



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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Via Electronic Mail Only

September 11, 2019

Mark L. Johnson, Executive Director and Secretary
Washington Utilities and Transportation Commission
621 Woodland Square Loop S.E.
P.O. Box 47250
Olympia, Washington 98504-7250

Re: *Staff Response to Company Petitions for Exemptions Relating to Application for Authority to Operate as a Household Goods Moving Company*
Docket TV-190594

Dear Mr. Johnson:

On July 10, 2019, Dolly Inc. d/b/a Dolly (“Dolly” or “Company”) filed an application for authority to operate as a household goods moving company (“HHG Application”) with the Washington Utilities and Transportation Commission (“Commission”) in Docket TV-190593, along with an accompanying Petition for Rule Exemption (“First Petition”) from the requirement that the Company file a United States Department of Transportation Federal Motor Carrier Safety Administration (“FMCSA”) number (“USDOT Number”) in Docket TV-190594.¹

On July 22, 2019, Dolly filed a second Petition for Rule Exemption in Docket TV-190594 (“Second Petition”) requesting two additional exemptions, from WAC 480-15-530 (Public Liability and Property Damage Insurance) and WAC 480-15-550 (Cargo Insurance) in conjunction with the Company’s HHG Application.

On August 13, 2019, Dolly filed a Motion for Leave to Amend Petition for Rule Exemption (along with an Amended Petition for Rule Exemption (“Amended Petition”)) in Docket TV-190594, seeking to amend and consolidate the First Petition and Second Petition, and add requests for exemptions from: WAC 480-15-555 (Criminal Background Checks for Prospective Employees); WAC 480-15-620 (Information Household Goods Carriers Must Provide to

¹ The Commission previously classified Dolly as a household goods carrier, a common carrier, and a solid waste collection company subject to Commission regulation. *In the Matter of Determining the Proper Carrier Classification of, and Complaint for Penalties Against Dolly, Inc.*, Docket TV-171212, Order 04 ¶ 19 (May 18, 2018).

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Customers); WAC 480-15-630 (Estimates); WAC 480-15-710 (Bill of Lading); WAC 480-15-750 (Weight); and WAC 480-15-490 (Tariff and rates, General). Commission Staff (“Staff”) did not oppose Dolly’s request.

On August 22, 2019, the Commission issued a Notice Permitting Amended Petition, adding the newly requested exemptions with those sought in the First Petition and Second Petition, and consolidating them under a single Amended Petition pertaining to the Company’s HHG Application.² By this letter, Staff responds to the Company’s Amended Petition.³

The Commission may grant an exemption from its rules “when doing so is consistent with the public interest, the purposes underlying regulation, and applicable statutes.”⁴ The Commission uses a public interest standard when considering whether to grant an exemption, and factors the Commission may consider “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.”⁵

Below, Staff first provides a general response to the Amended Petition, and thereafter provides responses as to each specific exemption requested by the Company.

1. Staff’s General Response to the Amended Petition

When submitting a petition seeking exemption from the Commission’s rules, the requesting party bears the burden of stating the “[f]acts that constitute the basis of the petition and requested relief, including relevant dates.”⁶ A party requesting a rule exemption or modification “must file with the commission a written petition identifying the rule for which the person seeks an exemption and *providing a full explanation of the reason for requesting the exemption.*”⁷ Staff recommends that the Commission deny the following exemptions requested by the Company based on the paucity of facts, analysis, and/or evidence filed by the Company demonstrating that the exemptions are consistent with the public interest, the purposes underlying regulation, and applicable statutes: WAC 480-15-555, -620, -630, -710, -750, -490, and the requirement that Dolly obtain a USDOT Number.⁸

² On August 21, 2019, the Commission received Dolly’s Petition for Exemption from WAC 480-14-250(1)(e) (“CC Exemption Petition”), in conjunction with its concurrently filed application for a permit as a common carrier of property (excluding household goods) filed in Docket TV-190594. Staff filed its response to the CC Exemption Petition on September 9, 2019.

³ Staff hereby reserves the right to revise and/or supplement its responses or recommendations should additional information become available, for example, in the event that this matter proceeds to an adjudication.

⁴ WAC 480-15-035(1).

