

**Commonwealth of Massachusetts  
Supreme Judicial Court**

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No. DAR-26638  
Appeals Court Case No. 2019-P-0162

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CITRIX SYSTEMS, INC.,  
*Plaintiff-Appellant,*

v.

COMMISSIONER OF REVENUE,  
*Defendant-Appellee.*

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On Appeal from a Decision of the Appellate Tax Board

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**Application for Leave to Obtain  
Direct Appellate Review**

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## **CORPORATE DISCLOSURE STATEMENT**

In accordance with S.J.C. Rule 1:21, the Appellant, Citrix Systems, Inc. (“Citrix”), states that it has no parent corporation and that there is no publicly-held corporation that owns 10 percent or more of the stock of Citrix.

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## **I. INTRODUCTION AND REQUEST FOR DIRECT APPELLATE REVIEW**

The Massachusetts sales tax statute (G.L. c. 64H) imposes a tax on the sale of standardized computer software but not on the sale of services (other than telecommunications services). This appeal presents a question of first impression: whether sales of services that are provided to the customer using computer software and networks that the customer can access over the Internet should be treated for tax purposes as sales of services or sales of the underlying software. Many of the country's largest Internet companies provide this type of services to their customers.<sup>1</sup>

This question has attracted the attention of the Commissioner of Revenue (the "Commissioner"), other state revenue authorities, and commentators. The leading treatise on state taxation described the Commissioner's approach in this case (which the Board ultimately upheld) as "puzzling." 2 Hellerstein & Swain, *State Taxation* ¶ 13.06A[3][c][i] (3d ed. 2001, upd. Dec. 2018). The Commissioner's efforts to provide clearer guidance have failed.<sup>2</sup> The Court should grant direct appellate review in order

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<sup>1</sup> Examples include Google, Facebook, Amazon Web Services, eBay, Salesforce, Bloomberg, and Uber.

<sup>2</sup> On February 17, 2013, the Commissioner requested public comment on a Working Draft Directive addressing the question, which he has not yet finalized. See Working Draft Directive 13-xx (Feb. 17, 2013), *available at* <https://www.mass.gov/directive/working-draft-directive-13-xx-criteria-for->

to provide a clear and definitive rule for application by the Commissioner, the Appellate Tax Board (the “Board”), and the courts of the Commonwealth.

Because Chapter 64H treats sellers of tangible personal property and sellers of services differently in a number of respects (see pp. 14-16 below), a set of principles distinguishing between sales of tangible personal property and other sales has been needed since the sales tax was first enacted in 1966.<sup>3</sup>

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determining-whether-a-transaction-is-a-taxable. Before and after that abortive attempt at general guidance, the Commissioner issued at least twenty rulings on particular types of online offerings. *See* Letter Rulings 08-5 (Mar. 24, 2008), 08-6 (Mar. 26, 2008), 10-1 (Feb. 22, 2010), 11-2 (Mar. 4, 2011), 11-3 (Mar. 24, 2011), 11-4 (Apr. 12, 2011), 12-1 (Jan. 12, 2012), 12-4 (May 7, 2012), 12-5 (May 7, 2012), 12-6 (May 21, 2012), 12-8 (Nov. 8, 2013), 12-10 (Sept. 25, 2012), 12-11 (Sept. 25, 2012), 12-13 (Nov. 9, 2012), 13-2 (Mar. 11, 2013), 13-5 (June 4, 2013), 14-1 (Feb. 10, 2014), 14-4 (May 29, 2014), 16-1 (Jan. 8, 2016), 17-1 (Mar. 23, 2017). Representative commentary includes 2 Hellerstein & Swain, *supra*, ¶¶ 13.06A[1] & 13.06A[3] (3d ed. 2001, upd. through Dec. 2018) (recognizing difficulty of “any effort to force the complex reality of cloud computing into the Procrustean bed” of existing sales tax rules and describing different approaches to the classification question applied by state tax authorities) and Kranz & Kitamura, “Taxing Software & Cloud Computing: Yesterday’s Law, Today’s Technology,” 62 *State Tax Notes* 737, 741-743 (Dec. 12, 2011).

<sup>3</sup> *See, e.g.*, Emerg. Reg. No. 3(3) (Apr. 28, 1966) (distinguishing between taxable leases of tangible personal property and nontaxable service contracts in which the vendor uses tangible personal property to provide the services); Emerg. Reg. No. 10(1) & (2) (July 7, 1966) (treating advertising transactions as sales of services, notwithstanding transfer of collateral materials as part of the transaction, but treating commercial artists as vendors of tangible personal property, regardless of whether the art work is sold for single use or for reproduction); Emerg. Reg. No. 12(2) & (4) (July 7, 1966) (treating construction contractors as sellers of services or real property, but distinguishing installation contracts, which are treated instead as bundled

Those principles have required some adjustment to keep pace with the development of the digital economy, but they have largely been up to the task. In its decision below, however, the Board ignored the traditional rules for differentiating between property and service transactions. It relied instead on an overbroad and imprecise reading of both a 2005 legislative change (the “2005 Legislation,” described in the next paragraph) and an accompanying regulation issued by the Commissioner, 830 C.M.R. 64H.1.3(3)(a) (2006), to hold that any vendor that provides services in a manner that requires its customers to access the vendor’s computer servers over the Internet is making a taxable sale of the software on those servers.

Until 2005, computer software was treated as tangible personal property within the meaning of G.L. c. 64H, § 1, only if it met two criteria: (1) it was standardized, or “canned,” software (designed to be sold in the same form to multiple customers, rather than developed to fit the needs of a

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transfers of tangible personal property and installation services). *See also, e.g., Browning-Ferris Indus., Inc. v. State Tax Comm’n*, 375 Mass. 326, 328-30 (1978) (distinguishing dumpster rental charge from service fee for trash removal); *New York Times Co. v. Commissioner of Rev.*, 22 Mass. App. Tax Bd. Rep. 177, 189, 1997 WL 402605 (1997) (discussing case law “distinguishing sales or leases of property from sales of transportation services” and applying it to aircraft leasing transaction), *aff’d on other grounds*, 427 Mass. 399 (1998).

particular customer),<sup>4</sup> and (2) it was delivered to the customer on a tangible medium.<sup>5</sup> In the early part of the last decade, as the electronic download of software over the Internet became practical and eventually the dominant form of software transfer, the exception under which electronic transfers were not subject to tax threatened to swallow the rule that sales of canned software were taxable.<sup>6</sup> In 2005, therefore, the Legislature amended the statute to provide that “[a] transfer of standardized computer software, including but not limited to electronic, telephonic, or similar transfer, shall also be considered a transfer of tangible personal property.” St. 2005, c. 163, § 34 (the “2005

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<sup>4</sup> Under a regulation originally issued by the Commissioner in 1987, canned software is treated as computer equipment, the sale of which is generally subject to tax, while sales of custom software are treated as exempt professional services transactions. 830 C.M.R. 64H.1.3(2), (3), & (6) (1987). (Although similar concepts appeared in an earlier regulation, 830 C.M.R. 64H.06(6) (1981), the rule took its current form in the 1987 regulation.)

<sup>5</sup> See 830 C.M.R. 64H.1.3(12) (1987) (transfers of software not taxable “unless the vendor transfers an otherwise taxable storage medium imprinted with the programs”); DOR Directive 01-3 (May 8, 2001), *available at* <https://www.mass.gov/directive/directive-01-3-sales-tax-consequences-of-computer-software-load-and-leave-transactions> (describing non-taxability of electronic transfers of software and extending non-taxability to “load and leave” transactions).

<sup>6</sup> See DOR Directive 01-3 (May 8, 2001) (describing sales tax rule as well as difficulty, at that time, of transferring software electronically); Shakow, “Taxation of Cloud Computing and Digital Content,” U. Penn. Faculty Scholarship 475, pp. 9-11 (2013), [http://scholarship.law.upenn.edu/faculty\\_scholarship/475](http://scholarship.law.upenn.edu/faculty_scholarship/475) (discussing sales tax challenges raised by transition in mode of software delivery).

Legislation”).

Since 2005, however, new models have developed for the delivery of services using computer hardware and software. Online companies today provide services to customers using automated systems involving computer servers and software that is maintained and operated by the vendor.<sup>7</sup> Examples of this “software-as-a-service” or “SaaS” business model include Salesforce, Dropbox, and the Citrix Online Offerings described below.

The Board in this case ignored the historical rules for distinguishing sales of property from sales of services, and relied instead on an untenable reading of the 2005 Legislation to hold that Citrix’s Online Offerings were sales of software rather than services. In treating the ability of Citrix’s subscribers “to use” or have “access to” an online system driven by software as sufficient to give rise to a tax (ATB Op. 552<sup>8</sup>), the Board failed to articulate any limiting principle. The Board’s reading of the 2005 Legislation would potentially recharacterize the entire range of services provided using online software—from advertising to ride sharing to web hosting and virtualization

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<sup>7</sup> See Kranz & Kitamura, *supra* at 740-741 (describing different “cloud computing” service models).

<sup>8</sup> “ATB Op.” refers to the Board’s Findings of Fact and Report, reproduced in the Addendum beginning at page 44. Page references are to the Board’s advance sheet pagination, not to the Addendum pagination.

to database access—as software sales, even though none involves actually transferring control of any software product to a consumer.<sup>9</sup>

The Board’s ruling is incorrect as to Citrix and fails to provide necessary guidance to the many other market participants that provide software-based services to Massachusetts customers. The Court should grant direct appellate review in order to clarify how the sales tax applies to this critical sector of the Massachusetts (and national) economy. The Court should make clear, in particular, that software-as-a-service transactions like subscriptions to Citrix’s Online Offerings are not taxed as sales of software, because they do not involve a transfer of control over software for consideration and because their true object is the provision of online services.

## **II. STATEMENT OF PRIOR PROCEEDINGS**

### **A. The Distinction Between Sales of Tangible Personal Property and Sales of Services under the Massachusetts Sales Tax**

The Massachusetts sales tax differentiates between vendors selling

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<sup>9</sup> To date, enterprises in each of those businesses have been treated as service providers for sales tax purposes, so that, unlike vendors of tangible personal property, they pay tax on their business inputs and do not collect tax on their retail sales. *See* 830 C.M.R. 64H.1.2(3) (advertising); 830 C.M.R. 64H.25.1(16) (limousine business treated as transportation service); 830 C.M.R. 64H.1.3(9) (computer data processing treated as service); Letter Rulings 81-41 (May 27, 1981), 85-61 (operation of computer servers treated as data processing); 830 C.M.R. 64H.1.3(13) (database access treated as service transaction).

tangible personal property and those selling services in a number of respects. A vendor selling tangible personal property to Massachusetts customers is generally required to collect sales or use tax on sales of such property, while a vendor selling only services (other than telecommunications services) is not required to collect tax on its sales.<sup>10</sup>

Conversely, since the sales tax is a tax on retail consumption, a vendor that sells tangible personal property is often eligible for sales tax exemptions when it *purchases* property that contributes to its inventory. So, for instance, goods purchased for “resale in the regular course of business” are exempt from tax as part of the definition of “retail sale” in c. 64H, § 1, and purchases of

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<sup>10</sup> Section 2 of Chapter 64H technically imposes the tax (which the vendor collects from the customer under G.L. c. 64H, § 3) on “sales at retail ... of tangible personal property or of services performed in the commonwealth.” The reference to services, however, is a vestige of the abortive attempt in legislation enacted in 1990 to expand the retail tax to a lengthy list of services. *See* St. 1990, c. 121, §§ 42, 43 (amending Section 2 to add the services reference and simultaneously amending G.L. c. 64H, § 1, to add a list of taxable services, both effective March 6, 1991 under St. 1990, c. 121, § 111). Just as the 1990 amendments were to take effect, the extension of the tax to services was essentially repealed. *See* St. 1991, c. 4, § 5 (amending definition of “services” to provide “that the term services shall be limited to telecommunications services”); St. 1991, c. 4, § 2 (amending definition of “sale at retail” in Section 1 to exclude “professional, insurance, or personal service transactions which involve no sale or which involve sales as inconsequential elements for which no separate charges are made”). The only taxable class of services under current law is therefore telecommunications services.

certain materials and machinery used in manufacturing are exempt from tax under c. 64H, § 6(r)-(s). Those input exemptions are designed to avoid “pyramiding” of the sales tax;<sup>11</sup> they accordingly are not available for inputs that a vendor uses in providing services when those services are not subject to the retail tax.

