

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. T-100, SUB 69

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Petition by Movin' On Movers, Inc. to Amend)	ORDER AMENDING
Rule R2-8.1 Applications for Certificates of)	RULE R2-8.1 AND
Exemption; Transfers; and Notice)	ALLOWING ADDITIONAL
)	COMMENTS

BY THE COMMISSION: On September 19, 2007, an Order was issued in this docket requesting comments from all Commission-certificated movers of household goods (HHG), the Public Staff – North Carolina Utilities Commission (Public Staff), the Office of the Attorney General (Attorney General), and any other interested parties regarding Movin' on Movers, Inc.'s (the Petitioner or Movin' on Movers) request that the Commission expand Rule R2-8.1(a)(3) to include the following additional requirements for the issuance of a certificate of exemption:

- e. That the applicant has a current, valid North Carolina Driver's License;
- f. That the applicant (or any of its principals) has not been convicted of, or been incarcerated following a conviction for, a felony crime within ten years prior to filing the application; [and]
- g. That the applicant is a United States citizen.

The Order requested that those submitting comments include comments on the following issues as well as any other issues deemed relevant to the Commission's consideration of the Petitioner's proposal:

1. Whether the Commission has the authority, consistent with relevant state and federal statutes and constitutional provisions, to require that an applicant for a certificate of exemption to transport household goods (a) have a valid North Carolina driver's license, (b) not have been convicted of a felony crime within the past ten years, and (c) be a United States citizen? If so, please state the legal basis which provides the Commission with such authority. If not, please state the reason that the Commission lacks such authority.

2. If driver's license, felony criminal record, and citizenship information are required on the application for a certificate of exemption, should some, none, or all of the information be treated as confidential and proprietary? If so, should it be provided in a separate exhibit attached to the application?

3. If driver's license, felony criminal record, and citizenship information are required on the application for a certificate of exemption, should such information also be required on the application to sell, assign, pledge, transfer, lease, merge, or acquire control of a certificate of exemption?

4. If driver's license, felony criminal record, and citizenship information are required on a certificate of exemption application, what documents providing proof of such information should be required to be provided by applicant along with the application?

5. Should a person who has been convicted of, or incarcerated for, a felony crime within the past ten years and who has been rehabilitated and released back into society have the right to have the opportunity to become a certified household goods mover? Further, would some time period less than ten years be more appropriate? Explain your responses.

6. Should the circumstances, type, and severity of a felony criminal record be considered by the Commission in determining whether to grant a certificate of exemption to an applicant? Explain/describe how the circumstances, type, and severity of a felony criminal record may or may not warrant special consideration such that an applicant with a felony criminal record might be granted a certificate of exemption.

7. How would you propose/suggest that the possession by an applicant of certain immigration documents (for example, work eligibility documents, Green Cards, Visas) affect his or her legal right to own and operate an intrastate household goods moving business in North Carolina?

In addition, the Order requested that those submitting comments include the specific language that they recommended be included in the certificate of exemption application(s), application exhibit(s), and in Rule R2-8.1. Initial and reply comments were required to be filed no later than October 19, 2007 and November 8, 2007, respectively. By further Order, those dates were extended to November 8, 2007, and November 26, 2007, respectively.

On November 9, 2007, James E. Dunnagan, d/b/a Dunnagan's Moving & Storage, filed a letter with the Commission requesting that a moratorium be placed on the issuance of any new HHG mover certificates of exemption until the Commission's

final decision was issued. By Order dated November 27, 2007, the Commission denied the request for such a moratorium.

On April 25, 2008, the Petitioner made a filing in this docket requesting an update on the status of the docket.

Initial comments were filed with the Commission on or before November 8, 2007, by the Public Staff of the Utilities Commission (hereinafter "Public Staff"), Triangle Residential Options for Substance Abusers, Inc. (hereinafter "TROSAs"), and the following sixteen certificated HHG movers: Absolute Moving & Storage, Inc. (hereinafter "Absolute"); A & E Moving and Storage, Inc., d/b/a New Bell Storage (hereinafter "New Bell"); All American Relocation, Inc. (hereinafter "All American"); Cardinal Moving & Storage, Inc. (hereinafter "Cardinal"); De Haven's Transfer & Storage, Inc. (hereinafter "De Haven's Transfer"); James E. Dunnagan, d/b/a Dunnagan's Movers & Storage (hereinafter "Dunnagan's Moving"); Easy Movers, Inc. (hereinafter "Easy Movers"); Fidelity Moving & Storage Co., Inc. (hereinafter "Fidelity"); Modern Moving & Storage, Inc. (hereinafter "Modern"); Petitioner; Ray Moving & Storage, Inc. (hereinafter "Ray Moving"); Salisbury Moving & Storage (hereinafter "Salisbury"); Security Storage Company, Inc. (hereinafter "Security Storage"); Sells Service, Inc. (hereinafter "Sells"); M. M. Smith Storage Warehouse, Inc. (hereinafter "Smith"); and T & K Moving, Inc., d/b/a Two Men and A Truck of Wilmington (hereinafter "TM&T").

Reply comments were filed on or before November 26, 2007, by the following six certificated HHG movers: Christopher Devon Brown, d/b/a Armorbearor Discount Movers (hereinafter "Armorbearor"); Dunnagan's Moving; I.H. Hill Transfer & Storage, Inc. (hereinafter "Hill"); Kenneth Frederick Lloyd, d/b/a Little Lloyd Moving & Transit (hereinafter "Lloyd"); Petitioner; and TM&T.

SUMMARY OF COMMENTS

1. Whether the Commission has the authority, consistent with relevant state and federal statutes and constitutional provisions, to require that an applicant for a certificate of exemption to transport household goods (a) have a valid North Carolina driver's license, (b) not have been convicted of a felony crime within the past ten years, and (c) be a United States citizen? If so, please state the legal basis that provides the Commission with such authority. If not, please state the reason that the Commission lacks such authority.

Petitioner asserts that the Commission has the statutory authority to make the proposed changes, and that this statutory authority is specifically granted to the Commission in G.S. 62-261(8). The Petitioner reasons that on February 22, 2002, in Docket No. T-100, Sub 49, the Commission issued an Order concluding that it would cease issuing Certificates of Public Convenience and Necessity and, pursuant to G.S. 62-261(8), would issue a certificate of exemption to each motor carrier of household goods authorized to operate in North Carolina instead. Significantly, in that same docket, the Commission concluded that it was important to maintain a certain amount of regulation over the transportation of household goods as a measure of protection for the

moving public. To that end, the Commission concluded that G.S. 62-261(8) gives the Commission authority to “attach to such certificate such reasonable terms and conditions as the moving public may require. . . .” See Order dated February 23, 2002 (Docket No. T-100, Sub 49). The Commission then identified several criteria that should be attached as conditions for receipt of a certificate of exemption. There is nothing in G.S. 62-261(8) that prohibits the Commission from imposing additional conditions.

The Petitioner further asserts that, despite the Public Staff’s comments, G.S. 62-261(8) does not limit a certificate’s terms and conditions to fitness and solvency requirements and compliance with the liability insurance provisions of Chapter 62. To the contrary, G.S. 62-621(8) does not state that the Commission can only attach those terms and conditions that are expressly authorized by Chapter 62. In fact, nothing in G.S. 62-261(8), or any other statute for that matter, requires that additional terms and conditions to protect the moving public be expressly authorized by Chapter 62 of the General Statutes. The Petitioner believes that such an interpretation of the statute would take away the authority given to the Commission in G.S. 62-261(8) to attach those terms and conditions it deems necessary.

The Petitioner clarifies that there is nothing contained in its proposal that prohibits or inhibits the opportunity for a hearing to interested parties. The proposal only amends Rule R2-8.1(a)(3). The hearing requirements are not contained in that rule. The right to a hearing as provided in G.S. 62-261(8), and promulgated under Rule R2-11, is protected. This proposal does not in any way deny the applicant authority to transport household goods without an opportunity for a hearing. Currently, if an applicant is denied a certificate of exemption due to lack of financial solvency (currently a condition to obtain a certificate), he or she has the right to a hearing on that issue. If this proposal is adopted and an applicant is denied a certificate on the basis of a history of felony convictions, he or she would have the right to a hearing on that issue pursuant to G.S. 62-261(8) and Rule R-11.

The Public Staff asserts that the Commission has only those powers granted it by the Legislature.¹ In Docket No. T-100, Sub 49, the Commission, being of the opinion that G.S. 62-261(8) did not give it authority to totally deregulate household goods transportation, looked to this statute for authority to exempt the transportation of household goods from compliance with certain of the provisions of Article 12. Pursuant to G.S. 62-261(8), the Commission found that “the current regulatory environment of household goods transportation is of such a nature that certificates of exemption should be issued to motor carriers of household goods” and that certain terms and conditions should be attached to those certificates “to assure continued and adequate levels of protection to the moving public.”² These terms and conditions are the fitness and solvency requirements set forth in G.S. 62-262(e)(2) and (3), plus the minimum limits of liability insurance coverage set out in G.S. 62-268 and the cargo insurance coverage requirement set out in G.S. 62-152.2. The Petitioner proposes that the Commission

¹ See *State ex. rel. Utils. Comm’n v. Southern Bell Tel. Co.*, 307 N.C. 541, 299 S.E. 2d 763 (1983).

² *Deregulation of Transportation of Household Goods Within North Carolina* - Order Ruling on Household Goods Transportation, Docket No. T-100, Sub 49, pages 15-16, (February 22, 2002).

amend the terms and conditions attached to a certificate of exemption for the transportation of household goods to include three additional requirements, none of which is expressly authorized by Chapter 62 of the General Statutes.

According to the Public Staff, the Commission may not have the authority, consistent with statutory and constitutional provisions, to amend Rule R2-8.1(a)(3) as proposed by the Petitioner. Even if the Commission is of the opinion that these requirements are “such reasonable terms and conditions as the public interest may require”³ under G.S. 62-261(8), it must comply with the provision that “[n]o certificate of exemption shall be denied . . . except after reasonable opportunity for hearing to interested parties.”

