STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30th JUDICIAL CIRCUIT
INGHAM COUNTY

MICHAEL A. COX, Attorney General
of the State of Michigan, on behalf of the
People of the State of Michigan,

Plaintiff

Hon.

Number: 05-51 -CP

v

ALYON TECHNOLOGIES, INC., a New Jersey
corporation; STEPHANE TOUBOUL,
individually and in his capacity as CEO of Alyon
Technologies, Inc., and TELCOLLECT, INC.,
a New York corporation,

Defendants.

FINAL AGREED JUDGMENT AND CONSENT DECREE

Plaintiff, MICHAEL A. COX, Attorney General of the State of Michigan, on behalf of the People of the State of Michigan, having filed a complaint for a permanent injunction and other relief in this matter, pursuant to the Michigan Consumer Protection Act, (MCL 445.901 *et seq.*) (the "Act"), charging the defendants with violations of the Act; defendants having accepted service thereof and;

The plaintiff, by his counsel, and defendants, by their counsel, having agreed to the entry of this Final Agreed Judgment and Consent Decree by the Court without trial or adjudication of any issue of fact or law, and without admission of any of the violations of the Act alleged in the complaint and;

The parties having further agreed that this judgment, including exhibits, is for settlement purposes only, and any and all negotiations, documents, and discussions generated in connection with them shall not be used or construed by any person as an admission of liability by the defendants to any party or person or be admissible against the defendants as evidence of any violation of any statute, law, or order, or as an admission of any liability of wrongdoing by the defendants, or the truth of any of the claims or allegations contained in the complaint, other than the jurisdictional claims or allegations;

ORDER

NOW THEREFORE, for the purpose of effecting this Final Agreed Judgment and Consent Decree in favor of plaintiff and against defendants, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. This Court has jurisdiction over the subject matter of the complaint filed herein and over the parties to this Final Agreed Judgment and Consent Decree.

2. Defendant Telcollect, Inc. denies that it has engaged in the business of billing for access to Videotext Services, and states that it does not intend to engage in such business. To the extent that Defendant Telcollect, Inc. does not engage in the business of billing for access to Videotext Services, the provisions of the judgment that pertain to the business of billing for access to Videotext Services are not applicable to Telcollect.

3. All Exhibits attached to this Final Agreed Judgment and Consent Decree are part of this Final Agreed Judgment and Consent Decree and are incorporated herein, whether or not specifically referred to.

DEFINITIONS

4. The following definitions shall apply to this Final Agreed Judgment and Consent Decree:

A. Any references to the acts and practices of Defendant Alyon Technologies, Inc. or of Defendant Telcollect, Inc. shall mean that such acts and practices are by and through the acts of such corporation's officers, agents, successors, assigns, servants, employees, and representatives; all other persons or entities directly or indirectly under their control, wholly or partially; and all other persons or entities in active concert or participation with them who receive actual or constructive notice of this Final Agreed Judgment and Consent Decree by personal service or otherwise. The term "defendants" as used in this Final Agreed Judgment and Consent Decree, means and includes all such persons and entities set forth in this paragraph 4, as well as Defendant Stephane Touboul.

B. "Billing Inquiry" shall mean any written, electronic, or telephonic communication by a consumer or a law enforcement agency on behalf of a consumer to the defendants concerning any bill for access to Videotext Services.

C. "Express Verifiable Authorization" shall mean a contractual agreement, electronic or otherwise, in which:

i. The defendants clearly and conspicuously disclose to the person to be billed all material terms and conditions associated with the purchase and/or use of the product or service, including the defendants' name and address, a business telephone number which the person to be billed may use to obtain additional

information (both the address and telephone number may be included in a hyperlink), and the charges to be incurred for the product or service;

ii. The defendants agree, in any recurring billing situation, to notify the person to be billed of any future changes and the charges to be incurred;

iii. The person to be billed agrees to purchase and/or use the product or service on the terms and conditions disclosed by the defendants;

iv. The defendants require the use of an identification number or other means to prevent the unauthorized purchase and/or use of the product or service; and

v. The defendants obtain sufficient documentation for use in the event that a billed person subsequently disputes any portion of the charges, which shall include (a) documentation, electronic or otherwise, evidencing the date and time a consumer connected to the defendants' billing gateway; (b) documentation, electronic or otherwise, evidencing the unique identifying information entered by the consumer, as required by the defendants, at a date and time contemporaneous with the date and time of the consumer's connection; and (c) the information obtained from any database lookup of the consumer's identifying information.

vi. The requirement for an identification number or other means to prevent the unauthorized purchase and/or use of the product or service, set forth in paragraph 4.C.iv. above, shall be satisfied by soliciting and obtaining from the consumer identifying information that is unique to the consumer to be charged (such as a portion of the consumer's social security number combined with other identifying information, such as the consumer's household telephone number), is

not likely to be widely known, and the accuracy of which the defendants may reliably verify before a consumer may proceed with his or her purchase.

vii. For purposes of this Final Agreed Judgment and Consent Decree, Automatic Number Identification ("ANI") alone does not constitute Express Verifiable Authorization.

viii. Satisfaction of the requirements of Express Verifiable Authorization shall constitute satisfaction of the definitions of "presubscription or comparable arrangement" as referenced in the Pay-Per-Call Rule, 16 C.F.R. § 308.2(e).

D. "Full Credit" shall mean that the defendants permanently forgive a debt, do not make any further attempts to collect the debt, do not sell or assign the debt to a third party debt collector, withdraw from all third party debt collectors all previous assignments of the debt, do not report or cause to be reported any negative credit information to any credit reporting bureau, and withdraw all previously reported negative credit information which they have caused to be reported.

E. "Minor Access Affidavit" shall mean an affidavit that shall take the form of Exhibit A, in which a consumer shall attest under penalty of perjury that a minor who was not competent to enter into an agreement to bind the consumer and who did not have the consumer's authorization to access Videotext Services provided through the defendants, incurred the charges which are the subject of the bill the consumer received from the defendants.

F. "No Authorization Affidavit" shall mean an affidavit that shall take the form of Exhibit B, in which a consumer shall attest under penalty of perjury that the

consumer did not enter into an agreement for accessing Videotext Services provided through the defendants or that the Videotext Services were otherwise accessed without his or her authorization.

G. "Records" shall include either paper or electronic data, in whatever form the defendants normally maintain such data in the ordinary course of business.

H. "Videotext Service(s)" shall mean visual (and in some instances audio) information and entertainment services offered over the Internet through individual websites.

I. "Wrong Number Affidavit" shall mean an affidavit that shall take the form of Exhibit C, in which a consumer shall attest under penalty of perjury that the consumer did not access any Videotext Services provided through the defendants and the bill the consumer received from the defendants lists a telephone number which was not a telephone line the consumer was subscribed to at the time the charges itemized on the bill were incurred.

AGREED INJUNCTION

5. The defendants agree to be enjoined, and are permanently enjoined, from doing the following in connection with the offering for sale, selling, facilitating of access to, providing of access to, billing for, or otherwise attempting to collect money from consumers for access to Videotext Services, which access occurs after the date of entry of this Final Agreed Judgment and Consent Decree:

A. Representing, expressly or by implication, that a consumer who is being billed or who is the subject of other collection efforts owes money unless:

i. The consumer is a person who has reached the age of majority by the time he or she is presented with the offer of access to Videotext Services and is capable of forming a contract; *provided, however*, that where a minor misrepresents that he or she is a person that has reached the age of majority and provides unique identifying information belonging to the adult whom the minor purports to be, the defendants shall not be held to be in violation of this provision;

ii. The consumer received a clear and conspicuous disclosure of all material terms and conditions of the offer to access Videotext Services.

iii. The consumer, after having received the disclosures required by paragraph 5.A.ii. of this Final Agreed Judgment and Consent Decree, provided to the defendants Express Verifiable Authorization to:

(1) receive the Videotext Services for which the consumer is being billed or subjected to other collection efforts; and

(2) be billed for the Videotext Services charges;

iv. The requirements of this paragraph 5 apply to each separate connection for which the consumer is being billed or subjected to other collection efforts by any of the defendants;

B. Failing to monitor in a reasonable manner the actions of any Videotext Service provider with which the defendants do business, including but not limited to investigating, in a reasonable manner, given their nature and quantity, consumer complaints about unauthorized billing for Videotext Service charges, to determine whether the Videotext Service provider continues to abide by the procedures established pursuant to paragraph 6 of this Final Agreed Judgment and Consent Decree, and failing

to take appropriate action against the Videotext Service provider, which may include terminating their business relationship with the Videotext Service provider, should the defendants discover that the Videotext Service provider is not complying with those procedures; *provided, however*:

i. Should the plaintiff discover that any Videotext Service provider with which the defendants do business is not abiding by the procedures established pursuant to paragraph 6 of this Final Agreed Judgment and Consent Decree, the plaintiff shall not bring an action under this Final Judgment and Consent Decree against the defendants before the plaintiff notifies the defendants of the alleged wrongdoing and provides the defendants with a reasonable time period within which to take appropriate action against the Videotext Service provider, unless the plaintiff determines that such notice to the defendants would likely result in the possible dissipation or concealment of assets, the possible destruction or concealment of records or other evidence, or the disclosure of facts that would hinder an ongoing investigation; and

ii. When investigating a consumer's complaint which asserts that one of the defendants' Videotext Service providers has failed to abide by the procedures established pursuant to paragraph 6 of this Final Agreed Judgment and Consent Decree, the defendants may request that the consumer furnish the defendants with information, facts, or evidence supporting the consumer's complaint;

C. Failing to offer and provide on defendants' website a free utility to remove all dialer software used to access any billing gateway which will result in a charge from any of the defendants; and

D. Failing to comply directly with the provisions of paragraph 6 in all transactions in which the defendants are the Videotext Service provider.