Vendors selling services thus ordinarily pay a tax on all of the business inputs used in providing those services, but they collect no tax on the services they sell. Vendors selling tangible personal property generally collect tax on their sales of the property, but they are entitled to exemptions on many business inputs related to those sales.

**B. Citrix’s Application of the Property/Services Distinction in Filing its Sales Tax Returns**

Citrix timely filed sales and use tax returns for the tax periods at issue (ranging from 2007 through 2011) and timely paid the amounts shown as due

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<sup>11</sup> Tax “pyramiding” in the context of consumption taxes refers to the repeated taxation of the same value when a single economic product is transferred among firms as it moves from one stage of production to another. It is considered economically undesirable because, by imposing a higher tax burden on complex products where production is divided among multiple firms and a lower tax burden on products with few production stages or that are produced by a vertically integrated firm, the tax discriminates among industries and business structures. *See* Gamage & Shanske, “Tax Cannibalization and Fiscal Federalism in the United States,” 111 *Nw. U. L. Rev.* 295, 364-65 (2017); Chamberlain & Fleenor, “Tax Pyramiding: The Economic Consequences Of Gross Receipts Taxes,” 43 *State Tax Notes* 457 (Feb. 19, 2007).



thereon. ATB Op. 538, 539. In preparing those returns, Citrix treated some of its sales (the “Online Offerings” described below) as sales of services, not as sales of tangible personal property. *Id.* at 540. The Commissioner disagreed and ultimately assessed taxes on Citrix’s receipts from sales of the Online Offerings. *Id.*

The Commissioner first audited an initial set of Citrix’s returns (for the periods April, 2007, through June, 2009) and proposed a tax assessment with respect to the Online Offerings. *Id.* at 539. Before finalizing that assessment, the Commissioner considered a letter ruling request from Citrix, in response to which he ruled that sales of the Online Offerings would be treated as taxable sales of prewritten software. *Id.* at 539 n.2.<sup>12</sup>

The Commissioner subsequently assessed additional sales taxes based on that conclusion, together with penalties for substantial understatement of the tax (*see* G.L. c. 62C, § 35A(b)(2)), both for the tax periods involved in the initial audit and for a second set of tax periods involved in a subsequent audit (October, 2009, through December, 2011). ATB Op. 539-540. Citrix timely applied for abatement of the tax and penalties, which the Commissioner

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<sup>12</sup> The ruling was published as Letter Ruling 12-10 (Sept. 25, 2012), *available at* <https://www.mass.gov/letter-ruling/letter-ruling-12-10-screen-sharing-software-and-the-massachusetts-salesuse-tax>.

denied; Citrix then timely filed petitions with the Board. *Id.*

The Board held a hearing on Citrix’s petitions on February 10, 2016. Add. 42.<sup>13</sup> On April 12, 2017, the Board issued a decision abating the penalties but upholding the Commissioner’s tax assessments. Add. 40, 43. On November 2, 2018, the Board issued its Findings of Fact and Report, and on December 31, 2018, Citrix timely filed a notice of appeal. *Id.*

### **III. STATEMENT OF RELEVANT FACTS**

#### **A. Description of the Online Offerings**

During the tax periods at issue, Citrix sold monthly or annual subscriptions to three types of offerings, described below as “GoToMyPC,” “GoToAssist,” and “GoToMeeting” (collectively, the “Online Offerings”).<sup>14</sup> ATB Op. 540. While each offering had its own features, they all involved

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<sup>13</sup> “Add.” refers to the addendum to this Application, which is paginated consecutively with the Application. Although the docket sheet for Docket No. C321160, included in the Addendum at pages 38-40, erroneously shows the hearing occurring on February 9, 2016, the docket entries from December 15 and December 18, 2015, correctly state that the hearing was scheduled for February 10, 2016, together with the hearing in Docket No. C325421.

<sup>14</sup> Although the parties’ Statement of Agreed Facts (referred to herein as “Stip.,” and reproduced in relevant part in the Addendum beginning at page

Statement of Agreed Facts ¶¶ 66) called these screen-sharing services the “Online Offerings” (Stip. ¶¶ 113-18), the Board’s opinion refers to them as “Online Products” (*id.* at 540), or in some cases “software product[s]” or “software applications” (*id.* at 542, 543, 544). So as not to prejudge the question at issue, this Application uses the parties’ agreed terminology.

screen sharing. Specifically, in each offering, Citrix used its software and server network to maintain a screen-sharing connection among two or more computers (or other devices, such as a mobile phone or tablet). ATB Op. 540-541. Using that connection, a “remote” computer or device could be used to view, and in some cases control, the operations of a “host” computer. *Id.* Neither the hardware—the host and remote machines—nor the software running on those machines was provided by Citrix.<sup>15</sup> *Id.* at 541. Citrix used its own software and server network to “allow[] the user of the remote computer to see the screen output of the host computer and, if applicable, to share access to input control via keyboard and a pointing device.” *Id.*

GoToMyPC used the screen-sharing connection between two machines generally owned by the same person for the purpose of remote access. *Id.* at 542. A subscriber could use GoToMyPC to work remotely by accessing a work computer from home, or *vice versa*. The screen-sharing connection allowed the subscriber to see the screen output of the host computer on the remote device and to use the input functions of the remote device to operate the host computer. *Id.* at 542-543.

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<sup>15</sup> Citrix did provide “Endpoint Software” that was installed on the host and remote machines in order to connect them to the relevant Online Offering. ATB Op. 543 n.4.

Similarly, GoToAssist provided the same sort of remote access connection in order to facilitate online technical support. A GoToAssist subscriber would typically be a technical support professional or firm that needed to troubleshoot problems on computers operated by the subscriber's clients. *Id.* at 543. The GoToAssist connection would give the technical support professional real-time access to a client's computer in order to perform troubleshooting. *Id.* at 543-544.

Finally, customers with a subscription to GoToMeeting could take advantage of the screen-sharing connection provided by Citrix to engage in online meetings, presentations, demonstrations, and collaboration. *Id.* at 544.<sup>16</sup> The subscriber in this case (a meeting organizer) would operate a host computer and provide links to one or more third parties that would enable them to view the screen or portion thereof shared from the subscriber's host computer. *Id.* at 544-545.

For all three Online Offerings, Citrix used its proprietary software and dedicated network of servers and other computer hardware to maintain the screen-sharing connection. *Id.* at 542-545. At no time did a subscriber obtain

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<sup>16</sup> GoToMeeting included an offering branded under that name, as well as offerings branded as "GoToWebinar" and "GoToTraining," which provided more specialized online meeting environments. *See* ATB Op. 544.

a copy of or control over that software (or the accompanying network hardware), although both subscribers and non-subscribers were able to download free of charge the “Endpoint Software” needed to connect their computers to Citrix’s servers. *Id.*; Stip. ¶¶ 115, 120, 125, 129, 130.

**B. Citrix’s Sales of Subscriptions to the Online Offerings**

Citrix sold subscriptions to each of the Online Offerings for a monthly or annual fee; a subscription entitled the subscriber to initiate an unlimited number of screen sharing sessions during the subscription period. *Id.* at 541. Citrix marketed the Online Offerings to prospective subscribers as “services,” and its Subscription Agreements, invoices, and other customer-facing documents (forms or samples of which were introduced in evidence) consistently use that terminology. *Id.* at 542 n.3; see Stip. Ex. 79-91.<sup>17</sup> In congruity with the documentation, the subscribers themselves viewed the Online Offerings as services. Citrix’s witness testified at the hearing that

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<sup>17</sup> A typical reference appears in the first paragraph of the Terms and Conditions attached to Citrix’s Master Subscription Agreement:

**1. Description of Services.** Citrix Online’s remote access service products consist of GoToAssist®, GoToMeeting®, GoToWebinar® and GoToMyPC® (individually and collectively referred to as the “**Services**”), as more fully described in subsections (a) through (d) immediately below.

Stip. Ex. 84, p. 2. See also Stip. Ex. 85, ¶ 2 (Citrix Online Terms of Service, including similar description of services).

subscribers were “ultimately looking for” “the ability to connect with other entities” through screen sharing, and that what customers were paying for was “to access the service.” Tr. 35, 47.<sup>18</sup>

Under the subscription documents, Citrix did not transfer title to or possession of any software to its subscribers or grant them any license to use Citrix software (Stip. Ex. 84, 85), although subscribers were permitted to “access and use” certain applications “for the sole purpose of” receiving the service subscribed for (Stip. Ex. 84, ¶ 1(a)-(d); Stip. Ex. 85 ¶¶ 2.1-2.9).<sup>19</sup>

Citrix earned substantial revenues from the Online Offerings and, as a publicly-traded corporation, it issued (and filed with the U.S. Securities and Exchange Commission) annual shareholder reports in which it detailed its business activities and revenue sources. In those reports, Citrix described a separate “Online Services division,” consisting principally of the Online Offerings, and reported its online services revenues separately from those derived from software licenses and license updates.<sup>20</sup> The worldwide annual

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<sup>18</sup> “Tr.” refers to the transcript of the February 10, 2016, hearing. Cited pages of the hearing transcript are reproduced in the Addendum beginning at page 113.

<sup>19</sup> The Board quoted the “access and use” terminology from those agreements without noting the accompanying limitation on that access and use. *See* ATB Op. 542.

<sup>20</sup> *See* Stip. Ex. 74, pp. 3, 5, 34; Stip. Ex. 75, pp. 3, 5, 36; Stip. Ex. 76, pp. 4-5, 38; Stip. Ex. 77, pp. 4-5, 37; Stip. Ex. 78, pp. 6-7, 41. The annual report

revenues in that category ranged from \$213.7 million in 2007 to \$430.2 million in 2011 and represented between 15% and 20% of Citrix's total net revenues for each calendar year. Stip. Ex. 74-78, p. F-4.

### **C. Citrix's Activities in Providing the Online Offerings**

In providing the Online Offerings to its subscribers, Citrix used an extensive, dedicated network of web servers and other computer hardware (the "Network Hardware"),<sup>21</sup> along with proprietary software installed on its servers (the "Server Software"). ATB Op. 542, 546. In order to maintain, configure, and operate the Network Hardware and Server Software, Citrix employed a 130-person Technical Operations Team led by its Vice President of Technology Operations, Anshuman Kanwar, who testified before the Board. ATB Op. 546.

The Technical Operations Team, which was separate from Citrix's software development and customer service teams (see Tr. 40, 44-45), continuously monitored and reconfigured the Network Hardware and Server

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for 2011 (Stip. Ex. 78) continues to refer to the business unit selling the Online Offerings as Citrix's "Online Services division" but also introduces the term "Software as a Service" in reference to the business and its revenues.

<sup>21</sup> The Board summarized trial testimony about the extent and complexity of the Network Hardware by noting that it involved "between 5,000 and 7,000 servers, approximately 200 routers and switches, and vast storage capacity." ATB Op. 546.

Software to ensure that the system was providing adequate capacity to handle customer demand; to identify, diagnose, and resolve issues and faults (which could include substandard performance, malicious attacks, or overutilization); to control the routing of traffic on the network; and to test and deploy hardware and software upgrades. ATB Op. 546-547; Tr. 37-38, 57-58. The Team’s work, which Mr. Kanwar analogized variously to flying an airplane and operating a medical practice, required it to monitor one million data points approximately every five minutes and to respond to approximately 4,000 incidents every three months. Tr. 33, 36-37, 56-57. The parties stipulated that the activities of Citrix’s Technical Operations team amounted to “control[]” over the Network Hardware and Server Software. Stip. ¶ 115.