All American asserts that, if the Commission does not have the authority to make the requested changes, then who does? All American believes that Docket No. T-100, Sub 49 gives the Commission the authority to change the requirements for obtaining a certificate of exemption. All American maintains that the Commission over the years has not taken responsibility for what it says, and that the Commission is one part of government that could be eliminated to save taxpayers’ money.

Cardinal asserts that the Commission has the authority to make the Petitioner’s proposed changes. In support of this, Cardinal advanced the following reasoning: In Docket No. T-100, Sub 49, the Commission concluded that it would cease issuing Certificates of Public Convenience and Necessity to HHG movers and instead, pursuant to G.S. 62-261(8), issue certificates of exemption. The Commission deemed that it was important to maintain a certain amount of regulatory control over the transportation of HHG as a measure of protection to the moving public. The Commission concluded that G.S. 62-261(8) gave it the authority to attach to certificates of exemption such reasonable terms and conditions as the public interest required. The current terms and conditions are enunciated by the Commission in Rule R2-8.1. Cardinal opines that the additional conditions requested by the Commission are consistent with relevant state and federal statutes and constitutional provisions.

De Haven’s Transfer believes that the Petitioner’s proposed changes are within the jurisdiction of the Commission. De Haven’s Transfer questions whether the Commission could be held responsible if a registered mover commits a serious crime in the home of a North Carolina resident.

Dunnagan’s Moving contends that the Petitioner’s proposed changes are not unreasonable and that they are necessary in the interest of public safety. Dunnagan’s Moving further contends that the Commission is required by law to provide fair regulation of public utilities in the interest of the public, and to promote adequate, reliable, and economical utility service. Dunnagan’s Moving reasons that the Commission can make or adjust rules in the interest of the public.

³ According to the Public Staff, a valid North Carolina driver’s license may not be necessary to protect the public interest, because an applicant for a certificate of exemption may not be an operator of any motor vehicles used in the transportation of household goods. The necessity of requiring that an applicant not have been convicted of a felony within the past ten years and be a United States citizen is also unclear.

Fidelity states that certificates of exemption are issued by the Commission. Thus, it is apparent that the Commission believes that some amount of regulation is needed in connection with the transportation of HHG to protect the moving public. Therefore, Fidelity maintains that the Commission should have the authority to make the Petitioner's proposed changes.

Hill observes that it is the Commission's responsibility to maintain the quality of the moving industry since the Commission is the "sole filter for the establishment of moving companies and their owners in" North Carolina. According to Hill, "[t]he mandate of the North Carolina Utilities Commission is to ensure fair trade and consumer protection in" North Carolina. Hill complains that the industry has been damaged by "rogue movers" and alleges that the moving public wants higher standards that only the Commission can provide.

Modern supports the Petitioner's proposed changes. Modern believes that an applicant should meet certain requirements before the Commission grants it a certificate of exemption. Modern reasons that, since the Commission has the authority to issue certificates of exemption, it should also have the authority to make changes to Rule R2-8.1 to the extent necessary.

Ray Moving expresses hope that the Commission is as concerned for the consumer as it is with the legalities of the matter. Ray Moving acknowledges the legal difficulties of the matter, but also contends that the Commission has an obligation to protect the consumer by requiring people who are hired to enter someone's home and move his belongings to satisfy appropriate criteria. Ray Moving states that it hopes the Commission appreciates the Petitioner's concern about the consequences of letting just anybody have access to consumers' belongings.

Salisbury opines that the Commission should have the authority to require an applicant to meet these important requirements.

Sells contends that the Commission has the authority to issue certificates of exemption to movers and to "attach to such certificate reasonable terms and conditions as the public may require" as is stated in G.S. 62-261(8), which is the basis for the Petitioner's proposed changes. Sells further maintains that the Commission has established the current criteria for obtaining a certificate of exemption, so it stands to reason that the Commission has the authority to change these criteria. Sells is of the opinion that the Petitioner's proposed changes do nothing to inhibit the ability of any reasonable applicant to obtain a certificate of exemption. Further, Sells opines that the moving public expects any mover that is hired to be in this country legally, have a valid North Carolina driver's license, and have a criminal record free from convictions for serious charges, just as they expect the mover to have basic insurance coverage. Sells comments that a certificate of exemption granted to a mover by the Commission does not offer the consumer any warranty or guarantees, but it does indicate to the consumer that the mover is legitimate. Sells alleges that consumers would be dismayed to know that a mover, although operating legally, is owned by someone who is in this country illegally, does not have a driver's license, or has been convicted of a violent crime and

that these factors were not even considered by the Commission in granting the mover its certificate of exemption.

Smith states that the Commission has been granted the authority pursuant to G.S. 62-261(8) to promulgate rules to protect the moving public, and, therefore, has the authority to require an applicant for a certificate of exemption to satisfy requirements that are in the public interest.

Security Storage asserts that the Commission has the authority to make the Petitioner's proposed changes and to attach to a certificate of exemption such reasonable terms and conditions as the public interest may require.

TM&T opines that the Commission has been charged with the responsibility of certifying that an individual is fit, willing, and able to serve the moving public that, and if the Commission is going to do this, it should make sure that it has the authority to perform its job.

TROSA opposes the Petitioner's proposed changes. TROSA states that there is already a process in place for the moving industry in North Carolina to be heard concerning applications for the issuance of a certificate of exemption. TROSA comments that, under the current process, other moving companies have the right to comment and voice their disapproval of any applicant and that, in this manner, the industry can decide on a case-by-case basis whether an applicant is a suitable candidate for the issuance of a certificate of exemption. TROSA acknowledges that there are instances under the current process in which unsuitable applicants have been granted certificates of exemption. However, TROSA contends that it is not clear that the proposed changes would accomplish the desired result of effectively screening out problem applicants.

1. (a) Whether there are any statutory or constitutional challenges to the requirement for North Carolina driver's license?

The Petitioner believes that a valid CDL license is necessary to ensure that the operator is knowledgeable about operating a commercial vehicle. The Petitioner contends that requiring an applicant to have a valid driver's license is an obvious and reasonable condition to place on the certificate of exemption. The Petitioner contends that the proposed requirement that an applicant for a certificate of exemption have a valid driver's license is necessary to protect the moving public by ensuring that an authorized HHG mover has the legal right to operate the vehicles necessary for making HHG moves. The Petitioner explains that the large majority of HHG moves are conducted with commercial vehicles and that operators of these vehicles are required to have a valid CDL license.

The Public Staff made no direct comments regarding this proposed requirement.

Absolute questions how a requirement that a person having a valid driver's license would "protect the moving and consuming public and the integrity of the moving industry." In that regard, Absolute asks (1) if a person is physically disabled, cannot drive, or simply chooses not to have a driver's license, why that fact should that prohibit such person from owning a moving company, and (2) why should having a valid driver's license be a prerequisite for owning this type of business?

Cardinal believes that a valid North Carolina driver's license is already required in order to operate a motor vehicle in North Carolina. The Commission has the authority to confirm that HHG movers are authorized to operate the vehicles used in HHG moves.

Easy Movers asserts that applicants should possess a valid driver's license to be able to move personal property.

Hill indicates that a North Carolina driver's license is already necessary for residents of our state, and the Commission is not placing undue weight on anyone by requiring compliance with such a requirement.

New Bell opposes the requirement that an applicant have a North Carolina driver's license. New Bell contends that a business owner does not need, nor is it required that a business owner have, a driver's license in order to own or operate a HHG moving company. Mr. Ashley, New Bell's owner, states that he does not drive a truck, nor has he ever driven one. New Bell further states that, under federal commercial license requirements, drivers are not required to maintain a license issued by the state in which they are domiciled. New Bell explains that drivers are only required to have one license. New Bell contends that requiring an applicant to have a North Carolina driver's license before obtaining the issuance of a certificate is a restraint of trade rather than a deterrent to poor service. Furthermore, New Bell opines that requiring an applicant to have a valid North Carolina driver's license does not protect the moving and consuming public.

Ray Moving does not understand why there would be any challenge to the driver's license requirement, considering that a driver's license is required to facilitate the transportation of someone's belongings and that such a driver's license requirement increases the chances that a truck and its contents are insured in the event of an accident.

TROSA contends that it is not clear why requiring an applicant for a certificate of exemption to have a current and valid North Carolina driver's license would be a relevant criterion for someone to operate a business in North Carolina. TROSA explains that an applicant may not be a resident of North Carolina and, therefore, not be eligible for a North Carolina driver's license. TROSA further explains that an applicant may not have a driver's license simply because he does not drive. TROSA contends that whether an applicant has a driver's license has no bearing on his ability to effectively run a reputable moving company since owners of moving companies need not, and in most cases do not, operate the moving vehicles. TROSA further contends

that it is clear, however, that anybody that operates moving vehicles must have a valid driver's license.

1. (b) Whether there would be a statutory or constitutional challenge to the criminal record requirement?