⁵ WAC 480-07-110(2)(c).

⁶ WAC 480-07-370(3)(b)(ii) (emphasis added).

⁷ WAC 480-15-035(2) (emphasis added).

⁸ As explained below, Staff recommends that the Commission grant the Company exemptions from WAC 480-15-530 and -550 relating to the Company’s use of surplus lines insurance carriers, subject to specific and necessary conditions.

By way of example, the following includes the entirety of the facts, analysis, and/or evidence filed by the Company in support of its request to be exempted from WAC 480-15-630:

The underlying purpose of WAC 480-15-630 is to ensure users receive clear and transparent estimates. When the platform provides the user with a guaranteed price, they can either accept or reject it. Users are very satisfied with Dolly's estimates and pricing, and consistently rate this experience and the Company 4.5 out of 5 stars. The rule imposes an undue hardship on the Company because the platform's pricing algorithm provides clear rates that are more affordable than the rates even though neither the user nor the Company sign the price estimate. Requiring signatures detracts from the ease of use that users prefer and expect when they post the detail of their move. As such, it is in the public interest to grant an exemption from the rule because the Company already satisfied the underlying purpose of the rule and users

Under Washington law, legal arguments are not factual evidence.⁹ The above contains conclusory assertions and opinion statements that are unsupported by facts and insufficient to support a Staff recommendation for approval of the exemption. For example, in asserting that WAC 480-15-630 imposes an undue hardship on the Company, the Company baldly asserts that "the platform's pricing algorithm provides clear rates that are more affordable than the rates even though neither the user nor the Company sign the price estimate." The Company offers no detail or information substantiating that its algorithm in fact provides more affordable rates. The Company appears to be asking the Commission to approve exemptions of its rules based upon Dolly's assurances about an algorithm the Commission has not seen and without any facts, evidence, or explanation concerning the substance of the Company's algorithm. The Company's assertion that the public interest is served by the exemption because "requiring signatures detracts from the ease of use that users prefer and expect" is similarly bare and insufficient to support a Staff recommendation that the exemption is indeed in the public interest.

Furthermore, the Commission regulates household goods carriers to ensure the safety and economic protection of consumers, which it does through the promulgation and enforcement of rules like those from which Dolly now requests exemption. Dolly's business model involves effectively subcontracting or delegating its duties to its "helpers" through Dolly's technology. However, Staff's understanding is that Dolly does not verify that its helpers possess a valid household goods carrier permit from the Commission, and the Commission has no way of knowing who Dolly is arranging to physically perform household goods moves. Granting the Company exemptions from WAC 480-15-555, -620, -630, -710, -750, -490, and the requirement that Dolly obtain a USDOT Number will therefore create a gap in the application and enforcement of the Commission's household goods carrier regulations (regulations the Commission deems necessary to protect consumers). The Company, through its exemption requests, essentially asks the Commission to create an entirely different regulatory scheme for it based on its use of technology. The Commission has clearly stated that it will not sacrifice consumer safety and protection in order to accommodate purported conveniences achieved by technology:

⁹ *Jones v. Hogan*, 56 Wn.2d 23, 31-32, 351 P.2d 153 (1960).

We reaffirm our position that, ‘although the digital marketplace may alter how customers obtain service, provisioning [household goods] moving service remains the same as it has been for centuries – using vehicles to move items from one household to another. We will not sacrifice safety and consumer protection for convenience . . .’¹⁰

Dolly has not presented sufficient facts, analysis, and/or evidence to support a recommendation from Staff that the Commission exempt Dolly from the important consumer protection requirements of WAC 480-15-555, -620, -630, -710, -750, -490, and the requirement that Dolly obtain a USDOT Number, and therefore Staff recommends that the Commission deny these exemption requests.