#### **IV. ISSUES OF LAW RAISED BY THIS APPEAL**

Whether the Appellate Tax Board erred in holding that Citrix’s receipts from sales of subscriptions for the Online Offerings were taxable receipts from the sale of computer software rather than non-taxable receipts from the sale of computer services.

#### **V. REASONS FOR GRANTING DIRECT APPELLATE REVIEW**

This case presents “questions of first impression [and] novel questions of law which should be submitted for final determination” to this Court. Mass. R. App. P. 11(a). But for one decision of an intermediate appellate court in



Michigan, the question presented is of first impression nationwide.

The legal distinction between taxable sales of computer software and nontaxable sales of computer services that the vendor uses software to provide is increasingly important as cloud computing, hosted software, and SaaS become more common. Existing Massachusetts law on classifying SaaS transactions is unclear. The Board's decision, based on a misreading of the 2005 Legislation and a conclusory assertion about the object of Citrix's subscribers in purchasing the Online Offerings, only adds to the confusion. Direct review is warranted not only to correct the Board's erroneous decision as to Citrix, but also to provide guidance on an important issue for the Commissioner, taxpayers, and the Board.

**A. The Correct Sales Tax Classification of "Software-as-a-Service" is Important and Warrants Direct Appellate Review**

A vendor selling tangible personal property in Massachusetts is generally required to collect sales or use tax, while a vendor selling only services (other than telecommunications services) is not.<sup>22</sup> Conversely, a vendor of tangible personal property is entitled to sales tax exemptions on many of its business inputs. As explained above (pp. 14-16), the

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<sup>22</sup> See G.L. c. 64H, § 2 (imposing tax); G.L. c. 64H, § 1 (limiting taxable "services" to "telecommunications services" and excluding "professional, insurance, or personal service transactions" from definition of "retail sale").

manufacturing, purchase-for-resale, and other input exemptions avoid “pyramiding” of the tax and are not available to vendors selling services.

Accordingly, the classification of a vendor’s sales has significant impacts on the sales taxation of both the vendor’s sales and its purchases. Because Citrix treated its Online Offerings as services, not tangible personal property, it did not collect sales tax when it sold them—and it also did not claim exemptions on purchases of the Network Hardware, any standardized software components that became part of the Server Software, or the machinery and materials used in “manufacturing” the Server Software.<sup>23</sup> The Board ruled otherwise and upheld tax assessments totaling approximately \$2.4 million for the periods at issue. *Stip.* ¶ 105. In doing so, the Board addressed the important question of how to classify SaaS transactions—as sales of software or of services—under Chapter 64H.

The issue affects more than just Citrix. SaaS and cloud computing have supplanted on-premises deployment as the dominant business models for delivering software-related services.<sup>24</sup> More generally, almost every

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<sup>23</sup> Citrix would have needed to claim those offsetting exemptions at the time of purchase (*see, e.g.*, G.L. c. 64H, § 8, requiring presentation of resale and exempt use certificates), and they would have affected its tax liabilities in the many jurisdictions in which its Network Hardware and Server Software were located, not just in Massachusetts.

<sup>24</sup> *See Kranz & Kitamura, supra* at 740-741.

significant online company—including Google, Facebook, Amazon Web Services, eBay, Salesforce, Bloomberg, and Uber—provides services that customers can access over the Internet and that are delivered using a combination of computer software and networks. The Commissioner and taxpayers need clear rules in order to determine whether provision of services using software is taxable or not, and also whether a SaaS vendor can claim exemptions on purchases of input materials.

Illustrating the scope of the issue, the Commissioner issued no fewer than twenty letter rulings between 2008 and 2017 addressing the software or service characterization of various transactions.<sup>25</sup> But taxpayers, commentators, and the Commissioner himself have had difficulty drawing a general rule from that series of fact-specific determinations. The leading state taxation treatise, after acknowledging the “troublesome state tax issues” raised by SaaS (2 Hellerstein & Swain, *supra*, ¶ 13.06A), criticized the Commissioner’s approach in this very matter as “puzzling” (*id.* at ¶ 13.06A[3][c][i], describing Letter Rulings 12-6 and 12-10 as examples of a “puzzling trend[]” to “casually” classify transactions as sales of software based on “perfunctory analysis”). Over six years ago, the Commissioner

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<sup>25</sup> See *supra* note 2.

attempted to craft general guidance on the question by circulating Working Draft Directive 13-xx for public comment, but it was never finalized. See *supra* note 2.

Despite the administrative resources the Commissioner has devoted to the issue, this matter is the first decided case in Massachusetts addressing the sales or use tax characterization of a SaaS transaction. Citrix has identified only one other decided case anywhere in the country. In *Auto-Owners Insurance Co. v. Department of Treasury*, the taxpayer had purchased subscriptions to remote access and online meeting offerings very similar to GoToMyPC and GoToMeeting. 313 Mich.App. 56, 63-64 (2015). The Michigan Court of Appeals determined that, while those offerings involved delivery of software under Michigan law (*id.* at 76-78), the transactions were nevertheless not taxable because the use of the software was incidental to the transaction's true object, which was the purchase of remote access and online meeting services (*id.* at 78-82).

**B. The Commissioner and Taxpayers Need Definitive Guidance to Properly Apply Sales Tax Rules to a Significant and Growing Industry**

Determining whether a SaaS transaction involves a taxable sale of tangible personal property under Chapter 64H raises a two-part inquiry: (1) has the vendor transferred title or possession of property to its customer,

as opposed to simply performing a service using its own property;<sup>26</sup> and (2) if both property and services are provided, is the true object of the transaction the purchase of the services or the property?<sup>27</sup> The Board’s decision below improperly short-circuited both parts of that inquiry. It incorrectly treated the 2005 Legislation as conclusively resolving the question whether a transfer had occurred, and it incorrectly determined the “object of the transaction” based on its own assumption about the objectives of Citrix’s subscribers rather than by applying the law to the evidence before it. Because of those errors, the Board not only reached the wrong result, it also failed to provide the guidance needed for the Commissioner and taxpayers to determine the character of any other SaaS transaction.

In order to have a “sale” of tangible personal property, the statute requires a “transfer of title or possession, or both, exchange, barter, lease, rental, conditional or otherwise ... for a consideration, in any manner or by any means whatsoever.” G.L. c. 64H, § 1. SaaS arrangements involve no

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<sup>26</sup> See G.L. c. 64H, § 1 (defining “sale” as “transfer of title or possession”); *New York Times*, 22 Mass. App. Tax Bd. Rep. at 188 (1997 WL 402605, \*8) & n.12 (distinguishing between property and services transactions and noting that transfer of possession is *sine qua non* of “sale” under statute).

<sup>27</sup> See 830 C.M.R. 64H.1.1(2)(a) (no sales tax when “real object of the transaction is the service itself”); *Houghton Mifflin Co. v. State Tax Comm’n*, 373 Mass. 772, 774 (1977).

transfer of title; taxability therefore turns on whether possession of the software is transferred to the customer. This same issue arises in distinguishing between a taxable lease of tangible personal property and a non-taxable transfer of services delivered using the property.<sup>28</sup> Cases applying that distinction have focused on the extent to which the customer has control over the property. *See New York Times*, 22 Mass. App. Tax Bd. Rep. at 188-189 (1997 WL 402605, \*8-9) & nn.12-13 (citing cases); *cf. City of Boston v. Mac-Gray Co.*, 371 Mass. 825, 827-828 (1977) (distinguishing laundry service provided using coin-operated machines from leasing of machines).

The Board's findings of fact and report do not mention the authorities on transfer of possession, because the Board held that the 2005 Legislation and a conforming 2006 amendment to the Commissioner's regulations treat mere *access* to online software as a taxable sale. The Board's interpretation is incorrect. The 2005 Legislation added language to the "tangible personal property" definition in Section 1 that explicitly requires a "transfer," not mere "access" to software:

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<sup>28</sup> *See* Emerg. Reg. No. 3(3), *supra* ("to constitute a taxable transaction, possession of the property must be transferred"; possession passes "whenever the property is under [the lessee's] control"); Donovan, *Massachusetts Sales & Use Tax Manual Revised* at 169-170 (upd. 1995).

*A transfer of standardized computer software, including but not limited to electronic, telephonic, or similar transfer, shall also be considered a transfer of tangible personal property.*

St. 2005, c. 163, § 34 (emphasis added). The amendment thus did not change the requirement that there be a “transfer of title or possession” in order to have a “sale” as defined in Section 1.

Similarly, the regulatory language adopted by the Commissioner in 2006 requires a “sale” in order to trigger a tax. Transferring a right to use software remotely is simply one of the “ways” that such a sale can be “effected”:

Taxable transfers of prewritten software include *sales effected in any of the following ways ... licenses and leases, transfers of rights to use software installed on a remote server, upgrades, and license upgrades.*

830 C.M.R. 64H.1.3(3)(a) (2006) (emphases added). The Board, however, never answered the question whether Citrix sold (transferred possession) of the Network Hardware and Server Software to its subscribers. The answer is no: indeed, the parties *stipulated* that Citrix’s Technical Operations team maintained control over the Server Software. Stip. ¶ 115. Accordingly, had the Board considered the matter, it would necessarily have determined that there was no transfer of possession, because Citrix did not transfer control of the Server Software to its subscribers within the meaning of *New York Times*, 22 Mass. App. Tax Bd. Rep. at 188-189 (1997 WL 402605, \*8-9), and the

authorities there cited. By bypassing the question of a “sale” entirely, the Board failed to engage with the key threshold inquiry under the statute, which was legal error.

Even to the extent Citrix could be said to have transferred possession of software for a consideration<sup>29</sup> to its subscribers, the question would remain whether the customers’ object was to obtain that software or to obtain services. The Board acknowledged that, because the Online Offerings involved an “integrated” service component as well as the use of software (ATB Op. 556), “the character of the transaction must be analyzed to ascertain whether the buyer’s basic purpose was to acquire the property which was sold to it, or to obtain the services.” *Id.*, quoting *Commissioner of Rev. v. Houghton Mifflin Co.*, 396 Mass. 666, 670 (1986).

The Board’s treatment of the object of the transaction, however, did not square with the passage it quoted from this Court’s *Houghton Mifflin* decision. Instead of “analyz[ing]” the character of Citrix’s transactions based on the evidence, the Board stated conclusively that

the basic purpose of Citrix’s customers in purchasing [Online Offerings] is to acquire access to and use of the product(s), each

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<sup>29</sup> Although Citrix did provide “Endpoint Software” to subscribers and non-subscribers alike to facilitate a connection to each of the Online Offerings (Tr. 46-48), that software was freely downloadable without charge (*id.*), and therefore did not involve a transfer “for a consideration” under c. 64H, § 2.



of which constitutes standardized computer software.

ATB Op. 558-559. While the Board referred generically to “the evidence,” it did not cite any testimony or exhibit in its entire discussion of the issue. *Id.* 556-559. To the contrary, it “acknowledge[d]” Citrix’s un rebutted evidence that the object of its subscribers was to obtain services. *Id.* 558. That evidence included marketing materials, subscription agreements, and other customer documents uniformly describing the Online Offerings as services, as well as testimony regarding subscribers’ intention to obtain a service. See *supra* pp. 21-22. Instead of analyzing the evidence, the Board purported to rely on “common sense” and the Commissioner having previously reached the same conclusion in his Letter Ruling issued to Citrix. ATB Op. 556-557. By elevating its own speculation over the evidence, the Board applied the same sort of casual and perfunctory reasoning that leading commentators call “puzzling,” see *supra* p. 27, and disregarded this Court’s admonition that such a determination “depends on the facts.” *Houghton Mifflin*, 373 Mass. at 774.

## **VI. CONCLUSION**

This case presents a matter of first impression that affects a wide swath of the digital economy in which taxpayers are purchasing or selling services delivered using software. The Court should grant direct appellate review in order to correct the errors made by the Board and bring clarity to this important question.

March 21, 2019

Respectfully submitted,

CITRIX SYSTEMS, INC.