The Petitioner comments that, currently, an applicant for a certificate of exemption is not required to provide any criminal background information. Further, the Petitioner remarks that it is not aware that the Commission conducts any criminal background checks on applicants. Therefore, the Petitioner concludes that there currently is no process in place to protect the moving public from misconduct by convicted felons. The Petitioner observes that a felony is a serious crime; felonies typically involve conduct that violates either person (e.g., rape, assault, death) or property (e.g., burglary or other stolen property) or involvement with illegal drugs. The protection of the moving public from persons that have engaged in such activities should be a high priority. The Petitioner asserts that at least three other states -- Illinois, Washington, and California – have rules that allow their administrative agencies to refuse a moving permit to an applicant who has a criminal background. In Illinois, the justification for refusal is not just limited to crimes resulting in felony convictions, but also includes “crimes involving dishonesty or false statement regardless of the punishment.” In Washington, the administrative agency considers whether the applicant has violated “any state law,” not just whether the applicant has been convicted of a felony. In California, the administrative agency can refuse a permit to an applicant who has “committed any act or dishonesty or fraud” or “committed a felony or crime or moral turpitude.” Significantly, in each of these states, there are no time limitations on when the crime or conviction may have occurred. There is also no specific consideration of whether the applicant may have been rehabilitated. The Petitioner comments that other North Carolina administrative agencies have promulgated rules to protect the public from misconduct by convicted felons. The Petitioner points to G.S. 87-10 which provides the North Carolina Licensing Board for General Contractors with the authority to deny a general contractor's license to an applicant who has been convicted of a felony involving moral turpitude or misappropriation of property. Similarly, G.S. 74F and 21 NCAC Ch.29, Section.0402 provides that locksmith applicants convicted of a Class A or Class B felony are permanently ineligible for licensure. These rules also state that an applicant who has been convicted of a Class C, D, E, or F felony should not be granted a license unless more than 12 years have elapsed since the completion of the applicant's sentence. The Petitioner remarks that it was not aware of any statutory or constitutional challenges to said rules.

The Public Staff states that it is not aware of any state in which the authority to transport household goods is automatically denied on the basis of criminal history or lack of United States citizenship without an opportunity for a hearing. The Public Staff asserts that the United States Supreme Court has recognized the severity of depriving a person of the means of earning a livelihood⁴ and states that “[i]t requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the

⁴ Cleveland Bd. of Education v. Loudermill, 470 U.S. 532, 543 (1985).

[Fourteenth] Amendment to secure.”⁵ The right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within both the “liberty” and “property” concepts of the Fifth and Fourteenth Amendments.⁶ Further, the Public Staff asserts that the Supreme Court has consistently interpreted the Fifth and Fourteenth Amendments to apply to all people present in the United States, regardless of their status under the immigration laws.⁷

Absolute wonders how the addition of the Petitioner’s proposed changes would protect the community served by common carriers of HHG by preventing ownership of a moving business by a felon. In that regard, Absolute asks what would a drug possession, conviction, and time served at 18 years of age have to do with the ability of a person who now 25 years old and has been a productive member of society for seven years to start and successfully operate his own moving company?

Hill supports the Petitioner’s proposed felony rule, that is, the rule that states that an applicant for a certificate of exemption (or any of its principals) must not have been convicted of, or been incarcerated following a conviction for, a felony crime within 10 years prior to filing the application. Hill believes that the proposed felony rule provides the security the moving industry in North Carolina needs. Hill does not believe, however, that the rule disqualifies, from gainful employment in North Carolina, those convicted felons who would not be able to obtain a certificate of exemption because of the rule. Hill maintains that the rule should be considered only as a delay in or postponement of the opportunity for a convicted felon to obtain a certificate of exemption. Hill further maintains that a convicted felon can work for any North Carolina moving company that will hire him in the interim. Therefore, Hill states that the felony rule limits the ownership of a business, and not the employment of an individual.

Ray Moving argues that a felony conviction is a very serious matter and should not be looked upon lightly. Ray Moving asks “[i]f a convicted felon does not have rights of law abiding citizens, would the Commission want this person moving its belongings or its constituent’s belongings?”

TM&T disagrees with the Public Staff’s analysis that there is a right to work issue involved in this matter. TM&T maintains that the right to work has nothing to do with the right to be granted a certificate of exemption to own and operate a moving company. TM&T explains that the right to work would be at issue if, for example, the authorized company refused to hire somebody because of his background. TM&T further explains that, when the Commission grants a certificate of exemption to a mover, the right to work is not at issue. Instead, the Commission is “certifying to the general public that the person holding the certificate is fit, willing, and able to come into the public’s homes and move household goods.” TM&T asserts that the Petitioner’s proposed changes are intended to protect the moving public and the integrity of the industry and not to deny persons the right to work or to limit competition. TM&T states that the current

⁵ *Truax v. Raidch*, 239 U.S. 33, 41 (1915).

⁶ *Greene v. McElroy*, 360 U.S. 474, 492 (1959).

⁷ See *Plyer v. Doe*, 457 U.S. 202, 210 (1982).

application approval process is giving the moving public a false sense of security and that it is “border line negligence.”

1. (c) Whether the requirement of United States citizenship will have any statutory or constitution challenges?

The Petitioner observes that currently there is no requirement that an applicant for a certificate of exemption show any documentation indicating lawful presence in this country. It is the opinion of the Petitioner that it is important to the moving public that a HHG mover be lawfully in the United States; that holding a certificate of exemption is not a right, but a privilege; and that this privilege should only be granted to persons who are lawfully in this country. The Petitioner argues that illegal aliens are not subject to the state and federal laws (e.g., workers’ compensation, employment, and tax laws) that protect the public interest.

The Public Staff is not aware of any state in which authority to transport household goods is automatically denied on the basis of a criminal history or lack of United States citizenship without an opportunity for a hearing. The Public Staff asserts that the United States Supreme Court has recognized the severity of depriving a person of the means of a livelihood⁸ and states that “[i]t requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [Fourteenth] Amendment to secure.”⁹ The right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within both the “liberty” and “property” concepts of the Fifth and Fourteenth Amendments.¹⁰ Further, the Supreme Court has consistently interpreted the Fifth and Fourteenth Amendments to apply to all people present in the United States, regardless of their status under the immigration laws.¹¹

Fidelity contends that a mover must be a United States citizen to give the moving public reliable service. Fidelity explains that a mover in the United States on a Visa could have the Visa revoked, resulting in a customer’s goods being stranded in the mover’s warehouse or truck(s).

Ray Moving believes requiring a certificate of exemption applicant to be a United States citizen is more than reasonable. Ray Moving states that “[O]ur whole system, local, state, and nationally is affected by illegal aliens. It goes without saying that this is obviously a reasonable request.”

Salisbury believes that it is very important that a mover be a United States citizen to ensure that state and federal tax laws, immigration laws, employment laws, and workers’ compensation laws and requirements are followed.

⁸ Loudermill, 470 U.S. at 543.

⁹ Raidch, 239 U.S. at 41.

¹⁰ McElroy, 360 U.S. at 492.

¹¹ Doe, 457 U.S. at 210.

TM&T contends that an applicant for a certificate of exemption should be either a United States citizen or a “legally naturalized immigrant.” TM&T argues that, if an applicant cannot follow this country’s immigration laws, then it is safe to assume that he will not follow any other requirements placed on him by North Carolina.

TROSA contends that it is not clear why it should be a requirement that an applicant for a certificate of exemption should be a United States citizen. TROSA argues that, while it is opposed to an applicant who is in this country illegally being granted a certificate of exemption, there might be cases where somebody is in this country legally and is eligible to operate a business in North Carolina or anywhere else in the United States. Applicants in that position should not be denied a certificate of exemption. TROSA further states that “[c]hecking to see that someone can own and operate a business makes sense, but the rule as proposed would wrongly exclude certain people.”

2. If driver’s license, felony criminal record, and citizenship information are required on the application for a certificate of exemption, should some, none, or all of the information be treated as confidential and proprietary? If so, should it be provided in a separate exhibit attached to the application?

The Petitioner states that the driver’s license, felony criminal record, and citizenship information should be treated as confidential.

The Public Staff comments that all of the required driver’s license, felony criminal record, and citizenship information should be attached to the application as a separate exhibit and marked confidential.

Absolute asserts that, in the event that driver’s license, felony criminal record, and citizenship information are required to be submitted with the application for a certificate of exemption, the information should not be treated as confidential and proprietary.

All American remarks that it sees no problem with the Commission’s keeping driver’s license, criminal record, and citizenship information confidential even though none of that information is currently protected as confidential under the law.

Cardinal maintains that it would be appropriate and reasonable for the Commission to treat driver’s license, criminal record, and citizenship information as confidential; however, none of this information is currently protected as confidential information under the law. Cardinal notes that all this information can be easily accessed through the Internet by anyone.

Fidelity believes that, due to the confidentiality of driver’s license, criminal record, and citizenship information, “[a]ll the information that is public does not need to be on a separate exhibit. The Commission could require non-public information on a separate exhibit.”

Modern comments that driver's license, felony criminal record, and citizenship information is all public information, and, therefore, need not be treated as confidential or proprietary by the Commission. However, Modern further comments that any information from an applicant that is not public information should be provided on a separate exhibit attached to the application.

Salisbury states that putting driver's license, criminal record, and citizenship information in a separate exhibit to the application might be a way to protect the confidentiality of that information if the Commission should choose to protect such information.

Security Storage states that the confidentiality of driver's license, criminal record, and citizenship information should be confidential if required by law.

Sells believes that driver's license, criminal record, and citizenship information should not be treated as confidential by the Commission so that other certificate holders can view it and determine whether a protest is warranted.

Smith contends that driver's license, felony criminal record, and citizenship information is not currently protected as confidential under the law. Smith states that most movers obtain such information from various Internet databases when they hire new employees and review current employees. Smith sees no need to restrict the availability of such information since it is readily available.

3. If driver's license, felony criminal record, and citizenship information are required on the application for a certificate of exemption, should such information also be required on the application to sell, assign, pledge, transfer, lease, merge, or acquire control of a certificate of exemption?

The Petitioner recommends that both (1) the application for a certificate of exemption and (2) an application to sell, assign, pledge, etc., a certificate of exemption should be handled alike, i.e., if the holder sells a certificate of exemption, the same rules applicable to new applications should apply.

The Public Staff comments that the same information that is required to be provided in connection with an application for the issuance of a new certificate of exemption should also be required on an application to sell, assign, pledge, transfer, lease, merge, or acquire control of a certificate.

Absolute asserts in its comments that driver's license, felony criminal record, and citizenship information should not be required to be submitted with an application to sell, assign, pledge, etc., a certificate of exemption.