6. In all contracts with Videotext Service providers, the defendants are hereby permanently restrained and enjoined from failing to require that the Videotext Service providers:

A. Refrain from advertising or distributing dialer programs that access the defendants' billing gateway which will result in Videotext Service charges that in any way:

i. Impair the ability of the person to be billed to read the terms and conditions of the Videotext Service offer or software download, including but not limited to, by way of unsolicited electronic mail messages, or by "pop-up" boxes which cannot be permanently closed or disabled by clicking on a "close" button or the "x" in the upper right hand corner of the box;

ii. Contain any type of spyware, virus, or additional software, other than that necessary to connect the billed person to the billing gateway, unless such inclusions are clearly and conspicuously disclosed to the consumer;

iii. Impair the ability of the person to be billed to identify and remove a dialer program from his or her personal computer system, including, but not limited to, impairing the Add/Remove controls within Windows or other computer operating systems;

iv. Impair the ability of the person to be billed to fully disconnect from the Videotext Services and to avoid additional reconnection attempts without first obtaining Express Verifiable Authorization from the person to be billed for each connection;

v. Fail to disclose the billing time increments used or relied upon by the defendants to calculate charges to such billed person (for example, six seconds or more of usage equals one minute of charges); and

B. Refrain from downloading onto the computer of any consumer, or cause, enable, or facilitate the downloading onto the computer of any consumer, any modem dialer software without first having obtained authorization for such download from the person to be billed after clear and conspicuous disclosure of the material terms and conditions of the download.

7. To the extent applicable to the defendants' business, the defendants are hereby permanently restrained and enjoined from failing to comply with the Pay-Per-Call Rule, 16 C.F.R. Part 308 (attached hereto as Exhibit D), as it may be amended, including but not limited to the billing dispute resolution procedures set forth in Section 308.7 of said Rule. This paragraph is not intended and should not be construed as suggesting that transactions of defendants in compliance with paragraph 5 of this Final Agreed Judgment and Consent Decree are subject to the Pay-Per-Call Rule.

DEBT FORGIVENESS AND REFUNDS FOR ELIGIBLE CONSUMERS

Charges Incurred Before June 15, 2003-
Billing Inquiry Submitted Before January 15, 2004

8. For any consumer who has received a bill from or on behalf of the defendants for Videotext Service charges incurred on or before June15, 2003:

A. The defendants shall provide a Full Credit to those consumers who have not paid all or any part of those charges and who submitted a Billing Inquiry to the defendants on or before January 15, 2004;

B. The defendants shall be permitted to bill and collect from those consumers who have not paid all or any part of those charges and who have not submitted a Billing Inquiry to the defendants on or before January 15, 2004, provided that the Defendants comply with the Dispute Resolution Procedures set forth in paragraph 9 of this Final Agreed Judgment and Consent Decree; and

C. Except as provided for in paragraphs 11 through 14 of this Final Agreed Judgment and Consent Decree, the defendants shall not be required by this Final Agreed Judgment and Consent Decree to refund any money already paid by any such consumer; *provided, however,* that the plaintiff's agreement to, and the Court's approval of, this Final Agreed Judgment and Consent Decree provision is expressly premised upon the truthfulness, accuracy, and completeness of the sworn financial statements of Defendants Alyon and Touboul dated July 7 and 8, 2004, which contain material information relied upon by the plaintiff in negotiating and agreeing to the terms of this Final Agreed Judgment and Consent Decree. If, upon motion by the plaintiff and after a hearing, this Court should find that Defendants Alyon or Touboul made a material misrepresentation or omitted material information concerning their respective financial condition, then this

Final Agreed Judgment and Consent Decree shall be reopened for the purposes of determining whether and to what extent payment of monetary redress or obtaining other equitable relief are appropriate; *provided, however*, that in all other respects this Final Agreed Judgment and Consent Decree shall remain in full force and effect, unless otherwise ordered by the Court.

Charges Incurred Before June 15, 2003-
No Billing Inquiry Submitted on or Before January 15, 2004

9. The defendants shall provide the following dispute resolution procedures for any consumer who has received a bill from or on behalf of the defendants for Videotext Service charges incurred on or before June 15, 2003, and who has not submitted a Billing Inquiry to the defendants on or before January 15, 2004:

A. In only the first bill sent by or on behalf of the defendants to each such consumer after the date of entry of this Final Agreed Judgment and Consent Decree, the defendants shall clearly and conspicuously disclose, in the format set forth as Exhibit E to this Final Agreed Judgment and Consent Decree, that the consumer has a right to dispute the bill by submitting to the defendants an affidavit appropriate to his or her claim, which must be signed and sworn to, under penalty of perjury, by the consumer being billed;

B. Defendants Alyon Technologies, Inc. and Stephane Touboul shall include on their website, in the format set forth as Exhibit F to this Final Agreed Judgment and Consent Decree, a page that sets forth the dispute resolution process and includes links to each of the Affidavits set forth as Exhibits A, B, and C to this Final Agreed Judgment and Consent Decree;

C. That first bill referenced in paragraph 9.A. above shall be sent by first class mail within one day of the "billing date," which shall be clearly and conspicuously disclosed on the face of the bill;

D. If the consumer submits such a signed and sworn Affidavit to the defendants within the prescribed time period, the defendants shall provide a Full Credit to such consumer;

E. Nothing in this Final Agreed Judgment and Consent Decree shall be deemed to prevent the defendants from exercising their lawful rights to collect on the bills of any consumer who does not submit a signed and sworn Affidavit to the defendants within the prescribed time period; and

F. Nothing in this Final Agreed Judgment and Consent Decree shall be construed to prevent the defendants from pursuing an action against any consumer who submits a perjurious affidavit.

Dispute Resolution Procedures for Charges Incurred After June 15, 2003

10. For any bill sent by the defendants to consumers, after the date of entry of this Final Agreed Judgment and Consent Decree, for Videotext Service charges incurred after June 15, 2003, the defendants shall:

A. Clearly and conspicuously disclose, on each bill sent to consumers, the "Billing Rights Summary" that is included as Exhibit G to this Final Agreed Judgment and Consent Decree; *provided, however*, that until the defendants use up their current stock of billing stationery, the complete Billing Rights Summary may be divided with sections appearing in two places on the bill; and

B. Comply with all of the terms and conditions set forth in the Billing Rights Summary.

REFUNDS

11. For purposes of this sub-section of this Final Agreed Judgment and Consent Decree entitled "Refunds", an "Eligible Consumer" is a consumer who meets all of the following criteria:

A. The consumer has received a statement for Videotext Service charges from or on behalf of any of the defendants allegedly incurred via a telephone line with a Michigan telephone number on or before June 15, 2003;

B. The consumer has filed a written consumer complaint, including, but not limited to, by letter, electronic mail, and/or facsimile, with the Michigan Attorney General's office on or before January 15, 2004; and

C. The consumer has paid any portion of the Videotext Service charges.

12. The defendants shall provide a cash refund to each Eligible Consumer for the total amount paid by each Eligible Consumer to the defendants. Such cash refunds must be made within thirty (30) days of the date this Final Agreed Judgment and Consent Decree is entered.

13. The defendants shall as soon as possible block the telephone numbers of all Eligible Consumers from access to all billing gateways which will result in Videotext Service charges for which any of the defendants bill, provide billing services, or otherwise attempt to collect such Videotext charges.

14. This sub-section entitled "Refunds" is in addition to and not in lieu of the debt forgiveness provided for in paragraph 8 of this Final Agreed Judgment and Consent Decree.

RECORDKEEPING

15. The defendants shall maintain, for a period of at least 5 years following the date this Final Agreed Judgment and Consent Decree is entered, records of all disputes received and all records demonstrating compliance with paragraphs 8 through 14 of this Final Agreed Judgment and Consent Decree, including, but not limited to, proof of express verifiable authorization obtained from billed consumers. Upon request from the Attorney General of Michigan or his authorized representative, the defendants shall produce such records within thirty (30) days of such request.

COMPLIANCE REPORTING BY DEFENDANTS

16. Upon request from the Attorney General of Michigan or his authorized representative, the defendants shall produce, within 30 days of such request, accurate and complete copies of the information provided to the Federal Trade Commission pursuant to Section XIII. (Entitled "Compliance Reporting by the Defendants") of the Final Order entered in the matter of the *Federal Trade Commission v. Alyon Technologies, Inc., Telcollect, Inc., and Stephane Touboul*, filed in the U.S. District Court for the Northern District of Georgia, Atlanta Division, Civil Number 1:03-CV-1297-RWS. This paragraph shall not be construed to limit the plaintiff's powers to obtain information.