By its attorneys,

/s/ Matthew D. Schnall

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## **ADDENDUM**

## **Addendum Table of Contents**

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COURT Appellate Tax Board

CLERK'S OFFICE

Date: January 16, 2019

RE: Citrix Systems Inc.

v.

Commissioner of Revenue

Docket Nos. C321160  
C325421

For plaintiff: (Name(s), firm(s), and telephone numbers.)

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For defendant:

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**NOTICE OF ASSEMBLY OF RECORD ON APPEAL**

In accordance with rules of Appellate Procedure, Rule 9, subsection (d), notice this day has been sent to the clerk of the Appeals Court for the Commonwealth along with two certified copies of docket entries. Record has been fully assembled in the office of the clerk of the

Appellate Tax Board  
(Name of Court)

In accordance with Rules of Appellate Procedure, Rule 10, subsection (a) and (b), the appealing party must enter the case in the Appeals Court for the Commonwealth within ten (10) days of receipt of this notice. This notice does not constitute entry in the Appeals court for the Commonwealth.

 **APPELLATE TAX BOARD**  
CLERK  
**A TRUE COPY**

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*The Commonwealth of Massachusetts*

**Appellate Tax Board**

100 Cambridge Street

Suite 200

Boston, MA 02114

Phone-(617) 727-3100

Fax-617-727-6234

**Citrix Systems Inc. vs. Commissioner of Revenue**

Docket#: **C321160-13-DOR**

Status : Findings Promulgated

**Appellant(s)**

Citrix Systems Inc.  
60 State Street  
Boston, MA 02109

**Representative(s)**

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**Appellee(s)**

Commissioner of Revenue  
DEPARTMENT OF REVENUE County

**Representative(s)**

Timothy R. Stille, Esq.  
Department of Revenue, Litigation Bureau  
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ph: 6176263230

**Subject Property**

**Property Assessment**

\$0.00

**Schedule**

01/23/2017 10:00AM Motion Hearing

**Board Members / Stenographers / Clerks**

Board Member :

Stenographer :

Clerk :

Frank J. Scharaffa

Copley Court Reporting

Helen Mary Warren

**View Chronology**

Date	Action
07/11/2013	Docket Number assigned; clerk notifies.
07/11/2013	Entry fee paid.
07/11/2013	Formal Petition filed.
07/16/2013	Attorney Appearance - Appellee - Along with Certificate of Service, filed. Timothy R Stille.

**APPELLATE TAX BOARD**

Docket Report - Citrix Systems Inc. vs. Commissioner of Revenue C321160-13-DOR  
Wednesday, January 16, 2019 9:34:14 AM

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*[Signature]*

CLERK

08/28/2013 Pre-Hearing scheduled for 03/20/2014

09/25/2013 Answer filed - Appellee - Along with Certificate of Service, filed.

12/26/2013 Converted Note - COR\'s First Set of Interrogatories and First Request for Production of Documents, along with Certificate of Service, filed.

03/11/2014 Hearing Scheduled - Hearing Scheduled (Continued fr Status 3/20/14.) - 11/19/2014

07/30/2014 Attorney Appearance - Appellant - Revised, appearance, along with Certificate of Service, John S Brown, George P Mair, Donald-Bruce Abrams, Darcy A Ryding & M Kathryn Seevers, filed.

08/01/2014 Hearing Scheduled - Hearing Scheduled (Continued fr 11/19/14.) - 06/16/2015

08/20/2014 Appellant\'s First Request for Production of Documents and Appellant\'s Response to COR\'s First Set of Interrogatories, filed along with Certificate of Service.

03/24/2015 Attorney Appearance - Appellant - Matthew D Schnall and Meghan Walsh, along with Certificate of Service.

03/24/2015 Hearing Scheduled - Hearing Scheduled - 10/28/2015

03/24/2015 Pre-Hearing (Continued fr 3/20/15/ New Attorney.) scheduled for 06/03/2015

06/05/2015 Order issued. Following a pretrial conference held on June 3, 2015, it is hereby ordered that the hearing of the above-entitled appeals will be held on Wednesday, October 28, 2015 at 9:30 a.m. No further continuance will be allowed with regard to the hearing of these appeals. Further, the parties are ordered to complete all discovery on or before September 25, 2015.

09/04/2015 Emergency Motion to Extend Discovery Deadline

09/21/2015 Pre-Hearing (Request to Scheduled status.) scheduled for 09/28/2015

09/28/2015 Hearing Scheduled - Hearing Scheduled (NO FURTHER CONTINUANCES. From 10/28/15.) - 01/06/2016

10/01/2015 Order issued. Following a pretrial conference held on September 28, 2015, it is hereby ordered that the hearing of the above-entitled appeals be held on Wednesday, January 6, 2016 at 9:30 a.m. No further continuance will be allowed with regard to the hearing of these appeals. Failure of either party to appear on said date will result in dismissal or default as appropriate. Further, the parties are ordered to complete all discovery on or before December 1, 2015.

10/23/2015 COR\'s Responses to Taxpayer First Set of Interrogatories and First Request for Production of Documents, along with Certificate of Service, filed.

11/06/2015 COR\'s Request for Production of Documents and First Set of Interrogatories, along with Certificate of Service, filed.

11/17/2015 Order issued. Appellee\'s Motion To Compel Answers To Interrogatories And Production Of Documents, filed on November 6, 2015, is hereby allowed. Appellant is ordered to file complete responses to said discovery on or before November 30, 2015.

11/30/2015 Appellant\'s Response to COR\'s First Set of Interrogatories and Request for Production of Documents, along with Certificate of Service, filed.

12/04/2015 Pre-Hearing scheduled for 12/15/2015

12/11/2015 Converted Note - COR\'s Supplemental Response to Appellant\'s First Request for Production of Documents, along with Certificate of Service, filed.

12/15/2015 Hearing Scheduled - Hearing Scheduled (From 1/6/16.) - 02/10/2016

12/18/2015 Converted Note - Order issued. Following a pretrial conference held on December 15, 2015, the Board hereby orders that the hearing of the above-entitled appeals be held on Wednesday, February 10, 2016 at 9:30 a.m. No further continuance will be allowed with regard to the hearing of these appeals. Failure of either party to appear on said date will result in dismissal or default as appropriate.

02/03/2016 Official Stenographer Request - Appellee - Copley Court Reporting.

02/09/2016 Converted Note - Appellant\'s Response to COR\'s First Set of Interrogatories and Request for Production of Documents, along with Certificate of Service, filed.

02/09/2016 Converted Note - Statement of Agreed Facts - Volumes 1 through 4 - filed by Appellant

02/09/2016 Hearing held.

02/09/2016 Hearing Scheduled From 1/6/16.

03/31/2016 Apt's reply Brief till 5/16/2016.

04/28/2016 Request for two week extension of time to file post hearing briefs

05/02/2016 Parties fr 5/2/16 till 5/16/2016-Reply Briegs - 5/20/16.

05/16/2016 PARTIES FROM 52/16- Reply Briefs-5/30/16

05/17/2016 APT's Ext of Post Trial Brief till 5/27/16 & Reply Brief till 6/10/16 DOR ASSENTS.

05/26/2016 Brief filed - by appellee

05/27/2016 Appellant's Request for Finding of Facts

05/27/2016 Appellant's REquest for Rulings of Law

05/27/2016 Brief filed - by appellant

06/08/2016 Appellée Request for two week extension of time to file post hearing briefs deadline 6/10/16 - 6/24/16

06/24/2016 Post TRial Reply Brief filed - by appellant

06/24/2016 Post Trial Reply Brief filed - by appellee

01/13/2017 Motion to Substitute Party - by appellant

01/17/2017 Motion Hearing Scheduled - 01/23/2017

01/19/2017 Opposition to Appellant's Motion to Substitute Party

01/25/2017

01/25/2017 Order issued. Appellant's Motion To Substitute Party, filed on January 13, 2017, is allowed in part. In accordance with the Appellee's Opposition to said motion, the Board hereby adds GetGo, Inc., as successor in interest to Citrix Systems, Inc., as an additional named appellant in the above entitled appeals.

04/12/2017 General Case Note - Decision issued. With regard to the above-entitled appeals, the decision is for the appellant as to the penalties assessed. In accordance with the Statement of Agreed Facts, abatement is granted in the total amount of \$478,633.73 plus statutory additions. The decision is for the appellee in all other respects in these appeals.

04/18/2017 Certificate of Service

04/18/2017 Request for Findings of Fact and Report filed - Appellee

04/24/2017 Certificate of Service

04/24/2017 Request for Findings of Fact and Report filed - Appellant

11/02/2018 Findings promulgated on 11/2/18

12/31/2018 Notice of Appeal - by appellant

01/16/2019 Record Assembled & Delivered to Appeals Court

**APPELLATE TAX BOARD**

*Docket Report - Citrix Systems Inc. vs. Commissioner of Revenue*  
*Wednesday, January 16, 2019 9:34:14 AM*

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*The Commonwealth of Massachusetts*  
**Appellate Tax Board**  
100 Cambridge Street  
Suite 200  
Boston, MA 02114  
Phone-(617) 727-3100  
Fax-617-727-6234

**Citrix Systems, Inc. vs. Commissioner of Revenue**

Docket#: **C325421-15-DOR**

Status : Findings Promulgated

**Appellant(s)**

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60 State Street  
Boston, MA 02109

**Representative(s)**

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**Appellee(s)**

Commissioner of Revenue  
DEPARTMENT OF REVENUE  
County

**Representative(s)**

Timothy R. Stille, Esq.  
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Marikae G Toye BBO # 687043

Pro Se

Commissioner of Revenue

Commissioner of Revenue  
Boston, MA 02114

Commissioner of Revenue

Commissioner of Revenue  
Boston, MA 02114

**Subject Property**

**Property Assessment**

\$0.00

**Schedule**

01/23/2017      10:00AM      Motion Hearing

**Board Members / Stenographers / Clerks**

Board Member :

Stenographer :

Clerk :

Frank J. Scharaffa

Copley Court Reporting

Helen Mary Warren

**APPELLATE TAX BOARD**

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Docket Report - Citrix Systems, Inc. vs. Commissioner of Revenue C325421-15-DOR  
Wednesday, January 16, 2019 10:34:40 AM

ATTEST  CLERK

**View Chronology**

Date	Action
09/15/2014	Certificate of Service filed
09/15/2014	Docket Number assigned; clerk notifies.
09/15/2014	Entry fee paid.
09/15/2014	Formal Petition filed.
09/23/2014	Attorney Appearance - Appellee - Timothy R Stille, Joseph J Tierney & Marikae G Toye, along with Certificate of Service, filed.
10/01/2014	Pre-Hearing (Status Conference) scheduled for 03/31/2015
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03/24/2015	Hearing Scheduled - Hearing Scheduled - 10/28/2015
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06/05/2015	Order issued. Following a pretrial conference held on June 3, 2015, it is hereby ordered that the hearing of the above-entitled appeals will be held on Wednesday, October 28, 2015 at 9:30 a.m. No further continuance will be allowed with regard to the hearing of these appeals. Further, the parties are ordered to complete all discovery on or before September 25, 2015.
09/04/2015	Emergency Motion to Extend Discovery Deadline
09/21/2015	Converted Note - Pre-Hearing (Appellant's Request for Status.) scheduled for 09/28/2015
09/28/2015	Hearing Scheduled - Hearing Scheduled (NO FURTHER CONTINUANCES, fr 10/28/15.) - 01/06/2016
10/01/2015	Order issued. Following a pretrial conference held on September 28, 2015, it is hereby ordered that the hearing of the above-entitled appeals be held on Wednesday, January 6, 2016 at 9:30 a.m. No further continuance will be allowed with regard to the hearing of these appeals. Failure of either party to appear on said date will result in dismissal or default as appropriate. Further, the parties are ordered to complete all discovery on or before December 1, 2015.
12/04/2015	Pre-Hearing scheduled for 12/15/2015
12/15/2015	Hearing Scheduled - Hearing Scheduled (From 1/6/16.) - 02/10/2016
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02/10/2016	Hearing Scheduled From 1/6/16.
03/31/2016	Apt's reply Brief till 5/16/2016
04/04/2016	Apt extension till 5/02/16 & Reply till 6/16/16.
04/28/2016	Request for two week extension of time to file post hearing briefs
05/17/2016	apt's EXT OF POST TRIAL BRIEF TILL 5/27/16 & post trial till 6/10/16 DOR has assented to.
05/27/2016	Appellant's Request for Finding of Facts
05/27/2016	Appellant's Request for Rulings of Law