All American states that, even though the certificate of exemption has no value, driver's license, criminal record, and citizenship information should be required in connection with an application to sell, assign, pledge, transfer, lease, merge, or acquire control of a certificate of exemption.

Cardinal states that it would be appropriate to require driver's license, criminal record, and citizenship information to be included on an application to sell, assign, pledge, transfer, lease, merge, or acquire control of a certificate of exemption.

De Haven's Transfer recommends that the Petitioner's proposed changes should apply to all applicants for a certificate of exemption, including those applicants using the application to sell, assign, pledge, transfer, lease, merge, or acquire control of a certificate of exemption. Otherwise, De Haven's Transfer argues, an unqualified mover could obtain a certificate of exemption by simply buying an existing certified moving company.

Fidelity asserts that the same information required on applications for a new certificate of exemption should be required on all applications to sell, assign, pledge, transfer, lease, merge, or acquire control of a certificate of exemption. Fidelity believes this will protect the moving public.

Modern states that any driver's license, felony criminal record, and citizenship information the Commission requires from an applicant for issuance of a certificate of exemption should also be required in connection with an application to sell, assign, pledge, transfer, lease, merge, or acquire control of a certificate of exemption. Modern also believes that a new owner of a moving company should have to reapply for a certificate of exemption.

Salisbury believes that the Petitioner's proposed changes should apply to all applicants for a certificate of exemption, including those applicants using the application to sell, assign, pledge, transfer, lease, merge, or acquire control of a certificate of exemption.

Security Storage believes that an application to sell, assign, pledge, transfer, lease, merge, or acquire control of a certificate of exemption should include the same information required of applicants for the issuance of a new certificate since it is needed to ensure that the moving public is protected.

Sells states that the Petitioner's proposed changes must apply to all applicants for a certificate of exemption, including those applicants using the application to sell, assign, pledge, transfer, lease, merge, or acquire control of a certificate of exemption.

Smith remarks that it is the Commission's responsibility to protect the moving public and to ensure that certificated movers are responsible, law abiding citizens. Accordingly, Smith comments, the Commission should handle applications to sell, assign, pledge, transfer, lease, merge, or acquire control of a certificate of exemption in the same manner in which it handles applications for new authority. Specifically, Smith recommends that a new subsection be added to Rule R2-8.1 (b), concerning applications to sell, assign, pledge, transfer, lease, merge, or acquire control of a certificate of exemption, requiring that applicants comply with these new requirements.

4. If driver's license, felony criminal record, and citizenship information are required on a certificate of exemption application, what documents providing proof of such information should be required to be provided by applicant along with the application?

The Petitioner believes that copies of (1) a NC driver's license; (2) a criminal record check (available from www.NC123.com); and (3) a birth certificate and/or citizenship papers that prove US citizenship should be required to be provided to the Commission by an applicant.

The Public Staff asserts that the required information should consist of a copy of (1) a valid regular driver's license or commercial driver's license issued by the Department of Motor Vehicles (hereinafter "DMV"), or a driver's license issued by another state that is recognized by the DMV as valid for operation on North Carolina highways; (2) a criminal history record check performed by the State Bureau of Investigation; and (3) either a birth certificate, United States passport, certificate of United States citizenship, or certificate of naturalization.

Absolute suggests that, if the information in question is required to be provided, then a copy of driver's license, criminal background check, and employment eligibility verification from the Department of Homeland Security should be provided and that, other than the copy of the driver's license, the forms of verification should be developed by the Commission, which should incur all verification-related costs.

All American asserts that an applicant should provide a copy of his North Carolina driver's license; a copy of his criminal record, which can be obtained from an authorized agency; and a copy of his birth certificate or other documents sufficient to prove United States citizenship status.

Cardinal asserts that a HHG mover applicant should provide to the Commission a copy of its North Carolina driver's license and a printout from the DMV which shows that the applicant's license is currently valid; a certified copy of his criminal record from an authorized agency such as www.NC123.com; and a copy of his birth certificate or certified citizenship documents sufficient to prove his status as a United States citizen.

De Haven's Transfer suggests that the Commission consider using the Employment Eligibility Verification I-9 Form, which is required of employers for their employees. De Haven's Transfer explained that this form does not mandate United States citizenship, but that it provides a good and fair means of establishing identity and employment eligibility.

Dunnagan's Moving suggests that background checks could easily be performed through public records or the Internet, and it proposed that financial background records be submitted with the application, along with verified proof of the applicant's statement.

Fidelity recommends that the Commission require that an applicant for a certificate of exemption submit a copy of his North Carolina driver's license, a document from the North Carolina DMV verifying the validity of the driver's license, and documents proving United States citizenship.

Modern asserts that the driver's license, felony criminal record, and citizenship information an applicant provides to the Commission should consist of a copy of a North Carolina driver's license, DMV motor vehicle report, national criminal background check report, and proof of United States citizenship.

Salisbury remarks that an applicant for a certificate of exemption should provide a copy of his North Carolina driver's license, proof from the DMV that the license is valid, a copy of his birth certificate or certified citizenship documents proving United States citizenship, and a certified copy of any criminal record.

Security Storage recommends that an applicant for a certificate of exemption be required to submit (1) a copy of its North Carolina driver's license, (2) a document from the North Carolina DMV verifying the validity of the driver's license, (3) a certified copy of his criminal record from an authorized agency, and (4) either a certified copy of his birth certificate or citizenship documents proving United States citizenship. Further, Security Storage warns that the accuracy and reliability of information from outside the United States may be questionable.

Sells recommends that a valid North Carolina driver's license, a copy of a criminal record check, and a birth certificate should serve as documentation to verify compliance with the Petitioner's proposed changes. However, Sells added that it will be absolutely necessary for the Commission to verify the validity of such documents.

Smith provides the following comments concerning the types of documents an applicant for a certificate of exemption should provide along with its application. For the proposed driver's license requirement, Smith suggests that an applicant provide a photocopy of its current driver's license along with a DMV printout proving that the license is current. Smith added that, if the applicant is from out of state, then the same information from that state could be provided. For the proposed criminal record requirement, Smith suggests that an applicant provide a certified copy of his criminal record from a recognized criminal records provider who conducts nationwide checks. Smith adds that it is insufficient to obtain a certified copy of a criminal record from just a local police or county ID Bureau check. For the proposed citizenship requirement, Smith recommends that an applicant provide a copy of his birth certificate or certified naturalization papers proving United States citizenship status. Smith contends that Green Cards should not be accepted.

5. Should a person who has been convicted of, or incarcerated for, a felony crime within the past ten years and who has been rehabilitated and released back into society have the right to have the opportunity to become a certified household goods mover? Further, would some time period less than ten years be more appropriate? Explain your responses.

The Petitioner's opinion is that all types of felonies should be treated the same and that 10 years is an appropriate amount of time to restrict a person from becoming a certified HHG mover. The Petitioner queried whether a Commissioner would want to let any of these felons, such as child molester, embezzler, rapist, or murderer into his or her home or want to be responsible for allowing them into the unsuspecting public's home? The Petitioner noted that 74% of all felons return to prison within 10 years of their release and that, after 10 years, the recidivism rate drops significantly. The Petitioner observed that a felony conviction results in the revocation of a felon's rights to vote and to hold a government job. It is the Petitioner's position that if the United States Constitution is amended so as to change these rules, then the Commission should reopen this proceeding.

The Public Staff asserts that a person who has been convicted of, or incarcerated for, a felony offense within the past ten years who has been rehabilitated, released back into society, and has had his or her rights restored under G.S. 13-1 should have the opportunity to become a certified household goods carrier.

Absolute believes that a person who has been convicted of, or incarcerated for a felony crime within the past 10 years and then rehabilitated and released back into society should have the opportunity to become a certificated HHG mover. Absolute observes that the law states that a person who commits a crime and pays for that crime with incarceration owes nothing in the way of compensation or debt to society. Furthermore, Absolute comments that the type of crime should be relevant. Absolute asserts that it is important to protect consumers/customers from potential violent offenders (those who commit crimes such as rape, murder, pedophiles, or sex crimes). However, Absolute also states that a person with a felony DUI conviction two years ago who turns his life around should not be denied the opportunity to better himself. Absolute queries who determines where the line is drawn? On a personal note, the owner of Absolute, Mr. Duckworth, states that he has had a rough past and that's exactly what it is – the past. He states that he is thankful for the privilege to have his own company and the honor to give back to his community.

Armorbearer asserts that "Felon" is a term applied to people who have committed certain crimes. Felonies can range from financial crimes, drugs, or murder. All crimes should be viewed as serious matters, whether they are misdemeanors or felonies. Once a person has served his sentence, most of his rights are restored. Why continue to punish him by not allowing him to obtain a certificate of exemption?

Cardinal comments that a felony is a serious crime that usually involves the type of conduct that violates a person's body (i.e., rape, assault, death) or property (e.g., burglary) or involves possession of or trafficking in drugs. Cardinal asserts that the moving public requires protection from persons associated with such activities. Cardinal questions whether a convicted felon should be at some point, granted the opportunity to move a family's HHG. In considering this question, Cardinal observes that some felons succeed after incarceration and counseling that convicted felons should be given opportunities to make a living, and that studies show that it often takes about 10 years to determine whether a convicted felon has been fully rehabilitated. It is Cardinal's position that, given these considerations, and the level of direct contact movers have

with customers and their belongings, 10 years is a reasonable amount of time to assure that a convicted felon will not commit a horrific crime involving the moving public. In regard to a felon's rights and privileges, Cardinal states that convicted felons currently are not allowed to vote and are stripped of certain privileges available to other citizens. Rehabilitation and time limitations are not considered. Holding a certificate of exemption to move household goods is not a 'right,' it is a privilege granted to persons who satisfy certain requirements. The State of North Carolina (through the DMV) has the right to permanently revoke a person's driver's license (the 'privilege to operate a vehicle') for violating various laws. There is nothing different here.