2. WAC 480-15-530 (Public Liability and Property Damage Insurance)

It is Staff’s position that the Company must, in addition to its current petition for exemption from WAC 480-15-530(1)(b) and WAC 480-15-530(3), file a petition for exemption from WAC 480-15-530(1)(a) because, as explained further below, it seeks to engage two surplus lines insurance carriers that are not admitted with the Office of the Insurance Commissioner (“OIC”) through its insurance brokerage company JMB Insurance Agency, Inc., SLA # 202 (“JMB”) to manage and maintain the Company’s commercial general liability and auto liability insurance policies. If the Company were to petition for this additional exemption, Staff would recommend that the Commission grant a so-amended exemption petition concerning WAC 480-15-530,¹¹ subject necessarily to the Company’s prior affirmative acceptance of the following conditions:

- (1) The Company obtains insurance from a highly-rated non-admitted company authorized by the OIC to issue surplus lines insurance (A.M. Best A- or above rating); and,
- (2) The Company allows only persons or entities whose household goods carrier permit(s) Dolly has verified, to transport property pursuant to a bid generated by Dolly.¹² The Company’s helpers must have sufficient liability and property damage liability insurance in order to obtain operating authority.

WAC 480-15-530(1) requires, among other things, that:

(1) Before operating under a household goods permit, carriers must have public liability and property damage insurance covering every motor vehicle used in its operations. The commission will not issue a permit for authority to operate without acceptable proof of required insurance coverage . . .

¹⁰ *In the Matter of Determining the Proper Carrier Classification of, and Complaint for Penalties Against Dolly, Inc.*, Docket TV-171212, Order 04 ¶ 27 (May 18, 2018).

¹¹ In providing its recommendation, Staff in no way agrees with the Company that WAC 480-15-530 imposes an undue hardship on the Company different from hardships imposed on other similarly situated persons, or that applying the rule to the Company would be contrary to the underlying purposes of the rule and the public interest.

¹² RCW 81.80.075(1) provides: “No person shall engage in business as a household goods carrier without first obtaining a household goods carrier permit from the commission.”

(a) The policy must be written by an insurance company authorized to write insurance in Washington state.

(b) The policy must include the Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance (Form E) or Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond (Form G) . . .

(3) Carriers must file a Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance (Form E) or Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond (Form G) as a condition of maintaining a household goods permit.

It is Staff's position that the Company must petition for exemptions from WAC 480-15-530(1)(a), 1(b), and (3) so that it can engage JMB to manage and maintain its commercial general liability and auto liability policies with two surplus lines insurance carriers who are not admitted with the OIC.¹³ Surplus lines insurance is used when licensed insurers in the standard market will not provide coverage because the risk is too high, too unique, too unfamiliar, or does not otherwise meet the insurer's guidelines. Surplus lines insurers have greater flexibility to design and price their insurance policies, and generally charge higher premiums because they insure risks that are usually more costly to cover.

Dolly's insurance broker, JMB, is registered with the OIC and is authorized to write surplus lines insurance on behalf of the two surplus lines insurers Dolly seeks to engage—James River Insurance Company (for commercial general liability) and First Mercury Insurance Company (for auto liability). Both companies are “non-admitted” insurers with the OIC and both are members of the Surplus Lines Associates of Washington. Both companies have an A (excellent) financial strength rating based on the A.M. Best Rating Services credit ratings.

The FMCSA accepts surplus lines insurance (*see* CFR Title 49 Part 387.315) for interstate motor carriers. The purpose of the insurance rule is to protect the public from loss or damage caused by the Company while providing service. Surplus lines insurance responds to that need and is a viable option for high-risk or unique lines of business where risk is less certain. Accordingly, Staff finds that the Company's petition for exemption from WAC 480-15-530 may be consistent with the public interest, the purposes underlying regulation, and applicable statutes, so long as the Company first and unequivocally accepts the above-specified conditions as a prerequisite to the granting of any such exemption.

¹³ RCW 81.80.190 requires “carriers to either procure and file liability and property damage insurance from a company licensed to write such insurance in the state of Washington, or deposit security, for the limits of liability and on terms and conditions that the commission determines are necessary for the reasonable protection of the public against damage and injury for which the carrier may be liable by reason of the operation of any motor vehicle.” The Company must purchase its insurance from a company licensed in the state of Washington. The OIC authorizes insurance companies to write insurance in Washington. Washington law permits the use of surplus lines insurance coverage, under certain conditions, if insurance from authorized insurers cannot be procured. *See* RCW 48.15.040. The licensing requirements for surplus lines brokers are enumerated at RCW 48.15.070.

