

**BEFORE FEDERAL
TRADE COMMISSION**

DOCKET NO. 9309

IN THE MATTER OF

TABLE OF CONTENTS

I. INTRODUCTORY STATEMENT.....1

II. COMPLAINT COUNSEL'S STATEMENT OF THE CASE.....2

 A. COMPLAINT COUNSEL'S STATEMENT OF FACTS.....2

 1. Complaint Counsel's Unsupported Claim That the Kentucky Association - - and not KTC - - Established Collective Rates for Movers.....2

2. Complaint Counsel's Statement With Respect to

A. COMPLAINT COUNSEL'S INSISTENCE THAT THERE ARE
HORIZONTAL AGREEMENTS ON PRICE IN THIS CASE AND

PER SE ILLEGAL.....9

TABLE OF AUTHORITIES

CASES

Federal Trade Commission v. Ticor Title Insurance Company, et al, 504 U.S. 621 (1992).....1,7,9

New England Motor rate Bureau v. FTC, 908 F.2d 1064 (1st Cir. 1990).....2

U.S. v. Southern Motor Carriers Rate Conference, 467 F. Supp. 471 (N.D. Ga. 1979).....10

FEDERAL STATUTES

INTRODUCTORY STATEMENT

Respondent herewith submits its Reply Brief in this proceeding pursuant to the provisions of Rule 3.52 of the Commission's Rules of Practice.

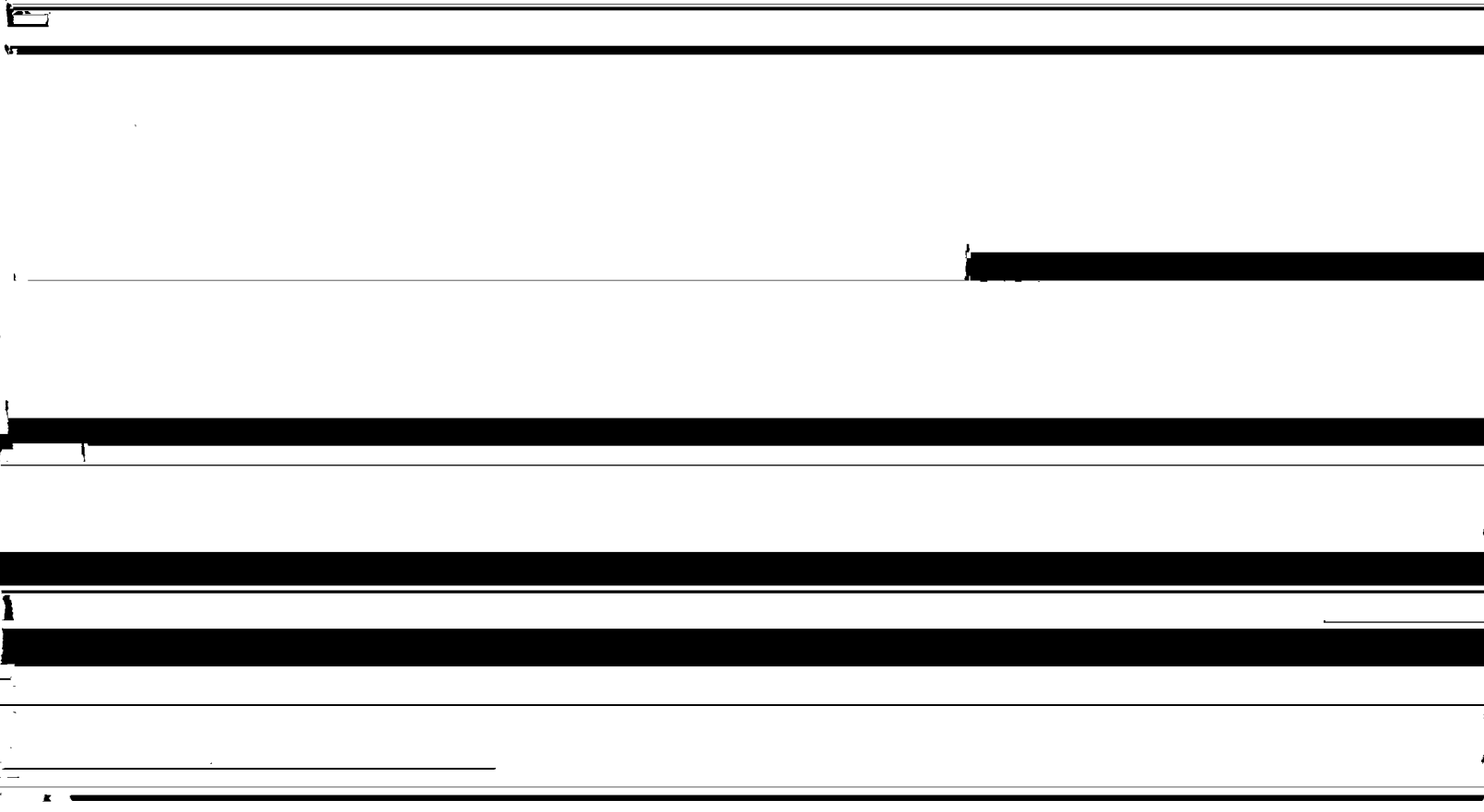
The headings in this Reply Brief have been arranged so as to correspond with those headings and subject matter contained in the Answering Brief of Counsel Supporting the Complaint which are addressed.

