

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

IN RE: PETITION OF DOLLY INC. FOR  
EXEMPTION FROM WAC RULES  
REGARDING PUBLIC LIABILITY AND  
PROPERTY AND CARGO INSURANCE

DOCKET TV-190594

**SECOND COMMENTS OF PUBLIC COUNSEL**

**September 11, 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 second set of comments concerning Dolly Inc.'s ("Company" or "Dolly") Petition for Rule Exemption ("Second Petition").<sup>1</sup> These Comments address Dolly's for exemption from numerous rules pertaining to their application for a household goods mover permit. In part, the following comments relate to issues discussed in Public Counsels Initial Comments in this docket, but are intended to supplement the existing record. Public Counsel looks forward to working with stakeholders through this proceeding and any subsequent proceedings.<sup>2</sup>

**II. BACKGROUND**

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, an app-based transportation

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

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

services company, has applied to operate as a common carrier<sup>3</sup> and household goods mover in Washington under the Commission’s jurisdiction. WAC 480-15-020 defines a household goods carrier as a business that transports the “personal effects and or property used, or to be used, in a residence when transported or arranged to be transported between residences or between a residence and a storage facility with the intent to later transport to a residence” for compensation.<sup>4</sup> Transporting a customer’s personal effects and/or property from one residence to another or to a storage facility is what distinguishes a household goods carrier from a common carrier, and is why there are additional requirements and ongoing obligations for household good movers to receive and maintain a permit in Washington.

3. As indicated in Public Counsel’s Initial Comments, Dolly’s business model has primarily motivated the petitions in this docket. Dolly uses a smartphone or tablet app to connect customers to transportation services and employs the services of independent contractors to fulfill the services. Dolly, and similar companies, are commonly referred to as “transportation network companies,”<sup>5</sup> because they maintain a network to connect customers and independent contractors to provide services. This is in contrast to traditional transportation service providers or household goods movers that establish a contract for service to be completed by directly employed individuals. Traditional transportation service providers typically own vehicles for services at a company level, whereas Dolly (and similarly situated companies) do not directly own the vehicles. Rather, the independent contractors own the vehicles.

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<sup>3</sup> Public Counsel’s Initial Comments in this docket concerned Dolly’s petition for exemption related to the common carrier permit application.

<sup>4</sup> WAC 480-15-020.

<sup>5</sup> “Transportation network company” is often used in the context of ride-sharing services, like Uber or Lyft.

### III. THE PUBLIC INTEREST STANDARD FOR EXEMPTION FROM COMMISSION RULES

4. 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>6</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 underlying purposes of the rule and the public interest.”<sup>7</sup> The Company’s petition fails to satisfy these factors and is not in the public interest.
5. In total, the Company seeks exemption from eight rules and the requirement to obtain United States Department of Transportation Federal Motor Carrier Safety Administration Number (“USDOT No.,”) for every vehicle. Public Counsel will treat each of these requests individually in the forthcoming comments, but also offers general comments to the petition as a whole.
6. Generally, the rules from which the Company seeks exemption form the bedrock of regulation for household goods carriers. WAC 480-15 states: “The rules establish standards for public safety, fair competitive practices, just and reasonable charges, nondiscriminatory application of rates, adequate and dependable service and consumer protection, as well as compliance with statutes, rules and commission orders.”<sup>8</sup>

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<sup>6</sup> WAC 480-07-110(1).

<sup>7</sup> WAC 480-07-110(2)(c).

<sup>8</sup> WAC 480-15-010(1).

7. Although Dolly does not seek exemption from all of the rules contained in WAC 480-15, the requests seek complete exemption for basic requirements intended to safeguard consumers and their property, in addition to maintaining a healthy, regulated market. Public Counsel understands that Dolly's business model makes it challenging to fit into the terms of the rules as they currently stand, since they were written without any consideration for TNCs. However, fully exempting Dolly – and other companies in the future – from these rules limits or eliminates the Commission's oversight authority. This would prevent the Commission from carrying out its critical role in the transportation sector. As such, Public Counsel recommends that the Commission deny the Company's Second Petition and initiate a rulemaking to address the needs of the changing marketplace for household goods movers.

