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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

JUN 09 2005

LUTHER D. THOMAS, Clerk  
By: [Signature] Deputy Clerk

FILED IN CHAMBERS  
RICHARD W. STORY  
U.S.D.C. Atlanta

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ALYON TECHNOLOGIES, INC.,  
a Delaware corporation;

TELCOLLECT, INC.,  
a New York corporation; and

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

Defendants.

CIVIL ACTION NO.  
1:03-CV-1297-RWS

JUN 13 2005

STIPULATED FINAL JUDGMENT  
AND AGREED ORDER AS TO  
DEFENDANT TELCOLLECT, INC.  
By: LUTHER D. THOMAS, Clerk  
[Signature] Deputy Clerk

On May 13, 2003, the Federal Trade Commission ("FTC" or "Commission") filed a Complaint for Injunctive and Other Equitable Relief in this matter pursuant to Sections 5(a), 13(b), and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 53(b), and 57b, and the Telephone Disclosure and Dispute Resolution Act of 1992 ("TDDRA"), 15 U.S.C. § 5701, *et seq.*, charging Defendants Alyon Technologies, Inc. ("Alyon"), TelCollect, Inc. ("TelCollect"), and Stephane Touboul ("Touboul") with violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Trade Regulation Rule Pursuant to TDDRA (the "Pay-Per-Call Rule"), 16 C.F.R. Part 308. The Commission and Defendant TelCollect, by and through their counsel, have agreed and stipulated to the entry of a Stipulated Final Judgment and Agreed Order ("Final Order") by this Court to resolve all matters in dispute in this action without Defendant TelCollect admitting, and specifically 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 Defendant TelCollect 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 Defendant that it 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 Defendant waives any claim it 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 Defendant waives all rights to seek appeal of this Final Order, and further waives and releases any claim it may have arising from this law enforcement action against the FTC and the employees, agents, or representatives of the FTC; and
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. "Defendant" shall mean TelCollect, Inc.; its parent, divisions, subsidiaries, successors, and assigns; and all other entities covered by Rule 65(d) of the Federal Rules of Civil Procedure.
- B. "Express Verifiable Authorization" shall mean a contractual agreement, electronic or otherwise, in which:
1. The Vendor clearly and conspicuously discloses 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 Vendor's 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 Vendor agrees, 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 Vendor;
  4. The Vendor requires 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 Vendor obtains 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 Vendor's billing gateway; (b) documentation,

electronic or otherwise, evidencing the unique identifying information entered by the consumer, as required by the Vendor, 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. For purposes of this Final Order, Automatic Number Identification ("ANI") alone does not constitute Express Verifiable Authorization.
- C. "Person" shall mean any individual, partnership, corporation, association, unincorporated association, government or governmental subdivision or agency, group, or other entity.
- D. "Records" shall include either paper or electronic data, in whatever form the Defendant normally maintains such data in the ordinary course of business.
- E. "Vendor" shall mean a Person that offers Videotext Services.
- F. "Videotext Service(s)" shall mean visual (and in some instances audio) information and entertainment services offered over the Internet through individual websites.

### **PROHIBITED BUSINESS PRACTICES**

#### **I.**

**IT IS THEREFORE ORDERED** that the Defendant is hereby permanently restrained and enjoined from:

- A. Billing, collecting, or attempting to collect from any consumer, on behalf of any Vendor, any charges for Videotext Services unless the Defendant knows or reasonably should have known that:
  1. The consumer 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 has

reached the age of majority and provides unique identifying information belonging to the adult whom the minor purports to be, the Defendant 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; and
  3. After receiving these disclosures, the consumer provided to the Vendor 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;
- B. Failing to obtain the express written agreement from any Vendor, prior to the start of a business relationship with that Vendor or, for current business relationships, within thirty (30) days after the entry date of this Final Order, that the Vendor will abide by the provisions set forth in paragraph I.A of this Final Order; and
- C. Failing to monitor in a reasonable manner the actions of any Vendor with which the Defendant does 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 Vendor continues to abide by the provisions set forth in paragraph I.A of this Final Order, and failing to take appropriate action against the Vendor, which may include terminating the Defendant's business relationship with the Vendor, should the Defendant discover that the Vendor is not complying with those provisions.



**II.**

**IT IS FURTHER ORDERED** that, to the extent applicable to the Defendant's business, the Defendant is 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 A), as it may be amended, including, but not limited to, the billing dispute resolution procedures set forth in Section 308.7 of said Rule.

