CORPORATE COST CONTROL, INC.

Controlling Unemployment Costs Nationwide

May 9, 2008

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Federal Trade Commission
Office of the Secretary
Room H-135
600 Pennsylvania Ave., NW
Washington, D.C. 20580

Re: In the Matter of TALX Corporation, FTC File No. 061 0209

Ladies and Gentlemen:

Enclosed please find our comments regarding the Decision and Order proposed in the above matter. We would appreciate confirmation of your receipt of these comments by phone or email to the undersigned. If you have additional questions, or if any of the comments lack clarity and need explanation, please contact me.

Thank you for undertaking this investigation into what many of us in this industry felt was a clearly anticompetitive situation. While we have many comments about the settlement, we would like to be sure that you are aware that we appreciate your willingness to take this issue on, in spite of its narrow area of impact.

We would also appreciate receiving, either by mail, email or fax, a copy of your final order, if that is possible. My contact information is below.

Thank you again.

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United States of America
Before Federal Trade Commission

In the Matter of TALX Corporation a corporation	)))))))	Docket No. C-0610209 Public Comment on Consent Agreement

Corporate Cost Control, Inc., a Designated UCM Services Provider pursuant to Section I(P) of the Decision and Order, would submit the following comments on the proposed Consent Agreement.

1. Corporate Cost Control meets the definition of a Designated UCM Services Provider in subsection 2 of Section I(P) of the order in that: it is neither TALX nor ADP; it has never subcontracted anything to TALX nor has it been in any relationship with such a subcontractor; and it provides within the jurisdiction of all fifty states the types of services listed in (c) of that section to several Major Multi State Employers having more than 3500 employees in multiple states. We would provide the identity of those clients confidentially upon FTC request. Corporate Cost Control should be listed in subsection 1 of I(P) as one of the named providers.

2. The provision of II(C) of the Order states that the purpose of the Order is to facilitate entry and expansion of firms in the UCM industry, and to remedy the lessening of competition in this industry. The only remedies posed in the Order fall short of resolving the existing monopoly in this industry; they simply mildly reprimand an organization that in a conscious, premeditated and publicly acknowledged manner set out to eliminate all effective competition. The remedies in this Order are inadequate in light of the impact of this history on the industry. Additionally, relying on the addition of $10M in market share nationwide to other firms in the industry does not alter the concentrated nature of this industry for the future.

3. Assuming without knowledge that the assertion in the documentation that TALX's UCM business was valued at $270 Million (4/28/08 Press release), the impact of possible loss of only $10 Million in contract value is at best a reprimand rather than a penalty for the egregious combination of entities that resulted in this company. The indication in the Analysis that this grants "the majority of TALX's long term contract customers" relief from the extended nature of their agreement is surprising; we believe that after its final acquisition, TALX went to virtually all of its customers and required signature on five-year agreements. It is hard to believe that only 3.7% ($10M/$270M) of their customers acceded. Nothing in this Order precludes them from continuing that process in the near future, either: in fact the definition of Long Term Contract Customer in I(X)(1) specifically eliminates contracts with effective dates after the date of this Order. Thus TALX has achieved the best of both worlds: it can avoid notification to customers with a one year agreement, await the finality of this Order, and seek similarly anticompetitive

five year agreements from those customers not covered by I(X)(1). In fact, we have become aware that TALX has done just that in a current sales situation: their proposal delivered in the last week included a five year agreement. They do not plan to change their methodologies. A better remedy for this situation should be to require TALX to treat all of its contracts as one year agreements with 30 day cancellation provisions, for any or no reason. If their service and their pricing is truly competitive, they will retain the business. That would solve any issue of the "personal nature" of this industry, discussed in the Analysis as a basis for the FTC not requiring divestiture in this case.

4. The fact of TALX's ownership of the VOIE and UCM businesses is not sufficiently addressed in this Order. The VOIE business is highly profitable: they are able to charge the customer employer for maintaining the data historically provided to the UCM service provider as part of the UCM service; and then they additionally charge the inquirer (mortgage company, landlord, etc.) a substantial amount to access the information. The cost of storing and maintaining that information is tiny: they must have recouped their initial development costs many times over by now. But what this combination does is place them in a unique position in the UCM world: they can nearly give away the UCM service in order to get the more lucrative VOIE contract. For those companies who do not have in-house VOIE, this makes a very high hurdle when the employer is offered both services by TALX. Requiring divestiture of either the VOIE or the UCM portion of the business would remedy this effect; alternatively, the FTC could require TALX to divest any UCM contracts to whom they provide VOIE, and not jointly sell the products in the future.