PAYMENT TO THE STATES

17. This Final Judgment and Consent Decree is executed as part of a settlement by the defendants with 23 State Attorneys General (the "States"). As part of their settlement with the States, the defendants have agreed to pay to the States a total of $285,000.00 (Two Hundred Eighty-Five Thousand Dollars) for attorneys fees or investigative costs, for consumer education, litigation or local consumer aid funds, or for public protection or consumer protection purposes, as allowed by each state's law at the discretion of each state's Attorney General. Of that $285,000.00, Defendant Stephane Touboul has agreed to be personally liable to pay $50,000.00 (Fifty Thousand Dollars), Defendant Telcollect, Inc. has agreed to be liable to pay $50,000.00 (Fifty Thousand Dollars), and Defendant Alyon Technologies, Inc. has agreed to be liable to pay the remaining $185,000.00 (One Hundred Eighty-Five Thousand Dollars). The plaintiff's share of defendants' payment to the States is $7,142.85.

18. The defendants and the States have agreed to payment of the $285,000.00 on the following schedule and terms:

A. On or before January 13, 2005, $25,000.00 shall be due and owing to the States;

B. On or before April 13, 2005, $50,000.00 shall be due and owing to the States;

C. On or before June 30, 2005, $25,000.00 shall be due and owing to the States;

D. On or before December 31, 2005, $50,000.00 shall be due and owing to the States;

E. On or before June 30, 2006, $50,000.00 shall be due and owing to the States;

F. On or before December 31, 2006, $50,000.00 shall be due and owing to the States; and

G. On or before June 30, 2007, $35,000.00 shall be due and owing to the States.

H. Defendant Stephane Touboul's liability for payment to the States of the $285,000.00 pursuant to the settlement between the States and the defendants will be discharged after the first $50,000.00 of payments are made to the States.

I. Defendant Teloollect, Inc.'s liability for payment to the States of the $285,000.00 pursuant to the settlement between the States and the defendants will be discharged after the first $100,000.00 of payments are made to the States.

J. Defendant Alyon Technologies, Inc.'s liability for payment to the States of the $285,000.00 pursuant to the settlement between the States and the defendants will be discharged after $285,000.00 of payments are made to the States.

19. The Court enters a judgment in favor of the Plaintiff and against Defendant Stephane Touboul in the amount of $1,253.16. Payment shall be in the form of a cashier's check or certified check made payable to the "State of Michigan" and remitted to the Michigan Department of Attorney General, Consumer Protection Division, Attention Assistant Attorney General In Charge; 525 West Ottawa, 6th Floor, P.O. Box 30213, Lansing, Michigan 48909. Payment in the amount of $1,253.16 is due as follows: $626.58 on or before January 13, 2005; and the remaining $626.58 on or before April 13, 2005.

20. The Court enters a judgment in favor of the Plaintiff and against Defendant Telcollect, Inc. in the amount of $1,253.15. Payment shall be in the form of a cashier's check or certified check made payable to the "State of Michigan" and remitted as provided in paragraph 19, above. Payment in the amount of $1,253.15 is due as follows: $626.58 on or before April 13, 2005; and the remaining $626.58 on or before June 30, 2005.

21. The Court enters a judgment in favor of the Plaintiff and against Defendant Alyon Technologies, Inc. in the amount of $4,636.59. Payment shall be in the form of a cashier's check or certified check made payable to the "State of Michigan" and remitted as provided in paragraph 19, above. Payment in the amount of $4,636.59 is due as follows: $1,253.15 on or before December 31, 2005; $1,243.15 on or before June 30, 2006; $1,253.15 on or before December 31, 2006, and the remaining $877.14 on or before June 30, 2007.

22. The plaintiff agrees to stay collection of the judgment debts through other proceedings provided by law for enforcement of judgments unless and until any of the defendants is in default as that term is defined in paragraph 23 of this Final Judgment and Consent Decree.

23. A defendant shall be in default upon the happening of one or more of the following:

A. failure of the defendant to inform the plaintiff of any change in the defendant's location or telephone number within twenty (20) days from the date of any such change; or

B. payment of less than the amount due as specified in paragraphs 17 through 21 of this Final Agreed Judgment and Consent Decree; provided, however that:

i. Defendant Stephane Touboul shall have a sixty-day grace period after the date on which a payment is due from said defendant within which to tender the payment due before said defendant shall be in default;

ii. Defendant Stephane Touboul shall have sixty days from the date on which he is in default within which to cure the default;

iii. Defendants Telcollect, Inc. and Alyon Technologies, Inc. shall have a thirty-day grace period after the date on which a payment is due from said defendants within which to tender the payment due before said defendants shall be in default; and

iv. Defendants Telcollect, Inc. and Alyon Technologies, Inc. shall have thirty days from the date on which said defendants are in default within which to cure the default;

C. Default by a defendant after all grace and cure periods have expired without payments being made will, at the option of the plaintiff, render the total unpaid balance at the time of default immediately due and payable, and release the plaintiff to pursue collection of the amount due through judicial enforcement of the Final Agreed Judgment and Consent Decree.

D. Default by a defendant will constitute a waiver by the defendant of all defenses to enforcement of this Final Agreed Judgment and Consent Decree, other than:

i. competent evidence of payment in accordance with the terms of this Final Agreed Judgment and Consent Decree in any suit or other proceeding initiated by the plaintiff to collect the amount due through enforcement of this Final Agreed Judgment and Consent Decree; and

ii. competent evidence demonstrating that a defendant's default was the result of any fire, flood, or other act of God.

GENERAL PROVISIONS

24. The defendants deny the allegations contained in the Complaint for Injunctive and Other Relief filed herein.

25. Should the plaintiff discover that any defendant is in violation of this Final Agreed Judgment and Consent Decree, the plaintiff shall not bring an action under this Final Agreed Judgment And Consent Decree against the defendants before plaintiff notifies such defendant of the alleged violation(s) and provides the defendants with at least 14 days within which to take appropriate action to correct the alleged violation(s), unless the plaintiff determines that such notice to such defendant likely would result in the possible dissipation or concealment of assets, the possible destruction or concealment of records or other evidence, or the disclosure of facts that would hinder an ongoing investigation. If such defendant demonstrates to the plaintiff's satisfaction that sufficient progress is being made toward the correction of the alleged violation(s), then nothing shall prevent the plaintiff from granting such defendant additional time beyond the 14 days within which to correct the alleged violation before bringing action to enforce this Final Agreed Judgment And Consent Decree.

26. Nothing contained in this Final Agreed Judgment and Consent Decree shall be construed to deprive any consumer or other person or entity of any right to pursue any available remedy or remedies pursuant to applicable law.

27. For purposes of this Final Agreed Judgment and Consent Decree, the defendants shall, unless otherwise directed by the plaintiff's authorized representatives, mail all written notifications to the plaintiff to: Kathy Fitzgerald, Assistant Attorney General, Consumer

Protection Division, Michigan Department of Attorney General, P.O. Box 30213, Lansing, MI 48909.

28. For purposes of compliance reporting and monitoring required by the Final Agreed Judgment and Consent Decree, the plaintiff is authorized to communicate with the defendants through the following counsel: Lawrence I. Fox, McDermott Will & Emery, 50 Rockefeller Plaza, 11th Floor, New York, NY 10020, Tel. 212-547-5400.

29. Upon entry of this Final Agreed Judgment and Consent Decree, all matters that were raised in the plaintiff's Complaint for Injunctive and Other Relief against the defendants pursuant to the Act will be fully and finally resolved. The plaintiff hereby releases the defendants from any and all liability relating to claims which were raised in the Complaint for Injunctive and Other Relief pursuant to the Act.

30. Jurisdiction is retained by this Court for the purpose of enforcing this Final

Agreed Judgment and Consent Decree.

APPROVED:

Defendant ALYON TECHNOLOGIES, INC.

Dated:_____

By: _____
Stephane Touboul
CEO, Alyon Technologies, Inc.

Defendant TELCOLLECT, INC.

Dated:_____

By: _____
Joseph Doherty
President, Telcollect, Inc.

Defendant STEPHANE TOUBOUL

Dated:_____

_____
Stephane Touboul

MCDERMOTT, WILL & EMERY

Dated:_____

By: _____
Lawrence I. Fox
Attorneys for Defendants
ALYON TECHNOLOGIES, INC.,
TELCOLLECT, INC., and
STEPHANE TOUBOUL
50 Rockefeller Plaza, 11th Floor
New York, NY 10020
Tel. (212) 547-5400

Agreed Judgment and Consent Decree.

APPROVED:

Defendant ALYON TECHNOLOGIES, INC.

Dated:_____

By:_____
Stephane Touboul
CEO, Alyon Technologies, Inc.

Defendant TELCOLLECT, INC.

Dated: 12/29/04

By:_____
Joseph Doherty
President, Telcollect, Inc.

Defendant STEPHANE TOUBOUL

Dated:_____

_____
Stephane Touboul

MCDERMOTT, WILL & EMERY

Dated:_____

By:_____
Lawrence I. Fox
Attorneys for Defendants
ALYON TECHNOLOGIES, INC.,
TELCOLLECT, INC., and
STEPHANE TOUBOUL
50 Rockefeller Plaza, 11th Floor
New York, NY 10020
Tel. (212) 547-5400

Agreed Judgment and Consent Decree.

APPROVED:

Defendant ALYON TECHNOLOGIES, INC.

Dated: Dec 29, 2004

By: _____
Stephane Touboul
CEO, Alyon Technologies, Inc.

Defendant TELCOLLECT, INC.

Dated: _____

By: _____
Joseph Doherty
President, Telcollect, Inc.

