

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

IN RE: APPLICATION OF DOLLY INC.  
FOR AUTHORITY TO OPERATE AS A  
HOUSEHOLD GOODS MOVING COMPANY  
AND MOTOR FREIGHT COMMON  
CARRIER

DOCKET TV-190594

**INITIAL COMMENTS OF PUBLIC COUNSEL**

**September 9, 2019**

**I. INTRODUCTION**

1. In accordance with the Notice Permitting Amended Petition, dated August 22, 2019, in Docket TV-190594, Public Counsel respectfully submits its first set of comments on Dolly Inc.’s (“Company” or “Dolly”) Petition for Rule Exemption (“First Petition”).<sup>1</sup> These Comments address rules governing transportation service providers generally and specifically address Dolly’s First Petition for rule exemption. Public Counsel looks forward to working with stakeholders through this proceeding and any subsequent proceedings.<sup>2</sup>

**II. TRANSPORTATION SERVICE PROVIDERS GENERALLY**

2. The Utilities and Transportation Commission (“Commission”) has statutory authority under RCW 80.01 to regulate the rates, services, facilities, and practices of entities providing transportation services to residents of the state of Washington. Dolly is an app-based company that intends to provide services to customers (including, but not limited to, goods hauling, goods hauling and disposal, and small residential moves) with the service from third-party contractors.

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<sup>1</sup> Dolly, Inc. Petition for Exemption from WAC 480-14-250(1)(e) (Aug. 20, 2019) (“First Petition”).

<sup>2</sup> Public Counsel reserves the right to supplement and/or modify comments in this Docket and subsequent related proceedings.

Companies that operate by connecting consumers with transportation-related services through a smartphone-based app are commonly referred to as “transportation network companies” (TNCs).<sup>3</sup> TNCs offer an alternative to consumers who may choose to procure transportation-related services through technology, as opposed to contacting a local courier or household goods mover through more traditional or conventional means. As the market in this arena continues to evolve, the options for consumers will expand and TNCs are sure to proliferate.

3. Given that Dolly and a number of other TNCs are currently operating or seeking permission to operate in Washington as common carriers or household goods movers, there is a need to adapt traditional regulatory frameworks to meet the realities of a 21<sup>st</sup> Century economy. While 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. As a result, Public Counsel urges the Commission to initiate a rulemaking to address the unique aspects of TNCs seeking to operate as common carriers and/or household goods movers, while still ensuring that Washington residents are adequately safeguarded.

4. Public Counsel appreciates Dolly’s current willingness to seek proper regulatory authority before resuming operations in Washington. As the Company’s petition indicates, the unique business structures<sup>4</sup> do not fit well into the current regulatory framework. This reality necessitates businesses, like Dolly, to seek exemptions from long-standing rules. In turn, processing and weighing the merits of such petitions is onerous for the Commission, applicants,

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<sup>3</sup> “Transportation network company” is often used in the context of ride-sharing services, like Uber or Lyft.

<sup>4</sup> Public Counsel does not weigh in on the merits of TNC business structures versus traditional transportation service providers currently regulated by the Commission.

and other stakeholders. This is further reason to initiate a rulemaking to address the needs of existing and future transportation service providers.

### III. PETITION FOR EXEMPTION TO INSURANCE VERIFICATION REQUIREMENTS

5. The Company seeks to become a permitted common carrier in Washington, under the Commission’s jurisdiction. A common carrier is defined as “any person who undertakes to transport property ... for the general public by motor vehicle for compensation ...”<sup>5</sup> Common carriers do not include household goods carriers, covered under WAC 480-15-020.<sup>6</sup> In order to legally operate in Washington, common carriers must provide proof of active liability and property damage insurance policies.<sup>7</sup> The Company seeks relief from one aspect of this requirement, and Public Counsel recommends denying their request at this time.

6. The insurance requirements detailed in WAC 480-14-250 provide protection to consumers, the company, vehicle operators, and other motorists on Washington roadways. This is an essential tool to provide safe and reliable transportation of goods. In its petition, the Company indicates that they require their drivers (independent contractors) to provide evidence of current auto liability insurance, which would cover any losses or damages to property while in transit.<sup>8</sup> Additionally, the Company carries supplemental commercial liability and auto liability insurance policies to cover any damages that exceed the independent contractor’s policy limits.<sup>9</sup>

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<sup>5</sup> WAC 480-14-040.

<sup>6</sup> The Company has submitted a separate application seeking authority to operate as a permitted household good carrier in Washington.

<sup>7</sup> WAC 480-14-250(e).

<sup>8</sup> First Petition at 2:22-24.

<sup>9</sup> First Petition at 2:25-3:1.

The Company's insurance policy will only cover what their contractors' policies will not, leaving the initial and primary burden on their independently contracted drivers.