5. The final acquisition of Employers Unity, Inc., far exceeded the usual value of such organizations, and was possible simply because of TALX's earlier near-monopolization of the market. An offer to purchase Employers Unity, Inc., had been made early in the pathway to complete monopolization. It was initially rejected; however, when nearly double the normal price for a business in this industry was later offered to the owner of Employers Unity, it was impossible for him not to accede. The increased price offered was enabled by the huge profitability of TALX's VOIE program. During the period between TALX's initial acquisitions and November of 2006, hundreds of clients had switched from the newly created TALX to Employers Unity because they did not like TALX's service. While decreased, some competition still existed for all sizes of accounts. However, once that acquisition occurred, as the Commission is acknowledging by this Order, the consolidation was complete. This Order allows the continued existence of this enormous conglomeration, and gives small comfort to those basically regional firms struggling to compete. It does not give large employers any choice in companies that have the wherewithal to manage sizeable accounts (Fortune 100 or 500 companies), as Employers Unity did. A client-centered remedy for this accretion should be the divestiture of some part of this business, rather than simply allowing a meager 3.7% of the TALX's clients to opt out of their contracts early, for just the coming three years.

6. The provision in III(B) that permits TALX to re-bid if a Long Term Contract Customer has opted to take the 90 day out is very harmful to competition. A very possible re-bid scenario is that TALX will simply cut the price on the service so deeply, either because of its deep pockets, because it has already inflated the price of the services due to the lack of competition, or because it is already making substantial amounts on the VOIE services, that the client cannot

make the switch. Once the employer opts to take the 90 day out, TALX should be precluded from sales efforts for at least a year, or should have a limit as to the discount it can take on its original contract price (e.g., it can only offer to meet the price, not surpass it).

7. While the limitation on enforcement of non-compete and non-solicitation provisions is appropriate, we would question the degree to which this is in fact a penalty to TALX. We would question whether TALX at any time has taken steps to enforce any non-compete or non-solicitation agreements it has entered into with Relevant Past Persons or Relevant Current Persons. If there is no evidence of active prosecution of such individuals on the basis of such clauses, this is another mere reprimand rather than a serious penalty.

8. The Order in Section II(B) limits the restriction on enforcement to a period of two years. In light of the fact that this Order does not alter the basic fact of monopolization of this industry by TALX, two years is a very short period. Additionally, the limitation of the option to leave without restriction to the first ten of one type of employee, the first four of another, etc. makes little sense other than as TALX's acceptance of the actual fact that, statistically, they will probably lose 46 employees over the next two years. Coupled with what we believe to be a lack of enforcement of the restrictive clauses in their employment agreements, this simply means that business will continue as usual for two years, and after that, everyone who still is at TALX will doubly fear leaving. This is confirmed by the provision in V that reiterates TALX's continued ability to engage in restrictive covenants with its employees. TALX should also be required to make an unusually full disclosure of the impact of signing such restrictions to any new employee, along with being required to not discriminate in hiring or other employment action against individuals who refuse to sign such limitations.

9. It is also inappropriate that no high level managers or salespeople are included in the Appendix F Employee List. It is to be expected, with TALX's extremely high degree of market penetration, that many salespeople would be eager to move to a competitor where the universe of prospects is greater, and commission opportunities more substantial. In addition, the Designated UCM Services Providers need to hire such experienced managers and sales people in order to obtain and service the $10M in business that should become available. Were this to truly be a penalty to TALX, there should be no restriction on the classification of employee who can escape the provisions; and there should be no time limit.

10. During the past two years, Corporate Cost Control has taken a few clients from TALX. In each case we have requested a final report on the client's account; in virtually none have we received it. This information is crucial to being able to effectively represent the new client. In fact, this data is the property of the client. Provisions in TALX agreements indicating to the contrary should be precluded from having effect by the FTC. This type of limitation simply puts up another barrier to switching to a new service. TALX should be required to provide the new service provider with as much information as TALX would have provided its client, and it should be required to be provided timely. Nothing in the Order's Section IV specifies the timeliness of this provision of information: if it is not timely, it is not useful. With TALX's substantial computerization, they should be able to produce this data within 30 days of notification. Additionally, as recognized in (E), state agencies will continue to send documentation to TALX long after a particular client has switched services. TALX should be

ordered to forward such documentation by fax and overnight mail on the day it receives it to the new service provider, rather than in any manner and just to the client as provided in (E), since the state places extreme limitation on the ability of the represented employer to enforce its rights if response is not made within as little as seven days from the date of mailing. Again, sending the information to the client and not to the new service provider places another barrier to switching that has been used by TALX to convince its clients to remain. The limitation on this section to a five year period is not sufficient: it should be continued until TALX demonstrates that it has reduced its share of the marketplace to a low enough level that it would not have been subject to the FTC's concern.