In the Introduction to their Answering Brief, Complaint Counsel comment on "[Respondent's] assertion that the [state action] defense applies where the state does little more than passively rubber stamp privately-set prices." CC App. 1; ¶ 1.

Respondent has never made this assertion.

Respondent asserts that the record shows that KTC does not "rubber stamp" tariff rate *proposals* which are submitted by the Kentucky Association.

The actions taken by KTC are performed by a KTC representative who has



only KTC has the authority to establish household goods transportation rates. The record

contains no evidence of any agreement among Respondent or its Members, nor any

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Respondent's Members have not "agreed" to establish a "peak season," (CC App. 3). though they have agreed to authorize the Kentucky Association to file a proposed

tariff containing such a proposal on their behalf.

Respondent does not "regularly institute rate increases" (CC App. 4) as with KTC

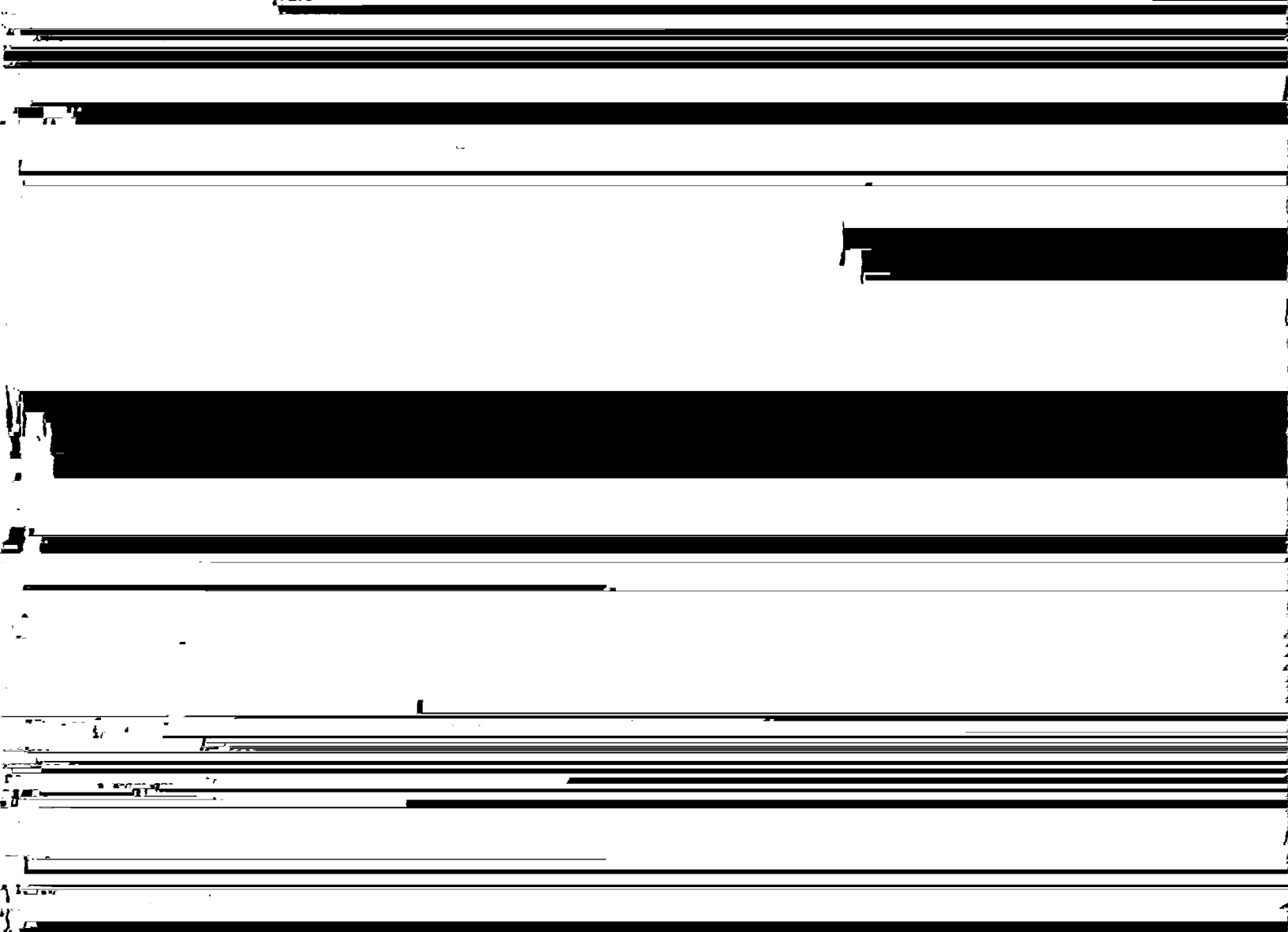
has the legal authority to establish rates for the transportation of household goods in the Commonwealth of Kentucky.

