memorialize their agreement reflecting the cost and components of their agreement, e.g., the items transported, the distance, the shipping and receiving destinations, the names of the parties, and the price. The Helper who performs the services signs the agreement to accept the customer's terms of service.

6. Dolly Requests to be Exempt from WAC 480-15-750

19 The rule imposes an undue hardship on Dolly because the Company has submitted and proposes to adhere to an individual tariff filed pursuant to WAC 480-15-520. In the event the Commission does not approve the Company's individual tariff, Dolly further requests to be exempt from rule 480-15-750 because neither Dolly, nor the Helper, weigh the items being transported. Dolly's proprietary software uses an algorithm that provides a guaranteed price quote based on a number of factors, including the estimated weight of the item being transported. For example, the software knows that a couch will typically weigh more than a chair and adjusts the price quoted to the customer to account for the difference in weight.

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IV. CONCLUSION

24 For the above stated reasons, Dolly requests the Commission grant its requests to be
exempted from WAC 480-15-490, -530, -550, -555, -710, and -750.

25 Respectfully submitted this 6th day of May, 2019.

DOLLY


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