



Agenda Date: 8/24/2016
Agenda Item: IVC

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CABLE TELEVISION &
TELECOMMUNICATIONS

IN THE MATTER OF THE INCONTACT, INC. AND)
NICE SYSTEMS, INC.'S PETITION FOR APPROVAL)
FOR INCONTACT, INC. TO PARTICIPATE IN CERTAIN)
FINANCING ARRANGEMENTS OF NICE SYSTEMS,)
INC. AND NICE, LTD.) ORDER
DOCKET NO. TF16070622

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Jonathan Gafni, Esq. and John Beahn, Esq., Skadden, Arps, Slate, Meagher & Flom, LLP on
behalf of NICE System, Inc.
Allison D. Rule, Esq., Marashlian & Donahue, PLLC, on behalf of InContact, Inc.

BY THE BOARD:

On July 5, 2016, inContact, Inc. ("inContact"), NICE Systems, Inc. ("NICE Systems"), and NICE, Ltd. ("NICE") (collectively, "Petitioners") submitted a Verified Petition for Approval for inContact to Participate in Certain Financing Arrangements of NICE Systems and NICE ("Joint Petition") with the New Jersey Board of Public Utilities ("Board") pursuant to N.J.S.A. 48:3-7 and 48:3-9, requesting approval to participate in financing arrangements in an aggregate amount of up to \$875 million.¹

BACKGROUND

inContact is a Delaware corporation with principal business offices located at 75 West Towne Ridge Parkway, Tower 1, Sandy, Utah 84070-5522. inContact provides an integrated software and cloud-based contact center solution in all fifty states, the District of Columbia, and Puerto Rico. The Company's primary business is its contact center offering, which includes telecommunications services and Software as a Service components. The Company provides legacy 1+ domestic calling in addition to transmission to and from its cloud-based platform in support of its contact center services. The contact center offering enables basic call

¹ The Debt Financing is being undertaken in connection with the transfer of control of inContact to NICE Systems. A Joint Petition requesting approval of the transfer was simultaneously filed in Docket No. TM16070621.

transmission (domestic and international) in conjunction with software-supported features such as call queuing, auto attendant, and analytics.

inContact is authorized to provide resold long distance and resold and facilities-based local exchange telecommunications service within the State of New Jersey. inContact registered as an interexchange provider in New Jersey on February 10, 2003, and the Board authorized inContact to provide local exchange telecommunications service throughout New Jersey on March 24, 2005 in Docket No. TE04101370. inContact is registered with the Federal Communications Commission to provide interstate telecommunications services (FCC Filer ID No. 818114), and was granted international Section 214 authority in FCC File No. ITC-214-19980407-00234. inContact is also authorized to provide local exchange and interexchange telecommunications services pursuant to registration, commission order, or on a deregulated basis in the states of Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming, and in the District of Columbia.

NICE Systems, Inc. is a Delaware corporation with principal business offices located at 461 From Road, 3rd Floor, Paramus, New Jersey 07652. NICE Systems is a wholly-owned direct subsidiary of NICE, Ltd. (formerly known as NICE-Systems, Ltd.), an Israeli company with principal business offices located at 13 Zarchin Street, P.O. Box 690, 4310602, Ra'anana, Israel. NICE Systems is a global market leader in analytics-based customer service applications.

DISCUSSION

Petitioners seek approval to participate in a debt financing transaction (the "Debt Financing") in connection and substantially concurrently with, the acquisition of inContact by NICE, Ltd., NICE Systems, Inc.'s direct parent. In connection with the Debt Financing, NICE Systems, Inc., NICE, Ltd. and certain Israeli and U.S. subsidiaries of NICE, Ltd. expect to pledge substantially all of their assets and those of inContact and certain of its subsidiaries to secure its obligations under the Debt Financing, the proceeds of which will be used to fund a portion of the consideration for the acquisition of inContact and for general corporate purposes. Petitioners seek authorization to incur new indebtedness in an aggregate amount of up to \$875 million.

Petitioners expect that any long-term indebtedness incurred as part of the Debt Financing will mature approximately five (5) years after issuance; however, Petitioners seek authorization for indebtedness that matures up to eight (8) years after issuance to maintain flexibility. The interest rate spread for the initial term loan facility and the initial revolving facility will be re-set on a quarterly basis based on the leverage ratio of NICE as of the last day of the fiscal quarter. Initially, the interest rate spread for the initial term loan facility and the initial revolving loan facility will be 1.50%, which will be added to the applicable London interbank offered rate (LIBOR) for the applicable loan. Adjustments will be made to the interest rate spread if NICE elects to borrow funds based on the alternative base rate, as opposed to the LIBOR rate. Additional secured credit incurred under the credit agreement will accrue interest at the rate agreed between NICE and the lenders providing such additional credit. Such interest rate may be affected by then-current market conditions and may accrue at a rate higher than the interest rate applicable to the initial term loan facility and the initial revolving facility. The Debt Financing will be secured by grant of a security interest in the assets of NICE Systems and

NICE and certain of its current and future subsidiaries, including inContact. In addition, NICE and certain of its current and future subsidiaries, including inContact, are expected to provide a guaranty as security for the Debt Financing.