**APPELLATE TAX BOARD**

Docket Report - Citrix Systems, Inc. vs. Commissioner of Revenue  
Wednesday, January 16, 2019 10:34:40 AM

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06/08/2016 Appellee Request for two week extension of time to file post hearing briefs deadline 6/10/16 - 6/24/16

06/24/2016 Reply Brief filed - by appellant

06/24/2016 Reply Brief filed -by appellee

01/13/2017 Motion to Substitute Party - by appellant

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01/25/2017

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04/18/2017 Certificate of Service

04/18/2017 Request for Findings of Fact and Report filed - Appellee

04/24/2017 Certificate of Service

04/24/2017 Request for Findings of Fact and Report filed - Appellant

11/02/2018 Findings promulgated on 11/2/18

12/31/2018 Notice of Appeal - by appellant

01/16/2019 Record Assembled & Delivered to Appeals Court

APPELLATE TAX BOARD

Docket Report - Citrix Systems, Inc. vs. Commissioner of Revenue  
 Wednesday, January 16, 2019 10:34:40 AM

ATTEST  CLERK

**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**CITRIX SYSTEMS, INC.**

**v.**

**COMMISSIONER OF REVENUE**

Docket Nos. C321160  
C325421

Promulgated:  
November 2, 2018

These are appeals filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 62C, § 39 from the refusal of the Commissioner of Revenue ("Commissioner" or "appellee"), to abate sales taxes assessed against Citrix Systems, Inc. ("Citrix" or "appellant") for the tax periods ended April 30, 2007 through June 30, 2009 and October 31, 2009 through December 31, 2011 (collectively, the "periods at issue").

Commissioner Scharaffa heard these appeals and was joined by Chairman Hammond and Commissioners Rose, Chmielinski, and Good in the decisions for the appellee.

These findings of fact and report are made pursuant to requests of the appellant and the appellee under G.L. c. 58A, § 13 and 831 CMR 1.32.

*Matthew D. Schnall, Esq. and Megan M. Walsh, Esq. for the appellant.*

*Marikae Grace Toye, Esq., Timothy R. Stille, Esq., and Frances M. Donovan, Esq. for the appellee.*

## **FINDINGS OF FACT AND REPORT**

On the basis of a Statement of Agreed Facts with 91 attached exhibits as well as testimony<sup>1</sup> and additional exhibits offered into evidence at the hearing of these appeals, the Appellate Tax Board ("Board") made the following findings of fact.

### **Jurisdiction**

Citrix is a publicly traded Delaware corporation that did business in Massachusetts and elsewhere during the periods at issue. For each of these periods, Citrix timely filed a Form ST-9, Sales and Use Tax Return, and timely paid the amount shown as due thereon. Following an audit of Citrix's Sales and Use Tax Returns for the periods ended April 30, 2007 through June 30, 2009, the Commissioner issued a Notice of Intent to Assess dated February 18, 2011 ("First NIA") and a Notice of Assessment dated October 23, 2012 ("First NOA").<sup>2</sup> On December 14, 2012, Citrix filed a Form CA-6, Application for Abatement/Amended Return, for the periods relating to the First NOA ("First Abatement

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<sup>1</sup> One witness, Mr. Anshuman Kanwar, was called by and testified on behalf of Citrix. The Commissioner did not offer any witnesses.

<sup>2</sup> After the issuance of the First NIA and prior to the issuance of the First NOA, the Commissioner promulgated Letter Ruling 12-10: Screen Sharing Software and the Massachusetts Sales/Use Tax ("Letter Ruling 12-10"). Letter Ruling 12-10 addressed a letter ruling request from Citrix and stated the Commissioner's conclusion that the software products at issue in these appeals constituted sales of prewritten software subject to Massachusetts sales tax imposed under G.L. c. 64H, §§ 1 and 2.

Application"). The Commissioner subsequently issued Notices of Abatement Determination, dated May 13, 2013, denying Citrix's First Abatement Application, and Citrix timely filed a petition with the Board on July 11, 2013.

For the periods ended October 31, 2009 through December 31, 2011, the Commissioner issued a Notice of Intent to Assess dated February 8, 2014 ("Second NIA") and a Notice of Assessment dated March 18, 2014 ("Second NOA"). Citrix filed a Form CA-6, Application for Abatement/Amended Return for the periods relating to the Second NOA on April 8, 2014 ("Second Abatement Application"), and the Commissioner issued Notices of Abatement Determination denying Citrix's Second Abatement Application dated August 1, 2014. Citrix timely filed a petition with the Board on September 15, 2014.

Based on the foregoing, the Board found and ruled that it had jurisdiction to hear and decide these appeals.

#### **Factual Background**

The tax at issue in these appeals was assessed by the Commissioner on Citrix's sales of three online software products, "GoToMyPC," "GoToAssist," and "GoToMeeting" (collectively, the "Online Products"). While the specific features of the Online Products vary, they share certain characteristics. In particular, each of the Online

Products, which are described in detail below, creates and maintains a screen-sharing connection between a host computer and one or more remote computers, all of which are connected to the internet. The host computer must have and run its own operating system and software applications, and the screen-sharing connection allows the user of the remote computer to see the screen output of the host computer and, if applicable, to share access to input control via keyboard and a pointing device. The host computer and remote computer may both be owned or controlled by a Citrix customer, or one may be owned or controlled by a third party who is not a Citrix customer. The Online Products, which the parties agree constitute software within the meaning of General Laws chapter 64H ("Chapter 64H"), are not customized for individual customers in any way. Customers may purchase certain options designed to enhance their user experience. The options, like the basic Online Products, are not customized for individual customers.

Citrix sells the Online Products in a subscription format and customers pay monthly or annual subscription fees in exchange for unlimited access to the products during the subscription period. To purchase a subscription, a customer executes a Master Subscription Agreement ("Sales Agreement") that reflects the Online Product(s) that have

been selected, the monthly or annual subscription fee, and the number of authorized users.<sup>3</sup> The Sales Agreement documents specify that by purchasing a Citrix subscription, the "customer may access and use" the chosen Online Product(s). Citrix also provides customer service as part of the relationship, typically by telephone or other electronic communication.

#### The Online Products

GoToMyPC is Citrix's online remote access software product that allows a user to securely access and operate his or her personal computer (commonly referred to as the "host computer") from a remote location or device that securely connects to the user's computer through Citrix's web servers. Both the host computer and the remote computer or device are typically owned or controlled by the customer.

As with all the Online Products, Citrix provides GoToMyPC principally through proprietary software and a dedicated network of computer hardware. To use the product, a customer installs GoToMyPC Endpoint Software on both the

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<sup>3</sup> The Sales Agreements consistently refer to the Online Products as services, as do Citrix's marketing materials and its filings with the Securities and Exchange Commission.



host computer and the remote computer.<sup>4</sup> A customer then initiates a connection to GoToMyPC between the host computer and the remote computer and is able to view the host computer screen and control the host computer using the keyboard and mouse of the remote computer. The user can execute applications that reside on the host computer, such as a word processor or a web-based application that the host computer accesses online. The applications used by a customer through GoToMyPC are always located on the host computer or third-party servers, not Citrix's servers.

GoToAssist is an online, screen-sharing software application that allows users to share screen and input control access to a computer in real time to facilitate technical support. GoToAssist customers are typically technical support professionals who use the product to connect with individuals who are in need of remote technical support. During a support session, the support professional can view the screen of the support recipient's computer and exercise keyboard and mouse control over that computer. There are two categories of GoToAssist: GoToAssist Express, which is designed primarily for individuals who provide technical support services; and

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<sup>4</sup> Endpoint Software, in some variant, is necessary to use each of the Online Products. There is no charge for Endpoint Software and its utility is limited to facilitating access to the Online Products.

GoToAssist Corporate, which is designed for technical support organizations and technical support departments within businesses.

To initiate a session through GoToAssist, a customer may log into an account through a web browser or can connect to the product using the version of Endpoint Software known as HelpAlert. The GoToAssist software provides the professional with a session identifier code, which the professional communicates to the support recipient. The support recipient then uses the session identifier code to login to the session through his or her web browser at a separate address. After the recipient accepts a prompt, the HelpAlert Endpoint Software is downloaded onto the recipient's computer and the connection can be made between the computers and the GoToAssist software application.

GoToMeeting is a family of online conferencing software applications that include GoToMeeting, GoToWebinar and GoToTraining. The applications allow users to share screen access and control for purposes of an online meeting, presentation, demonstration, or collaboration (collectively, "meeting"). The host computer is owned or controlled by a meeting organizer who is Citrix's customer,

and the remote computers are typically owned or controlled by third parties who are participating in the meeting.

The meeting organizer schedules, convenes, and moderates a GoToMeeting web conference session and may invite participants using telephone, email, or other means. The organizer may initiate the session using a web browser or GoToMeeting Endpoint Software, which is installed on both the participants' and the organizer's devices. The GoToMeeting server software provides a meeting identifier, which invited participants can use to join the session, either by using a browser to visit a website and entering the meeting identifier or by clicking a link in an invitation email. Each participant's browser then initiates the download and installation of the GoToMeeting Endpoint Software on the participant's device. The Endpoint Software on the organizer's computer allows the organizer to begin and end the conference and to make selections regarding the conference, such as the application(s) to be included in the screen sharing. Participants in the conference have no control over the conference other than joining or exiting, participating in chat or feedback, and, as allowed by the meeting organizer, sharing control over one or more applications or documents on the organizer's computer.

Testimony of Mr. Kanwar

Mr. Kanwar, Citrix's Vice President of Technology Operations, leads Citrix's Technical Operations Team. The team is comprised of approximately 130 employees responsible for the maintenance, configuration, update, and control of Citrix's network hardware, which supports the Online Products, and its server software, the software hosted on Citrix's servers that is required to run the Online Products.

Mr. Kanwar testified about the size and complexity of Citrix's hardware network that supports the Online Products and includes between 5,000 and 7,000 servers, approximately 200 routers and switches, and vast storage capacity. The Technical Operations Team constantly monitors the network and responds to any issues or faults in the network that may impact a customer's experience. These can include insufficient capacity, substandard performance, malicious attacks from outside the system, or atypically high network utilization. Mr. Kanwar described this type of activity as falling within the "reactive" side of operations. The "proactive" side includes ensuring sufficient capacity to support customer use as well as general observation of the network.

Mr. Kanwar also described his team's involvement in "change management" in the "software development lifecycle." This includes putting the server software through various stages of testing before the software is placed into the "live systems." The software travels through a "software development pipeline" before it is implemented, which includes successive stages of its employment on hardware, various tests, and "flipping on the switch" for successive waves of users, thereby allowing feedback and modification as updates are incrementally integrated into the system. Mr. Kanwar also testified that Citrix maintains control over the software at all times and opined that Citrix's customers are "ultimately looking for . . . the ability to connect with other entities."

Based on the evidence presented and the reasonable inferences drawn therefrom, the Board found and ruled that the Online Products constituted standardized software and, in turn, tangible personal property within the meaning of G.L. c. 64H, § 1. The Board further found and ruled that the sales of the Online Products at issue in these appeals were sales of tangible personal property subject to the sales tax pursuant to G.L. c. 64H, §§ 1 and 2. Accordingly, the Board issued decisions for the appellee in these appeals.

## OPINION

Massachusetts law imposes a sales tax on sales of tangible personal property in the Commonwealth. G.L. c. 64H, §§ 1 and 2. For purposes of the sales tax, a sale includes:

any transfer of title or possession, or both, exchange, barter, lease, rental, conditional or otherwise, of tangible personal property . . . in any manner or by any means whatsoever.

G.L. c. 64H, § 1.