Defendant STEPHANE TOUBOUL

Dated: Dec 29, 2004

_____
Stephane Touboul

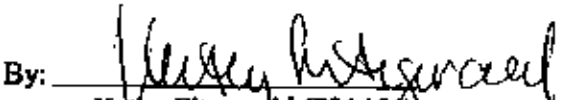
MCDERMOTT, WILL & EMERY

Dated: _____

By: _____
Lawrence I. Fox
Attorneys for Defendants
ALYON TECHNOLOGIES, INC.,
TELCOLLECT, INC., and
STEPHANE TOUBOUL
50 Rockefeller Plaza, 11th Floor
New York, NY 10020
Tel. (212) 547-5400

Plaintiff MICHAEL A. COX
Attorney General, on behalf of the
People of the State of Michigan

Dated: 1/12/05

By: 

Kathy Fitzgerald (P31454)
Assistant Attorney General
Consumer Protection Division
P.O. Box 30213
Lansing, MI 48909
Telephone: 517-335-0855

Dated Entered: JAN 13 2005

JOYCE DRAGANCHUK
Hon.

EXHIBIT A

Minor Access Affidavit

ALYONTechnologies

Send completed Affidavit to:Alyon TechnologiesPO Box 923299Norcross, GA 30010-3299

Customer Information:

Name:
Address:
City/State/Zip Code:
Home Phone Number:
Work Phone Number:
Alyon Technologies Account Number:
Alyon Technologies Billing Phone Number:

Dispute Information:

Nature of Disputed Charges: A minor accessed the service without my authorization.
Amount of Disputed Charges: $
Date(s) of Invoice in Dispute:
Give a brief explanation of the dispute (explain why you think you think a child incurred the charges):

If you need additional space, please use the reverse of this form. Responses will be sent to the addresses listed on the account. To be eligible for a credit, you must affirm that the information you are submitting is truthful and accurate to the best of your knowledge. Please be aware that in an agreed Order approved by the Federal Court for the Northern District of Georgia and the Federal Trade Commission, Alyon has retained all of its legal rights to pursue appropriate legal action against any consumer who submits an untruthful affidavit.

I declare that the foregoing is true and correct to the best of my knowledge and make this statement subject to the penalties for perjury under 18 U.S.C. § 1001 and 28 U.S.C. §1746, which provide for a possible fine or imprisonment of not more than five (5) years, or both.

_____Signature _____Print your name _____Date

EXHIBIT B

ALYONTechnologies

No Authorization Affidavit

Send completed Affidavit to:Alyon TechnologiesPO Box 923299Norcross, GA 30010-3299

Customer Information:

Name:
Address:
City/State/Zip Code:
Home Phone Number:
Work Phone Number:
Alyon Technologies Account Number:
Alyon Technologies Billing Phone Number:

Dispute Information:

Nature of Disputed Charges: I am the line subscriber (the person responsible for the bill) for the telephone number being billed. I never personally accessed the service nor authorized anyone else to access the service.
Amount of Disputed Charges: $
Date(s) of Invoice in Dispute:
Give a brief explanation of the dispute:

If you need additional space, please use the reverse of this form. Responses will be sent to the addresses listed on the account. To be eligible for a credit, you must affirm that the information you are submitting is truthful and accurate to the best of your knowledge. Please be aware that in an agreed Order approved by the Federal Court for the Northern District of Georgia and the Federal Trade Commission, Alyon has retained all of its legal rights to pursue appropriate legal action against any consumer who submits an untruthful affidavit.

I declare that the foregoing is true and correct to the best of my knowledge and make this statement subject to the penalties for perjury under 18 U.S.C. § 1001 and 28 U.S.C. §1746, which provide for a possible fine or imprisonment of not more than five (5) years, or both.

_____Signature _____Print your name _____Date

EXHIBIT C

ALYONTechnologies

Wrong NumberAffidavit

Send completed Affidavit to:Alyon TechnologiesPO Box 923299Norcross, GA 30010-3299

Customer Information:

Name:
Address:
City/State/Zip Code:
Home Phone Number:
Work Phone Number:
Alyon Technologies Account Number:
Alyon Technologies Billing Phone Number:

Dispute Information:

Nature of Disputed Charges: The telephone number on the bill is not a telephone number that I was subscribed to at the time of the charges itemized on the bill.
Amount of Disputed Charges: $
Date(s) of Invoice in Dispute:
Give a brief explanation of the dispute (explain why you think you were billed for a call youare not responsible for):

If you need additional space, please use the reverse of this form. Responses will be sent to the addresses listed on the account. To be eligible for a credit, you must affirm that the information you are submitting is truthful and accurate to the best of your knowledge. Please be aware that in an agreed Order approved by the Federal Court for the Northern District of Georgia and the Federal Trade Commission, Alyon has retained all of its legal rights to pursue appropriate legal action against any consumer who submits an untruthful affidavit.

I declare that the foregoing is true and correct to the best of my knowledge and make this statement subject to the penalties for perjury under 18 U.S.C. § 1001 and 28 U.S.C. §1746, which provide for a possible fine or imprisonment of not more than five (5) years, or both.

_____Signature _____Print your name _____Date

EXHIBIT D

ordered by the smokeless tobacco manufacturer, or the date the objects or materials are scheduled to be disseminated, provided that the production of such materials or objects is carried out in a manner consistent with customary business practices.

(c) A plan for the rotation, display, and dissemination of warning statements in smokeless tobacco advertising shall include a representative sample of each of the three warning statements required by the Act and these regulations. This provision does not require the submission of all advertising for each brand marketed by a manufacturer, packager, or importer of smokeless tobacco products and shall be deemed to be satisfied by submission of actual examples of different types of advertising materials for various brands, prototypes of actual advertising materials, the warning statement as it would appear in different sizes of advertisements, or acetates or other facsimiles for the warning statement as it would appear in different sizes of advertisements.

[51 FR 40015, Nov. 4, 1986. Redesignated and amended at 56 FR 11662, 11663, Mar. 20, 1991; 58 FR 4874, Jan. 15, 1993; 61 FR 45886, Aug. 30, 1996]

PART 308—TRADE REGULATION RULE PURSUANT TO THE TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION ACT OF 1992

Sec.
308.1 Scope of regulations in this part.
308.2 Definitions.
308.3 Advertising of pay-per-call services.
308.4 Special rule for infrequent publications.
308.5 Pay-per-call service standards.
308.6 Access to information.
308.7 Billing and collection for pay-per-call services.
308.8 Severability.
308.9 Rulemaking review.

AUTHORITY: Pub. L. 102-556, 106 Stat. 4181 (15 U.S.C. 5701, et seq.)

SOURCE: 58 FR 42400, Aug. 9, 1993, unless otherwise noted.

§308.1 Scope of regulations in this part.

This rule implements titles II and III of the Telephone Disclosure and Dispute Resolution Act of 1992, to be codified in relevant part at 15 U.S.C. 5711-14, 5721-24.

§308.2 Definitions.

(a) *Bona fide educational service* means any pay-per-call service dedicated to providing information or instruction relating to education, subjects of academic study, or other related areas of school study.

(b) *Commission* means the Federal Trade Commission.

(c) *Pay-per-call service* has the meaning provided in section 228 of the Communications Act of 1934, 47 U.S.C. 228.[1]

(d) *Person* means any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.

(e)(1) *Presubscription or comparable arrangement* means a contractual agreement in which

(i) The service provider clearly and conspicuously discloses to the consumer all material terms and conditions associated with the use of the service, including the service provider's name and address, a business telephone number which the consumer

[1] Section 228 of the Communications Act of 1934 states:

(1) The term *pay-per-call services* means any service—

(A) In which any person provides or purports to provide—

(i) Audio information or audio entertainment produced or packaged by such person;

(ii) Access to simultaneous voice conversation services; or

(iii) Any service, including the provision of a product, the charges for which are assessed on the basis of the completion of the call;

(B) For which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and

(C) Which is accessed through use of a 900 telephone number or other prefix or area code designated by the (Federal Communications) Commission in accordance with subsection (b)(5) (47 U.S.C. 228(b)(5)).

(2) Such term does not include directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate, or any service the charge for which is tariffed, or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service.

may use to obtain additional information or to register a complaint, and the rates for the service;

(ii) The service provider agrees to notify the consumer of any future rate changes;

(iii) The consumer agrees to utilize the service on the terms and conditions disclosed by the service provider; and

(iv) The service provider requires the use of an identification number or other means to prevent unauthorized access to the service by nonsubscribers.

(2) Disclosure of a credit card or charge card number, along with authorization to bill that number, made during the course of a call to a pay-per-call service shall constitute a presubscription or comparable arrangement if the credit or charge card is subject to the dispute resolution requirements of the Fair Credit Billing Act and the Truth in Lending Act, as amended. No other action taken by the consumer during the course of a call to a pay-per-call service can be construed as creating a presubscription or comparable arrangement.

(f) *Program-length commercial* means any commercial or other advertisement fifteen (15) minutes in length or longer or intended to fill a television or radio broadcasting or cablecasting time slot of fifteen (15) minutes in length or longer.

(g) *Provider of pay-per-call services* means any person who sells or offers to sell a pay-per-call service. A person who provides only transmission services or billing and collection services shall not be considered a provider of pay-per-call services.

