

denying, each claim, fact (other than the jurisdictional facts), and assertion of liability alleged in the Complaint and without trial. Pursuant to agreement and stipulation, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this action and the parties;
2. Venue in this district is proper;
3. The Commission's Complaint states a claim upon which relief may be granted against Defendants Alyon and Touboul under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Pay-Per-Call Rule, 16 C.F.R. Part 308;
4. This Final Order is for settlement purposes only and does not constitute and shall not be interpreted to constitute an admission by the Defendants that they have engaged in any wrongdoing or violations of law, or that any of the facts or claims alleged in the Complaint, other than the jurisdictional facts, are true;
5. The Defendants waive any claim they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. No. 104-121, 110 Stat. 846, 863-64 (1996), concerning the prosecution of this action;
6. The Defendants waive all rights to seek appeal of this Final Order, and further waive and release any claim they may have arising from this law enforcement action against the FTC and the employees, agents, or representatives of the FTC;
7. All Exhibits attached to this Final Order are part of this Final Order and are incorporated herein, whether or not specifically referred to; and
8. Entry of this Final Order is in the public interest.

DEFINITIONS

For the purpose of this Final Order, the following definitions shall apply:

- A. “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.
- B. “Defendants” shall mean Stephane Touboul; Alyon Technologies, Inc.; its parent, divisions, subsidiaries, successors, and assigns; and all other entities covered by Rule 65(d) of the Federal Rules of Civil Procedure.
- C. “Express Verifiable Authorization” shall mean a contractual agreement, electronic or otherwise, in which:
 - 1. 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;
 - 2. The Defendants agree, in any recurring billing situation, to notify the person to be billed of any future changes in the charges to be incurred;
 - 3. The person to be billed agrees to purchase and/or use the product or service on the terms and conditions disclosed by the Defendants;
 - 4. 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

5. 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.
6. 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 C.4 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.
7. For purposes of this Final Order, Automatic Number Identification ("ANI") alone does not constitute Express Verifiable Authorization.
8. Satisfaction of the requirements of Express Verifiable Authorizationn8.8. Satisfyi.(cr(bsres*0

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.

PROHIBITED BUSINESS PRACTICES

I.

IT IS THEREFORE ORDERED and the Defendants agree that the Defendants, in connection with the offering for sale of, selling of, 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 Order, are permanently restrained and enjoined from:

- 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:
1. 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;
 2. The consumer received a clear and conspicuous disclosure of all material terms and conditions of the offer to access Videotext Services;
 3. The consumer, after having received the disclosures required by paragraph I.A.2 of this Final Order, provided to the Defendants Express Verifiable Authorization to:

- a. receive the Videotext Services for which the consumer is being billed or subjected to other collection efforts; and
 - b. be billed for the Videotext Services charges;
 4. The requirements of this paragraph I.A 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 II of this Final Order, 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:*
1. Should the FTC discover that any Videotext Service provider with which the Defendants do business is not abiding by the procedures established pursuant to paragraph II of this Final Order, the FTC shall not bring an action under this Final Order against the Defendants before the FTC 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 FTC 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

2. 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;
 3. 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;
 4. 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;
 5. 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.

III.

IT IS FURTHER ORDERED that, 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 I of this Final Order are subject to the Pay-Per-Call Rule.

**CONSUMER REDRESS FOR CHARGES INCURRED PRIOR TO JUNE 15, 2003
IV.**

IT IS FURTHER ORDERED that, 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:

- 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 V of this Final Order; and
- C. The Defendants shall not be required by this Final Order to refund any money already paid by any such consumer; *provided, however*, that the Commission's agreement to, and the Court's approval of, this Final Order 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 Commission in negotiating and agreeing to the terms of this Final Order. If, upon motion by the Commission 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 Order 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 Order shall remain in full force and effect, unless otherwise ordered by the Court.

**DISPUTE RESOLUTION PROCEDURES FOR CHARGES
INCURRED BEFORE JUNE 15, 2003**

V.

IT IS FURTHER ORDERED that 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 Order, the Defendants shall clearly and conspicuously disclose, in the format set forth as Exhibit E to this Final Order, 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. The Defendants shall include on their website, in the format set forth as Exhibit F to this Final Order, 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 Order;
- C. That first bill referenced in paragraph V.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 Order 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 Order 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
VI.**

IT IS FURTHER ORDERED that, for any bill sent by the Defendants to consumers, after the date of entry of this Final Order, 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 Order; *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.

**COMPLIANCE MONITORING
VII.**

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Final Order:

- A. Within thirty (30) days of receipt of written notice from a representative of the Commission, Alyon and Touboul shall submit additional written reports, sworn to under

penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such Defendant's possession or direct or indirect control to inspect the business operation; *provided, however,* that Alyon and Touboul, after attempting to resolve a dispute without court action and for good cause shown, may file a motion with this Court seeking an order including one or more of the protections set forth in Fed. R. Civ. P. 26(c);

B. In addition, the Commission is authorized to monitor compliance with this Final Order by all other lawful means, including, but not limited to, the following:

1. Obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
2. Posing as consumers and suppliers to: Alyon or Touboul, Alyon or Touboul's employees, or any other entity managed or controlled in whole or in part by Alyon or Touboul, without the necessity of identification or prior notice; and

C. Alyon and Touboul shall permit representatives of the Commission, upon thirty (30) days

COMPLIANCE REPORTING BY THE DEFENDANTS

of, selling of, facilitating of access to, providing of access to, billing for, or otherwise attempting to collect money from consumers for the provision of Videotext Services, that may affect compliance obligations arising under this Final Order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Final Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which Alyon and Touboul learn less than thirty (30) days prior to the date such action is to take place, Alyon and Touboul shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Final Order, Alyon and Touboul each shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Final Order. This report shall include, but not be limited to:

1. For Touboul:
 - a. His then-current residence address, mailing addresses, and telephone numbers;
 - b. His then-current employment and business addresses and telephone numbers, a description of the business activities of each such employer or business, and his title and responsibilities for each such employer or business; and

- c. Any other changes required to be reported under subparagraph A of this Section.
 - 2. For Touboul and Alyon:
 - a. A list of the names, addresses, telephone numbers, and account numbers of all consumers who received a Full Credit pursuant to paragraph IV, as well as the amount of the Full Credit provided to each such consumer;
 - b. A copy of each acknowledgment of receipt of this Final Order, obtained pursuant to paragraph X;
 - c. Any other changes required to be reported under subparagraph A of this Section.
 - C. For the purposes of this Final Order, Alyon and Touboul shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:
- Associate Director for the Division of Marketing Practices
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Re: FTC v. Alyon Technologies, Inc., Civil Action No. 1:03-CV-1297-RWS
- D. For purposes of the compliance reporting and monitoring required by this Final Order, the Commission is authorized to communicate with Alyon and Touboul through the following counsel:

Lawrence I. Fox
Michael S. Sommer
McDermott, Will & Emery
50 Rockefeller Plaza, 11th Floor
New York, New York 10020

RECORD KEEPING PROVISIONS

IX.

IT IS FURTHER ORDERED that, for a period of six (6) years from the date of entry of this Final Order, Touboul, in connection with any business in which he is the majority owner or otherwise controls the business and which business is involved in the offering for sale of, selling of, facilitating of access to, providing of access to, billing for, or otherwise attempting to collect money from consumers for access to Videotext Services, and Alyon are hereby restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that, in reasonable detail, reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer records containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, description of items or services purchased, and the Express Verifiable Authorization obtained by the Defendants, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly, indirectly or through any third party), including any Minor Affidavits, No Authorization Affidavits, and Wrong Number Affidavits, and any responses to those complaints or requests;

- E. Copies of all advertisements or other marketing materials for any Videotext Service billing program used by or on behalf of the Defendants, including copies of any and all unique website pages that would be viewed by a consumer to access any Videotext Service billing program;
- F. Copies of all contracts with Videotext Service providers; and
- G. All records and documents necessary to demonstrate full compliance with each provision of this Final Order, including but not limited to, copies of acknowledgments of receipt of this Final Order, required by Paragraph XI, and all reports submitted to the FTC pursuant to Paragraph VIII.

DISTRIBUTION OF ORDER BY THE DEFENDANTS
X.

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Final Order, the Defendants shall deliver copies of the Final Order, electronically or otherwise, as directed below:

- A. Alyon must deliver a copy of this Final Order to all of its principals, officers, directors, and managers. Alyon also must deliver copies of this Final Order to all of its employees, agents, and representatives who engage in conduct materially related to the subject matter of the Final Order. For current personnel, delivery shall be within five (5) business days of service of this Final Order upon Alyon. For new personnel, delivery shall occur prior to them assuming their responsibilities;
- B. For any business involved in the offering for sale of, selling of, facilitating of access to, providing of access to, billing for, or otherwise attempting to collect money from consumers for access to Videotext Services, that Touboul controls, directly or indirectly,

§ 7001, *et seq.*) acknowledging receipt of the Final Order, within thirty (30) days of delivery, from all persons receiving a copy of the Final Order pursuant to this Part.

**ACKNOWLEDGMENT OF RECEIPT OF ORDER BY THE DEFENDANTS
XI.**

IT IS FURTHER ORDERED that Alyon and Touboul, within five (5) business days of receipt of this Final Order as entered by the Court, each must submit to the Commission a truthful sworn statement acknowledging receipt of this Final Order.

**RETENTION OF JURISDICTION
XII.**

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, interpretation, modification, and enforcement of this Final Order.

XIII.

IT IS FURTHER ORDERED that there being no just reason for delay of entry of this judgment, and, pursuant to Federal Rule of Civil Procedure 54(b), the Clerk shall enter this Final Order immediately.

SO ORDERED, this ___ day of _____, 2004 at Atlanta, Georgia.

Richard W. Story
United States District Judge

The parties hereby consent to the terms and conditions of the Final Order as set forth above and consent to entry thereof.

FOR THE COMMISSION:

FOR THE DEFENDANTS:

DAVID M. TOROK
JONATHAN KRADEN
Federal Trade Commission
600 Pennsylvania Ave., N.W., Room H-238
Washington, D.C. 20580
(202) 326-3075 (Torok)
(202) 326-3257 (Kraden)
(202) 326-3395 (fax)

STEPHANE TOUBOUL
Individually and as an officer of
Alyon Technologies, Inc.

LAWRENCE I. FOX
MICHAEL S. SOMMER
McDermott, Will & Emery
50 Rockefeller Plaza, 11th Floor
New York, New York 10020
212-547-5400

EXHIBIT D
COPY OF THE FTC'S PAY-PER-CALL RULE

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,

EXHIBIT G

EXHIBIT H

INSERT ON CONTRACTS WITH VIDEOTEXT SERVICE PROVIDERS

[Company] is required to inform [Videotext Service provider] that its conduct is governed by a Final Judgment and Agreed Order (“Order”) entered into on [date]. A copy of this full Order can be found on [company]’s website at [website a