3. WAC 480-15-550 (Cargo Insurance)

WAC 480-15-550 requires that:

(1) Carriers must have cargo insurance coverage at the levels prescribed in subsection (2) of this section to protect all household goods transported under the permit. The commission will not issue a permit for authority to operate without acceptable proof of required cargo insurance coverage.

(2) The minimum limits of required cargo insurance are:

(a) Ten thousand dollars for household goods transported in motor vehicles with a gross vehicle weight rating of less than ten thousand pounds.

(b) Twenty thousand dollars for household goods transported in motor vehicles with a gross vehicle weight rating of ten thousand pounds or more.¹⁴

The Company asserts that its \$2,000,000 general liability insurance policy more than adequately protects consumers in the event of loss or damage, as it is substantially more than the \$20,000 required in the rule.¹⁵ The Company states that requiring additional cargo insurance serves no public interest because the user's property is already fully insured.¹⁶ Staff would recommend that the Commission grant the Company's exemption petition concerning WAC 480-15-550,¹⁷ subject necessarily to the Company's prior affirmative acceptance of the following conditions:

- (1) The Company obtains insurance from a highly-rated non-admitted company authorized by the OIC to issue surplus lines insurance (A.M. Best A- or above rating); and,
- (2) The Company allows only persons or entities whose household goods carrier permit(s) Dolly has verified, to transport property pursuant to a bid generated by Dolly.¹⁸ The Company's helpers must have sufficient liability and property damage liability insurance in order to obtain operating authority.

For the same reasons set forth in Staff's response to the Company's request for an exemption from WAC 480-15-530, regarding the Company's use of surplus lines carriers, Staff finds that the Company's petition for exemption from WAC 480-15-550 may be consistent with the public interest, the purposes underlying regulation, and applicable statutes, so long as the Company first

¹⁴ WAC 480-15-550(1)-(2).

¹⁵ Amended Petition at p. 7.

¹⁶ *Id.* at pp. 7-8.

¹⁷ In providing its recommendation, Staff in no way agrees with the Company that WAC 480-15-550 imposes an undue hardship on the Company different from hardships imposed on other similarly situated persons, or that applying the rule to the Company would be contrary to the underlying purposes of the rule and the public interest.

¹⁸ RCW 81.80.075(1) provides: "No person shall engage in business as a household goods carrier without first obtaining a household goods carrier permit from the commission."

and unequivocally accepts the above-specified conditions as a prerequisite to the granting of any such exemption.

4. WAC 480-15-555 (Criminal Background Checks for Prospective Employees)

WAC 480-15-555 requires that:

- (1) Each carrier must complete a criminal background check for every person the carrier intends to hire.
- (2) The carrier must 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.
- (3) No carrier may hire a person who has been convicted of any crime involving theft, burglary, assault, sexual misconduct, identity theft, fraud, false statements, or the manufacture, sale, or distribution of a controlled substance within the past five years.

Dolly states that, for its helpers, it already conducts a thorough background check which scrutinizes the applicant's criminal history and driving history dating back seven years.¹⁹ However, Dolly does not perform background checks on its actual (corporate) employees (*e.g.*, software engineers, marketing specialists, etc.).²⁰ Dolly requests that these employees be exempt from background checks 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..." and Dolly's employees "do not enter consumer's homes."²¹

Staff disagrees with the Company that the single underlying purpose of the rule is to ensure that individuals who committed certain criminal offenses do not have access to consumers' homes and possessions. While this is indeed one purpose for conducting background checks, it is not the sole purpose. The purpose of background checks is to protect the consumer and their goods. It is reasonable to believe that all Company employees, regardless of title or work type, would have access to confidential customer information and/or property. This information can include credit card data, personal contact information, personal schedules, and other types of personal information. Employees who have access to consumer information, even at a corporate office, are able to do harm to a consumer just as an employee who enters the home and takes possession of goods.

Many other household goods carriers employ individuals who conduct similar corporate or administrative duties as those described by the Company. To the best of Staff's knowledge, no other household goods carrier has requested that corporate or office staff be exempted from this rule simply because they do not enter consumers' homes. Allowing a certain group of

¹⁹ Amended Petition at p. 8.