11. The provision of VI(B) requiring notice only to Long Term Contract Customers limits an important part of what should result from TALX's conduct. All of their clients should be made aware of this Order, not just the limited group defined as Long Term Contract Customers.

12. Without greater knowledge of the ADP/TALX agreement it is hard to comment on the provisions of VII of the Order; however, it is apparent that there is no requirement that TALX cease its relationship with ADP. Full disclosure to the public of the relationship and its extent (not including pricing, of course) should be required. The fact that this Order permits them to continue under the undisclosed terms of the ADP/TALX agreement of June 27, 2001 suggests that TALX will be permitted to retain clients provided by ADP. In another recent sales situation, we were aware of a company who was putting out an RFP for UCM services. They refused to include TALX in the process, because of their dissatisfaction with the service. However, they did include ADP, because they were unaware of the fact that ADP's UCM service is simply TALX. TALX should require ADP to disclose this fact when offering the UCM service if the service will in fact be provided by TALX.

It is not clear how the requirement of allowing Long Term Contract clients to cancel will apply to ADP based relationships, or if it will at all. It is our understanding that frequently ADP offers the UCM service to its clients as part of a package of services, without a separate bid or fee. If that is the case, and ADP continues to have the relationship it currently has with TALX, it is unlikely that any of those clients will make a change, as it most often is reported to us that ADP charges no separate fee for the TALX service. This, of course, cannot be true; however, it is likely that ADP is able, due to its exclusive relationship with TALX, to absorb the cost of the TALX fee.

13. As to Section VII of the Order, the term "procompetitive benefit" is used in paragraph A. It would be helpful for this to be defined, as it is hard for us to imagine how any joint venture between TALX and any other UCM service provider might be "procompetitive."

14. The appointment of a Monitor/Administrator in this situation is very appropriate. However, while we appreciate Mr. Switzer's previous background as an Attorney General, he is in fact from the State of Missouri, in which TALX's headquarters is located. We question whether he will be able to be an effective fiduciary for the FTC in light of his roots in that state coupled with the fact of his being paid by TALX.

15. In Sections (D)(1) and (3) of IX the Monitor/Administrator is given the responsibility to monitor TALX's compliance with all sections except V. Was that an oversight or intentional? It would appear that it should be included. Is there a reason that the Monitor/Administrator is not charged with informing Negative Option contract holders of their rights as well in Section (d)(5)(a)?

16. The requirement of giving notice to Long Term Contract Customers expires after three years in III and VI(C). What if $10M in contracts have not by that time sought to cancel? This means that the status quo ante will resume after the three year period. If this meager amount of business cannot be absorbed by the other UCM Service Providers, or if the fact of TALX's ability to come in and re-quote the business at an artificially low price as discussed above, and companies do not cancel, we will be in the exact position we are in today: with a concentration of the market that is violative of the Acts. At the very least, the time and dollar amount ceiling should be in the alternative; whichever happens last.

17. In VI(D), notice to Negative Option Contract Customers is allowed to be included either on invoices or in a letter. They should be required to send a letter in all cases; if they wish to include it on the invoice (which will likely not be seen by anyone in a decision-making position), that would be nice, but not essential. The provisions of VI(D) do not include the requirement that this letter be sent to the person identified for notices in the contract or the CEO of the client, as required by I(Q) for Long Term Contract Customers. The companies with Negative Option contracts should be treated no differently.

In conclusion, our primary concern is that if the remedies are not enhanced to <u>insure</u> an increase in competition, TALX can simply wait out the relatively short time periods, suffer the mild inconvenience of the other sanctions, and continue business as usual without any consequence. This should not be the outcome accepted by the Commission.

We would be pleased to testify or provide any other additional documentation or information that would assist the Commission in this case.

Clay Weidman, CEO

Susan Crosby, President

Robin M. Quon, General Counsel
Corporate Cost Control, Inc.