Decision **PROPOSED DECISION OF ALJ MILES** **(Mailed 10/25/16)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of inContact, Inc. (U5979C) and NICE Systems, Inc. for Approval of the Transfer of Control of inContact, Inc. Pursuant to the Provisions of Public Utilities Code Section 854(a).	Application 16-07-011 (Filed July 5, 2016)

DECISION AUTHORIZING TRANSFER OF CONTROL OF inContact, INC. TO NICE SYSTEMS, INC.

Summary

This decision grants the unopposed joint application filed July 15, ~~2016~~2016, by inContact, Inc. (U5979C) and NICE Systems, Inc. for authorization, pursuant to Public Utilities Code Section 854, to transfer control of inContact, Inc. to NICE Systems, Inc.

1. Parties to the Transaction

inContact, Inc. (inContact) is a Delaware corporation with its business office located at 75 West Towne Ridge Parkway Tower, Sandy, Utah 84070-5522.[1] It holds a certificate of public convenience and necessity (CPCN), issued June 30, 2005 (U-5979-C), to serve as a certified local carrier, certified local reseller and interexchange carrier throughout the state of California[2]

[1] *See* Application at 2.

[2] ~~The CPCN (U5979C) was granted to UCN, Inc. by Decision (D.) 05-06-050 in proceeding A.04-11-012. Effective January 1, 2009, UCN, Inc. changed its company name to inContact.~~

.[2]

It also registered with the Commission to provide Interconnected Voice over Internet Protocol (VoIP) services on May, 14, 2014 (U1270C). inContact provides integrated software and cloud-based call center services in all 50 states, the District of Columbia and Puerto Rico. It provides domestic and international call transmission in conjunction with its software-supported features such as call queuing, auto attendant and analytics.[3]

NICE Systems, Inc. (NICE) is a Delaware corporation with its principal business office located at 461 From Road, 3rd Floor, Paramus, New Jersey 07652.[4] It is a global market leader in analytics-based customer service applications.

For purposes of this Application[5]

,[5]

NICE and inContact are collectively the "Applicants."[6]

[2] The CPCN (U5979C) was granted to UCN, Inc. by Decision (D.) 05-06-050 in proceeding Application (A.) 04-11-012. Effective January 1, 2009, UCN, Inc. changed its company name to inContact.

[3] *Id.*

[4] *See* application at 3. ~~Nice~~NICE is a wholly -owned direct subsidiary of NICE, Ltd., an Israeli company whose principal business office is located at 13 Zarchin Street, P.O. Box 4310602, Ra'anana, Israel. NICE shares are listed on the Tel Aviv (Israel) stock exchange and in the United States on the National Association of Securities Dealers Automated Quotations System (NASDAQ).

~~[5] The Application includes an "Appendix A – Agreement and Plan of Merger as of May 17, 2016 among inContact, Inc., NICE Systems Ltd. and Victory Merger Sub Inc." (Merger Agreement.)~~

[5] The Application includes an "Appendix A – Agreement and Plan of Merger as of May 17, 2016 among inContact, Inc., NICE Systems Ltd. and Victory Merger, Sub, Inc." (Merger Agreement.)

[6] A third entity, called Victory Merger Sub, Inc. (Victory) has been created for the sole purpose of effectuating the acquisition. Victory is a Delaware corporation and wholly -owned indirect subsidiary of NICE. Its principal business office is located at 461 From Road, 3rd Floor, Paramus, New Jersey 07652. Victory will not exist post-transaction.

2. Proposed Transaction

The application describes a transaction whereby NICE Systems, Inc. would acquire ownership and control of inContact by merging Victory into inContact, with inContact surviving the merger as a wholly-owned subsidiary of NICE.[7]

Applicants indicate that NICE's acquisition of inContact will be in the public interest because the merger will enhance the ability of inContact and NICE to compete more effectively in the telecommunications marketplace.[8] Applicants represent that inContact will benefit from the financial, operational and managerial resources of NICE, thereby expanding inContact's and NICE's respective operations, which will strengthen the competitive position of both companies.[9] Following the acquisition, inContact's customers will continue to be served by inContact and thus will receive services under the same rates, terms and conditions.[10]

inContact and NICE are non-dominant competitive carriers that do not control a substantial portion of the California telecommunications market, and will remain so after the merger.