²⁰ *Id.*

²¹ *Id.*

employees to not have background checks puts the consumer's personal and financial property at risk by creating a gap in the rule's coverage for a loosely defined group of "corporate employees."

Dolly claims it already conducts thorough background checks scrutinizing potential helpers' criminal and driving history dating back seven years. Therefore, adding the remaining employees should not impose an undue hardship to the Company. Staff therefore recommends that the Commission deny the Company's petition for an exemption from WAC 480-15-555 as it is consistent with the public interest and purposes underlying regulation to require the Company to perform background checks on all employees and helpers.

5. WAC 480-15-620 (Information Household Goods Carriers must Provide to Customers)

WAC 480-15-620 requires household goods carriers to give each customer a copy of the Commission publication, *Consumer Guide to Moving in Washington State*, at the time the carrier gives the customer a written estimate. The guide is designed to help the consumer before, during, and after their household move by outlining the consumer's rights and responsibilities related to a move. The language contained in the publication is prescribed by the Commission and may not be changed by the carrier.²² Carriers are responsible for providing copies of the publication sufficient to meet their specific need.²³

The Company states that while it provides users with a written estimate, Dolly's only interaction with its users is through the platform. The Company claims that requiring it to provide the publication presents complications involved with rewriting its software and is therefore unduly burdensome. Dolly "assures" the Commission, without providing detail or a date certain, that it will nonetheless modify its platform to provide consumers with the Commission publication, but requests to be exempt from this requirement while those changes are being made.

In the absence of any supporting information concerning the alleged burden or specific dates on which the Company will implement the changes, Staff finds no basis to recommend approval of this exemption request.²⁴ The Commission provides a print-ready version of the consumer guide on the Commission's website. The Company has the option, for example, to either print the brochure and provide it to the customer, or to provide an electronic copy to the customer, ensuring they keep the customer's response confirming receipt of the guide. Rather than provide the *Consumer Guide to Moving in Washington State* through electronic means, such as email, Dolly would rather be exempted from the requirement that the Company inform customers of their rights.

²² WAC 480-15-620(2).

²³ WAC 480-15-620(3).

²⁴ Dolly's website states that the consumer and helper "will be able to message and call one another via the Dolly app or website." If consumers and "Helpers" are able to message each other through the Company's app and/or website, Staff questions whether it would present an undue hardship for Dolly to also use its app and/or website to send a message or otherwise communicate the required information to the customer.

Staff believes that the public interest and the purposes underlying regulation are served when consumers are informed of their rights prior to entering into a contract with a household goods carrier. The customer will learn how to evaluate and choose a mover, how to compare moving charges and estimates, and how to avoid and reduce loss or damage to their property. Staff recommends that the Commission deny the Company's petition for an exemption from WAC 480-15-620 and require the Company to provide its customers with a copy of the Commission's publication.

6. WAC 480-15-630 (Estimates)

WAC 480-15-630, in part,²⁵ requires every carrier to provide a written binding or non-binding estimate to every customer prior to the move, and to issue a written supplemental estimate when required by Commission rule or by tariff.²⁶ All written estimates must be signed and dated by both the carrier and customer prior to the move.²⁷

The estimate provides customers with the probable cost of their move, and should clearly and accurately describe all charges. It is important and in the public interest that the customer be fully informed about the cost of their move, what services the charges cover, and that the customer have an opportunity to select their level of loss or damage protection.

Dolly believes requiring signatures on the estimate detracts from the ease of use that users prefer and expect. Staff, like the Commission, values consumers being fully informed over ease. Signing the estimate demonstrates the customer was provided and accepts the proposed charges listed on the estimate, whether the estimate is binding or non-binding, date and locations of the move, and the loss or damage protection option the customer selected. Email approval and acceptance by the customer suffices as a customer signature.

Staff recommends that the Commission deny the Company's request to be exempt from the requirement that it provide written estimates as it is in the public's interest to be informed on all matters addressed in WAC 480-15-630 prior to the move taking place.

7. WAC 480-15-710 (Bill of Lading)

WAC 480-15-710 provides:

- (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.

²⁵ It is not clear from the Amended Petition what portions of WAC 480-15-630 the Company seeks to be exempted from, or if it seeks exemption from the entire rule. The Amended Petition does not address, for example, the provisions or requirements of WAC 480-15-630(6) concerning "estimate[s] based on a customer-completed web site calculation."