**FINANCIAL STATEMENT**

**III.**

**IT IS FURTHER ORDERED** that the Commission's agreement to, and the Court's approval of, this Final Order is expressly premised upon the truthfulness, accuracy and completeness of the Defendant's financial statement dated February 2, 2005. The Defendant's financial statement contains material information upon which the Commission relied in negotiating and agreeing to this Final Order. If, upon motion by the Commission, this Court finds that the Defendant's financial statement either failed to disclose any material asset or source of income or materially misrepresented the value of any asset or source of income, or contained any other material misrepresentation or omission, the Commission may request that this Final Order be reopened for the purpose of requiring from the Defendant such equitable relief as this Court may deem appropriate; *provided, however*, that in all other respects this Final Order shall remain in full force and effect unless otherwise ordered by this Court; and *provided further*, that proceedings instituted under this provision are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings the Commission may initiate to enforce this Final Order. In any such enforcement proceeding, the Defendant waives any right to contest any of the allegations of the Complaint filed in this matter.

**COMPLIANCE MONITORING  
IV.**

**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, TelCollect 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 TelCollect's possession or direct or indirect control to inspect the business operation; *provided, however,* that TelCollect, 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 TelCollect, its employees, or any other entity managed or controlled in whole or in part by TelCollect, without the necessity of identification or prior notice; and
- C. TelCollect shall permit representatives of the Commission, upon thirty (30) days advance notice, to interview any employer, consultant, independent contractor, representative, agent, or managerial employee who has agreed to such an interview, relating in any way

to any conduct subject to this Final Order. The Person interviewed may have counsel present.

*Provided, however,* that nothing in this Final Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

**COMPLIANCE REPORTING BY THE DEFENDANT**  
V.

**IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this Final Order may be monitored:

- A. For a period of three (3) years from the date of entry of this Final Order, TelCollect shall notify the Commission of any changes in its corporate structure 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 TelCollect learns less than thirty (30) days prior to the date such action is to take place, TelCollect 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, TelCollect shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which it has complied and is complying with this Final Order. This report shall include, but not be limited to a copy of each acknowledgment of receipt of this Final Order obtained pursuant to Paragraph VII, a copy of all express written agreements with Vendors, as required by Paragraph I.B, and any other changes required to be reported under subparagraph A of this Section;
- C. For the purposes of this Final Order, TelCollect 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. Alvon 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 TelCollect through the following counsel:

William A. DuPre IV  
Daniel P. Griffin  
Miller & Martin PLLC  
1170 Peachtree Street, N.E., Suite 800  
Atlanta, Georgia 30309  
404-962-6100

**RECORD KEEPING PROVISIONS**  
**VI.**

**IT IS FURTHER ORDERED** that, for a period of six (6) years from the date of entry of this Final Order, TelCollect, in connection with billing for or otherwise attempting to collect

money from consumers for access to Videotext Services, is 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 Vendors, 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), and any responses to those complaints or requests;
- E. Copies of all express written agreements with Vendors, as required by Paragraph I.B; and
- F. 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 VII, and all reports submitted to the FTC pursuant to Paragraph V.

**DISTRIBUTION OF ORDER BY THE DEFENDANTS  
VII.**

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

- A. TelCollect must deliver a copy of this Final Order to all of its principals, officers, directors, and managers. TelCollect 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 TelCollect. For new personnel, delivery shall occur prior to them assuming their responsibilities;
- B. TelCollect must secure a signed and dated statement (which may be obtained electronically provided that the signature complies with the requirements of the Electronic Signatures in Global and National Commerce Act, ("E-Sign Act"), 15 U.S.C. § 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  
VIII.**

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

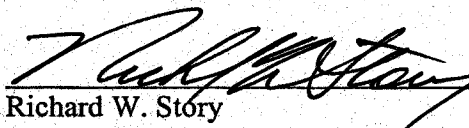
**RETENTION OF JURISDICTION  
IX.**

**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.

**X.**

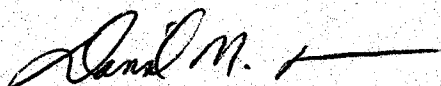
**IT IS FURTHER ORDERED** that there being no just reason for delay of entry of this judgment, and, pursuant to Federal Rule of Civil Procedure 54(b), the Clerk shall enter this Final Order immediately.

**SO ORDERED**, this 13<sup>th</sup> day of June, 2005 at Atlanta, Georgia.


  
Richard W. Story  
United States District Judge

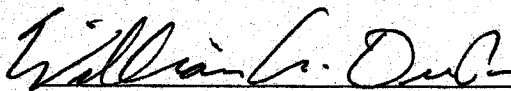
The parties hereby consent to the terms and conditions of the Final Order as set forth above and consent to entry thereof.

**FOR THE COMMISSION:**

  
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)

**FOR THE DEFENDANTS:**

  
JOSEPH DOHERTY  
As an officer of TelCollect, Inc.

  
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