



UTCA
Unemployment Tax
Control Associates, Inc.

MAY 14 2008

Because a good consultant teaches...

May 14, 2008

Federal Trade Commission
Office of the Secretary
Room H-135
600 Pennsylvania Avenue
N.W., Washington, D.C. 20580

RE: Public Comment TALX & FTC
FTC File # 061 0209

Dear Sir/Madam:

Please consider this letter our "Public Comments" regarding the above-cited proposed settlement agreement between the Federal Trade Commission and TALX Corporation.

Unemployment Tax Control Associates, Inc (hereinafter UTCA) is a Massachusetts corporation incorporated in 1990. We are in the business of outsourced unemployment compensation management (UCM). Many of our clients are multi-state or "national" clients.

The FTC complaint alleges that, "TALX's acquisitions have enhanced its ability to increase prices unilaterally and to decrease the quality of services in relevant markets." UTCA agrees with this allegation and has experienced TALX's impact in direct conversations with potential new clients or customers.

UTCA currently represents a number of former TALX clients. In addition, we are routinely solicited by a wide range of employers to prepare and present bids for UCM services while they are still represented by TALX. In order to complete a fair and responsible bid for services, most reputable UCM companies complete an underwriting process. Certain basic unemployment information, including specific state issued (agency) documentation, must be obtained from the employer to do so (this information is detailed in a latter section of this document). As TALX, with few known exceptions, becomes "Address of Record" for their clients in each state where they do business and all unemployment documentation is delivered directly to TALX's address of choice (commonly their offices). These documents, pursuant to most common Power or Attorney and Address-of-Record designations, are typically required (per contractual obligation) to be maintained carefully by UCM agents. Without this information, any quote for services would be considered a "blind quote" in our industry. And as such, places the employer (client)

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and the new vendor at greater risk should the business quoted on significantly differ from the estimated or "guessed" experience of the employer. The new vendor is potentially exposed to significant and avoidable loss and/or the client may end up paying far more for services than necessary. This level of exposure, when dealing with large, multi-state employers is significant enough to discourage most *responsible or reputable* vendor from pursuing further discussions with potential clients. This is the single most damaging factor UTCA has experienced in our dealings with TALX clients. A number of large prospective clients with whom we've met or discussed services with, have initially expressed a willingness to discuss termination of their agreements with TALX dependent upon the outcome of our underwriting process (this generates our fee). However, when confronted with difficulty in accessing their very own UI data, including state issued documents -- they frequently delay changing services or abandon their market search until their long-term agreements expire. Another alternative is to pursue dialogue with less established organizations or businesses willing to assume significant loss, or those amenable to the prospect of over-charging the client company. UTCA has a long standing policy of turning away clients that cannot comply with our request for basic account information or "experience and activity data", as this is the minimal data needed to complete any responsible bid for services.

The prospect of pursuing large national accounts, without having a baseline understanding of the minimal activity range which may be experienced, means smaller vendors must confront and accept a tremendous potential for undercharging or overcharging from TALX clients. Few small vendors have the resources to withstand undercharging a national account and, in our opinion, any intelligent vendor will not risk putting forth a reckless fee proposal, which can insult the TALX client and/or cannot be substantiated by "key account" information.

Basic or minimal experience/activity data is "insider information" commonly known only to those who understand UCM services and how our business is conducted. This is not information readily available to third parties, or those who possess only a casual or limited scope of knowledge in this niche industry. However, any party who has sold UCM services or has managed a UCM company knows that suppressing, limiting or refusing a client's access to their own UI data will make the conversion of services to a new vendor very difficult and or unnecessarily risky. The new vendor may be forced to "drop out" of the bid process or assume an unreasonable degree of risk depending on the size of the employer. The alternatives are limited, whereby the prospective vendor can press the client company to force TALX to surrender the information but can only exercise a limited degree of force in this regard. And it has been reported to UTCA, even when this is pursued by the client; their requests are often not complied with. One client in particular informed us they were forced to have their corporate attorney threaten legal action. Another alternative, also unsatisfactory, requires the client company ask the new vendor if they can source limited information from the issuing state agency. This is an expensive and complex administrative task for the new prospective vendor, with no means for recovering those costs and can take several months to a year or more to obtain the necessary information (depending on the state agency involved and the volume of data necessary to source). Ultimately, the client company can become frustrated, the prospective vendor, in all likelihood, loses forward momentum and it would appear TALX continues to retain control of the clients' ability to pursue viable market options.