De Haven's Transfer believes that shortening the proposed 10-year period would increase the risk to the public. De Haven's Transfer also believes that rehabilitated criminals should have gainful employment. However, De Haven's Transfer argues that the moving industry, by its very nature, places employees in close proximity to and in private quarters with women, children, and valuables, all of which can tempt possible repeat offenders. Given the nature of the HHG moving industry, De Haven's Transfer expresses concern about not just felony convictions, but also recent, multiple misdemeanor charges. De Haven's Transfer also suggests that it should be clarified in this rulemaking whether the 10-year period begins at conviction or completion of the sentence.

Easy Movers supports the Petitioner's proposed changes. Easy Movers states that it does not hire employees with recent felony convictions and it asked that the Commission not grant certificates of exemption to applicants with recent felony convictions. Easy Movers also remarks that persons with felony convictions have exhibited traits of irresponsibility and a lack of respect for the law and such persons cannot obtain a valid driver's license or be hired by the federal government. Easy Movers believes "that we should not subject customers to conditions that we would not want to subject our families or our government establishment to."

Fidelity opines that "[t]he moving public should be protected from people convicted of a felony crime. After 10 years back in good standing within the society a person should be able to apply for . . . [a certificate of exemption]." Fidelity adds that it is unnecessary for the Commission to consider the circumstances, type, and severity of a felony criminal record in determining whether to grant a certificate of exemption to an applicant.

Modern opines that a person who has been convicted of, or incarcerated for, a felony should not be allowed to apply for a certificate of exemption until he has been rehabilitated and has been back in society in good standing for at least 10 years. Furthermore, Modern believes that, since all felonies are significant crimes, the Commission should treat all felonies alike.

Salisbury supports the Petitioner's proposed changes. Salisbury believes that granting certificates of exemption to only applicants that have not been convicted of, or incarcerated for, a felony crime within a 10-year period would reduce theft from customers. Salisbury asserts that a period of less than 10 years would not be appropriate and could possibly put customers in danger. Salisbury maintains that

members of the general public have the right to be able to assume that their families and possessions will be safe when they let a mover into their home.

Security Storage is of the opinion that 10 years is the minimum time in which a convicted felon should be denied the opportunity to become a certified HHG mover. Further, Security Storage opines that a convicted felon should be denied the opportunity to become a certified HHG mover even beyond 10 years if the Commission believes that the applicant may in any way be a risk to the moving public. Security Storage adds that the Commission may not want to put itself in the position of considering the circumstances, type, and severity of a felony criminal record in determining whether to grant a certificate of exemption to an applicant.

Sells asserts that a convicted felon should prove that he has been rehabilitated before being granted a certificate of exemption. Accordingly, Sells believes that a convicted felon should not be eligible for a certificate of exemption until 10 years after incarceration has ended. Sells states that “[a] felony crime is a felony crime.” Sells is most concerned though about violent crimes, drug crimes, crimes against children, and crimes of a sexual nature. Sells contends that exposing unsuspecting consumers to convicted felons who committed such crimes is irresponsible, and that to do so with the blessing of the Commission is unthinkable.

TM&T supports some sort of restrictions on the granting of certificates of exemption to convicted felons. TM&T suggests that the time period for which a convicted felon should be denied the opportunity to receive a certificate of exemption ought to vary depending on the type of crime involved. TM&T further suggests that ten years might be too long for some types of crimes, and that some types of crimes might not be considered serious enough to justify denying an applicant a certificate of exemption.

TROSA comments that, while it is true that felony conviction implies the commission of a serious crime, there are some important things that need to be kept in perspective. First, a felony conviction should not automatically be treated as an indictment of a person’s honesty or their ability to operate a professional, reputable business. Second, this proposed rule selects an arbitrary time-frame for determining rehabilitation. TROSA has a strong belief that people can change, that applicants should be dealt with on a case-by-case basis, and that no artificial line in the sand should be drawn.

6. Should the circumstances, type, and severity of a felony criminal record be considered by the Commission in determining whether to grant a certificate of exemption to an applicant? Explain/describe how the circumstances, type, and severity of a felony criminal record may or may not warrant special consideration such that an applicant with a felony criminal record might be granted a certificate of exemption.

The Petitioner’s opinion is that all types of felonies should be treated the same by the Commission and that 10 years is an appropriate amount of time to restrict a person convicted of committing a felony from becoming a certified HHG mover.

The Public Staff opines that the Commission should consider the circumstances, type, and severity of an applicant's felony criminal record in determining whether to grant a certificate of exemption. The Public Staff further opines that the Commission should scrutinize criminal history record checks that reveal one or more of the felony criminal offenses set forth in Chapters 14, 20, and 90. The Public Staff recommends that the Commission consider, among other things, the date of the crime, the age of applicant, the circumstances surrounding the commission of the crime, any evidence of rehabilitation, the duties and responsibilities related to the activities conducted by an HHG carrier, and the public policy considerations relating to an ex-offender's right to work in determining whether a certificate of exemption should be granted or denied based upon information contained in an applicant's criminal history record check.

All American contends that a felony is a serious crime that includes violent offenses such as rape, assault, and murder and nonviolent offenses such as theft and possession of and trafficking in drugs. All American further comments that protecting the moving public from people that perpetrate felony crimes is, or should be, a high priority for the Commission. All American believes that a convicted felon should never be allowed to move a family's household goods. All American notes that convicted felons cannot vote and are stripped of other privileges and that rehabilitation and time limitations are relevant to these disabilities. It is the opinion of All American that holding a certificate of exemption is not a right, but is instead a privilege granted to persons who satisfy certain requirements. All American questions whether anyone in the Commission would expose his or her family or possessions to possible misconduct by a convicted felon by virtue of allowing such persons access to individual homes during the moving process. All American asserts that a felony is a felony under the law and that the Commission should treat all of them alike.

Cardinal believes that the Commission should consider the circumstances, type, and severity of an applicant's criminal record in determining whether to grant a certificate. Cardinal observes that neither Illinois nor Washington limit the criminal conduct considered in the application process to felonies. In Illinois, the Commission can consider the type of crime, when the crime occurred, and the age of the applicant at the time of the incident. In Washington, the Commission does not consider these factors. Cardinal argues that, while it may be appropriate to consider the characteristics of a crime if one is looking at both misdemeanors and felonies, it is not appropriate when the scope of inquiry is limited to felony convictions or incarcerations following felony convictions since felonies are so serious. Cardinal asserts that the Commission should not consider the characteristics of a felony criminal record and should treat all such criminal records alike.

De Haven's Transfer comments that, if the Commission were to consider the characteristics of a criminal record, it might need to establish a fair matrix for justifying granting certificates to some felons and not others and that such an undertaking might be quite complex. De Haven's Transfer further comments that, if such a matrix were to be established it might possibly include misdemeanors as well as felony crimes. De

Haven's Transfer favors a simple 10-year felony rule to keep the North Carolina moving business safe for the public.

New Bell remarks that, if criminal records are to be considered in the application process, the type of felony should be considered in the decision of whether to grant a certificate to an applicant. New Bell opines that everyone is entitled to a chance at rehabilitation and that some convicted felons will become good citizens.

Salisbury contends that the circumstances, type, and severity of a felony criminal record should be considered by the Commission in determining whether to grant a certificate of exemption to an applicant. For example, Salisbury argues that if an applicant's crime is of an extremely serious nature, it might be in the best interest of consumers for the applicant to never be granted a certificate. Further, Salisbury remarks that, when a mover moves a family, it only takes one horrible incident for that family to lose it all. Therefore, very careful consideration should be given by the Commission before granting authority to an applicant.

Smith contends that the circumstances, type, and severity of a felony criminal record should not be considered by the Commission in determining whether to grant a certificate of exemption to an applicant. In support of its position, Smith states that the United States Government does not consider degrees of a felony and neither should the Commission. In addition, Smith observes that the States of Washington and Illinois have requirements similar to those applied by the United States Government, which are much broader than the Petitioner's proposed requirements. Smith asserts that "[t]he Commission should not have to act as judge and jury in this matter (severity), a felony does not warrant special consideration."

TROSA comments that while it is true that a felony conviction implies the commission of a serious crime, there are some important things that need to be kept in perspective. First, a felony conviction should not automatically constitute an indictment of a person's honesty or his ability to operate a professional, reputable business. Second, the proposed rule selects an arbitrary time-frame on rehabilitation. TROSA has a strong belief that people can change. It is TROSA's opinion that the issues sought to be addressed by the proposal relating to applicants' criminal records should be dealt with on a case-by-case basis, and that no artificial line in the sand should be drawn.

7. How would you propose/suggest that the possession by an applicant of certain immigration documents (for example, work eligibility documents, Green Cards, Visas) affects his or her legal right to own and operate an intrastate household goods moving business in North Carolina?

The Petitioner argues that anybody who is an illegal alien should not have the right to own and operate a HHG moving company. The Petitioner asks what gives an illegal immigrant any legal rights?

The Public Staff contends that an applicant's possession of immigration documents evidencing employment authorization regardless of citizenship status should be sufficient to permit an applicant to own and operate an intrastate household goods moving business in North Carolina.

Absolute contends that the Commission should follow federal guidelines for any questions about citizenship or questions about owning a business, assuming that the applicant is not a United States citizen. Absolute remarks that both the federal government and the State of North Carolina already recognize that a person who has certain documentation can work.

All American remarks that immigration documents should not be considered by the Commission and that if a person is not a United States citizen should not be able to own and operate a HHG moving business or any other business in this state or country. All American questions what gives a non-tax paying illegal any rights or privileges in this country, and also why the Commission would want to allow an illegal immigrant the same business opportunities as a United States citizen?