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[7] *See* Application at 4 and Merger Agreement at A-13. Because Victory is a wholly owned subsidiary of NICE created for the sole purpose of consummating the transaction, and will not exist post-transaction, no further references will be made to Victory in this decision. Following the acquisition, NICE will own all of the voting shares of inContact.

[8] Application at 5.

[9] *Id*.

[10] Application at 6.

3. Procedural Matters

The applicants filed the application on July 5, 2016.[11]

Notice of the Application was published in the Commission's Daily Calendar on July 22, 2016. On August 18, 2016, the Commission preliminarily categorized the application as ratesetting.[12] No protests to the application were filed.

On September 16, 2016, the assigned Administrative Law Judge requested additional information from the Applicants, which they filed on September 27, 2016.[13]

On October 10, 2016, the parties agreed to a shortened comment period.

4. Discussion

The Applicants request Commission authorization pursuant to Public Utilities Code § 854 for NICE's acquisition of and control of inContact. Section 854[13][14] states, in relevant part, as follows:

> No person or corporation…shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing

[11] The exhibits filed with the Application are: **Exhibit A –** inContact and Nice Systems, Inc. Certificates of Status to Transact Intrastate Business in California; **Exhibit B –** Biographies of inContact and Nice Systems, Ltd Management Teams; **Exhibit C –** Corporate Structure Organization Charts (Current and Post Merger Status); **Exhibit D –** Agreement and Plan of Merger dated May 17, 2016; **Exhibit E –** Financial Material (Filed under Seal); **Exhibit F –** Scoping Information for New Applications (Rule 2.1 (c) , 1.3 and Article 7).

[12] The proceeding was assigned to a Commissioner and ALJAdministrative Law Judge on August 19, 2016. (*See* Section§ 7 below.)

[13] On September 27, 2016 Applicants filed a Response attaching: an Exhibit A - Unaudited bank statement for the month ending August 2016; an Exhibit B – Certification under Penalty of Perjury by Corporate Secretary and General Counsel of inContact, Inc. , an Exhibit C–Certification under Penalty of Perjury by President of Nice Systems, Inc., and an Exhibit D–Certification Under Penalty of Perjury by President and Director of Victory Merger Sub, Inc. Applicants also filed a Motion for Leave to File Under Seal the Exhibit A bank statement.

[13][14] All Section references are to the Public Utilities Code, unless otherwise stated.

> authorization to do so from the commission…Any merger, acquisition, or control without that prior authorization shall be void and of no effect.

Section 854 requires that the Commission review a proposed transaction, before it takes place, in order to assure that it is in the public interest. The Commission has broad discretion under § 854 to approve or reject a proposed transaction. If necessary and appropriate, the Commission may attach conditions to a transaction in order to protect and promote the public interest.[~~14~~15]

As discussed above, inContact holds a CPCN to provide resold local exchange and interexchange services throughout the State of California.[~~15~~16] To date, inContact has complied with all performance bond, surcharge and fee reporting requirements of the Commission.

However, when a company that does not possess a CPCN desires to acquire control of a company which possesses a CPCN, the Commission will scrutinize the acquiring company as if it were a new applicant seeking the type of CPCN held by the company being acquired.

4.1. Financial Qualifications

To acquire control of inContact, which operates as a non-dominant ~~interexchange carrier (~~NDIEC~~)~~, NICE must possess a minimum of $25,000 unencumbered cash or cash equivalent, reasonably liquid and readily available to demonstrate that it has sufficient resources to cover any deposits that may be required by local exchange carriers and/or interexchange carriers with which it may contract in order to provide service. NICE must demonstrate that it meets the minimum financial requirement by submitting any of the eight financial

[~~14~~15] D.01-06-007, 2001 Cal. PUC LEXIS 390, *24.

[~~15~~16] inContact is a non-dominant interexchange carrier (NDIEC) and has no facilities within the state of California.

instruments described in D.91-10-041,[~~16~~17]

or by submitting an audited balance sheet and income statement demonstrating sufficient cash flow.

NICE Financial Statements

As part of the exhibits to the application, Applicants provided an online bank account statement for NICE, and an unaudited income statement, but none of the other eight financial instruments required under D.91-10-041.