²⁶ WAC 480-15-630(1)-(3).

²⁷ WAC 480-15-630(8).

(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.

In support of this exemption request, the Company argues that its “platform provides the Helper and the consumer with the information necessary to document and memorialize their agreement reflecting the cost and components...”²⁸ In Staff’s view, it is in the public interest for customers to receive and understand the bill of lading because it represents the contract between the customer and the carrier. It states the carrier’s responsibilities—*e.g.*, the services to be performed, when and how the carrier will charge for the move, and what liability the carrier will assume. If a customer ultimately needs to file a claim for damages arising from the move, the bill of lading is the record that will be used by the customer to demonstrate the loss or damage protection level selected by the customer. In reviewing and signing the bill of lading prior to the move, the customer is able to review and agree to all terms prior to releasing their household goods to the carrier, and seek clarification where needed. Signing the bill of lading upon the delivery of goods confirms their receipt.

Staff therefore believes it is in the customer’s (and therefore the public) interest to have a signed contract with the carrier, and that contract is the bill of lading. Staff recommends that the Commission deny the Company’s petition for an exemption from WAC 480-15-710.

8. WAC 480-15-750 (Weight)

WAC 480-15-750 provides that: “Carriers must follow the requirement of the tariff as it applies to weight of the shipment.” Tariff 15-C, Item 115 – Weight of Shipment, provides different requirements regarding the weight of shipment for long distance moves, including how the rates and charges shall be computed, when the carrier must obtain a certified loaded weight, and what documentation carriers must retain for record keeping purposes. Specifically, Tariff 15-C, Item 115(4)(b) states: “If no certified scale is available at the point of origin, at a point along the route to the destination, or at the destination point, the carrier may use the constructive weight of the shipment.” Tariff 15-C, Item 10, defines “Constructive Weight” as “a weight based on a formula of seven pounds per cubic foot of properly loaded van space occupied by the customer’s goods.”

The Company states that neither the Company nor its helpers “have the ability to weigh the items being transported.”²⁹ The tariff provides remedies to assist carriers in meeting this tariff. When there is no certified scale available, carriers may use constructive weight as defined in Tariff 15-C. Staff does not believe, and Dolly has not shown, that applying a constructive weight poses an

²⁸ Amended Petition at p. 9.

²⁹ *Id.* at pp. 9-10.

undue hardship on the Company. Therefore, Staff recommends denying the Company's petition for an exemption from WAC 480-15-750 as Dolly has not demonstrated it is in the public interest to exempt it from this rule.

9. Requirement that the Company obtain a USDOT Number

"All entities with authority under chapters 81.66, 81.68, 81.70, and 81.77 RCW, and all household goods carriers with authority under chapter 81.80 RCW, must apply for a department of transportation number . . ." ³⁰ The Commission is responsible for adopting and enforcing safety requirements for transportation companies subject to its regulation. ³¹

In its First Petition, Dolly requested an exemption from the Commission's requirement that it obtain a USDOT Number. The Company stated that "Dolly does not qualify for . . . a USDOT No." and is "unable to obtain a USDOT No." because "Dolly does not own any vehicles and its Helpers do not transport items across state lines. Both actions are required to trigger the necessity to obtain a USDOT No." ³² The Company stated that requiring it to obtain a USDOT Number would impose a hardship on the Company "because the absence of the exemption would require Dolly to acquire vehicles it does not currently own for the sole purpose of engaging in activities it does not currently engage in." ³³

In its Amended Petition, the Company reiterated its argument that it must own vehicles and transport items across state lines in order to "trigger the necessity to obtain a USDOT No." However, the Company nonetheless applied for a USDOT Number and asserts that its application is pending with the FMCSA. The Company now requests to be exempt from this requirement for the time being until the FMCSA approves Dolly's application for a USDOT Number.