7. Dolly's relationship with its contractor-drivers also presents a practical concern, particularly if the Commission grants this exemption. First, there is no visibility into Dolly's processes to ensure that their contractors carry insurance, have sufficient insurance policies, and verify that the insurance policies are kept current. Although the Company may indeed have robust internal practices to enforce this requirement for their contractor-drivers, the regulators and stakeholders do not have visibility. Furthermore, granting the requested exemption limits the Commission's ability to enforce any insurance requirements. Again, Dolly may indeed take the necessary steps to guarantee all parties are sufficiently insured, but the Commission will be unable to provide necessary oversight and enforcement in the public interest.

#### **IV. DOLLY'S REQUEST FAILS TO MEET THE STANDARD TO GRANT EXEMPTION**

8. Under WAC 480-07-110(1) 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."<sup>10</sup> In determining whether a petition for exemption is in the public interest, the Commission "may consider" two factors: (1) "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 (2) "whether the effect of applying the rule to the requesting person would be contrary to the

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<sup>10</sup> WAC 480-07-110(1).  
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underlying purposes of the rule and the public interest.”<sup>11</sup> The Company’s petition fails to satisfy both factors and, as a result, does not meet the public interest standard.

9. WAC 480-14-250(1)(e), for which Dolly seeks an exemption, requires common carriers to submit evidence of 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. This rule ensures that companies seeking to operate and currently operating as a common carrier can provide proof to the Commission that it does indeed carry sufficient insurance coverage. Dolly argues that it carries adequate insurance that satisfies WAC 480-14-250(1)(a) through (d), but cannot provide Forms E or G because it does not own the individual vehicles covered by its commercial general liability and auto liability insurance.<sup>12</sup> Dolly argues that the requirement imposes an undue hardship by prohibiting it from engaging in business in the state simply because it does not own the vehicles used to provide services.<sup>13</sup>

10. The rule in question is focused on providing evidence of sufficient insurance, and all entities seeking to operate as a common carrier must submit this evidence. Dolly argues that they have sufficient coverage to meet the spirit of the rule, but cannot provide Forms E or G as a result of their business structure (i.e. independent contractors own the vehicles). Under Dolly’s business model, the primary form of insurance is each individual driver’s auto liability insurance, which is supplemented by additional insurance policies held at a company-wide level.<sup>14</sup> Dolly’s argument, however, is moot because the rule simply does not contemplate the type of business

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<sup>11</sup> WAC 480-07-110(2)(c).

<sup>12</sup> First Petition at 3:17-23.

<sup>13</sup> *Id.* at 4:1-2.

<sup>14</sup> *Id.* at 2:23-24.

and vehicle ownership structure at issue. Dolly and traditional common carriers are not “similarly situated,” in this specific respect. As a result, the solution to this dilemma is a rulemaking to address the issue and provide necessary oversight to guarantee that common carriers are operating with sufficient insurance coverage.

11. Second, granting the exemption undermines the underlying purpose of WAC 480-14-250(e). The intent of this rule is to provide the Commission with the ability to verify that all permitted common carriers have the appropriate insurance. Although Dolly argues that they have sufficient insurance coverage between the primary policies held by their contractors and the secondary policies held by the Company, the Commission will not be able to properly verify at the time a permit is issued and on an annual basis thereafter.<sup>15</sup> Current rules also do not include a mechanism to verify (on an initial and annual basis) that each independent contractor operating on Dolly’s behalf has the proper insurance policies, even if it is a Company policy. Taken together, Dolly’s petition fails to meet the second factor of the public interest determination and underscores the need for a rulemaking.

12. Furthermore, if the Commission grants this petition for relief from the regulatory requirements of WAC 480-14-250(e), traditional common carriers would be wholly responsible for proving that they carry two primary insurance policies for their entire fleet and Dolly would be exempted. This creates unfair and unevenly applied regulatory requirements in the same field of operation. The Commission is charged with ensuring safe and reliable transportation services while maintaining the public interest, not picking winners and losers in a competitive market. The Company argues that the Commission should provide relief from the rule because it creates

an “undue hardship,” citing the factors weighed in making the determination.<sup>16</sup> Granting the Company’s petition will, in effect, give Dolly a competitive advantage over other common carriers who are subject to the rule. Such a result is “contrary to the underlying purposes of the rule” and is inconsistent with the “public interest.”<sup>17</sup> For all of the above stated reasons, the Company’s petition fails to meet the standard of determination for providing an exemption to rules.

## V. CONCLUSION

13. Although Public Counsel does not support the Company’s petition for relief as it relates to WAC 480-14-250, the Commission should provide an opportunity for Dolly and similarly situated companies to become permitted carriers and operate lawfully under their jurisdiction. The issue of insurance, in addition to the other issues outlined in the Company’s Second Petition,<sup>18</sup> can be addressed through a rulemaking intended to address the unique challenges presented by non-traditional transportation carriers. Taking such action would create forward-thinking, modern regulatory structures and is in the public interest.

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<sup>16</sup> First Petition at 2:6-7; WAC 480-07-110.

<sup>17</sup> WAC 480-07-110.

<sup>18</sup> The Company filed an Amended Petition on August 13 for relief from rules applied to household goods carriers. This Petition was filed to correspond with the Company’s application for a household goods carrier permit.