The website for NICE includes a link to its United States Securities and Exchange Commission (SEC), Form 20-F, which includes an Annual Report Pursuant to ~~§§~~§ 13 or 15(d) of the Securities Exchange Act of 1934, for the fiscal year ended December 31, 2015, (NICE annual report).[~~17~~18] The audited annual report included within Form 20-F reflects that NICE meets the minimum financial requirement and complies with D.13-05-035.

[~~16~~17] D.91-10-~~041,~~041 at 13 "Acceptable Financial Support" lists the following financial instruments that will adequately support the financial requirements for a CPCN: (a) Cash or cash equivalent, including cashier's check, sight draft, performance bond proceeds, or traveler's checks; (b) Certificate of deposit or other liquid deposit, with a reputable bank or other financial institution; (c) Preferred stock proceeds or other corporate shareholder equity, provided that use is restricted to maintenance or working capital for a period of at least 12 months beyond certification of the applicant by the Commission; (d) ~~letter~~Letter of credit, issued by a reputable bank or other financial institution, irrevocable for a period of at least 12 months beyond certification of the application by the Commission; (e) Line of credit or other loan, issued by a reputable bank or other financial institution, irrevocable for a period of at least 12 months beyond certification of the applicant by the Commission, and payable on an interest only basis for the same period; (f) Loan, issued by a qualified subsidiary, affiliate of applicant, or a qualified corporation holding controlling interest in the applicant, irrevocable for a period of at least 12 months beyond certification of the applicant by the Commission, and payable on an interest-only basis for the same period; (g) Guarantee, issued by a corporation, copartnership, or other person or association~~ or association~~, irrevocable for a period of at least 12 months beyond certification of applicant by the Commission, and (h) Guarantee, issued by a qualified subsidiary, affiliate of applicant, or a qualified corporation holding controlling interest in the applicant, irrevocable for a period of at least 12 months beyond certification of the applicant by the Commission.

[~~17~~18] In an e-mail ruling dated October 11, 2016, the ALJ ordered NICE to file the annual report with the Commission by the close of business October 14, 2016.

inContact, Inc. Financial Statements

The website for inContact, Inc. includes a link to its SEC Form 10-K, which includes an Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the fiscal year ended December 31, 2015 (inContact annual report).[18][19]

The application and the annual report which is part of Form 10-K, discloses litigation against inContact in the states of Utah[19][20] and New York[20].[21] There were also two patent infringement lawsuits filed against inContact in the United States District Court (Delaware) in 2014.[21][22]

inContact maintains a performance bond with the Commission. As a NDIEC, it is required to maintain a performance bond of at least $25,000, which must remain in effect during all periods of operations in order to secure the payment of any monetary sanction (i.e., fines, penalties, taxes, surcharges, fees

[18][19] In an e-mail ruling dated October 11, 2016, the ALJ ordered inContact to file the annual report with the Commission by the close of business October 14, 2016.

[19][20] *See* Application at page 6. *California College, Inc., et al., v. UCN, Inc., et. al.* filed in May 2009, is still pending in Utah state court.

[20] A demand for arbitration regarding a dispute related to a software service agreement was filed by Info Directions, Inc. against inContact on May 2, 2014. The arbitration hearing was scheduled to take place April 11-15, 2016. The current status of the arbitration is not apparent. In addition, in May 2016, inContact entered into a consent decree with the Federal Communication Commission to settle and resolve an investigation involving rural call completion issues.

[21] A demand for arbitration regarding a dispute related to a software service agreement was filed by Info Directions, Inc. against inContact on May 2, 2014. The arbitration hearing was scheduled to take place April 11-15, 2016. The current status of the arbitration is not apparent. In addition, in May 2016, inContact entered into a consent decree with the Federal Communication Commission to settle and resolve an investigation involving rural call completion issues.

[21][22] *See* Form 10-K, at F-29 and 30. A patent infringement suit against inContact was filed on January 15, 2015 by Microlog Corporation and is still pending. A patent infringement suit against inContact filed by Pragmatus Telecom, LLC was settled.

and restitution) that may be imposed should an enforcement proceeding be brought against it.[22][23]

The various pending actions against inContact, which have arisen subsequent to the time that it registered with the Commission, suggest that future disputes may arise in the course of inContact's and NICE's business dealings within California, and that such disputes could potentially lead to future monetary sanctions or enforcement proceedings against one or both companies.[23][24]

Accordingly, we deem it appropriate to require NICE to submit an additional performance bond of $125,000 payable to the Commission, which combined with the $25,000 already maintained by inContact, will result in $150,000 of coverage.[24][25] The combined $150,000 bond is to remain in effect for a period of two full years from the effective date of this decision, then may be reduced to $25,000, but must remain in effect throughout the duration of inContact/NICE's operation within the State of California, as required under D.13-05-035.