(h) *Reasonably understandable volume* means at an audible level that renders the message intelligible to the receiving audience, and, in any event, at least the same audible level as that principally used in the advertisement or the pay-per-call service.

(i) *Service bureau* means any person, other than a common carrier, who provides, among other things, access to telephone service and voice storage to pay-per-call service providers.

(j) *Slow and deliberate manner* means at a rate that renders the message intelligible to the receiving audience, and, in any event, at a cadence or rate no faster than that principally used in the advertisement or the pay-per-call service.

(k) *Sweepstakes*, including games of chance, means a game or promotional mechanism that involves the elements of a prize and chance and does not require consideration.

§ 308.3 Advertising of pay-per-call services.

(a) *General requirements*. The following requirements apply to disclosures required in advertisements under §§ 308.3 (b)–(d), and (f):

(1) The disclosures shall be made in the same language as that principally used in the advertisement.

(2) Television video and print disclosures shall be of a color or shade that readily contrasts with the background of the advertisement.

(3) In print advertisements, disclosures shall be parallel with the base of the advertisement.

(4) Audio disclosures, whether in television or radio, shall be delivered in a slow and deliberate manner and in a reasonably understandable volume.

(5) Nothing contrary to, inconsistent with, or in mitigation of, the required disclosures shall be used in any advertisement in any medium; nor shall any audio, video or print technique be used that is likely to detract significantly from the communication of the disclosures.

(6) In any program-length commercial, required disclosures shall be made at least three times (unless more frequent disclosure is otherwise required) near the beginning, middle and end of the commercial.

(b) *Cost of the call*. (1) The provider of pay-per-call services shall clearly and conspicuously disclose the cost of the call, in Arabic numerals, in any advertisement for the pay-per-call service, as follows:

(i) If there is a flat fee for the call, the advertisement shall state the total cost of the call.

(ii) If the call is billed on a time sensitive basis, the advertisement shall state the cost per minute and any minimum charges. If the length of the program can be determined in advance, the advertisement shall also state the

maximum charge that could be incurred if the caller listens to the complete program.

(iii) If the call is billed on a variable rate basis, the advertisement shall state, in accordance with §§ 308.3(b)(1)(i) and (ii), the cost of the initial portion of the call, any minimum charges, and the range of rates that may be charged depending on the options chosen by the caller.

(iv) The advertisement shall disclose any other fees that will be charged for the service.

(v) If the caller may be transferred to another pay-per-call service, the advertisement shall disclose the cost of the other call, in accordance with §§ 308.3(b)(1)(i), (ii), (iii), and (iv).

(2) For purposes of § 308.3(b), disclosures shall be made "clearly and conspicuously" as set forth in § 308.3(a) and as follows:

(i) In a television or videotape advertisement, the video disclosure shall appear adjacent to each video presentation of the pay-per-call number. However, in an advertisement displaying more than one pay-per-call number with the same cost, the video disclosure need only appear adjacent to the largest presentation of the pay-per-call number. Each letter or numeral of the video disclosure shall be, at a minimum, one-half the size of each letter or numeral of the pay-per-call number to which the disclosure is adjacent. In addition, the video disclosure shall appear on the screen for the duration of the presentation of the pay-per-call number. An audio disclosure shall be made at least once, simultaneously with a video presentation of the disclosure. However, no audio presentation of the disclosure is required in: (A) An advertisement fifteen (15) seconds or less in length in which the pay-per-call number is not presented in the audio portion, or (B) an advertisement in which there is no audio presentation of information regarding the pay-per-call service, including the pay-per-call number. In an advertisement in which the pay-per-call number is presented *only* in the audio portion, the cost of the call shall be delivered immediately following the first and last delivery of the pay-per-call number, except that in a program-length commercial, the disclosure shall be delivered immediately following each delivery of the pay-per-call number.

(ii) In a print advertisement, the disclosure shall be placed adjacent to each presentation of the pay-per-call number. However, in an advertisement displaying more than one pay-per-call number with the same cost, the disclosure need only appear adjacent to the largest presentation of the pay-per-call number. Each letter or numeral of the disclosure shall be, at a minimum, one-half the size of each letter or numeral of the pay-per-call number to which the disclosure is adjacent.

(iii) In a radio advertisement, the disclosure shall be made at least once, and shall be delivered immediately following the first delivery of the pay-per-call number. In a program-length commercial, the disclosure shall be delivered immediately following each delivery of the pay-per-call number.

(c) *Sweepstakes; games of chance.* (1) The provider of pay-per-call services that advertises a prize or award or a service or product at no cost or for a reduced cost, to be awarded to the winner of any sweepstakes, including games of chance, shall clearly and conspicuously disclose in the advertisement the odds of being able to receive the prize, award, service, or product at no cost or reduced cost. If the odds are not calculable in advance, the advertisement shall disclose the factors used in calculating the odds. Either the advertisement or the preamble required by § 308.5(a) for such service shall clearly and conspicuously disclose that no call to the pay-per-call service is required to participate, and shall also disclose the existence of a free alternative method of entry, and either instructions on how to enter, or a local or toll-free telephone number or address to which consumers may call or write for information on how to enter the sweepstakes. Any description or characterization of the prize, award, service, or product that is being offered at no cost or reduced cost shall be truthful and accurate.

(2) For purposes of § 308.3(c), disclosures shall be made "clearly and conspicuously" as set forth in § 308.3(a) and as follows:

(i) In a television or videotape advertisement, the disclosures may be made in either the audio or video portion of the advertisement. If the disclosures are made in the video portion, they shall appear on the screen in sufficient size and for sufficient time to allow consumers to read and comprehend the disclosures.

(ii) In a print advertisement, the disclosures shall appear in a sufficient size and prominence and such location to be readily noticeable, readable and comprehensible.

(d) *Federal programs.* (1) The provider of pay-per-call services that advertises a pay-per-call service that is not operated or expressly authorized by a Federal agency, but that provides information on a Federal program, shall clearly and conspicuously disclose in the advertisement that the pay-per-call service is not authorized, endorsed, or approved by any Federal agency. Advertisements providing information on a Federal program shall include, but not be limited to, advertisements that contain a seal, insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any Federal government connection, approval, or endorsement.

(2) For purposes of §308.3(d), disclosures shall be made "clearly and conspicuously" as set forth in §308.3(a) and as follows:

(i) In a television or videotape advertisement, the disclosure may be made in either the audio or video portion of the advertisement. If the disclosure is made in the video portion, it shall appear on the screen in sufficient size and for sufficient time to allow consumers to read and comprehend the disclosure. The disclosure shall begin within the first fifteen (15) seconds of the advertisement.

(ii) In a print advertisement, the disclosure shall appear in a sufficient size and prominence and such location to be readily noticeable, readable and comprehensible. The disclosure shall appear in the top one-third of the advertisement.

(iii) In a radio advertisement, the disclosure shall begin within the first fifteen (15) seconds of the advertisement.

(e) *Prohibition on advertising to children.* (1) The provider of pay-per-call services shall not direct advertisements for such pay-per-call services to children under the age of 12, unless the service is a bona fide educational service.

(2) For the purposes of this regulation, advertisements directed to children under 12 shall include: any pay-per-call advertisement appearing during or immediately adjacent to programming for which competent and reliable audience composition data demonstrate that more than 50% of the audience is composed of children under 12, and any pay-per-call advertisement appearing in a periodical for which competent and reliable readership data demonstrate that more than 50% of the readership is composed of children under 12.

(3) For the purposes of this regulation, if competent and reliable audience composition or readership data does not demonstrate that more than 50% of the audience or readership is composed of children under 12, then the Commission shall consider the following criteria in determining whether an advertisement is directed to children under 12:

(i) Whether the advertisement appears in a publication directed to children under 12, including, but not limited to, books, magazines and comic books;

(ii) Whether the advertisement appears during or immediately adjacent to television programs directed to children under 12, including, but not limited to, children's programming as defined by the Federal Communications Commission, animated programs, and after-school programs;

(iii) Whether the advertisement appears on a television station or channel directed to children under 12;

(iv) Whether the advertisement is broadcast during or immediately adjacent to radio programs directed to children under 12, or broadcast on a radio station directed to children under 12;

(v) Whether the advertisement appears on the same video as a commercially-prepared video directed to children under 12, or preceding a movie directed to children under 12 shown in a movie theater;

(vi) Whether the advertisement or promotion appears on product packaging directed to children under 12; and

(vii) Whether the advertisement, regardless of when or where it appears, is directed to children under 12 in light of its subject matter, visual content, age of models, language, characters, tone, message, or the like.

(f) *Advertising to individuals under the age of 18.* (1) The provider of pay-per-call services shall ensure that any pay-per-call advertisement directed primarily to individuals under the age of 18 shall contain a clear and conspicuous disclosure that all individuals under the age of 18 must have the permission of such individual's parent or legal guardian prior to calling such pay-per-call service.

(2) For purposes of §308.3(f), disclosures shall be made "clearly and conspicuously" as set forth in §308.3(a) and as follows:

(i) In a television or videotape advertisement, each letter or numeral of the video disclosure shall be, at a minimum, one-half the size of each letter or numeral of the largest presentation of the pay-per-call number. The video disclosure shall appear on the screen for sufficient time to allow consumers to read and comprehend the disclosure. An audio disclosure shall be made at least once, simultaneously with a video presentation of the disclosure. However, no audio presentation of the disclosure is required in: (A) An advertisement fifteen (15) seconds or less in length in which the pay-per-call number is not presented in the audio portion, or (B) an advertisement in which there is no audio presentation of information regarding the pay-per-call service, including the pay-per-call number.