8. As indicated in Public Counsel's Initial Comments, the number of TNCs offering services that fall under the UTC's jurisdiction will only increase in number over time. A simple Internet search indicates that Dolly may not be the only TNC that is currently or will be offering services in Washington. With this in mind, every TNC that applies for a permit to operate will likely seek similar exemptions to rules. Not only do these requests have the effect of limiting the Commission's enforcement abilities, but reviewing these petitions is also onerous for the Commission, companies, and stakeholders. Public Counsel appreciates Dolly's willingness to apply for permits; thus, the Commission should use this opportunity to create a regulatory framework that acknowledges the existence of TNCs, while maintaining the benefits of ensuring safe and reliable transportation services. Moving forward with a rulemaking to address the specific needs of Dolly and similar companies would result in forward-thinking regulation

support the Commission’s role in maintaining safe and reliable transportation services, and is in the public interest.

**IV. DOLLY’S REQUEST FOR EXEMPTION FROM WAC 480-15-490**

9. WAC 480-15-490 requires household goods movers to maintain a rate tariff that describes how much the company can charge its customers, in addition to the structure of rates and fees. Dolly argues that they are unable to comply with the tariff requirement, and it poses an undue hardship. Furthermore, they indicate that the current tariff “imposes rates higher than those Dolly charges” and they do not perform long-distance moves.<sup>9</sup> Public Counsel understands the Company’s predicament and how current regulatory structures do not align with how it conducts business. While the motivation to seek exemption from this rule is understandable, the Commission’s duty to enforce “nondiscriminatory rates”<sup>10</sup> provides a critical consumer protection. Complete exemption from this rule is in conflict with the spirit of WAC 480-15 and is not in the public interest. As such, the Commission should initiate a rulemaking to address the realities of Dolly’s rate structure and non-traditional rate structures of similar companies, while maintaining important consumer protections.

**V. DOLLY’S REQUEST FOR EXEMPTION FROM WAC 480-15-530(1)(B) AND (3)**

10. The Company requested relief from the analogous rule applied to common carriers in its First Petition. Given that the issues in this request are largely similar, Public Counsel’s position remains consistent: the Commission should deny relief and initiate a rulemaking. Public Counsel continues to acknowledge Dolly’s efforts to comply with the spirit of this rule, but also remains

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<sup>9</sup> Second Petition at 3:14-16.

<sup>10</sup> WAC 480-15-010(1).

concerned about the Commission’s enforcement capabilities and secondary effects of approving the request in the Second Petition. For more detail on Public Counsel’s argument, please refer to the Initial Comments in this docket filed on September 9, 2019.

**VI. DOLLY’S REQUEST FOR EXEMPTION FROM WAC 480-15-550**

11. Dolly requests exemption from the requirement to carry cargo insurance. Rule requires household goods movers to retain a cargo insurance policy with coverage based on the weight of the insured vehicle. This intended to “protect all household goods transported under the permit.”<sup>11</sup> The Company argues, again, that they do not own the vehicles and that their general liability insurance policy would provide coverage in excess of what is required by rule.<sup>12</sup> Public Counsel reiterates the same comments offered in regard to the Company’s requested exemptions to WAC 480-15-530 (*see above and Initial Comments*). The reality that Dolly and other TNCs are not similarly situated to traditional household goods carriers is a strong argument for the Commission to exercise its authority and initiate a rulemaking that will prevent the need to handle blanket exemptions every time a new Company seeks a permit to operate.

**VII. DOLLY’S REQUEST FOR EXEMPTION FROM WAC 480-15-555**

12. WAC 480-15-555 requires permitted household goods movers to conduct background checks on employees. This rule is intended to protect customers from property loss, given that household goods movers are entrusted with entering a residence and moving the property and personal effects to another. Dolly seeks exemption from this rule, stating that they conduct background checks on all of their independent contractors but not the employees who work in

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<sup>11</sup> WAC 480-15-550(1).

<sup>12</sup> Second Petition at 7:25-27

their corporate offices. Public Counsel understands the Company’s predicament, but also finds value in the Commission’s ability to enforce rules that protect the safety of customers and are in the public interest.

13. Dolly’s business structure and size are different from many of the household goods movers operating in Washington. Rather than operating as a small company with a handful of employees that are exclusively hired to help with household moves, Dolly has a more diversified set of employee functions. This provides further reason for the Commission to exercise its authority and initiate a rulemaking.

**VIII. DOLLY’S REQUEST FOR EXEMPTION FROM WAC 480-15-620**

14. WAC 480-15-620 requires all household goods carriers to provide each customer with 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 rule ensures all customers receive the same information, written by the Commission, regarding their rights and the requirements placed on household goods movers. Dolly seeks an exemption from this rule, stating that the rule imposes an undue hardship on the company because of the complications involved with rewriting the software underlying the platform through which it interacts with consumer. Dolly states that it will modify its platform to provide the information but seeks this exemption while those changes are being made.