Tangible personal property is defined in Chapter 64H as:

personal property of any nature consisting of any produce, goods, wares, merchandise and commodities whatsoever, brought into, produced, manufactured or being within the commonwealth, but shall not include rights and credits, insurance policies, bills of exchange, stocks and bonds and similar evidences of indebtedness or ownership. For purposes of this chapter, "tangible personal property" shall include gas, electricity and steam. **A transfer of standardized computer software, including but not limited to electronic, telephonic, or similar transfer, shall also be considered a transfer of tangible personal property.**

G.L. c. 64H, § 1 (emphasis added).

For a number of years prior to 2005, whether standardized software was subject to sales or use tax in Massachusetts depended on its method of delivery.<sup>5</sup> More

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<sup>5</sup> Even earlier, a distinction had been drawn between standardized and custom software, with only the former being subject to sales and use tax. See, e.g. Letter Ruling 88-14: Computer Software Sales.

specifically, if standardized software was delivered in tangible form, such as a CD-ROM or a floppy disk, it was subject to tax. If, however, standardized software was delivered electronically or by load and leave,<sup>6</sup> it was not subject to tax. See, e.g., Directive 01-3: Sales Tax Consequences of Computer Software "Load and Leave" Transactions. In 2005, the Massachusetts Legislature addressed this disparity and created uniform sales tax treatment for sales of standardized software, regardless of the method by which the sale is made. To accomplish this, the definition of tangible personal property was expanded, as reflected in the emphasized language above, to incorporate transfers of standardized computer software "including but not limited to electronic, telephonic, or similar transfer[s]." St. 2005, c. 163, § 34 (effective April 1, 2006) (the "2005 statutory change").

Following the 2005 statutory change, the Commissioner promulgated a regulation on October 20, 2006 that, in pertinent part, construed the application of the sales tax

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<sup>6</sup> In a load and leave transaction, a vendor installs software directly onto a customer's computer using tangible storage media, but does not transfer the tangible medium used to load the software as part of the sale.

to sales of prewritten software (the "Regulation").<sup>7</sup> See 830

CMR 64H.1.3. In particular, the Regulation specifies that

[s]ales in Massachusetts of . . . prewritten computer software, regardless of the method of delivery . . . are generally subject to the Massachusetts sales tax. Taxable transfers of prewritten software include sales effected in any of the following ways regardless of the method of delivery, including electronic delivery or load and leave: licenses and leases, **transfers of rights to use software installed on a remote server.**

*Id.* (emphasis added).

There is no dispute that the Online Products constitute software within the meaning of Chapter 64H. As to the issue of whether the products qualify as prewritten software, Citrix did not explicitly oppose the characterization, but it remained an issue for the Board to resolve.

The Regulation provides that prewritten computer software, which is "also known as [c]anned [s]oftware and [s]tandardized [s]oftware,"<sup>8</sup> is defined as computer software

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<sup>7</sup> Several months prior to the issuance of the Regulation, the Commissioner issued Technical Information Release 05-15: Transfers of Prewritten Computer Software ("Technical Information Release 05-15"), which outlined the 2005 statutory change to the definition of tangible personal property and the consequences for treatment of sales of prewritten software under the sales and use tax. Technical Information Release 05-15's discussion as it relates to the issues before the Board in these appeals is substantively the same as the Regulation and Technical Information Release 05-15 is therefore not discussed further in these findings of fact and report.

<sup>8</sup> For purposes of the sales and use tax, there is no distinction in Massachusetts law among standardized software, prewritten software, and canned software.



"which is not designed and developed by the author or other creator to the specifications of a specific purchaser." 830 CMR 64H.1.3(2). Conversely, custom software is "a software program prepared to the special order of a customer that is not prewritten software." *Id.*

The software that comprises the Online Products is complex and requires continuous development, monitoring, and maintenance. It is not, however, made to the specifications or prepared to the special order of any individual purchaser. To the contrary, having chosen which among the Online Products to purchase, every customer receives access to and use of fundamentally the same online software application, whether it is GoToMyPC, GoToAssist, or GoToMeeting. The only variations in the Online Products are optional features, which are available for purchase by all customers and are customized to none. Given these facts and absent any contrary authority, the Board found and ruled that the Online Products constitute standardized computer software within the meaning of Chapter 64H.

As previously noted, the Regulation states that sales of standardized software in Massachusetts include "transfers of rights to use software installed on a remote server." 830 CMR 64H.1.3(3). Each of the Online Products resides on Citrix's servers. To access the Online Products,

a customer executes a Sales Agreement that explicitly grants the customer the right, for a fee, to access and use one or more of the products. Before using an Online Product, a customer downloads the applicable Endpoint Software, which enables access to the product. The customer is then able to use the chosen Online Product. In sum, the transfer of the right to use software installed on a remote server is precisely the transaction effected when a customer purchases one or more of the Online Products from Citrix.

Citrix's response to this analysis was twofold. First, Citrix argued that there was no taxable sale of software because there was no "transfer" of software as required by Chapter 64H. According to Citrix, while the 2005 statutory change to the definition of tangible personal property extended the taxation of software to software transferred electronically, the change did not encompass access to software that is remotely hosted by a vendor. In Citrix's view, the Commissioner improperly sought to extend the tax to remote access transactions, which are beyond the scope of Chapter 64H. This extension was reflected first in Technical Information Release 05-15, and next, the Regulation, both of which, in effect, Citrix seeks to

invalidate. The Board did not find Citrix's argument persuasive.

The Board is mindful of the maxim that "[t]he right to tax must be plainly conferred by statute. It is not to be implied." *McCarthy v. Commissioner of Revenue*, 391 Mass. 630, 632-33 (1984). However, this well-established rule operates in concert with the principle that "regulations are not to be declared void unless their provisions cannot by any reasonable construction be interpreted in harmony with the legislative mandate." *Exposito Duarte v. Commissioner of Revenue*, 451 Mass. 399, 408 (2008) (citing *Smith v. Commissioner of Transitional Assistance*, 431 Mass. 638, 646 (2000)); see also *Regency Transportation, Inc. v. Commissioner of Revenue*, 473 Mass. 459, 466 (2016) ("[w]e accord substantial deference to the agency's regulations and apply all presumptions in favor of the validity of the administrative action and [do] not declare it void unless its provisions cannot by any reasonable construction be interpreted in harmony with the legislative mandate").

As technology and computer business practices have evolved, so too has Massachusetts law relating to the taxation of software. As discussed above, the 2005 statutory change, which expanded the definition of tangible personal property to include "[a] transfer of standardized

computer software, including but not limited to electronic, telephonic, or similar transfer," reflects the Legislature's intent to create uniform sales tax treatment for sales of standardized software, regardless of the method of sale. G.L. c. 64H, § 1. The definitional change is facially broad in scope and not only specifies various types of transfers to which it applies but, by incorporating the words "including but not limited to," anticipates others. The Commissioner construed this expansive statutory language to include "transfers of rights to use software installed on a remote server." 830 CMR 64H.1.3(3), a definition that clearly applies to the transactions at issue in these appeals. The Commissioner's construction is wholly consistent with the plain terms of the statute. Consequently, any argument that the Regulation "cannot by any reasonable construction be interpreted in harmony with the legislative mandate" must fail. *Expedito Duarte*, 451 Mass. at 408.

Citrix also argued that its sales of the Online Products constitute sales of services and not of tangible personal property. In support of its argument, Citrix points to several facts, including that: the Sales Agreements consistently refer to the Online Products as services, as do Citrix's marketing documents and filings

with the Securities and Exchange Commission; and the network hardware and server software systems that function together to provide the Online Products do not operate automatically, but require numerous employees to operate and maintain the systems. Citrix also places particular emphasis on Mr. Kanwar's "uncontested" testimony that Citrix's customers are "ultimately looking for . . . the ability to connect with other entities," which reflects his opinion that provision of the Online Products constitutes services.

Massachusetts sales tax law distinguishes between sales of tangible personal property, which are taxable absent an exemption, and sales of services, which are generally not subject to tax. G.L. c. 64H, §§ 1 and 2.<sup>9</sup> The Regulation acknowledges this distinction in the context of charges for remote access to standardized software, which are generally subject to tax, as follows:

[W]here there is no charge for the use of the software and the object of the transaction is acquiring a good or service other than the use of the software, sales or use tax does not apply. See, e.g., 830 CMR 64H.1.3(13).

830 CMR 64H.1.3(14)(a).

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<sup>9</sup> Personal service transactions that involve sales of tangible personal property "as inconsequential elements for which no separate charges are made" are also not subject to the sales tax. G.L. c. 64H, § 1.

The Supreme Judicial Court first enunciated the test to determine the "object of the transaction" in *Commissioner of Revenue v. Houghton Mifflin Co.*, 396 Mass. 666, 670 (1986). In *Houghton Mifflin*, the Court considered application of the sales tax to transactions involving provision of typesetting and compositing services in which the taxpayer also received tangible reproduction proofs. The Court held that "bundled transactions" such as these, where the service and property components of a transaction are integrated, are subject to the rule that

the character of the transaction must be analyzed to ascertain whether the buyer's basic purpose was to acquire the property which was sold to it, or to obtain the services.

*Houghton Mifflin*, 396 Mass. at 670.

As referenced above, in Letter Ruling 12-10, the Commissioner considered whether Citrix's sales of the Online Products were subject to sales tax. In reaching the conclusion that the sales were so subject, the Commissioner noted Citrix's ancillary provision of services, likely in the form of customer service, and ultimately determined that the object of the transactions was Citrix's sale of the right to use its prewritten software. The Commissioner's analysis implicitly addressed concerns raised by Citrix in these appeals. For example, Letter

Ruling 12-10 states that, in part, to determine "the object of the transaction, the Department [of Revenue] generally looks to the customer's experience in using the product rather than the 'behind the scenes' operations where the software is accessed on a seller's server."

The "behind the scenes" operations referenced by the Commissioner include the many support functions necessary to develop, maintain, test, and troubleshoot the Online Products as well as Citrix's network hardware. While these operations may be numerous and costly and require substantial employee support, the evidence presented and common sense do not indicate that they are services sought by Citrix's customers. Rather, Citrix's customers subscribe to, access, and use the Online Products without any view to the unseen support operations. In essence, the support operations are part of Citrix's overhead, which is necessary to its provision and use of the standardized software products that it sells.

The Regulation also provides an example that is instructive in the current appeals:

Example 2: Ann wants to acquire prewritten computer software to prepare her personal income tax return. The vendor of the software gives her the option of purchasing the software on a disk that will be mailed to her home or she can pay to securely access the software on the vendor's server through the Internet and use of a personal

access code. In either case, the functionality of the software is the same. The object of the transaction here is the use of the software. Charges for the prewritten software will be subject to sales or use tax regardless of the method of delivery chosen by Ann.

830 CMR 64H.1.3(14)(a).

The consumer in Example 2 may access prewritten software that resides on remote servers to achieve a specific goal, completion of her tax returns. Similarly, Citrix's customers access and use the Online Products to achieve their goals, which include remote computer access, shared-screen technical support, and web conferencing. In each case, it is the functionality of standardized software that customers seek and that enables them to complete specific tasks.

Finally, the Board acknowledges that Citrix's various written materials refer to the Online Products as services, and that Mr. Kanwar, a high-level Citrix employee, views the products as services. However, these facts must be considered in the broader context of all available facts in these appeals. In this regard, the evidence established that the basic purpose of Citrix's customers in purchasing one or more of the Online Products is to acquire access to and use of the product(s), each of which constitutes



standardized computer software as contemplated by Chapter 64H.

In sum, the Board found and ruled that the Online Products constitute standardized software within the meaning of Chapter 64H; the Regulation's definition of a sale as including "transfers of rights to use software installed on a remote server" was within the scope of Chapter 64H; the Regulation's definition of a sale accurately describes the sales at issue in these appeals; and the sales at issue were sales of tangible personal property and not services. Based on these conclusions and the record as a whole, the Board found and ruled that Citrix's sales of the Online Products were subject to the sales tax pursuant to G.L. c. 64H, §§ 1 and 2. Accordingly, the Board issued decisions for the appellee in these appeals.