There is no evidence in the record to support the conclusion or inference that the Kentucky Association takes steps to orchestrate changes in the tariff or that Kentucky Association Members use this information to keep rates elevated. (CC App. 5)

purpose of the FTC “inquiry” into what were taken to be matters of compliance with State law, was subsequently recanted in a *further* letter (RX 226) from the subject law firm offered as evidence and excluded at trial. (Respondent’s current Counsel informed Complaint Counsel of the incorrectness of prior Counsel’s letter shortly after the commencement of this proceeding.) Respondent believes that it was error for the ALJ to exclude the subsequent letter from evidence.

a. Complaint Counsel says that “Once Upon A Time” the KTC Reviewed Tariff Rates”

Respondent’s Counsel says that “Once Upon A Time” the KTC Reviewed Tariff Rates”



Here is the answer.

KTC continued the regulation of household goods in a thorough and aggressive manner by retaining the services of its most competent and experienced transportation

professional to administer the regulatory program. ICC v. KTC, 1995 WL 111111

the employment of the State, it may be necessary for KTC to make other arrangements which will involve increased or alternate staffing. In fact, KTC is holding a meeting on September 15th to discuss changes which may be made necessary by this proceeding.

The dramatic change in the state regulatory landscape effected by the ICC

Termination Act of 1995 was a complicated event that had a significant impact on the State

foundation. (CC App. 30; n. 27) To the extent that those documents speculatively expand on the holding of *Ticor*, as does the position of Complaint Counsel in this proceeding, these documents are entirely without merit. So much should be clear from the position of Respondent as expressed in this case.

- d. Complaint Counsel says that KTC Does Not Analyze Rates or Rate Increases Under any State Standard

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[REDACTED]

[REDACTED]

KTC and Respondent in connection with rate filings. It is surely "misleading" for
Complaint Counsel to suggest otherwise.

B PROCEEDINGS BELOW

Complaint Counsel had 10 days to file a motion to dismiss the complaint.

This is a curious approach indeed to what should properly be characterized as a

good faith inquiry into the political process. 2114 64-65 6-10-64

III. ARGUMENT

A. COMPLAINT COUNSEL'S INSISTENCE THAT THERE ARE HORIZONTAL AGREEMENTS ON PRICE IN THIS CASE AND THAT SUCH ALLEGED

allows for the rules described in the case to be sensibly applied to the regulation of each.

The ID and Complaint Counsel acknowledge that *Ticor* does not include a “laundry list” of specifically enumerated factors. ID 35; CC App. 28.

United States v. Southern Motor Carriers Rate Conference, Inc. 467 F. Supp. 471

68) The point being made by KTC Counsel was that if Complaint Counsel were acting in good faith or in the public interest, they would have attempted to effect changes at KTC

with the intention of KTC Counsel, who also happens to be KTC's Deputy General

Counsel, told the ALJ that if he were aware of the true concerns of the FTC, that KTC would have worked with FTC to change its procedures. Of course, Complaint Counsel was seeking information to prepare a Complaint in the referenced interview - - not to solve a problem.

E. WHILE A CEASE AND DESIST ORDER OF ANY KIND IS INAPPROPRIATE, ARTICLE VII OF THE ORDER PROPOSED BY THE ADMINISTRATIVE LAW JUDGE IS ENTIRELY PROPER IF THE INITIAL DECISION IS TO BE AFFIRMED

The specific portion of the proposed remedy contained in Article VII of the ID's

is hereby denied without the punitive effect of an

At the present time, KTC is preparing to implement a program of regulatory activity which it believes will comply with the legal standard described in the ID. Accordingly, an application of the type contemplated by the proposed remedy is likely to be forthcoming. A Meeting to address this issue has been scheduled at the offices of KTC for September 15, 2004.

the record is painstakingly clear that no harm whatsoever has been suffered by any consumer, competitor, government agency, or any person whatsoever - - by reason of the conduct described in the Complaint.

of Kentucky as a co-ordinate sovereign in the regulatory process and demonstrate the Commission's respect for the State in a manner consistent with the federalism contemplated by *Parker v. Brown*.

F. THE ALJ ACTED IMPROPERLY IN
EXCLUDING THE EVIDENCE

This is a case about political responsibility. In RX 227 a Kentucky

Governing official assumes political responsibility for the actions of his agency. It was error

VII. CONCLUSION

For the reasons stated, Defendant respectfully requests that the

CERTIFICATE OF SERVICE

This is to certify that on September 11, 2004, I caused a copy of the attached Reply Brief of **Appellant Kentucky Household Goods Carriers Association, Inc.** to be delivered Express Mail to the persons listed below:

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