Cardinal argues that it is important that a mover be a United States citizen and gives two reasons in support of this argument: The first is that the moving public is best served and protected by movers that comply with all state and federal tax, immigration, employment, workers' compensation, and other laws. The second reason is that the moving public needs the reliability that only a United States citizen can provide. Cardinal remarks that immigrants, even those with immigration documents, tend to be migrants and do not establish long-term business roots. Cardinal believes that immigration documents can be revoked by the Immigration and Naturalization Service or other authorities. Cardinal also believes that, because moves are planned months in advance, the moving public needs to be assured that movers will show up on moving day.

De Haven's Transfer states that the issue seems to be whether legal aliens or only United States citizens should be allowed to be certified moving business owners. De Haven's Transfer put forth several arguments in support of allowing only United States citizens to be certified moving business owners. First, De Haven's Transfer argues that proving that someone is truly a legal alien eligible to work involves a full background check. Second, De Haven's Transfer asserts that requiring owners of moving companies to be United States citizens does not limit the hiring of eligible aliens in the moving industry. Third, De Haven's Transfer maintains that it is vital that an owner of a moving company be a United States citizen and a North Carolina resident to ensure the necessary business stability and longevity required to provide the promised services and other related services after the move, such as handling claims. De Haven's Transfer claims that adopting such a requirement would protect the public from movers that do not have solid ties to the area that could leave or possibly be deported at any time. Lastly, De Haven's Transfer observes that felony criminal records for crimes committed outside the United States by aliens may be difficult to obtain.

Dunnagan's Moving supports the Petitioner's proposed changes and states that such changes, along with verification of all information on the application for a certificate of exemption, would help protect and serve the consuming public.

Sells asserts that citizenship provides the most protection to the consumer. In support of this position, Sells argues that if an immigrant were to lose his Green Card status, he could be deported and this could in turn result in a consumer's belongings being left stranded in the deported mover's warehouse.

Smith asserts that non-citizen applicants should be denied a certificate of exemption. Individuals who have not become United States citizens are here on a Visa, which could be revoked at any time by the Immigration and Naturalization Service or other authorities. As such, there is no guarantee that such individuals will be here to provide moving services. There is a need to insure that a certificated mover abides by both state and federal laws concerning employment, taxes, immigration, etc. Individuals who are not United States citizens should not be issued certificates of exemption.

8. Comments regarding suspected "illegal movers" or uncertificated movers.

Absolute opines that, in the moving industry, there are people with a valid North Carolina driver's license, United States citizenship, and a clean criminal record doing considerable harm to the reputation of movers, the business of moving HHG in general, and the public. Absolute remarks that more time and energy should be spent focusing on how we can stop these illegal movers, which give the moving industry a bad name by engaging in unethical business practices. In that regard, Absolute observes that it is aware of several movers in Wilmington that are not legal companies.

Armorbearer believes that adding these requirements to the application will add more complexity to the process, prevent rehabilitated citizens from becoming business owners, and cause an increase in the number of illegal moving companies.

Dunnagan's Moving states that it understood that the Commission relaxed the entry process in Docket No. T-100, Sub 49, to allow the many existing illegal operations an opportunity to become "legal" by eliminating the necessity for a showing of need as a prerequisite for coming into compliance with the law. The overall outcome of this process was and is deterioration of the integrity of all certified movers and the creation of an imbalance in competitive conditions. Dunnagan's Moving maintains that the Petitioner's proposed changes in this current docket will protect the public and create a more even level of competition to better serve the public.

Dunnagan's Moving remarks that

Enforcement is the 'key'!! Without enforcement what good are rules? If no one stops a bank from being robbed, how many bank robbers would there be? If no one stops illegal operations, how many operations will there be? The answer to that question is almost as many as certificated movers are operating today. Right now we compete with PODS, illegal

operators, and operations that will fail within 19 months on the average. That alone shows the application process is flawed. Changes are long over due.

Dunnagan's Moving comments that the Commission should make or adjust the rules in the interest of the public. Dunnagan's Moving remarks that moving is a stressful period and that the general public deserves to be able to select a reputable mover that is stable, reliable, and drug free. Dunnagan's Moving points out that the Public Staff was created in 1977 to review, investigate, and make appropriate recommendations to the Commission with respect to standards, regulations, or practices. Dunnagan's Moving opines that the Public Staff should be more active regarding illegal activities and should take strong action to stop illegal movers within North Carolina. Dunnagan's Moving maintains that it has reported 100 or more illegal movers to the Public Staff. Dunnagan's Moving states that it is not satisfied with the Public Staff's efforts, which have consisted of writing a letter or two that resulted in no change in the level of illegal operation. Dunnagan's Moving questions how do the Commission and the Public Staff determine the benefit of allowing the illegal operators to continue and "rubber stamping" every application to transport household goods within North Carolina? Dunnagan's Moving believes that the proposed changes would be a deterrent for illegal operators and would protect the interest of the general public.

Easy Movers states that over the years professional movers have been harmed by the degradation of the industry. There seems to be a void in accountability and a failure to stand up for what is right and to address what is going wrong in the industry. Easy Movers hopes that the Commission will listen to its comments and not allow further erosion of what it has taken a lifetime to build.

Hill observes that it is the Commission's responsibility to maintain the quality of the moving industry since the Commission is the "sole filter for the establishment of moving companies and their owners in" North Carolina. Hill asserts that the mandate of the Commission is to ensure fair trade and consumer protection in North Carolina. Hill complains that the industry has been damaged by "rogue movers" and contends that the moving public wants higher standards that only the Commission can provide.

Ray Moving complains about how badly illegal movers treat the moving public, and points out that they do not pay Commission regulatory fees or any taxes. Ray Moving observes, "In 2005, \$61,000,000 worth of revenue was generated by LEGAL movers in North Carolina. This equates to \$74,280 of regulatory fees paid to the State of North Carolina. It has been estimated that there are as many illegals as legal movers within the state."

Security Storage asserts that "[t]he first priority should always be to protect the public from any possible manner of harm. . . . Erring on the side of doing all that is possible to ensure the public is protected is of the utmost importance."

WHEREUPON, the Commission reaches the following

CONCLUSIONS

Amendments to Rule R2-8.1

In 2002, the Commission made a fundamental change in the manner in which it regulates motor carriers of household goods. In rejecting complete deregulation of intrastate household good movers, the Commission concluded “that a modified degree of regulation . . . should be maintained, thereby providing a measure of protection to the moving public.”¹² The Commission ceased issuing Certificates of Public Convenience and Necessity pursuant to G.S. 62-262 and began issuing certificates of exemption to intrastate household goods movers pursuant to G.S. 62-261(8).¹³ G.S. 62-261(8) required the Commission “to attach to such certificate [of exemption] such reasonable terms and conditions as the public interest may require. . . .”¹⁴ Accordingly, in order “to assure continued and adequate levels of protection for the moving public,” the Commission has attached terms and conditions to certificates of exemption dealing with fitness and solvency requirements (set forth in G.S. 62-262(e)(2) and (3)) and minimum limits of liability insurance coverage and cargo insurance coverage (as provided in G. S, 62-152 and G.S. 62-268) since 2002. In the present docket, Petitioner seeks to have the Commission expand the terms and conditions it attaches to certificates of exemption issued to intrastate household goods movers.

As was the case in 2002, the Commission continues to conclude that a modified degree of regulation of intrastate household goods movers is appropriate and that the current regulatory environment for household goods transportation is of such a nature that certificates of exemption should continue to be issued as provided for in G.S. 62-261(8). Indeed, there is little suggestion in any of the comments filed in this docket that the approach undertaken in 2002 is no longer appropriate. However, the Commission further concludes that the plain language of the statute imposes on the Commission both the right and the obligation “to attach such reasonable terms and conditions as the public interest may require . . .”¹⁵ Accordingly, the question presented in this proceeding is whether imposition of the additional requirements proposed by the Petitioner would be an appropriate exercise of the Commission’s clear authority under G.S. 62-261(8) in order to assure continued and adequate levels of protection for the moving public. After careful consideration and review of the comments, reply comments, and the entire record in this docket, the Commission denies the request of Petitioner as set forth in the Petition. However, the Commission concludes that some expansion of the requirements of Rule R2-8.1, in order to obtain additional information relevant to the granting and maintenance of certificates of exemption, would be appropriate.

¹² Order Ruling on Household Goods Transportation, Docket No. T-100, Sub 49, at 14.

¹³ *Id.* at 15-16.

¹⁴ *Id.* at 16.

¹⁵ *Id.*

Any amendments to the existing Commission rule must be carefully constructed in order to assure continued and adequate levels of protection for the moving public and to address the concerns raised by the Petitioner and other commenting parties. In exercising its conditioning authority, the Commission must balance the interests of both the using and consuming public and the interests of applicants and potential applicants for, and holders of, certificates of exemption. In doing so, the Commission must recognize practical considerations concerning the ownership and operation of these businesses in addition to the practical, legal and constitutional limits on its own authority. As the Public Staff argued persuasively in its comments, the United States Supreme Court has recognized the severity of depriving a person of the means of a livelihood¹⁶ and that “[i]t requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [Fourteenth] Amendment to secure.”¹⁷ The right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within the ambit of both the “liberty” and the “property” concepts found in the Fifth and Fourteenth Amendments.¹⁸ Further, the Supreme Court has consistently interpreted the Fifth and Fourteenth Amendments to apply to all people present in the United States, regardless of their status under the immigration laws.¹⁹ The Commission determines that it can appropriately address the concerns raised by Petitioner and other commentators by modifying its rules to require the certification of compliance with the motor vehicle laws of the state and the submission of additional information concerning criminal history and immigration status rather than adopting blanket rules prohibiting the issuance of certificates of exemption under the circumstances proposed by Petitioner.

First, the Commission will not require that an applicant have a valid North Carolina driver’s license as a precondition for obtaining the issuance of a certificate of exemption. The Commission determines, however, that it is appropriate to require that an applicant for a certificate of exemption be required to certify that any person that the applicant employs to operate a vehicle used to transport household goods will have a valid driver’s license. Specifically, the Commission will require that an applicant certify that the applicant will only permit employees with valid driver’s licenses to operate vehicles to transport household goods in compliance with the laws of the State of North Carolina.