THE APPELLATE TAX BOARD

By:

  
Thomas W. Hammond, Jr., Chairman

A true copy

Attest:

  
Clerk of the Board

*Asst.*

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

CITRIX SYSTEMS, INC.,  
Appellant,

v.

COMMISSIONER OF REVENUE,  
Appellee.

DOCKET NOS. C321160 &  
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APPELLATE TAX BOARD

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STATEMENT OF AGREED FACTS

Pursuant to Rule 23 of the Appellate Tax Board Rules of Practice and Procedure, 831 C.M.R. 1.23, the parties to these appeals hereby stipulate and agree for purposes of these appeals to the following matters. In so stipulating, the parties expressly reserve their rights to contest the materiality and relevance of any facts or documents herein and to introduce any other evidence not inconsistent herewith that may be relevant to these proceedings, but waive all other objections to the admissibility of the stipulated facts and documents. The parties specifically stipulate and agree that the exhibits attached hereto are authentic, and waive any objection to the admissibility of duplicates in lieu of originals of such exhibits.

DOCUMENTS

1. The document attached as Exhibit 1 is a true and accurate copy of the sales and use tax return on Form ST-9 filed by Citrix Systems, Inc. (together with Citrix Online LLC, "Citrix") for the monthly period ended April 30, 2007.
2. The document attached as Exhibit 2 is a true and accurate copy of the sales and use tax return on Form ST-9 filed by Citrix for the monthly period ended May 31, 2007.

AMOUNTS INVOLVED

105. The tax at issue and the penalties set forth in the two notices of assessment are as follows:

<u>Period</u>	<u>Tax</u>	<u>Penalty</u>
April, 2007	\$6,524.60	\$1,304.92
May, 2007	\$6,150.57	\$1,230.11
June, 2007	\$9,916.84	\$1,983.37
July, 2007	\$6,193.10	\$1,238.62
August, 2007	\$15,002.89	\$3,000.58
September, 2007	\$10,286.80	\$2,057.36
October, 2007	\$5,797.80	\$1,159.56
November, 2007	\$23,414.53	\$4,682.91
December, 2007	\$10,170.27	\$2,034.05
January, 2008	\$10,627.20	\$2,125.44
February, 2008	\$5,173.22	\$1,034.64
March, 2008	\$66,374.29	\$13,274.86
April, 2008	\$5,814.00	\$1,162.80
May, 2008	\$6,338.32	\$1,267.66
June, 2008	\$76,945.81	\$15,389.16
July, 2008	\$6,258.41	\$1,251.68
August, 2008	\$17,959.20	\$3,591.84
September, 2008	\$14,781.09	\$2,956.22
October, 2008	\$19,274.32	\$3,854.86
November, 2008	\$6,627.06	\$1,325.41
December, 2008	\$19,449.05	\$3,889.81
January, 2009	\$28,820.15	\$5,764.03
February, 2009	\$10,874.09	\$2,174.82
March, 2009	\$12,214.04	\$2,442.81
April, 2009	\$10,311.30	\$2,062.26
May, 2009	\$17,561.72	\$3,512.34
June, 2009	\$66,883.03	\$13,376.61
October, 2009	\$57,185.00	\$11,437.00
November, 2009	\$35,545.00	\$7,109.00
December, 2009	\$62,476.00	\$12,495.00
January, 2010	\$19,076.00	\$3,815.00
February, 2010	\$22,696.00	\$4,539.00
March, 2010	\$221,197.00	\$44,239.00
April, 2010	\$63,839.00	\$12,768.00
May, 2010	\$29,783.00	\$5,957.00
June, 2010	\$263,153.00	\$52,631.00
July, 2010	\$59,576.00	\$11,915.00
August, 2010	\$28,720.00	\$5,744.00

September, 2010	\$41,878.00	\$8,376.00
October, 2010	\$57,132.00	\$11,426.00
November, 2010	\$28,702.00	\$5,740.00
December, 2010	\$217,182.00	\$43,436.00
January, 2011	\$98,067.00	\$19,613.00
February, 2011	\$38,461.00	\$7,692.00
March, 2011	\$84,021.00	\$16,804.00
April, 2011	\$29,463.00	\$5,893.00
May, 2011	\$34,154.00	\$6,831.00
June, 2011	\$68,410.00	\$13,682.00
July, 2011	\$42,056.00	\$8,411.00
August, 2011	\$36,083.00	\$7,217.00
September, 2011	\$76,961.00	\$15,392.00
October, 2011	\$37,664.00	\$7,533.00
November, 2011	\$44,476.00	\$8,895.00
December, 2011	\$99,476.00	\$19,895.00
Total	\$2,393,175.70	\$478,633.73

#### ISSUES

106. The first issue presented in these appeals is whether sales of the Online Offerings (described below, beginning with paragraph 113) are sales of tangible personal property within the meaning of G.L. c. 64H, § 1.
107. The second issue presented in these appeals is whether sales of the GoToMeeting offerings (described below, beginning with paragraph 128) are sales of telecommunications services within the meaning of G.L. c. 64H, § 1.
108. If sales of the Online Offerings are not sales of tangible personal property and sales of GoToMeeting are not sales of telecommunications services, then the parties agree that those sales were sales of services not subject to Massachusetts sales or use tax, and all of the tax at issue should be abated.
109. The Commissioner will abate the penalties reflected in the two notices of assessment.

#### FACTS

110. Citrix, founded on April 17, 1989, is a Delaware corporation doing business in Massachusetts and elsewhere. See Exhibits 74 through 78.
111. Citrix is and was during the periods at issue publicly traded on the Nasdaq Global Select Market.
112. Citrix is not regulated as a telecommunications service provider for federal or state purposes. Citrix Online Audio LLC ("Citrix Online Audio"), a wholly-owned subsidiary of Citrix Systems, Inc., is regulated by the Federal Communications Commission as a telecommunications service provider. None of the tax at issue was imposed on sales made by Citrix Online Audio.

#### THE ONLINE OFFERINGS

113. The tax at issue was assessed by the Commissioner on sales by Citrix of the offerings described below under the headings "GoToMyPC," "GoToAssist," and "GoToMeeting" (collectively, the "Online Offerings"). The Online Offerings involve initiating and maintaining a screen-sharing connection between a host computer and one or more remote computers (or other devices) connected to the Internet. The host computer runs an operating system and/or one or more applications, and the remote computer shares screen output access to the entire desktop or a particular application on the host computer (and, if applicable, may also share access to input control via keyboard and a pointing device). The host computer and remote computer may both be owned or controlled by a Citrix customer (as is typically the case with GoToMyPC, see paragraph 119), or one of them may be owned or controlled by a third party who is not a Citrix customer (as is typically the case with GoToAssist and GoToMeeting, see paragraphs 124 and 128).

114. Citrix provides each of the Online Offerings in a subscription format in which customers pay monthly or annual subscription fees in exchange for unlimited access to the specified offering for the subscription period. See Exhibits 81 through 85.
115. Citrix maintains, configures, updates and controls its hardware, and the software hosted on Citrix's servers (the "Server Software"), that is required to run each of the Online Offerings. Citrix has a technical operations team of approximately 130 employees who are responsible for the maintenance, configuration, updating and control of the Citrix network hardware and the Server Software. Citrix provides a locally-installed client software application (the "Endpoint Software") that allows access to the Online Offerings by connecting a host computer or remote computer to Citrix's web servers.
116. Citrix does not provide any service allowing a customer to connect its computer or other device to Citrix's web servers through any means other than an Internet connection separately purchased by the customer. Citrix's customers must purchase Internet access from a third party other than Citrix in order to access the Online Offerings.
117. Similarly, customers connecting to the GoToMeeting offerings by telephone must purchase telephone service from a third party other than Citrix. Customers wishing to make a toll-free dial-in number available for their GoToMeetings can purchase that service from Citrix Online Audio for a separate charge. The taxability of sales by Citrix Online Audio are not at issue in these appeals.
118. All transmission of data in connection with the Online Offerings takes place over a separately-purchased Internet or telephone connection as described in paragraphs 116 and 117 that is not provided by Citrix.

GoToMyPC

119. GoToMyPC is an online remote access offering that allows users to securely access and operate their personal computers from a remote location or device that securely connects to the user's personal computer through Citrix's web servers. Both the host computer and the remote computer or device are typically owned or controlled by the customer.
120. Citrix provides GoToMyPC principally through proprietary software (the "GoToMyPC Server Software") together with a dedicated network of switches, routers, servers and other hardware. The GoToMyPC Server Software is at all times stored, executed, maintained, updated and controlled on servers owned or leased by Citrix. Citrix provides a locally-installed/downloaded client software application (the "GoToMyPC Endpoint Software") that allows access to GoToMyPC as discussed below.
121. The customer must install the GoToMyPC Endpoint Software on the host computer ("Host-Side Endpoint Software"). See Exhibit 86. This Host-Side Endpoint Software must be installed and running on the host computer to allow remote access to the host computer. The customer then accesses GoToMyPC from a remote computer or other device either over the Internet, by logging in at <http://www.gotomypc.com> (which downloads and installs the GoToMyPC Endpoint Software on the remote device if necessary and initiates a connection) or by executing a copy of the GoToMyPC Endpoint Software that is already installed on the remote device ("Remote-Side Endpoint Software").
122. The Host-Side Endpoint Software and Remote-Side Endpoint Software have no utility apart from allowing access to GoToMyPC, and they are not required to be removed from the host computer or remote computer or other device if the customer terminates his or her subscription to GoToMyPC.

123. After the customer initiates a GoToMyPC connection, as described in paragraph 121, the customer can use the remote device to access and control the software and data that are located on the host computer. The customer requests initiation or termination of the GoToMyPC connection.

#### GoToAssist

124. GoToAssist is an online screen-sharing solution that allows users to share screen and input control access to a computer in real time for purposes of facilitating technical support. The remote computer is typically owned or controlled by a technical support professional, who is Citrix's customer, and the host computer is owned or controlled by a third party who is the recipient of the technical support. In a support session, the technical support professional can view the screen output of the support recipient's computer and can exercise keyboard and mouse control over that computer in real time. The connection between the two machines takes place over the Internet or within a local area or wide area network. Citrix provides two categories of GoToAssist: GoToAssist Express (which is designed principally for individual providers of technical support services) and GoToAssist Corporate (which is designed principally for technical support organizations and internal technical support departments within businesses).
125. Citrix provides GoToAssist using dedicated hardware and software (the "GoToAssist Server Software") that is stored, executed, maintained, updated and controlled on servers owned or leased by Citrix. Citrix provides a locally-installed/downloaded client software application (the "GoToAssist Endpoint Software") that allows access to GoToAssist as discussed below. A customer accesses GoToAssist using the GoToAssist Endpoint Software provided by Citrix, which the customer downloads and installs on the



customer's computer, and which is installed on the service recipient's computer as described in paragraph 127. See Exhibit 87. The Endpoint Software has no utility apart from allowing access to GoToAssist, and is not required to be removed from either the customer's or the service recipient's computer if the customer terminates his or her subscription to GoToAssist.

126. To initiate a session, the support professional logs into his or her account through a web browser at <https://secure.gotoassist.com>, at which time GoToAssist provides the professional with a session identifier code. The support professional may also connect to GoToAssist through the GoToAssist Endpoint Software. See Exhibit 87.
127. The support professional communicates the session identifier code to the support recipient via telephone or email, and the support recipient uses the code to log on to the session through his or her own web browser at a separate address, <http://fastsupport.com>, which does not require an account with GoToAssist. As part of the logon process, the support recipient's computer downloads the GoToAssist Endpoint Software. The GoToAssist Endpoint Software may remain on the support recipient's computer after the support session is completed or the support recipient may remove it if he or she so chooses.

#### GoToMeeting

128. GoToMeeting is a family of online conferencing solutions—consisting of GoToMeeting, GoToWebinar and GoToTraining (collectively, the “GoToMeeting offerings”)—that permit users to share screen access and control for purposes of online presentations, demonstrations and collaboration. The host computer is owned or controlled by a

meeting organizer who is Citrix's customer; the remote computers are owned or controlled by third parties who are participating in the meeting.