(ii) In a print advertisement, each letter or numeral of the disclosure shall be, at a minimum, one-half the size of each letter or numeral of the largest presentation of the pay-per-call number.

(3) For the purposes of this regulation, advertisements directed primarily to individuals under 18 shall include: Any pay-per-call advertisement appearing during or immediately adjacent to programming for which competent and reliable audience composition data demonstrate that more than 50% of the audience is composed of individuals under 18, and any pay-per-call advertisement appearing in a periodical for which competent and reliable readership data demonstrate that more than 50% of the readership is composed of individuals under 18.

(4) For the purposes of this regulation, if competent and reliable audience composition or readership data does not demonstrate that more than 50% of the audience or readership is composed of individuals under 18, then the Commission shall consider the following criteria in determining whether an advertisement is directed primarily to individuals under 18:

(i) Whether the advertisement appears in publications directed primarily to individuals under 18, including, but not limited to, books, magazines and comic books;

(ii) Whether the advertisement appears during or immediately adjacent to television programs directed primarily to individuals under 18, including, but not limited to, mid-afternoon weekday television shows;

(iii) Whether the advertisement is broadcast on radio stations that are directed primarily to individuals under 18;

(iv) Whether the advertisement appears on a cable or broadcast television station directed primarily to individuals under 18;

(v) Whether the advertisement appears on the same video as a commercially-prepared video directed primarily to individuals under 18, or preceding a movie directed primarily to individuals under 18 shown in a movie theater; and

(vi) Whether the advertisement, regardless of when or where it appears, is directed primarily to individuals under 18 in light of its subject matter, visual content, age of models, language, characters, tone, massage, or the like.

(g) *Electronic tones in advertisements.* The provider of pay-per-call services is prohibited from using advertisements that emit electronic tones that can automatically dial a pay-per-call service.

(h) *Telephone solicitations.* The provider of pay-per-call services shall ensure that any telephone message that solicits calls to the pay-per-call service

discloses the cost of the call in a slow and deliberate manner and in a reasonably understandable volume, in accordance with §§ 308.3(b)(1)(i)-(v).

(i) *Referral to toll-free telephone numbers.* The provider of pay-per-call services is prohibited from referring in advertisements to an 800 telephone number, or any other telephone number advertised as or widely understood to be toll-free, if that number violates the prohibition concerning toll-free numbers set forth in § 308.5(i).

§ 308.4 Special rule for infrequent publications.

(a) The provider of any pay-per-call service that advertises a pay-per-call service in a publication that meets the requirements set forth in § 308.4(c) may include in such advertisement, in lieu of the cost disclosures required by § 308.3(b), a clear and conspicuous disclosure that a call to the advertised pay-per-call service may result in a substantial charge.

(b) The provider of any pay-per-call service that places an alphabetical listing in a publication that meets the requirements set forth in § 308.4(c) is not required to make any of the disclosures required by §§ 308.3 (b), (c), (d) and (f) in the alphabetical listing, provided that such listing does not contain any information except the name, address and telephone number of the pay-per-call provider.

(c) The publication referred to in § 308.4(a) and (b) must be:

(1) Widely distributed;

(2) Printed annually or less frequently; and

(3) One that has an established policy of not publishing specific prices in advertisements.

§ 308.5 Pay-per-call service standards.

(a) *Preamble message.* The provider of pay-per-call services shall include, in each pay-per-call message, an introductory disclosure message ("preamble") in the same language as that principally used in the pay-per-call message, that clearly, in a slow and deliberate manner and in a reasonably understandable volume:

(1) Identifies the name of the provider of the pay-per-call service and describes the service being provided;

(2) Specifies the cost of the service as follows:

(i) If there is a flat fee for the call, the preamble shall state the total cost of the call;

(ii) If the call is billed on a time-sensitive basis, the preamble shall state the cost per minute and any minimum charges; if the length of the program can be determined in advance, the preamble shall also state the maximum charge that could be incurred if the caller listens to the complete program;

(iii) If the call is billed on a variable rate basis, the preamble shall state, in accordance with §§ 308.5(a)(2)(i) and (ii), the cost of the initial portion of the call, any minimum charges, and the range of rates that may be charged depending on the options chosen by the caller;

(iv) Any other fees that will be charged for the service shall be disclosed, as well as fees for any other pay-per-call service to which the caller may be transferred;

(3) Informs the caller that charges for the call begin, and that to avoid charges the call must be terminated, three seconds after a clearly discernible signal or tone indicating the end of the preamble;

(4) Informs the caller that anyone under the age of 18 must have the permission of parent or legal guardian in order to complete the call; and

(5) Informs the caller, in the case of a pay-per-call service that is not operated or expressly authorized by a Federal agency but that provides information on a Federal program, or that uses a trade or brand name or any other term that reasonably could be interpreted or construed as implying any Federal government connection, approval or endorsement, that the pay-per-call service is not authorized, endorsed, or approved by any Federal agency.

(b) *No charge to caller for preamble message.* The provider of pay-per-call services is prohibited from charging a caller any amount whatsoever for such a service if the caller hangs up at any time prior to three seconds after the signal or tone indicating the end of the preamble described in § 308.5(a). However, the three-second delay, and the

message concerning such delay described in § 308.5(a)(3), is not required if the provider of pay-per-call services offers the caller an affirmative means (such as pressing a key on a telephone keypad) of indicating a decision to incur the charges.

(c) *Nominal cost calls.* The preamble described in § 308.5(a) is not required when the entire cost of the pay-per-call service, whether billed as a flat rate or on a time sensitive basis, is $2.00 or less.

(d) *Data service calls.* The preamble described in § 308.5(a) is not required when the entire call consists of the non-verbal transmission of information.

(e) *Bypass mechanism.* The provider of pay-per-call services that offers to frequent callers or regular subscribers to such services the option of activating a bypass mechanism to avoid listening to the preamble during subsequent calls shall not be deemed to be in violation of § 308.5(a), *provided that* any such bypass mechanism shall be disabled for a period of no less than 30 days immediately after the institution of an increase in the price for the service or a change in the nature of the service offered.

(f) *Billing limitations.* The provider of pay-per-call services is prohibited from billing consumers in excess of the amount described in the preamble for those services and from billing for any services provided in violation of any section of this rule.

(g) *Stopping the assessment of time-based charges.* The provider of pay-per-call services shall stop the assessment of time-based charges immediately upon disconnection by the caller.

(h) *Prohibition on services to children.* The provider of pay-per-call services shall not direct such services to children under the age of 12, unless such service is a bona fide educational service. The Commission shall consider the following criteria in determining whether a pay-per-call service is directed to children under 12:

(1) Whether the pay-per-call service is advertised in the manner set forth in §§ 308.3(e)(2) and (3); and

(2) Whether the pay-per-call service, regardless of when or where it is advertised, is directed to children under 12, in light of its subject matter, content, language, featured personality, characters, tone, message, or the like.

(i) *Prohibition concerning toll-free numbers.* Any person is prohibited from using an 800 number or other telephone number advertised as or widely understood to be toll-free in a manner that would result in:

(1) The calling party being assessed, by virtue of completing the call, a charge for the call;

(2) The calling party being connected to an access number for, or otherwise transferred to, a pay-per-call service;

(3) The calling party being charged for information conveyed during the call unless the calling party has a presubscription or comparable arrangement to be charged for the information; or

(4) The calling party being called back collect for the provision of audio or data information services, simultaneous voice conversation services, or products.

(j) *Disclosure requirements for billing statements.* The provider of pay-per-call services shall ensure that any billing statement for such provider's charges shall:

(1) Display any charges for pay-per-call services in a portion of the consumer's bill that is identified as not being related to local and long distance telephone charges;

(2) For each charge so displayed, specify the type of service, the amount of the charge, and the date, time, and, for calls billed on a time-sensitive basis, the duration of the call; and

(3) Display the local or toll-free telephone number where consumers can obtain answers to their questions and information on their rights and obligations with regard to their use of pay-per-call services, and can obtain the name and mailing address of the provider of pay-per-call services.

(k) *Refunds to consumers.* The provider of pay-per-call services shall be liable for refunds or credits to consumers who have been billed for pay-per-call services, and who have paid the charges for such services, pursuant to pay-per-call programs that have been found to have violated any provision of this rule or any other Federal rule or law.

(l) *Service bureau liability.* A service bureau shall be liable for violations of the rule by pay-per-call services using its call processing facilities where it knew or should have known of the violation.

§ 308.6 Access to information.

Any common carrier that provides telecommunication services to any provider of pay-per-call services shall make available to the Commission, upon written request, any records and financial information maintained by such carrier relating to the arrangements (other than for the provision of local exchange service) between such carrier and any provider of pay-per-call services.

§ 308.7 Billing and collection for pay-per-call services.

(a) *Definitions.* For the purposes of this section, the following definitions shall apply:

(1) *Billing entity* means any person who transmits a billing statement to a customer for a telephone-billed purchase, or any person who assumes responsibility for receiving and responding to billing error complaints or inquiries.