It would be ineffective, and thus inappropriate, to require the actual applicant for a certificate to possess a valid driver’s license. Applicants might be individuals, but an applicant might also be a partnership, corporation, or other business entity incapable of obtaining a valid driver’s license. Moreover, even where an applicant is an individual, the individual that possesses the certificate may not be the same individual that operates a motor vehicle and facilitates the actual move. Instead, the important and relevant requirement is that the actual operators of vehicles for the purpose of conducting a household goods move within the state be entitled to lawfully operate such

¹⁶ Loudermill, 470 U.S. at 543.

¹⁷ Raidch, 239 U.S. at 41.

¹⁸ McElroy, 360 U.S. at 492.

¹⁹ Doe, 457 U.S. at 210.

vehicles. In this regard, the Commission will require the applicant to certify to the Commission that any operator of any vehicle used in the transportation of HHG will be properly licensed to operate such vehicle pursuant to the motor vehicle laws of the relevant state.

The Commission sees no legitimate reason for limiting the right to operate an HHG moving business to North Carolina-licensed drivers as suggested by Petitioner. Such a requirement would unnecessarily burden an applicant whose employee does not possess a driver's license issued by the State of North Carolina but nonetheless can lawfully operate a vehicle in the state. To do so would impose on such applicants a burden that is possibly greater than that placed on others operating vehicles on our state's roads in a lawful manner.

The Commission's interest is in protecting the using and consuming public by ensuring that anyone engaging in an HHG move is qualified and lawfully permitted to operate any vehicle being used for the purpose. Amending Rule R2-8.1 to require that an applicant certify that the applicant will only permit employees with valid driver's licenses to operate vehicles used to transport HHG in compliance with the laws of the State of North Carolina is the most appropriate way to accomplish this goal. This approach will place the appropriate burden on the applicant and operator of the intrastate HHG moving business to assure compliance with the motor vehicle laws of the state while avoiding the practical and legal concerns that would arise from placing a burden on intrastate household goods movers that is greater than that placed on the population at large.

Second, the Commission rejects the invitation to adopt an absolute rule with respect to the criminal history of an applicant. However, the Commission determines that it is important to ascertain from the applicant whether the applicant or its principals have been convicted of a crime that might reflect on that person's fitness to engage in the HHG moving business. Therefore, the Commission will require a certified 10-year criminal record check to be filed with each application. In the case of an individual or sole proprietorship, the record should be in the name of the individual completing the application. In the case of an application from a partnership or other corporate form, the Commission expects record checks to be performed on all the partners in a partnership or all the officers in the case of a corporation.

The Commission wants it to be clear that an applicant will not be denied a certificate automatically or solely on the basis that the applicant has a criminal record. Instead, the Commission will review and evaluate the information provided to determine if any conviction or any other aspect of the information provided is relevant to, or would call into question, the applicant's fitness to possess a certificate of exemption. The Commission will consider a variety of factors regarding the conviction in making that determination, including, but not limited to, the severity of the crime, the date of the offense, the nature of the crime as it relates to the duties and responsibilities of a household goods mover, and the applicant's employment, rehabilitation, and other activities since the crime was committed. If the Commission has a concern about any information contained in the applicant's criminal record that it believes might call into question the applicant's fitness to obtain a certificate, the Commission may request

additional information or schedule a hearing to allow the applicant an opportunity to be heard before any further action is taken on the application.

The Commission recognizes that applicants and operators may hire employees possessing criminal backgrounds. This is not necessarily a bad thing. Instead, it is a management decision that the Commission believes to lie within the purview of the operator of the business rather than a matter for the Commission should necessarily become involved in addressing. There are obvious practical limitations to the Commission's ability to obtain and review such information concerning every employee of an applicant or operator. More importantly, imposing such a requirement would run the risk of having the Commission become too involved in the management of the businesses providing intrastate HHG moving services in the state. That said, the management and operation of these business, as they affect the public interest, are legitimate interests of the Commission, and should the hiring decisions of a certificate holder and the actions of its employees negatively impact the public interest, the Commission retains the authority to investigate and respond to such circumstances.

Third, the Commission will not implement a requirement that an applicant be a United States citizen as a precondition for obtaining a certificate of exemption. A decision to bar non-citizens from obtaining a certificate of exemption would raise serious constitutional issues. Furthermore, the Commission is not satisfied that there is any reason to believe that individuals lawfully entitled to be in the United States cannot appropriately operate an HHG moving business. On the other hand, the Commission agrees that individuals who are not lawfully in the United States should be issued certificates of exemption. As a result, the Commission determines that it is appropriate to require that all applicants, their principals or owners, disclose their legal status in the United States. In the case of an individual or sole proprietorship, the information should be in the name of the individual completing the application. In the case of an application from a partnership or other corporate form, the Commission expects information to be provided for all the partners or all the officers of a corporation. If an applicant or its principal is not a United States citizen, the individual should provide evidence of some form of employment authorization indicating that he or she is lawfully in the United States. The Commission concludes that possession of a valid form of employment authorization, regardless of citizenship status, by an applicant or its principals, should suffice to permit an applicant to own and operate an intrastate HHG moving business in North Carolina.

As with the issue of criminal history, the Commission recognizes that applicants and operators, like any business, might hire employees who do not possess a valid form of employment authorization. There are, however, obvious practical limitations to the Commission's ability to prevent this from occurring, and, more importantly, there are other government entities with primary responsibility for addressing this problem. That said, the management and operation of these businesses, as they affect the public interest, are legitimate interests of the Commission, and should the hiring decisions of a certificate holder negatively impact the public interest, the Commission retains the authority to investigate and respond to such circumstances.

Having determined that the public interest will be served by requiring additional information concerning lawful operation of motor vehicles, criminal history, and citizenship/employment authorization from applicants for certificates of exemption, an obvious question is presented concerning the appropriate scope and extent of these additional requirements. To the extent that the public interest is served by requiring that this information be provided by new applicants, the public interest also is served by requiring that this information be obtained in other contexts as well. In deciding whether to grant an application to sell, assign, pledge, lease or otherwise transfer a certificate of exemption, just like in deciding whether to grant an application to obtain an initial certificate of exemption, the Commission must find the applicant (i.e., transferee) to be fit, willing, and able to provide the service. Accordingly, the Commission believes that the same requirements applicable to a new application should also be imposed in the event that a certificate is being transferred pursuant to G.S. 62-261(8) and Commission Rules R2-8.1 or R2-9. Similarly, once a certificate of exemption is granted, the Commission retains a continuing obligation to protect the public interest and the authority to revoke a certificate of exemption in appropriate circumstances pursuant to G.S. 62-261(8). The Commission believes that the additional information specified in this order should be required of operators who currently hold certificates of exemption and should be obtained from such current certificate holders at the first reasonable opportunity.

In order to accomplish this result, Rule R2-8.1(b), dealing with the approval of sales, leases or other transfers of certificates of exemption, must be amended in order to make clear that the amendments and additional requirements dealing with new applicants apply and must be conformed to in this context. With respect to existing certificate holders, there are also rule changes that will be necessary to effectuate the Commission's decision. In its first annual report following the issuance of this order and the adoption of the amendments to Rule R2-8.1(a) approved herein, each certificate holder should provide the information being required by Rule R2-8.1(a)(3)e-g, as amended. This obligation will not be an ongoing requirement and will be limited to the first annual report filing following the issuance of this Order. However, in order to fulfill its ongoing responsibility to protect the public interest, the Commission will require that all certificated movers inform the Commission in a timely manner in the event that facts or circumstances relevant to its application or the continuing validity of its certificate of exemption change. Accordingly, each certificated household goods mover should submit with its annual report a certification indicating compliance with the applicable public utility statutes and Commission Rules and stating that no material changes have occurred with respect to the information contained in its initial application and provided to the Commission pursuant to Rule R2-8.1(a)(3), as amended. If there is a change in the information contained in its initial application or provided pursuant to Rule R2-8.1(a)(3), as amended, the certificate holder will have 30 days within which to notify the Commission of this fact.

Finally, having reached the foregoing conclusions with respect to the issues raised by Petitioner, the Commission recognizes that there are certain practical issues raised by the conclusions it has reached. First, any information concerning both criminal history and citizenship/employment authorization shall be filed in a manner that will ensure its confidentiality. The Commission will maintain its confidentiality in a

manner consistent with its existing statutes, rules and practices. Second, as noted by several commenters, G.S.62-261(8) expressly states that “[n]o certificate of exemption shall be denied, and no order of revocation shall be issued . . . except after reasonable opportunity of hearing of interested parties.” The Commission recognizes the right of interested parties to be heard prior to action being taken with respect to a certificate of exemption. By amending Rule R2-8.1 in the manner set forth herein, the Commission does not intend to subvert or impair the right of interested parties to be heard prior to ultimate action being taken concerning a certificate of exemption. With this Order and the amendments promulgated herein, the Commission imposes only a requirement that the additional information be provided by the applicant or operators, but does not prejudge the impact of the information obtained on its ultimate decisions. Instead, the Commission concludes that the information required to be provided as the result of the issuance of this Order will better inform its assessment of whether to grant or revoke a certificate of exemption and to assess the manner in which the business of an operator is being conducted. As required by statute, no ultimate action will be taken in the absence of a reasonable opportunity for interested parties to be heard.