Petitioners state that the financing is in the public interest. Petitioners state financing is a critical part of the proposed acquisition of inContact by NICE, it will allow access to greater financial resources to more effectively compete with larger telecommunications providers, it is necessary and appropriate, consistent with the performance of services to the public, as it will not impair the ability to perform such services, and it will promote corporate purposes.

The New Jersey Division of Rate Counsel has reviewed this matter and, by letter dated July 29, 2016, stated that it does not object to approval of the Joint Petition.

Under N.J.S.A. 48:3-7 and N.J.S.A. 48:3-10, the Board is required to determine whether the public utility or a wholly-owned subsidiary thereof may be unable to fulfill its pension obligations to any of its New Jersey employees. Petitioners have indicated that inContact does not have an employee pension plan and that inContact employees' existing rights in any other retirement benefit plan offered by inContact will be retained upon completion of the Debt Financing. Approval of the financing will serve the public interest by promoting competition among telecommunications carriers, by providing inContact with access to greater financial resources to become a more effective competitor, and by using proceeds associated therewith as appropriate. The financing will be transparent to inContact's customers and will not disrupt service or cause customer confusion or inconvenience. While there is no guarantee in this regard, especially given the competitive environment in which Petitioners operate, the Board is satisfied that the transaction will not have an adverse impact on Petitioners' operations in New Jersey.

After careful review of this matter, the Board **FINDS** that the proposed Debt Financing will not have a negative impact on competition, the rates of current customers, or New Jersey employees. Therefore, after investigation and consideration of the record and information submitted in this proceeding, the Board **FINDS** that the Debt Financing arrangements are in accordance with the law and effectuates the public interest, and **HEREBY AUTHORIZES** Petitioners to participate in financing arrangements up to an aggregate amount of \$875 million, and to take those actions necessary to effectuate such financing arrangements.

This Order is issued subject to the following provisions:

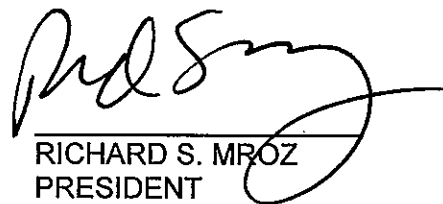
1. This Order shall not affect or in any way limit the exercise of the authority of the Board or the State of New Jersey in any future petition or in any proceeding regarding rates, costs of service, franchises, service, financing, accounting, capitalization, depreciation, or any other matters affecting Petitioners.
2. Petitioners shall notify the Board, within five (5) business days, of any material changes in the proposed financing and shall provide complete details of such transactions, including any anticipated effects upon service in New Jersey.
3. Petitioners shall notify the Board of any material default in the terms of the proposed financing within five (5) business days of such occurrence.

4. Notwithstanding anything to the contrary in the documents executed pursuant to the financing transaction or other supporting documents, a default or assignment under such documents shall not constitute an automatic transfer of inContact's assets. Board approval must be sought pursuant to N.J.S.A. 48:1-1 et seq. where applicable.
5. This order shall not be construed as directly or indirectly fixing for any purpose whatsoever any value of tangible or intangible assets now owned or hereafter to be owned by the Petitioners.

This Order shall become effective September 3, 2016.

DATED: 8/24/16

BOARD OF PUBLIC UTILITIES
BY:



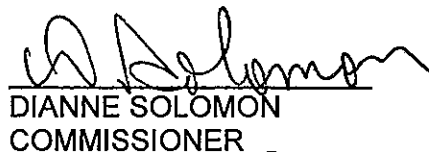
RICHARD S. MROZ
PRESIDENT



JOSEPH L. FIORDALISO
COMMISSIONER



MARY-ANNA HOLDEN
COMMISSIONER

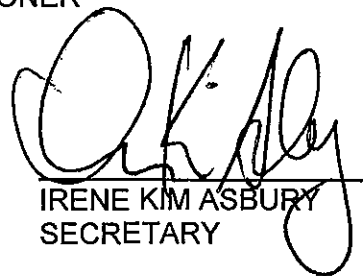


DIANNE SOLOMON
COMMISSIONER



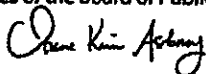
UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST:



IRENE KIM ASBURY
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities



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