15. It is not clear from the petition that this requirement places an undue hardship upon the Company. Dolly’s petition states that it is able to provide the required information to consumers, but does not describe the time or effort involved in the undertaking. While Public Counsel understands that such an undertaking may be time consuming, Dolly has had notice for over a

year that it would be regulated as a household good carrier and presumably understood that the rules applicable to the industry would be applicable to the Company. The fact that Dolly is able to meet the requirements of the rule but has not yet done so does not support Dolly's claim that the requirement is an undue hardship. Public Counsel recommends that the Commission reject Dolly's request for an exemption of this rule.

**IX. DOLLY'S REQUEST FOR EXEMPTION FROM WAC 480-15-630**

16. WAC 480-15-630 requires all household goods carriers to provide a written estimate to every customer prior to moving a shipment of household goods and to issue a written supplemental estimate when required by commission rule or tariff. The rule also requires a visual inspection of the goods or an estimate based on a website calculation, which must be virtually signed by the customer. The rule is intended to ensure customers have some idea of what they will be charged prior to entering into an agreement with a company, and Public Counsel strongly believes that all household goods carriers should be required to offer an estimate to customers. Although Public Counsel does not find Dolly's arguments regarding the requirement to collect the customer's signature to be compelling, Public Counsel understands that it may be difficult to apply the rules to Dolly's particular form of business.

17. Public Counsel, therefore, reiterates the same comments offered above. The reality that Dolly and other TNCs are not similarly situated to traditional household goods carriers is a strong argument for the Commission to exercise its authority and initiate a rulemaking that will prevent the need to handle blanket exemptions every time a new Company seeks a permit to operate.



**X. DOLLY'S REQUIRES FOR AN EXEMPTION FROM WAC 480-15-710**

18. WAC 480-15-710 requires carriers to issue customers a bill of lading that establishes a legal contract between the customer and the household goods carrier. Dolly has requested to be exempt from this requirement because it seeks an individual tariff through a separate Petition. Dolly also argues that its platform already satisfies the purpose of the rule by capturing the essential terms of an agreement necessary to establish a legal contract. Public Counsel strongly opposes any exemption from the requirement to provide a clear and binding legal contract to a customer, as well as the requirement to keep the bill of lading for three years. Customers must be provided with a contract upon which they can rely in case of subsequent disagreements or legal disputes. While it may be possible for Dolly to provide their independent contracts and customers with a platform that allows the parties to create such an agreement, it is unclear from the petition whether customers have any way of obtaining a copy of the agreement or if the platform saves the agreement in any way.
19. Public Counsel acknowledges that there may be a way in which Dolly may meet the underlying purpose of the rule within its platform, but this rule provides a vital consumer protection. A blanket exemption would not be proper in this instance without some enforceable means of ensuring customers receive a bill of lading or similar contractual document. Public Counsel urges the Commission to address this requirement through a rulemaking so that companies such as Dolly may operate, but with enforceable consumer protections in place to protect the public interest.

**XI. DOLLY’S REQUEST TO BE EXEMPT FROM WAC 480-15-750**

20. This rule requires carriers to follow the rate requirements of Tariff 15-C as it applies to the weight of a given shipment. Public Counsel notes that this issue may be resolved by Dolly’s request for an individual permit. In the event the Commission does not grant Dolly’s petition, Public Counsel reiterates the same comments offered in regard to the Company’s requested exemptions to WAC 480-15-530 (*see* above and in Initial Comments). This issue highlights the reality that Dolly and other TNCs are not similarly situated to traditional household goods carriers and is a strong argument for the Commission to exercise its authority and initiate a rulemaking that will prevent the need to handle blanket exemptions every time a new Company seeks a permit to operate.

**XII. DOLLY’S REQUEST TO BE EXEMPT FROM THE REQUIREMENT TO OBTAIN A USDOT NUMBER**

21. The requirement for companies to obtain USDOT Nos. under WACs 480-14-010, -290, -300 and 480-15-900 appears only to apply to carriers that provide interstate transportation services for compensation. If it is indeed true that Dolly’s independent contractors do not transport items across state lines, than it is unclear to Public Counsel why the Company seeks relief from this requirement. The issue, however, may be moot since Dolly states that it has applied for a USDOT Number and that application is currently pending. Public Counsel sees the value in clarifying how this rule may apply to Dolly’s independent contractors and in the creation of new rules which can explicitly require that drivers of TNCs such as Dolly cannot cross state lines without such a permit. This issue further supports Public Counsel’s repeated recommendation to open a rulemaking to address these rules.