

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Deborah Platt Majoras, Chairman**

[REDACTED]

the state were not actively exercised by the Commonwealth of Kentucky specifically the state

Kentucky Transportation Cabinet ("KTC")

On July 20, 2005, Respondent filed a Motion for Reconsideration or, in the Alternative for a Stay of the Commission's Order pending review by a U.S. Court of Appeals. ("Resp. Motion for Stay"). Respondent's motion for reconsideration should be denied both because it

The motion for a stay should be denied.

14-00000-01111 The Commission considered the motion and Respondent's comment

and decided against it. The Commission found that the KTC had "taken some initial steps to augment the level of supervision it exercises over the Kentucky Association's collective

~~In the current motion, Defendant embellishes further on its rejected argument~~

concerning the KTC's activities since the close of the record below. But its argument is not new, and is not grounds for reconsideration, especially since the information provided further confirms

~~that the KTC has a long way to go before a demonstration can be made that rates are being~~

actively supervised.

~~The information contained in Defendant's motion once again relates to the rate changes~~

KTC called its long-time employee Mr. Debord as a witness at the hearing, and elicited little more than a page of testimony from him concerning his review of the proposed rate increase.

(~~Transcript at 42-44~~) In response to further questions, Mr. Debord made generalized

comparisons to rates in neighboring states (Transcript at 43-45) but gave no details of the basis

for such comparisons. While Mr. Debord made reference to the KTC having received some sort

whether the further 10% rate increase is reasonable. As the Commission stated in its opinion

"(3) Most important, Respondent has not shown with specificity what information the KTC will

require to support proposed rate adjustments and what criteria the KTC will apply to assess the

11 "Supports rate adjustments" (Comm. Op. at 27). Such information and criteria

substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *In the Matter of California Dental Ass'n ("CDA")*, Dkt. No. 9259, 1996 FTC LEXIS 277 at \*1 (May 22, 1996); 16 C.F.R. § 3.56(c). A stay should be granted only if the

is "the most difficult legal question" and determines that "the equities of

the case suggest that the status quo should be maintained." *CDA*, 1996 FTC LEXIS 277 at \*9.

Since the questions presented in this case are not difficult or novel, and since the broad stay sought by Respondent is not necessary or in the public interest, it should be denied.

Commission noted that the *amicus* brief filed in this matter by the Kentucky Attorney General, stating “that the ALJ opinion does not conflict with state law or public policy,” further undercuts Respondent’s arguments. (Comm. Op. at 22 n. 20).

**B. RESPONDENT AND ITS MEMBERS WILL NOT SUFFER IRREPARABLE HARM**

**FROM A PROHIBITION OF COLLUSIVE RATE INCREASES.**

is whether Respondent will suffer irreparable harm if a stay is not granted. The Commission has



position to file individual tariffs on behalf of its Members.” (Resp. Motion for Stay at 7). No explanation is given for why the Kentucky Association could not continue in business by

11            1. *that function formover in Kentucky. In short, in support of its position that*

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4. The distinctive merit of new individual filings will be given the current review of collective

rates KTC has historically performed.

The record does contain testimony, however, from Mr. Debord that individual filings

would require additional state resources. CX 116 (Debord, Dep. II at 8-9). In light of the long history of less-than-substantial state resources devoted to regulatory supervision of movers in Kentucky, it is plausible that there could be regulatory disruption caused by the provisions of the

particular members of the Association want a rate increase (or decrease), no material disruption should occur if such members act independently to seek regulatory approval, as has been