Staff disagrees with the Company's assertion that it does not qualify for a USDOT Number. Staff independently confirmed with the FMCSA that a company is not required to own vehicles in order to obtain a USDOT Number. The fact that the Company owns no vehicles is, therefore, not a basis for asserting undue hardship or an inability to obtain a USDOT Number. Furthermore, neither the Company's First Petition or Amended Petition addressed RCW 46.32.080, which mandates that all household goods carriers, regardless of whether or not they transport items in interstate commerce, apply for a USDOT Number. Staff further disagrees with the Company that exempting it from the requirement to obtain a USDOT Number is consistent with the public interest and/or the purposes underlying regulation. The USDOT Number is an important tool used to effectively track safety data, identify companies for reporting unsafe operations or travelling with faulty or dangerous equipment, and establishing a safety rating for the Company which can be placed out of service, if appropriate.

³⁰ RCW 46.32.080(4)(a).

³¹ RCW 46.32.080(1).

³² First Petition at p. 2.

³³ *Id.*

Therefore, Staff recommends that the Commission deny Dolly's request for an exemption from the requirement that it obtain a USDOT Number. Similarly, Staff finds no basis to recommend a temporary exemption from this rule pending a determination on the Company's application with the FMCSA.

10. WAC 480-15-490 (Tariff and Rates, General)

WAC 480-15-490 provides:

- (1) A tariff is a publication containing the rates and charges that household goods carriers must assess on shipments of household goods, including rules that govern how rates and charges are assessed.
- (2) The commission publishes tariffs that all household goods carriers must use and allows household goods carriers to file individual tariffs if the commission finds it is impractical to include certain commodities or services in its tariff.
- (3) All household goods carriers are required to follow the terms, conditions, rates and all other requirements imposed by the commission-published tariff.
- (4) The commission will set minimum and maximum rates carriers may charge within the tariff.
- (5) Every household goods permit holder must obtain at least one copy of the current tariff, and may pay applicable tariff maintenance fees. Any interested person may purchase a copy by paying the applicable fees in advance.

Staff recommends denying the Company's request for an exemption from WAC 480-15-490 for the following reasons. The Company's request is unusual and outside Commission precedent; in the past, some companies have been granted the ability to file individual tariffs if the Commission finds it is impractical to include certain *commodities* or *services* in Tariff 15-C. Currently, the only individual tariffs in effect are for the transportation of pianos and organs. The only argument offered by Dolly as to why this exemption is in the public interest is that, purportedly, the Company's platform "charges rates much lower than those included in the tariff."³⁴ However, in order to be exempted from WAC 480-15-490 the Company must successfully argue that there is a significant difference in the services offered or the commodities being moved.³⁵ Staff does not believe that the Company's commodities or services are significantly different than other household goods carriers: "although the digital marketplace may alter how customers obtain service, provisioning [household goods] moving service remains the same as it has been for centuries – using vehicles to move items from one household to

³⁴ Amended Petition at p. 3.

³⁵ WAC 480-15-490(2).

another.”³⁶ Indeed, if the Commission were to grant this exemption, the only difference in the actual carrier services Dolly provides would be the rate itself.

Additionally, the Company’s Amended Petition does not address the fact that WAC 480-15-490 sets both maximum *and minimum* rates that carriers may charge.³⁷ Setting minimum rates serves the public interest by discouraging cost-cutting by carriers at the expense of important business and consumer protection expenses like insurance, minimum wages, vehicle maintenance, office administration and recordkeeping, scheduling, regulatory filings and compliance, and more. The Company’s sole argument as to why this exemption is in the public interest—that its platform purportedly charges lower rates than Tariff 15-C—ignores the public interest in maintaining minimum rate standards to avoid a race-to-the-bottom among carriers at the expense of consumer safety and protection.

Therefore, Staff recommends denying the Company’s petition for an exemption from WAC 480-15-490 as the Company has not demonstrated that the exemption would be consistent with the public interest, the purposes underlying regulation, and applicable statutes.

Sincerely,

/s/

Bridgit Feeser, Assistant Director, Consumer Protection
Mathew Perkinson, Assistant Director, Transportation Safety
Mike Young, Section Manager, Regulatory Services

³⁶ *In the Matter of Determining the Proper Carrier Classification of, and Complaint for Penalties Against Dolly, Inc.*, Docket TV-171212, Order 04 ¶ 27 (May 18, 2018).

³⁷ WAC 480-15-490(4).