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[22][23] D.13-05-035.

[23][24] We note that, in June 2005, when D.05-06-050 granted inContact (then UCN) authority to provide resold and limited facilities-based competitive local exchange services throughout this state, the Commission also noted a history of regulatory problems, including revocations of operating authority in other states, but overlooked them because of compliance with Commission requirements in provision of inter -and ~~intralata~~intraLATA resold services to business and residential customers in California. Since that time, however, the Commission has instituted a performance bond requirement, signaling an increased level of scrutiny and safeguards designed to ensure adequate security for potential sanctions, fines, etc., against a carrier.

[24][25] The $150,000 bond will secure the payment of any monetary sanction that may be imposed against NICE should an enforcement proceeding be brought against it or its subsidiary inContact. § 1013(f) does not set a figure for the performance bond. In D.13-05-035, the Commission noted that some carriers requested that the bond requirement be limited to a maximum amount of $500,000. (*See* D.13-05-035 at 27.) Ultimately, the Commission concluded it appropriate to require all wireless registrants and CPCN holders to obtain a performance bond of *at least* $25,000. (*See* D.13-05-035 at 29 and Ordering Paragraphs (OPs) 3, 4 and 6.) Accordingly, the Commission has discretion to require that applicants post a performance bond of $125,000, if warranted.

4.2. Technical Qualifications

NICE is required to make a reasonable showing of technical expertise in telecommunications or a related business, to assure the Commission that it has sufficient technical qualifications to continue inContact's business operations within the state of California.

NICE is involved in the design of analytics-based customer service applications and has global clients. It does business in the United States, Asia, Europe and Latin America. The application represents that, after the transfer of control, inContact will be a wholly -owned subsidiary of NICE but customers will continue to receive services from inContact under the same rates, terms and conditions.[25][26] NICE's management team clearly demonstrates technical expertise in telecommunications sufficient to operate as a telecommunications provider. Exhibit B to the Application contains the biographies of NICE's board of directors and management team.[26][27]

However, because inContact will continue to provide day -to -day services to its customers, it is clear that NICE will have sufficient technical qualifications within its organization to continue inContact's business operations within the state of California.

[25][26] Application at 5.

[26][27] Members of the NICE management team include: Barak Eilam, Director of NICE and Chief Executive Officer (more than 20 years in telecommunications industry), Eran Porat, Director of NICE and Corporate Vice President, Finance (more than 20 years in accounting and corporate finance), Barry Cooper, Chief Operating Officer of NICE since 2011, Tom Dziersk, Director of NICE and President (who held senior executive leadership roles at other sales and marketing companies), Jeff Levenberg, Director of NICE and General Counsel for Nice Americas (nine years of experience at NICE), William Vogt, Vice President of Finance for Nice Americas, ☼
Joe Friscia, President of NICE Actimize (20 years of experience in high tech firms).

4.3 Certifications

Applicants are required to disclose certification issues in other jurisdictions as well as in California, and failing to disclose these or making a false representation to the Commission is a violation of Rule1.1 of the Commission's Rules of Practice and Procedure.

Section VII(C) "Prior Sanctions" of the application provides the Applicants' certification that no affiliate, officer, director, partner, agent or owner (directly or indirectly) of more than 10 percent of Applicants, or any person acting in management capacity for Applicants, has: (a) held a similar position with a company that filed for bankruptcy; (b) has been personally found liable or held a similar position with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers of others; (c) been convicted of a felony; (d) been (to his/her knowledge) the subject of a criminal referral by a judge or public agency; (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of sections 17000 *et seq*., 17200 *et seq*., or 17500 *et seq*. of the California Business and Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; or (g) been found to have violated any statute, law or rule pertaining to public utilities or other regulated industries; or (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of

any action by any regulatory body, agency, or attorney general.[27][28]

The application reflects that the only entity holding more than 10 percent of inContact equity will be NICE, which will hold 100 percent of inContact. NICE Ltd. (Israel) holds 100 percent of NICE.[28][29]

4.4 California Environmental Quality Act (CEQA)

The CEQA requires the Commission act as the designated lead agency to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. inContact has no facilities within California. The transfer of control that is the subject of this application proposes no new construction and requests no authority for future construction.[29][30] The transfer of control transaction has no potential for either a direct or indirect change in the environment, therefore, granting this application will have no adverse impact upon the environment. Accordingly, the application is exempt from review under CEQA. Should inContact or NICE seek to construct facilities or structures in the future, Applicants must file for additional authority, and submit to any necessary CEQA review.

