



Agenda Date: 08/24/16  
Agenda Item: IVD

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED JOINT PETITION )  
OF INCONTACT, INC. AND NICE SYSTEMS, INC. FOR )  
APPROVAL FOR THE TRANSFER OF CONTROL OF )  
INCONTACT, INC. TO NICE SYSTEMS, INC. )

ORDER

DOCKET NO. TM16070621

**Parties of Record:**

**Jonathan Gafni, Esq.**, Skadden, Arps, Slate, Meagher & Flom LLP, on behalf of Petitioners  
**Stefanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel

**BY THE BOARD:**

On July 5, 2016, inContact, Inc. ("inContact") and NICE Systems, Inc. ("NICE Systems")(collectively, "Petitioners") submitted a joint verified petition to the New Jersey Board of Public Utilities ("Board") pursuant to N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10, requesting Board approval of a proposed transaction to transfer control of inContact to NICE Systems by merging inContact with a NICE systems direct subsidiary. inContact, the surviving entity, will continue to offer the same services in New Jersey at the same rates, terms, and conditions.

**BACKGROUND**

inContact is a Delaware corporation with principal business offices located at 75 West Towne Ridge Parkway, Tower 1, Sandy, Utah 84070-5522. The petition states that inContact provides an integrated software and cloud-based call center solution in all fifty states, the District of Columbia and Puerto Rico. inContact's primary business is its call center offering, which includes telecommunications services and Software as a Service ("SaaS") components.

In New Jersey, inContact (f/k/a UCN, Inc.) is authorized to provide facilities-based local exchange, telecommunications services, See 1/M/O the Petition of UCN, Inc. for a Certificate of Public Convenience to Offer Resold and Facilities-Based Local Exchange, Telecommunications Services Throughout the State of New Jersey, Docket No. TE104101370, Order dated March 24, 2005. inContact is also registered with the FCC to provide interstate telecommunications services and was granted international Section 214 authority in FCC File No. ITC-214-19980407-00234. inContact is authorized to provide local exchange interexchange telecommunications services in 48 states and in the District of Columbia.

NICE Systems is a Delaware corporation with principal business offices located at 461 From Road, 3<sup>rd</sup> 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.

## **DISCUSSION**

A merger agreement (the "Agreement") has been executed among NICE Systems, NICE, Ltd., inContact, and Victory Merger Sub Inc. ("Merger Sub"). NICE, Ltd. will acquire all of the voting securities of inContact post-merger. The underlying transactions are structured so NICE Ltd. will acquire ultimate ownership and control of inContact by merging MergerSub with and into inContact (the "Merger"), with inContact surviving as a post-merger wholly-owned subsidiary of NICE Systems. NICE Systems will remain a wholly-owned subsidiary of NICE, Ltd. post-merger. Petitioners, therefore, request Board approval for the authority to transfer control of inContact to NICE Systems (the "proposed transaction").

Petitioners state inContact's customers will remain customers of inContact, inContact customers will continue to receive services under the same rates, terms and conditions, and the only post-merger change will be to inContact as a direct, wholly-owned subsidiary of NICE Systems. Petitioners state NICE Systems is well qualified to control the continuing operations of inContact.

In support of the request, Petitioners further assert that the public interest is served by promoting competition among telecommunications providers, inContact will have access to the financial, operational, and managerial resources of NICE Systems, and such support will strengthen its competitive position, and inContact's customers will remain customers of inContact and will continue to receive services under the same rates, terms and conditions. Petitioners therefore claim the transaction will be transparent to inContact's customers and state inContact does not have an employee pension plan.<sup>1</sup>

Petitioners assert the acquisition will be conducted in a manner that will be transparent to customers and will not result in any immediate change of carrier for customers and in no event will result in the discontinuance, reduction, loss, or impairment of service to customers.

By letter to the Board dated July 29, 2016, the New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments stating it had no objection to the Board's grant of Petitioners' request under the Verified Joint Petition.

## **FINDINGS AND CONCLUSIONS**

In considering a request for authority to transfer control, the Board shall evaluate the impact of such an acquisition on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates. N.J.S.A. 48:2-51.1(a). The Board must be satisfied that positive benefits will flow to customers and the State of New Jersey and,

---

<sup>1</sup> The transfer of control of inContact to NICE Systems will be financed. A Joint Petition requesting financing approval was filed simultaneously in BPU Docket No. TF16070622. Petitioners' representation that inContact does not have an employee pension plan was also made in that docketed financing approval application.

at a minimum, that there are no adverse impacts on any of the criteria delineated in N.J.S.A. 48:2-51.1. N.J.A.C. 14:1-5.14(c). Also, pursuant to N.J.S.A. 48:3-7 and N.J.S.A. 48:3-10, the Board must determine whether the public utility, or a wholly-owned subsidiary thereof, may be unable to fulfill its pension obligations to any of its employees.

After a thorough review of the Joint Petition and all related documents, the Board concludes that there will be no negative impact on rates or service quality since Petitioners' New Jersey customers will continue to receive the same services at the same rates and under the same terms and conditions. The Board further concludes there is no pension plan impact to employees. Also, the Board is satisfied that positive benefits will flow to customers based upon the record, as the transaction will strengthen Petitioners' competitive posture in the telecommunications market due to their access to additional resources.