Numerous times we have been requested to present a bid for services by a company represented by TALX. We have informed each of these potential clients of the minimal documentation and account experience information we require to comply with their request. They express their willingness to do so but "*must request it from TALX, as they are the Address of Record*". Despite numerous requests, it has been consistently reported to us that these TALX clients experience much difficulty obtaining this information from TALX, even though this information legally belongs to them. That should not be the case. This information and all documentation generated and issued by the state are maintained by every agent as legally required. The information is "key information" critical to those in our industry for ascertaining costs associated with maintaining minimal service levels and delivering promised services. This information can be considered "client code" necessary to service an account and is unique to each client company. It is similar to a "loss trail" in the insurance industry and should be made readily available to the client company and all vendors they deem eligible to review such information. This is NOT obscure, nuanced, supplementary or general information but rather "key" information absolutely vital to the client company and should be maintained even if they were NOT to move their business from TALX. It's their "finger print" or account DNA -- and be made available to the client company regardless of their intent to move their business elsewhere, or to remain on as a TALX client.

In our industry, when a client asks for this type of documentation it is a "red flag" they are looking at other service providers. This type of information is not what a business would commonly ask for in their normal course of daily activity and instantly betrays the client company's motivation for requesting this data. Over the past several years, UTCA has made note of prospective client organizations that have reported "no response, inaccurate responses and "limited apparent responses" -- which in essence are little more than questionably valuable data runs. These "reports" appear to provide confusing or misleading dates (not tied out to the correct fiscal year for the entity and state reported on) and supply little in terms of key information necessary. The data presented is generally worthless and cannot be used in place of state documents or carefully codified reports. UTCA only provides "key account" information to our clients at the close of each and every fiscal year, tied out to the fiscal year observed by each state agency. This has been our practice since our business began in 1990. Our clients, should they wish to exercise their right to terminate our contract, have immediate and consistent access to their account data.

It is our recommendation, the FTC include an additional provision in the proposed order/settlement agreement as follows:

"If an existing TALX client requests TALX provide them with the following documentation and account information, it must be forwarded without delay to that client within 7 days of the written or verbal request":

- State issued Benefit Charge Statements;
- State issued Annual Tax Rate Notices;

- Total number of Unemployment Claims Filed, segregated as “Disputable and Non-Disputable”;
- Total Amount of Unemployment Hearings attended
- Two Most Recent Annual Reports;

Mandating TALX to provide their clients with this documentation in a timely manner would clearly reduce the competitive disadvantage TALX maintains over other legitimate competitors and allows the client company clear, concise and understandable access to their *own* data. This provides businesses with valuable insight as to their account activity, profile and cost centers. And is information which they should maintain regardless of their service status with any vendor, as it assures them greater market mobility and increases their likelihood of securing reasonable and reputable service providers at any future date. Other UCM companies would be able to complete a quality and informed proposal for services. It would clearly counteract the anticompetitive effects of TALX’s multiple acquisitions in the marketplace which is consistent with the FTC’s intent.

It is our firm and most ardent belief that the changes proposed, though meaningful and valuable to the industry, will not be nearly as effective without the above submitted information included in any agreement made. We have been “locked” out of many accounts in need of our service primarily because of aforementioned. The Federal Trade Commission’s willingness to consider the importance of requiring the release of client company data is one of the most effective requirements you can make of TALX and our industry at-large. Any mandate requiring all UCM vendors to readily supply this information directly to their clients, would be a positive and far-reaching step toward truly opening the UCM market to all competitors, significantly reducing the likelihood of any one organization monopolizing the industry.

We thank you in advance for your anticipated consideration of the information put forth in this “Public Comment” and welcome any questions you may have relative to the statements and assertions presented. UTCA also wishes to thank you for the actions you have taken on behalf of UCM clients and vendors alike, as we believe your proposed mandates will do much to level the playing field. If you have any questions please do not hesitate to contact me directly.

Timothy Phelan,
Vice President Client Services

cc: File
Suzanne Murphy, CEO