(2) *Billing error* means any of the following:

(i) A reflection on a billing statement of a telephone-billed purchase that was not made by the customer nor made from the telephone of the customer who was billed for the purchase or, if made, was not in the amount reflected on such statement.

(ii) A reflection on a billing statement of a telephone-billed purchase for which the customer requests additional clarification, including documentary evidence thereof.

(iii) A reflection on a billing statement of a telephone-billed purchase that was not accepted by the customer or not provided to the customer in accordance with the stated terms of the transaction.

(iv) A reflection on a billing statement of a telephone-billed purchase for a call made to an 800 or other toll free telephone number.

(v) The failure to reflect properly on a billing statement a payment made by the customer or a credit issued to the customer with respect to a telephone-billed purchase.

(vi) A computation error or similar error of an accounting nature on a billing statement of a telephone-billed purchase.

(vii) Failure to transmit a billing statement for a telephone-billed purchase to a customer's last known address if that address was furnished by the customer at least twenty days before the end of the billing cycle for which the statement was required.

(viii) A reflection on a billing statement of a telephone-billed purchase that is not identified in accordance with the requirements of § 308.5(j).

(3) *Customer* means any person who acquires or attempts to acquire goods or services in a telephone-billed purchase, or who receives a billing statement for a telephone-billed purchase charged to a telephone number assigned to that person by a providing carrier.

(4) *Preexisting agreement* means a "presubscription or comparable arrangement," as that term is defined in § 308.2(e).

(5) *Providing carrier* means a local exchange or interexchange common carrier providing telephone services (other than local exchange services) to a vendor for a telephone-billed purchase that is the subject of a billing error complaint or inquiry.

(6) *Telephone-billed purchase* means any purchase that is completed solely as a consequence of the completion of the call or a subsequent dialing, touch tone entry, or comparable action of the caller. Such term does not include:

(i) A purchase by a caller pursuant to a preexisting agreement with a vendor;

(ii) Local exchange telephone services or interexchange telephone services or any service that the Federal Communications Commission determines by rule—

(A) Is closely related to the provision of local exchange telephone services or interexchange telephone services; and

(B) Is subject to billing dispute resolution procedures required by Federal or state statute or regulation; or

(iii) The purchase of goods or services that is otherwise subject to billing dispute resolution procedures required by Federal statute or regulation.

(7) *Vendor* means any person who, through the use of the telephone, offers goods or services for a telephone-billed purchase.

(b) *Initiation of billing review.* A customer may initiate a billing review with respect to a telephone-billed purchase by providing the billing entity with notice of a billing error no later than 60 days after the billing entity transmitted the first billing statement that contains a charge for such telephone-billed purchase. If the billing error is the reflection on a billing statement of a telephone-billed purchase not provided to the customer in accordance with the stated terms of the transaction, the 60-day period shall begin to run from the date the goods or services are delivered or, if not delivered, should have been delivered, if such date is later than the date the billing statement was transmitted. A billing error notice shall:

(1) Set forth or otherwise enable the billing entity to identify the customer's name and the telephone number to which the charge was billed;

(2) Indicate the customer's belief that the statement contains a billing error and the type, date, and amount of such; and

(3) Set forth the reasons for the customer's belief, to the extent possible, that the statement contains a billing error.

(c) *Disclosure of method of providing notice; presumption if oral notice is permitted.* A billing entity shall clearly and conspicuously[2] disclose on each billing statement or on other material accompanying the billing statement the method (oral or written) by which the customer may provide notice to initiate review of a billing error in the manner set forth in § 308.7(b). If oral notice is permitted, any customer who orally communicates an allegation of a billing error to a billing entity shall be presumed to have properly initiated a billing review in accordance with the requirements of § 308.7(b).

(d) *Response to customer notice.* A billing entity that receives notice of a billing error as described in § 308.7(b) shall:

(1) Send a written acknowledgement to the customer including a statement that any disputed amount need not be paid pending investigation of the billing error. This shall be done no later than forty (40) days after receiving the notice, unless the action required by § 308.7(d)(2) is taken within such 40-day period; and

(2)(i) Correct the billing error and credit the customer's account for any disputed amount and any related charges, and notify the customer of the correction. The billing entity also shall disclose to the customer that collection efforts may occur despite the credit, and shall provide the names, mailing addresses, and business telephone numbers of the vendor and providing carrier, as applicable, that are the subject of the telephone-billed purchase, or provide the customer with a local or toll-free telephone number that the customer may call to obtain this information directly. However, the billing entity is not required to make the disclosure concerning collection efforts if the vendor, its agent, or the providing carrier, as applicable, will not collect or attempt to collect the disputed charge; or

(ii) Transmit an explanation to the customer, after conducting a reasonable investigation (including, where appropriate, contacting the vendor or providing carrier),[3] setting forth the reasons why it has determined that no

[2] The standard for "clear and conspicuous" as used in this section shall be the standard enunciated by the Board of Governors of the Federal Reserve System in its Official Staff Commentary on Regulation Z, which requires simply that the disclosures be in a reasonably understandable form. *See* 12 CFR part 226, Supplement I, Comment 226.5(a)(1)-1.

[3] If a customer submits a billing error notice alleging either the nondelivery of goods or services or that information appearing on a billing statement has been reported incorrectly to the billing entity, the billing entity shall not deny the assertion unless it conducts a reasonable investigation and determines that the goods or services were actually delivered as agreed or that the information was correct. There shall be a rebuttable presumption that goods or services were actually delivered to the extent that a vendor or providing carrier produces documents prepared and maintained in the ordinary course of business showing the date on, and the place to, which the goods or services were transmitted or delivered.

billing error occurred or that a different billing error occurred from that asserted, make any appropriate adjustments to the customer's account, and, if the customer so requests, provide a written explanation and copies of documentary evidence of the customer's indebtedness.

(3) The action required by § 308.7(d)(2) shall be taken no later than two complete billing cycles of the billing entity (in no event later than ninety (90) days) after receiving the notice of the billing error and before taking any action to collect the disputed amount, or any part thereof. After complying with § 308.7(d)(2), the billing entity shall:

(i) If it is determined that any disputed amount is in error, promptly notify the appropriate providing carrier or vendor, as applicable, of its disposition of the customer's billing error and the reasons therefor; and

(ii) Promptly notify the customer in writing of the time when payment is due of any portion of the disputed amount determined not to be in error, which time shall be the longer of ten (10) days or the number of days the customer is ordinarily allowed (whether by custom, contract or state law) to pay undisputed amounts, and that failure to pay such amount may be reported to a credit reporting agency or subject the customer to a collection action, if that in fact may happen.

(e) *Withdrawal of billing error notice.* A billing entity need not comply with the requirements of § 308.7(d) if the customer has, after giving notice of a billing error and before the expiration of the time limits specified therein, agreed that the billing statement was correct or agreed to withdraw voluntarily the billing error notice.

(f) *Limitation on responsibility for billing error.* After complying with the provisions of § 308.7(d), a billing entity has no further responsibility under that section if the customer continues to make substantially the same allegation with respect to a billing error.

(g) *Customer's right to withhold disputed amount; limitation on collection action.* Once the customer has submitted notice of a billing error to a billing entity, the customer need not pay, and the billing entity, providing carrier, or vendor may not try to collect, any portion of any required payment that the customer reasonably believes is related to the disputed amount until the billing entity receiving the notice has complied with the requirements of § 308.7(d). The billing entity, providing carrier, or vendor are not prohibited from taking any action to collect any undisputed portion of the bill, or from reflecting a disputed amount and related charges on a billing statement, provided that the billing statement clearly states that payment of any disputed amount or related charges is not required pending the billing entity's compliance with § 308.7(d).

(h) *Prohibition on charges for initiating billing review.* A billing entity, providing carrier, or vendor may not impose on the customer any charge related to the billing review, including charges for documentation or investigation.

(i) *Restrictions on credit reporting*—(1) *Adverse credit reports prohibited.* Once the customer has submitted notice of a billing error to a billing entity, a billing entity, providing carrier, vendor, or other agent may not report or threaten directly or indirectly to report adverse information to any person because of the customer's withholding payment of the disputed amount or related charges, until the billing entity has met the requirements of § 308.7(d) and allowed the customer as many days thereafter to make payment as prescribed by § 308.7(d)(3)(ii).

(2) *Reports on continuing disputes.* If a billing entity receives further notice from a customer within the time allowed for payment under § 308.7(i)(1) that any portion of the billing error is still in dispute, a billing entity, providing carrier, vendor, or other agent may not report to any person that the customer's account is delinquent because of the customer's failure to pay that disputed amount unless the billing entity, providing carrier, vendor, or other agent also reports that the amount is in dispute and notifies the customer in writing of the name and address of each person to whom the vendor, billing entity, providing carrier, or other agent has reported the account as delinquent.

(3) *Reporting of dispute resolutions required.* A billing entity, providing carrier, vendor, or other agent shall report

in writing any subsequent resolution of any matter reported pursuant to § 308.7(l)(2) to all persons to whom such matter was initially reported.

(j) *Forfeiture of right to collect disputed amount.* Any billing entity, providing carrier, vendor, or other agent who fails to comply with the requirements of §§ 308.7(c), (d), (g), (h), or (i) forfeits any right to collect from the customer the amount indicated by the customer, under § 308.7(b)(2), to be in error, and any late charges or other related charges thereon, up to $50 per transaction.