Accordingly, the Board **FINDS** that the proposed transaction is consistent with applicable law, is not contrary to the public interest and will have no material impact on the rates of current customers, or on New Jersey employees. The Board also **FINDS** that the proposed transaction will have no impact on the provision of safe, adequate and proper service, and will positively benefit competition. Therefore, after investigation, having considered the record and exhibits submitted in this proceeding, the Board **HEREBY ORDERS** that Petitioners are authorized to proceed with the proposed transaction.

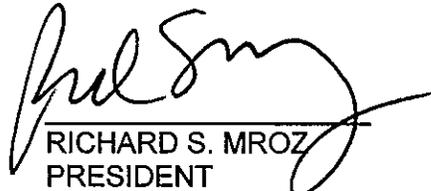
This Order shall be effective on September 3, 2016.

DATED:

8/24/16

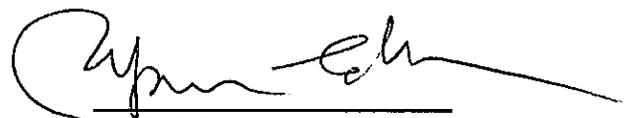
BOARD OF PUBLIC UTILITIES  
BY:

  
JOSEPH L. FIORDALISO  
COMMISSIONER

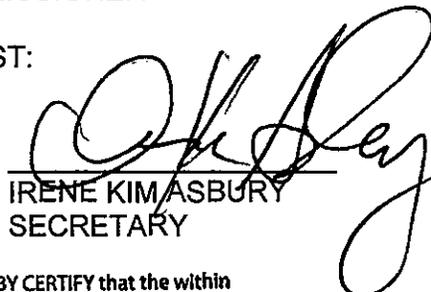
  
RICHARD S. MROZ  
PRESIDENT

  
MARY-ANNA HOLDEN  
COMMISSIONER

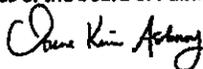
  
DIANNE SOLOMON  
COMMISSIONER

  
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



VERIFIED JOINT PETITION OF INCONTACT, INC. AND NICE SYSTEMS, INC. FOR  
APPROVAL FOR THE TRANSFER OF CONTROL OF INCONTACT, INC. TO NICE  
SYSTEMS, INC.  
DOCKET NO. TM16070621

SERVICE LIST

Daniel Lloyd  
Matthew Crumley  
Gregory Ayers  
inContact, Inc.  
75 West Towne Ridge Parkway, Tower 1  
Sandy, Utah 84070-5522  
[daniel.lloyd@incontact.com](mailto:daniel.lloyd@incontact.com)  
[matthew.crumley@incontact.com](mailto:matthew.crumley@incontact.com)  
[greg.ayers@incontact.com](mailto:greg.ayers@incontact.com)

Allison D. Rule  
Jacqueline R. Hankins  
Joanna G. Wallace  
Marashlian & Donahue, PLLC  
The CommLaw Group  
1420 Spring Hill Road, Suite 401  
Tysons, Virginia 22102  
[adr@commllawgroup.com](mailto:adr@commllawgroup.com)

Jeff Levenberg  
General Counsel  
NICE Systems, Inc.  
461 From Road  
Third Floor  
Paramus, New Jersey 07652  
[jeff.levevberg@nice.com](mailto:jeff.levevberg@nice.com)

John Beahn  
Joshua Gruenspecht  
Skadden, Arps, Slate Meagher & Flom LLP  
1440 New York Avenue, NW  
Washington, DC 20005  
[John.beahn@skadden.com](mailto:John.beahn@skadden.com)  
[Joshua.gruenspecht@skadden.com](mailto:Joshua.gruenspecht@skadden.com)

Stefanie A. Brand, Esq., Director  
Division of Rate Counsel  
140 East Front Street, 4<sup>th</sup> Floor  
Post Office Box 003  
Trenton, NJ 08625-0003  
[sbrand@rpa.state.nj.us](mailto:sbrand@rpa.state.nj.us)

Maria Novas-Ruiz, Esq.  
Division of Rate Counsel  
140 East Front Street, 4<sup>th</sup> Floor  
Post Office Box 003  
Trenton, NJ 08625-0003  
[mnovas-ruiz@rpa.state.nj.us](mailto:mnovas-ruiz@rpa.state.nj.us)

Lawanda R. Gilbert, Director  
Rocco Della Serra  
Office of Cable Television and  
Telecommunications  
Board of Public Utilities  
44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, NJ 08625-0350  
[Lawanada.gilbert@bpu.state.nj.us](mailto:Lawanada.gilbert@bpu.state.nj.us)  
[rocco.della-serra@bpu.state.nj.us](mailto:rocco.della-serra@bpu.state.nj.us)

Veronica Beke, Esq.  
Department of Law & Public Safety  
Division of Law  
124 Halsey Street  
Post Office Box 45029  
Newark, NJ 07101-45029  
[veronica.beke@dol.lps.state.nj.us](mailto:veronica.beke@dol.lps.state.nj.us)