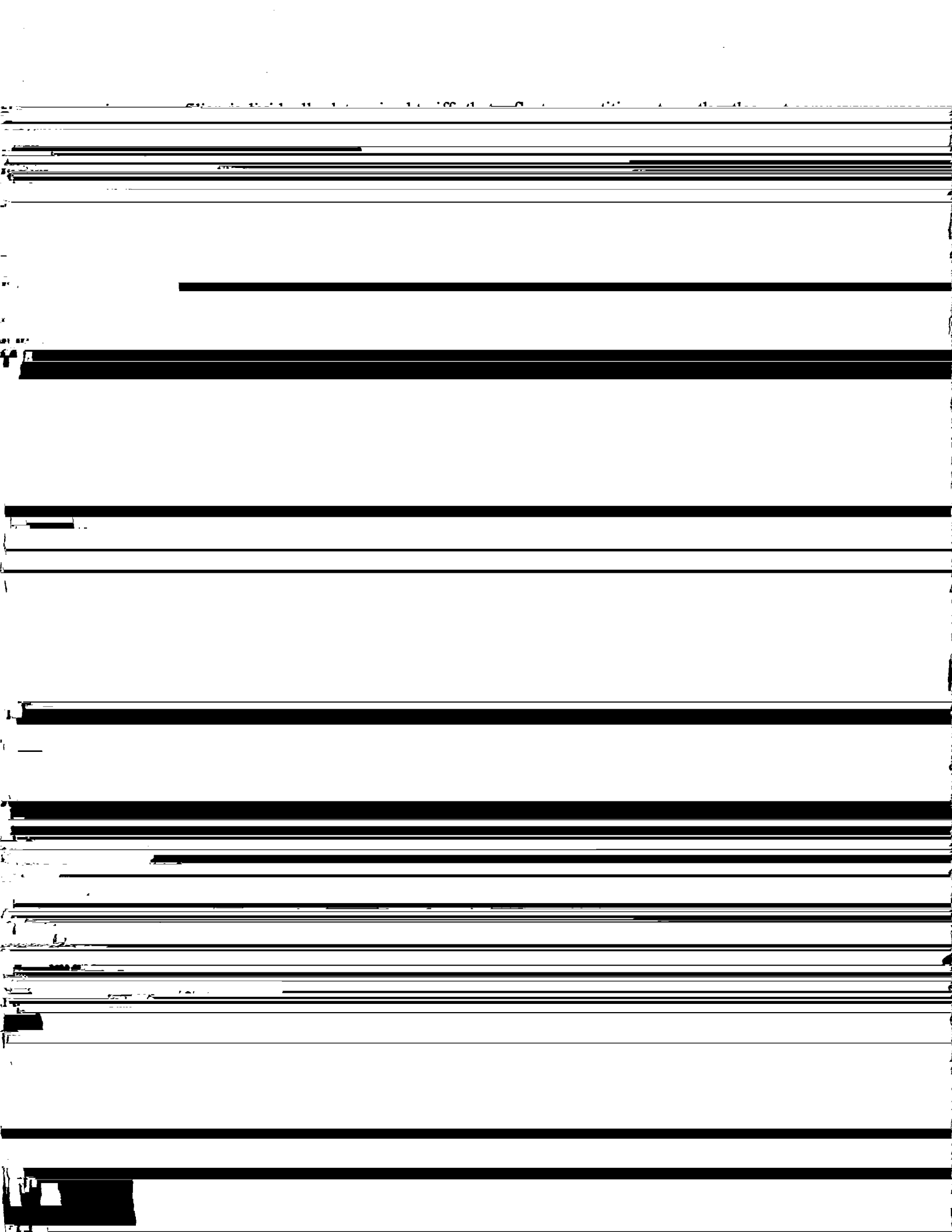
acted all along under the Kentucky Statutory provisions, and not through collusion with the

other members of the Association.

**D. A BROAD STAY WILL HARM CONSUMERS AND THE PUBLIC INTEREST.**

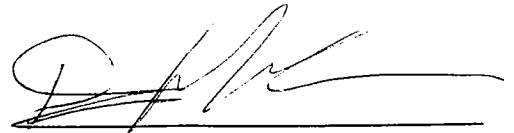
The public interest ultimately will be served, and consumers protected, by implementing the Commission's Order. As the Commission found, Respondent's members have for many years adhered to tariffs that contain collectively determined prices and "the vast majority of carriers

have to pay the same rate for many items in the tariff" (Comm. Op. at 24). In addition to



disruption of the Kentucky regulatory process during the time that the Commission's decision is on appellate review.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

This is to certify that on August 1, 2005, I caused a copy of Complaint Counsel's Opposition to Respondent's Motion for Reconsideration or, in the Alternative, for a Stay of Final Order Pending Review by U.S. Court of Appeals to be served upon the following persons by facsimile, U.S. Mail or Hand-Carried:

by hand delivery to:

The Commissioners  
U.S. Federal Trade Commission  
via Office of the Secretary, Room H-135  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

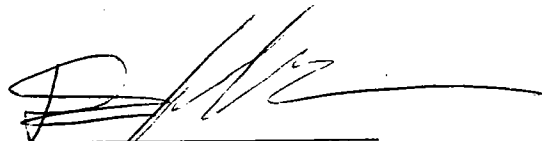
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