(k) *Prompt notification of returns and crediting of refunds.* When a vendor other than the billing entity accepts the return of property or forgives a debt for services in connection with a telephone-billed purchase, the vendor shall, within seven (7) business days from accepting the return or forgiving the debt, either:

(1) Mail or deliver a cash refund directly to the customer's address, and notify the appropriate billing entity that the customer has been given a refund, or

(2) Transmit a credit statement to the billing entity through the vendor's normal channels for billing telephone-billed purchases. The billing entity shall, within seven (7) business days after receiving a credit statement, credit the customer's account with the amount of the refund.

(l) *Right of customer to assert claims or defenses.* Any billing entity or providing carrier who seeks to collect charges from a customer for a telephone-billed purchase that is the subject of a dispute between the customer and the vendor shall be subject to all claims (other than tort claims) and defenses arising out of the transaction and relating to the failure to resolve the dispute that the customer could assert against the vendor, if the customer has made a good faith attempt to resolve the dispute with the vendor or providing carrier (other than the billing entity). The billing entity or providing carrier shall not be liable under this paragraph for any amount greater than the amount billed to the customer for the purchase (including any related charges).

(m) *Retaliatory actions prohibited.* A billing entity, providing carrier, vendor, or other agent may not accelerate any part of the customer's indebtedness or restrict or terminate the customer's access to pay-per-call services solely because the customer has exercised in good faith rights provided by this section.

(n) *Notice of billing error rights*—(1) *Annual statement.* (i) A billing entity shall mail or deliver to each customer, with the first billing statement for a telephone-billed purchase mailed or delivered after the effective date of these regulations, a statement of the customer's billing rights with respect to telephone-billed purchases. Thereafter the billing entity shall mail or deliver the billing rights statement at least once per calendar year to each customer to whom it has mailed or delivered a billing statement for a telephone-billed purchase during the previous twelve months. The billing rights statement shall disclose that the rights and obligations of the customer and the billing entity, set forth therein, are provided under the federal Telephone Disclosure and Dispute Resolution Act. The statement shall describe the procedure that the customer must follow to notify the billing entity of a billing error and the steps that the billing entity must take in response to the customer's notice. If the customer is permitted to provide oral notice of a billing error, the statement shall disclose that a customer who orally communicates an allegation of a billing error is presumed to have provided sufficient notice to initiate a billing review. The statement shall also disclose the customer's right to withhold payment of any disputed amount, and that any action to collect any disputed amount will be suspended, pending completion of the billing review. The statement shall further disclose the customer's rights and obligations if the billing entity determines that no billing error occurred, including what action the billing entity may take if the customer continues to withhold payment of the disputed amount. Additionally, the statement shall inform the customer of the billing entity's obligation to forfeit any disputed amount (up to $50 per transaction) if the billing entity fails

to follow the billing and collection procedures prescribed by §308.7 of this rule.

(ii) A billing entity that is a common carrier may comply with §308.7(n)(1)(i) by, within 60 days after the effective date of these regulations, mailing or delivering the billing rights statement to all of its customers and, thereafter, mailing or delivering the billing rights statement at least once per calendar year, at intervals of not less than 6 months nor more than 18 months, to all of its customers.

(2) *Alternative summary statement.* As an alternative to §308.7(n)(1), a billing entity may mail or deliver, on or with each billing statement, a statement that sets forth the procedure that a customer must follow to notify the billing entity of a billing error. The statement shall also disclose the customer's right to withhold payment of any disputed amount, and that any action to collect any disputed amount will be suspended, pending completion of the billing review.

(3) *General disclosure requirements.* (i) The disclosures required by §308.7(n)(1) shall be made clearly and conspicuously on a separate statement that the customer may keep.

(ii) The disclosures required by §308.7(n)(2) shall be made clearly and conspicuously and may be made on a separate statement or on the customer's billing statement. If any of the disclosures are provided on the back of the billing statement, the billing entity shall include a reference to those disclosures on the front of the statement.

(iii) At the billing entity's option, additional information or explanations may be supplied with the disclosures required by §308.7(n), but none shall be stated, utilized, or placed so as to mislead or confuse the customer or contradict, obscure, or detract attention from the information required to be disclosed. The disclosures required by §308.7(n) shall appear separately and above any other disclosures.

(o) *Multiple billing entities.* If a telephone-billed purchase involves more than one billing entity, only one set of disclosures need by given, and the billing entities shall agree among themselves which billing entity must comply with the requirements that this regulation imposes on any or all of them. The billing entity designated to receive and respond to billing errors shall remain the only billing entity responsible for complying with the terms of §308.7(d). If a billing entity other than the one designated to receive and respond to billing errors receives notice of a billing error as described in §308.7(b), that billing entity shall either: (1) Promptly transmit to the customer the name, mailing address, and business telephone number of the billing entity designated to receive and respond to billing errors; or (2) transmit the billing error notice within fifteen (15) days to the billing entity designated to receive and respond to billing errors. The time requirements in §308.7(d) shall not begin to run until the billing entity designated to receive and respond to billing errors receives notice of the billing error, either from the customer or from the billing entity to whom the customer transmitted the notice.

(p) *Multiple customers.* If there is more than one customer involved in a telephone-billed purchase, the disclosures may be made to any customer who is primarily liable on the account.

§ 308.8 Severability.

The provisions of this rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

§ 308.9 Rulemaking review.

No later than four years after the effective date of this Rule, the Commission shall initiate a rulemaking review proceeding to evaluate the operation of the rule.

PART 309—LABELING REQUIREMENTS FOR ALTERNATIVE FUELS AND ALTERNATIVE FUELED VEHICLES

Subpart A—General

Sec.
309.1 Definitions.
309.2 What this part does.
309.3 Stayed or invalid portions.

EXHIBIT E
INSERT ON BILLING STATEMENT

The following text shall appear on the front of the bill:

A Court's Order gives you the right to dispute this bill. See back.

The following text shall appear on the back of the bill:

Pursuant to an agreed Order approved by the Federal Court for the Northern District of Georgia and the Federal Trade Commission ("FTC"), you have an opportunity to dispute this bill. If you wish to dispute this bill, you may do so by following the procedures set forth on Alyon's website at [insert link], or on the FTC's website at [insert link]. These procedures require that you submit, under penalty of perjury, a sworn affidavit setting forth the facts you contend support your claim that the billed charges are not owed by you. The affidavit must be downloaded, signed, and received by the Company by First Class Mail no later than forty-five (45) days from the date on your billing statement. Moreover, in its agreed Order, Alyon has retained all of its legal rights to pursue appropriate legal action against any consumer who submits an untruthful affidavit.

EXHIBIT F
ALYON HOME PAGE FOR DISPUTE RESOLUTION

Dispute Resolution Process: The procedures on this page apply only to those consumers who have received a bill for Videotext Service charges incurred on or before June 15, 2003, and who have not communicated with Alyon concerning this bill in the past. If you are such a consumer, you have an opportunity to dispute this bill pursuant to an agreed Order approved by the Federal Court for the Northern District of Georgia and the Federal Trade Commission.

If you believe you should not be required to pay the billed charges, you may follow the dispute procedures set forth below which include fully completing and signing an affidavit (forms of which are furnished below). The facts and information you furnish in your affidavit is represented by you as being true and correct to the best of your knowledge. Please understand that under the law, a false statement by you may subject you to penalties for perjury which may include a fine or imprisonment for up to five (5) years or both. Moreover, in its agreed Order, Alyon has retained all of its legal rights to pursue appropriate legal action against any consumer who submits an untruthful affidavit. Therefore, you should carefully review the three affidavit forms provided below and, if applicable, complete and execute the appropriate one and return it by First Class Mail to the Company. The Company must receive your affidavit NO LATER THAN forty-five (45) days from the date contained on your billing statement.

[INCLUDE HYPERLINK TO DOWNLOADABLE VERSIONS OF
WRONG NUMBER AFFIDAVIT
NO AUTHORIZATION AFFIDAVIT
MINOR ACCESS AFFIDAVIT]

EXHIBIT G

Billing Rights Summary: (in case of errors or questions about your bill)

If you feel that your bill contains an error or you are unclear about a certain charge, please write to us on a separate sheet of paper at the address printed on the front of this bill. In order to process any dispute, we must receive the dispute in writing from you no later than 60 days after the mailing date of the first bill on which the disputed charge appears. In your letter, please include your name, member number, the dollar amount and date of the disputed charge along with an explanation of your concern or why you feel there is an error. [INSERT COMPANY NAME] will review your inquiry and will respond to you in writing within 30 days by reversing the charge, requesting additional information, or explaining why [INSERT NAME OF COMPANY] has concluded that the charge is valid. While we are investigating your dispute, you will not have to pay any disputed charges (and your account will not be considered delinquent, nor will any collection activity take place). However, please be aware that ten days after the investigation concludes and we have notified by us of the results, all amounts found to be correctly billed will be due and payable in full. If you do not agree with the results of our investigation, you must notify us of that fact in writing within those ten days.

If your account is 15 days past due, you may receive a reminder invoice from us. If you have submitted a dispute, please disregard the reminder notice until your charge dispute is resolved.

If you have questions about your bill you can:
*Call Customer Support at 800-485-2506
*Write to us at PO Box 1551, Secaucus, NJ 07096-1551.
*Email us at support@ChargeMeLater.com.

However, all disputes must be submitted in writing to the P.O. Box listed above.