[27][28] This certification is required by D.13-05-035 and must be verified, under penalty of perjury by an officer or principal of the company. The application attaches verifications, dated June 27, 2016, and signed under penalty of perjury, by Daniel G. Lloyd, Corporate Secretary and General Counsel of inContact, and by Thomas Dziersk, President of NICE that each has read the contents of the application which is true and correct to the best of their knowledge, information and belief. Mr. Lloyd, Mr. Dziersk and Barak Eilam, President and Director of Victory also submitted certifications under penalty of perjury dated September 20, ~~2016.~~2016, as part of Applicant's September 27, 2016 Response to the ALJ's request for additional information.

[28][29] *See* Exhibit C to Application~~–~~ which is a chart showing the legal entity structure.

[29][30] *See* Application at 8.

4.5 Summary

Based on the above analysis of financial and technical qualifications, and after determination that environmental review is not necessary, we find that the transaction is not adverse to the public interest and grant the application pursuant to § 854.

5. Categorization and Need for Hearings

In Resolution ALJ 176-3382, dated August 18, 2016, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received, and it is not necessary to disturb the preliminary determinations.

6. Reduction of Comment Period

Pursuant to Rule 14.6(b) of the Commission's Rules of Practice and Procedure, the Applicants stipulated to reduce the 30-day public review and comment period required by Section 311 of the Pub. Util. Code. Pursuant to the parties' stipulation, the comment period is reduced to 10 days. The Proposed Decision was mailed on October ~~___~~,25, 2016, and no comments were filed ~~on November ___2016.~~.

7. Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner and Patricia B. Miles is the assigned ALJ in this proceeding.

Findings of Fact

1. The Commission reviews requests for transfer of control of regulated utilities under § 854 in order to ensure that each transfer is in the public interest and is not adverse to the interests of customers.

2. An applicant seeking approval to acquire a telecommunications provider, is subject to the same scrutiny given to an applicant seeking initial authority to provide such services within California.

3. inContact (U5979C) is a Delaware corporation, which holds a CPCN to serve as a local carrier, local reseller and interexchange carrier throughout the state of California. inContact is also registered with the Commission to provide interconnected VoIP services (U1270C).

4. inContact has complied with all performance bond, user fee and surcharge reporting requirements of the Commission.

5. NICE is a publicly traded Delaware corporation whose shares are listed on the Tel Aviv (Israel) stock exchange and in the United States on NASDAQ. NICE seeks to acquire inContact as a wholly -owned subsidiary.

6. Victory is a Delaware corporation and wholly owned subsidiary of NICE formed solely for the purpose of completing the acquisition of inContact by NICE.

7. NICE does not hold a CPCN authorizing the company to provide telecommunications services in California.

8. If the transfer of control is approved, operations of inContact will continue without interruption, and inContact will continue to provide services to California customers under the same terms as prior to the acquisition.

9. Applicant NICE filed its SEC Form 20-F, which includes an audited annual report for the fiscal year ended December 31, 2015, which reflects that NICE meets the minimum financial requirements for issuance of a CPCN authorizing the provision of resold local exchange telecommunications services in California.

10. NICE management possesses sufficient experience, knowledge, and technical expertise to provide resold telecommunications services in California. Additionally, if this acquisition is approved, NICE's wholly -owned subsidiary inContact, will continue under its existing day -to -day management, which also ~~have~~has the required telecommunications expertise.

11. Granting transfer of control of inContact to NICE to provide resold local exchange and interexchange telecommunications services will not have a significant adverse effect upon the environment.

12. No one associated with or employed by NICE as an affiliate, officer director, partner, or owner of more than 10 percent of NICE was: previously associated with a telecommunications carrier that filed for bankruptcy; was sanctioned by the FCC or any state regulatory agency for failure to comply with any regulatory statute, rule, or order; or was previously associated with any telecommunication carrier that has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of § 17000, *et seq*. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations.