In summary, the Commission finds good cause to expand the specific provisions of Rule R2-8.1 in order to require the provision of additional information relevant to the granting and maintenance of a certificate of exemption. In doing so, the Commission has attempted to balance the policy goals of not unnecessarily increasing the barriers to entry into the HHG moving business while protecting the using and consuming public. While the Commission cannot police all aspects of the operation of an HHG mover, the Commission can seek the representation of the applicant that, in the operation of the business, the motor vehicle laws of the state will be adhered to. The Commission further will request additional information concerning both the criminal history, if any, and immigration status of applicants. This information will be provided confidentially and will assist the Commission in determining the fitness of an applicant to obtain a certificate of exemption. Given that these additional requirements are deemed appropriate for consideration with respect to the granting of a new application and the protection of the public interest, the Commission also is extending them to applications to sell, lease, or transfer a business pursuant to Rules R2-8.1(b) and R2-9. Finally, given the relevance and appropriateness of these requirements at the application stage, the Commission determines that it is appropriate to require that this information be provided by current certificate holders at the first reasonable opportunity and that notice of any changes to the information provided to the Commission should be required as a condition of maintaining good standing under the certificate of exemption.

A copy of the revised Rule R2-8.1 reflecting the foregoing conclusions is attached hereto, as Appendix A, and a copy of the revised application forms for use by future applicants are available on the Commission’s website, www.ncuc.net, under Transportation Applications.

Comments on Enforcement

The Commission in its review of the comments submitted by HHG movers notes that some movers have raised concerns about the activities of “illegal” or uncertificated movers. The Commission recognizes that uncertificated movers are a legitimate

concern, that uncertificated movers can have a detrimental impact on the integrity of the moving industry, and that the activities of uncertificated movers might jeopardize the property and well-being of the using and consuming public. The Commission has, for example, imposed penalties on at least one uncertified HHG mover. In addition, the Commission has passed along reports of alleged illegal operation to the appropriate state agencies accompanied by a request that the report be properly investigated. On the other hand, the Commission does not have unlimited authority to enforce existing rules and regulations. For example, the Commission does not have enforcement officers with authority to arrest uncertified movers. Instead, that authority is possessed by other agencies of state government. The Commission does believe, however, that further input on the issue is important in order to determine how the Commission might better enforce its rules and regulations given the limitations contained in existing law in order to ensure that uncertificated movers either become certificated or cease doing business entirely. Consequently, the Commission is of the opinion that good cause exists to allow interested parties to file comments on the following issues: 1) Are there ways in which the Commission can improve its requirements for certification and the process for obtaining a certificate such that they may be better understood by potential applicants who are interested in engaging in the intrastate HHG moving industry; 2) Are there ways in which the Commission can improve its enforcement of the requirements contained in existing statutes and Commission rules once an applicant is certified to ensure that he or she remains compliant; and 3) Are there ways in which the Commission can better identify, investigate, pursue, and obtain the prosecution of individuals or businesses that operate in violation of our statutes and rules. The Commission reserves the right to enter, or not enter, additional orders in this docket subsequent to review of such comments.

Comments on these matters should be filed with the Commission in this docket no later than October 1, 2008.

IT IS, THEREFORE, ORDERED as follows:

1. That Commission Rule R2-8.1 shall be, and hereby is amended as set out in Appendix A, attached hereto, effective as of the date of this Order.

2. That, in connection with its first annual report following the issuance of this Order and the adoption of amendments to Rule R2-8.1(a) promulgated herein, each current holder of a certificate of exemption pursuant to G.S. 62-261(8) should provide the information being required by Rule R2-8.1(a) (3)e-g, as amended.

3. That interested parties may file comments on the following issues: 1) Are there ways in which the Commission can improve its requirements for certification and the process for obtaining a certificate such that they may be better understood by potential applicants who are interested in engaging in the intrastate HHG moving industry; 2) Are there ways in which the Commission can improve its enforcement of the requirements contained in existing statutes and Commission rules once an applicant is certified to ensure that the applicant remains compliant; and 3) Are there ways in which the Commission can better identify, investigate, pursue, and obtain the prosecution of individuals or businesses that operate in violation of our statutes and rules. Such

comments shall be filed with the Commission not later than October 1, 2008.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of August, 2008.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "Patricia Swenson". The signature is written in a cursive style with a long horizontal flourish at the end.

Patricia Swenson, Deputy Clerk

Kc082908.04

R2–8.1. APPLICATIONS FOR CERTIFICATES OF EXEMPTION; TRANSFERS; AND NOTICE

(a) For New Applications.

- (1) Application to operate as a common carrier of household goods must be made on forms furnished by the Commission, and all the required exhibits must be attached to and made a part of the application. The original and three (3) complete copies of the application, including exhibits, must be filed with the Commission with a fourth copy for the Public Staff's Transportation Division.
- (2) The application shall be signed and sworn to by the applicant. If the applicant is a partnership, one partner may sign and verify for all; but the names and addresses of all partners must appear in the application and a certified copy of the partnership agreement, as filed in the county wherein the principal office of the partnership is located, must be filed with the Commission. This does not alleviate the responsibility that all the partners or principals are required to submit individual certified criminal records and citizen certifications or employment authorization as set forth in Rule R2-8.1(a)(3)(f and g). Trade names will not be allowed unless the names and addresses of all owners are given. If the applicant is a corporation, a duly authorized officer of the corporation must verify the application. The names and addresses of the principal managing officers of the corporation must be given and a certified copy of the corporate charter filed with the application.
- (3) Pursuant to G.S. 62-261(8), the applicant shall provide proof or certification of the following:
 - a. That the applicant is fit, willing, and able to properly provide the transportation of household goods in intrastate commerce and has a reasonable and adequate knowledge of the moving industry;
 - b. That the applicant is financially solvent and able to furnish adequate service on a continuing basis, including adequate insurance protection, maintenance of safe, dependable equipment, and the financial ability to settle any damage claims for which it is liable;
 - c. That the applicant maintains minimum limits of liability insurance coverage of \$100,000/\$300,000/\$50,000, or such higher amount may be required by federal law, and cargo insurance coverage of \$35,000/\$50,000;
 - d. That the applicant maintains a minimum amount of \$50,000 general liability insurance coverage;
 - e. That the applicant certifies that only persons possessing valid driver's licenses will operate the motor vehicles that will be used for transporting household goods;

- f. That the applicant or all its partners/principals submit a certified criminal history records check for the immediately preceding 10-year period; and
 - g. That the applicant or all its partners/principals certifies that he or she (1) is a United States citizen or (2) if not a United States citizen, to submit employment authorization document(s) proving legal status to work within the United States.
- (b) For Approval of Sale, Lease, or Other Transfer of Certificate of Exemption. (Also see Rule R2-9.)
 - (1) Application for approval of sale, lease, or other transfer of certificate of exemption shall be typewritten, shall be filed with the Commission with a copy to the Public Staff, by providing an original and three (3) copies. Such applications may necessarily differ according to the nature of the transaction involved, but must include the following:
 - a. The names and addresses of all parties to the transaction.
 - b. A full and complete explanation of the nature of the transaction and its purpose.
 - c. That the applicant or all its partners/principals complete the requirements set forth in R2-8.1(a)(3).
 - (2) If the application is for approval of a lease of certificate of exemption, a copy of the proposed lease agreement must be filed with the application and must contain the entire agreement between the parties.
 - (3) If the application is for approval of a sale of certificate of exemption, a copy of the proposed sales agreement must be filed with the application and must contain the entire agreement between the parties, including the purchase price agreed upon, and all the terms and conditions with respect to the payment of same.
 - (4) No sale of a certificate of exemption will be approved unless the seller complies with the provisions of G.S. 62-111 by filing a statement under oath, as therein required, with respect to debts and claims; a statement showing gross operating revenues and total number of miles traveled for the latest three months' period preceding the date of filing the application, or for the latest three months' period preceding the date of authority to suspend operations, if theretofore granted by this Commission; and no such sale will be approved unless the purchaser files with the Commission a statement under oath attesting to his fitness and ability to provide household goods transportation service and of his assets and liabilities from which it must appear that the purchaser is solvent and in financial condition to meet such reasonable demands as the business may require.

- (5) If the transferee is a corporation, a certified copy of its corporate charter must be filed with said application unless same is already on file with the Commission.
- (6) If the application is for approval of a merger of two or more carriers, or of any agreement by which one carrier seeks to acquire an interest in or control over another carrier, the application shall set out the purpose of such merger, combination or agreement, and the extent of any transfers of other properties of the carriers involved, the changes in the financial status and obligations of the individual carriers involved, and all other matters necessary to a full understanding of the transaction and its effect upon other motor carriers.

(c) Notice of Application and Hearings.

- (1) Upon receipt of an application for a certificate of exemption for the transportation of household goods, same shall be made available for review on the Commission's website. Any party desiring to file a protest must do so in writing by setting forth the reasons for the protest and filing that protest with the Commission no later than 15 days from the filing date of the application. Protests may be filed based only upon the applicant's fitness or financial solvency.
- (2) If no protests are filed to the application within the 15-day time period provided for in Rule R2-8.1(c)(1), or as extended by order of the Commission, the Commission may proceed to decide the application on the basis of information contained in the application and such additional information as the Commission may choose to obtain.

(NCUC Docket No. T-100, Sub 49, 02/02/04; NCUC Docket No. T-100, Sub 69, (8/29/08.))

Docket No. T-100, Sub 69

COMMISSIONER ROBERT V. OWENS, JR., DISSENTING IN PART: I am respectfully dissenting from the portion of the majority's order that requires applicants for certificate of exemption to provide criminal background checks and to submit employment authorization documents. The Petitioner initiated this docket under the guise of promoting safety for the using and consuming public and creating stability in the moving industry. However, the Petitioner in my opinion has not provided sufficient justification for amending Commission Rule R2-8.1.

I believe that the Commission has exceeded its jurisdiction in this matter by requiring these documents. Although the majority has stated that the information will not be used to deny an applicant without first having a hearing and opportunity to be heard, the requirement of these documents will have a chilling effect on otherwise interested individuals who may have a criminal record or who happen to be an undocumented person from applying for a certificate of exemption.

Overall, I believe the effect of the requirements put forth by the Petitioner and modified by the Commission will adversely limit competition in the household goods moving industry and possibly create more uncertificated movers.

/s/ Robert V. Owens, Jr.
Commissioner Robert V. Owens, Jr.