13. inContact has been the subject of litigation subsequent to the time that it registered with the Commission, which suggests that future disputes may arise in the course of inContact's and NICE's business dealings within California.

14. To secure the payment of any monetary sanction (i.e., fines, penalties, taxes, surcharges, fees, and restitution) that may be imposed should future disputes arise, and enforcement proceedings are brought against inContact or NICE, a performance bond of $150,000 payable to the Commission is appropriate.

15. Pursuant to Rule 11.4, NICE filed ~~a motion~~ motions for leave to file Exhibits E ~~and~~ to the Application and Exhibit A to the Response filed September 27, 2016, as confidential material under seal.

16. Notice of this application appeared on the Commission's Daily Calendar on July 22, 2016.

17. No protests to this application were filed.

19. No hearing is necessary.

Conclusions of Law

1. NICE meets the Commission's financial requirements for approval of a transfer of control.

2. The transfer of control is not adverse to the public interest.

3. NICE has sufficient technical expertise in telecommunications to meet Commission requirements.

4. NICE should be granted approval to acquire inContact and to provide service as a local reseller and interexchange carrier, as well as provider of VoIP services throughout the state of California, subject to the terms and conditions set forth in the OPs, including obtaining a $150,000 performance bond, as set forth in this decision.

5. Applicant's request for confidential treatment of Exhibit E to the Application and Exhibit A to its Response dated September 27, 2016 should be granted pursuant to Rule 11.5, GO 66-C and D.06-06-066.

5. The decision should be effective immediately.

6. Evidentiary hearings were not necessary.

7. A.16-07-011 should be closed.

O R D E R

IT IS ORDERED that:

1. The joint application of inContact, Inc. (U5979C and U1270C) and NICE Systems, Inc., pursuant to Public Utilities Code Section 854, to permit the acquisition and transfer of control of inContact, Inc. to NICE Systems, Inc. is approved.

2. After acquisition of inContact, Inc. by NICE Systems, Inc., inContact, Inc. will remain subject to all of the requirements previously set forth by the Commission in Decision 05-06-050 which granted inContact, Inc., the certificate of public convenience and necessity to provide limited facilities-based and resold local exchange telecommunications services as a competitive local carrier.

3. Within five (5) days of the closing of the transaction, NICE Systems, Inc., and inContact, Inc., shall notify the Commission's Communications Division, by letter, of the consummation of the transaction to acquire inContact, Inc.

4. After acquisition of inContact, Inc., NICE Systems, Inc. will be subject to the performance bond requirements in Decision 13-05-035 applicable to inContact, and must obtain a performance bond in the amount of $150,000, issued by a corporate surety company authorized to transact surety business in California, to facilitate the collection of fines, penalties, taxes, surcharges, fees and restitution, and the California Public Utilities Commission must be listed as the obligee on the bond.

5. The $150,000 performance bond must remain in effect for a period of two years from the effective date of this decision. Thereafter, NICE Systems, Inc., must maintain a minimum performance bond of $25,000 to facilitate the collection of fines, penalties, taxes, surcharges, fees and restitution, in accordance

with Decision 13-05-035. The $25,000 bond must be a continuous bond (i.e., there will be no termination date on the bond.

6. Not later than five days after consummation of the acquisition of inContact, Inc., NICE Systems, Inc. must submit a Tier-1 advice letter to the Director of the Communications Division, with a copy of the executed bond of $150,000 required by Ordering Paragraph 4. Not later than five days before expiration of the $150,000 performance bond, NICE Systems, Inc. must submit a Tier-1 advice letter to the Director of the Communications Division, providing evidence of a continuous performance bond of at least $25,000, in accordance with Decision 13-05-035.

7. NICE Systems, Inc. must not allow its performance bond to lapse during any period of its operation in California. Pursuant to Decision 13-05-035, the Commission may revoke a certificate of public convenience and necessity if a carrier is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.

8. The confidential portions of the record, consisting of Exhibit E to the Application and Exhibit A to inContact, Inc.'s and NICE Systems, Inc.'s Response dated September 27, 2016 are sealed, pursuant to Rule 11.5 of the Commission's Rules of Practice and Procedure

9. ~~8.~~ Evidentiary hearings are not necessary.

10. ~~9.~~ Application 16-07-011 is closed.

This order is effective today.

Dated _____, at San Francisco, California.