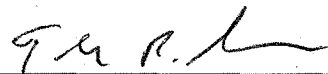
129. Citrix provides GoToMeeting using dedicated hardware and software (the "GoToMeeting Server Software") that is stored, executed, maintained, updated and controlled on servers owned or leased by Citrix.
130. Citrix provides a locally-installed/downloaded client software application (the "GoToMeeting Endpoint Software") that allows access to GoToMeeting as discussed below. See Exhibit 88. The GoToMeeting Endpoint Software has no utility apart from allowing access to GoToMeeting, and is not required to be removed from either the customer's or a participant's computer either at the end of the meeting or if the customer terminates his or her subscription to GoToMeeting.
131. Web conferences are initiated by the meeting organizer, who can invite participants using telephone, email, instant message or other means. The organizer may initiate a conference using a web browser or by directly accessing the GoToMeeting Endpoint Software, which allows the GoToMeeting Server Software to communicate with the organizer's computer. The GoToMeeting Server Software provides a meeting identifier, which participants can use to join the conference (either by using a browser to visit <http://www.joingotomeeting.com> and entering the meeting identifier or by clicking the link in an invitation email). The participant's browser then initiates the download and installation of the GoToMeeting Endpoint Software. See Exhibit 88.
132. The GoToMeeting Endpoint Software on the organizer's computer allows the organizer to begin and end the conference (and, if applicable, recording of the conference) and to make selections regarding the conference, such as the application(s) to be included in

screen sharing. Participants in the conference have no control over the conference other than joining or exiting, participating in chat or feedback, and, to the extent permitted by the organizer, sharing control over one or more applications or documents on the organizer's computer.

Respectfully submitted,

COMMISSIONER OF REVENUE,


By his attorney,

  
Timothy R. Stille BBO # 557119  
Department of Revenue  
Litigation Bureau  
100 Cambridge Street, 7<sup>th</sup> Floor  
Boston, MA 02114  
617-626-3225

Date: 2-9-16

CITRIX SYSTEMS, INC.,

By its attorney,

  
Matthew D. Schnall BBO# 564990  
WilmerHale  
60 State Street  
Boston, MA 02109  
617-526-6892

Date: 2-9-16

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**Form 10-K**

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(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2007

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number 0-27084

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**CITRIX SYSTEMS, INC.**

*(Exact name of registrant as specified in its charter)*

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**Delaware**  
*(State or other jurisdiction of  
incorporation or organization)*

**75-2275152**  
*(I.R.S. Employer  
Identification No.)*

**851 West Cypress Creek Road  
Fort Lauderdale, Florida 33309**  
*(Address of principal executive offices, including zip code)*

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**Registrant's telephone number, including area code: (954) 267-3000**

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**Securities registered pursuant to Section 12(b) of the Act:**

**Common Stock, \$.001 Par Value**  
*(Title of each class)*

**The NASDAQ Stock Market LLC**  
*(Name of each exchange on which registered)*

**Securities registered pursuant to Section 12(g) of the Act: NONE**

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Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer or a non-accelerated filer or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in 12b-2 of the Exchange Act.

☒ Large accelerated filer  
☐ Non-accelerated filer

☐ Accelerated filer  
☐ Smaller reporting company

Indicate by checkmark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of Common Stock held by non-affiliates of the registrant computed by reference to the price of the registrant's Common Stock as of the last business day of the registrant's most recently completed second fiscal quarter (based on the last reported sale price on The Nasdaq Global Select Market as of such date) was \$6,026,508,654. As of February 20, 2008 there were 185,289,377 shares of the registrant's Common Stock outstanding.

#### **DOCUMENTS INCORPORATED BY REFERENCE**

The registrant intends to file a proxy statement pursuant to Regulation 14A within 120 days of the end of the fiscal year ended December 31, 2007. Portions of such proxy statement are incorporated by reference into Part III of this Annual Report on Form 10-K.

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## PART I

This Annual Report on Form 10-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Actual results could differ materially from those set forth in the forward-looking statements. Certain factors that might cause such a difference are discussed in this report, including in Part I, Item 1A “Risk Factors” beginning on page 10.

### ITEM 1. BUSINESS

#### General

Citrix Systems, Inc. is a Delaware corporation founded on April 17, 1989. We design, develop and market technology solutions that allow applications to be delivered, supported, and shared on-demand with high performance, enhanced security, and improved total cost of ownership, or TCO. We market and license our products through multiple channels such as value-added resellers, or VARs, channel distributors, system integrators, or SIs, independent software vendors, or ISVs, our Websites and original equipment manufacturers, or OEMs.

#### Business Overview

Our goal is to enable a world where virtually anyone can work from almost anywhere. In our drive to achieve our vision, we have been an innovator in the information technology, or IT, industry for more than a decade, since the completion of our initial public offering in December 1995.

Our three main waves of innovation have had a significant impact on the IT industry:

- Our first wave of innovation, in the mid-1990s, enabled the virtualization of the Windows desktop with our WinFrame® product. This in turn enabled thin-client computing.
- Our second wave of innovation, from the late 1990s to the early 2000s, focused on bringing the advantages of application virtualization and IT centralization to businesses with our MetaFrame® line of presentation server products. When an application is virtualized, the business logic of the application runs on a central server, and only screen pixels, keystrokes, and mouse movements – not actual data – are transmitted via an encrypted channel to the user’s computer. Keeping applications under the centralized control of IT administrators enhances data security and reduces the costs of managing separate clients and applications on every user’s desktop. Through our application virtualization solutions, we became a market leader in server-based computing.
- Our third wave of innovation is ongoing, focusing on a unique and holistic approach to solving application delivery problems, and equipping business to change on-demand. Since 2002, we have transformed Citrix from a company with one product line, to one that offers a broad portfolio of solutions that make people more productive through on-demand access to applications from virtually anywhere. In 2007, we took a major step forward in this wave of innovation by acquiring XenSource, Inc., or XenSource, a privately held leader in enterprise-grade virtual infrastructure solutions. This acquisition moves Citrix, a pioneer in the application virtualization market, into adjacent server and desktop virtualization markets. By acquiring XenSource, Citrix is positioned as the only company to offer organizations an end-to-end application delivery infrastructure that leverages the method of application, desktop and server virtualization suited for the dynamic delivery of applications to virtually any user.

During this period, our revenues have grown from \$527.4 million in 2002 to \$1.39 billion in 2007.

Today, we design, develop, market, sell and support multiple products in an IT market category called Application Delivery Infrastructure. Our product family brand, announced in early 2008, for all our infrastructure solutions is the Citrix Delivery Center. These products include solutions for application, server and desktop virtualization, Web application optimization, application performance monitoring, branch office application delivery and wide area network, or WAN, optimization, secure sockets layers/virtual private network, or SSL/VPN, gateways, and Internet Protocol, or IP, telephony.

We also offer our GoTo services - GoToMyPc®, GoToMeeting®, GoToAssist®, GoToWebinar™ and all their variants, collectively called Online Services - through our Online Services Division.

#### Products

Citrix Delivery Center is designed to offer comprehensive solutions across all dimensions of application, server and desktop virtualization as well as application and network optimization. In many cases, IT organizations have not taken a holistic, architectural approach to application delivery. Instead they have taken an incremental approach creating IT systems for delivering applications that are too static, too complex, and costly to maintain. With the realities of slow-growing technology budgets and fast-changing business needs the strategic, architectural approach to application, server and desktop delivery that we offer has the capacity to enable business change.

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### ***Virtualization and Management Systems***

Our Virtualization and Management Systems are focused on developing and marketing technologies and solutions and products for server virtualization, and application performance monitoring.

#### ***Server Virtualization***

- *Citrix® XenServer™* is an enterprise-class platform for managing server virtualization in the datacenter as a flexible aggregated pool of computing and storage resources. Based on the high-performance Xen virtualization engine, Citrix XenServer combines comprehensive server virtualization capabilities with scalability, performance and ease-of-use. The product line ranges from Citrix XenServer Express Edition, a single-server solution available for free download, to the more comprehensive Citrix XenServer Enterprise Edition, formerly XenEnterprise. In early 2008, we announced XenServer Platinum edition, which addresses both virtual and physical servers.
- *Citrix Provisioning Server™* enables IT organizations to dynamically stream datacenter and desktop operating systems and workloads to both virtual and physical machines from a central location. The solution enables more agile and cost-effective delivery of applications and desktops, and complements XenServer.

#### ***Application Performance Monitoring***

- *Citrix® EdgeSight® for Endpoints* is an agent-based monitoring solution that provides real-time visibility from the end-user perspective to the performance of virtually any application.
- *Citrix EdgeSight for XenApp* is an agent-based monitoring solution that provides real-time visibility from the end-user perspective to the performance of applications delivered by XenApp.

In 2008, we expect to add a key new product to Citrix Delivery Center which will allow customers to orchestrate communications between multiple Citrix Delivery Center products, called Citrix Workflow Studio. It will allow a simpler and faster integration of Citrix products as well as support third-party solutions.

### ***Online Services***

Online Services is focused on developing and marketing Web-based access, support and collaboration software and services.

- *GoToMyPC®* is an online, managed service that provides secure, remote access to Windows® PC desktops from virtually any Internet-connected computer. GoToMyPC, which sets up easily with a secure encrypted connection, enables individuals to remotely use any resources hosted on their desktop just as though they were sitting in front of their PC. GoToMyPC® Pro, tailored for the needs of professionals and small offices, supports up to 20 PCs, rolls out secure remote access for multiple users in minutes, and features an administration Website in which managers can add, suspend and delete users and run usage reports.
- *GoToMeeting®* is an online, easy-to-use, secure and cost-effective solution for online meetings, training sessions and collaborative gatherings. GoToMeeting allows a user with a PC and an Internet browser to easily host, attend or participate in an online meeting or session without significant training. GoToMeeting features advanced secure communication architecture that uses industry-standard SSL and meets U.S. government standards. The service offers flat-fee pricing for any number of meetings of any length, for up to 10 attendees per meeting. We also offer GoToMeeting Corporate which supports five or more organizers and 25 to 200 attendees per meeting, and features advanced secure communication architecture that uses industry-standard SSL and meets U.S. government standards.
- *GoToAssist®* is a leading, online, remote technical-support solution that enables organizations to provide secure, on-demand support over the Internet. GoToAssist enables support staff to view and control the desktop of a user, requires no client software or additional resources, works automatically and securely through virtually every firewall, even over dial-up connections, and integrates into existing infrastructure.
- *GoToWebinar™* is a simple and affordable solution to conduct online events, such as large sales presentations and marketing events over the Internet. GoToWebinar has the capacity to scale to 1,000 attendees per event and includes such features as full-service registration with real-time reports, customized branding of Webinar materials, automated e-mail templates, free integrated voice conferencing or toll-free service, attendee polling and survey capability, Webinar dashboard to monitor audiences, and easy controls for quickly changing presenters.

### ***Technical Services***

We provide a portfolio of services designed to allow our customers and entities with which we have a technology relationship to maximize the value of our Citrix Delivery Center solutions. These services are available as a feature of our business-development program and are available for additional fees to customers.

- *Consulting services'* objective is to help ensure the successful implementation of our solutions. Tested methodologies, certified professionals and best practices developed from real-world experience allow our consulting services organization to provide guidance and support to partners and customers to maximize the effectiveness of their access infrastructure implementations.

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### *Revenues*

Net revenues include the following categories: Product Licenses, License Updates, Online Services and Technical Services. Product Licenses primarily represent fees related to the licensing of the following products:

- Our Application Virtualization products, including XenApp (formerly Presentation Server) and Access Essentials;
- Our Application Networking products, including our NetScaler, Access Gateway and WANScaler products;
- Our Application Performance Monitoring products, including EdgeSight; and
- Our Server Virtualization products, including Provisioning Server (formerly Ardence) and XenServer, both acquired in our 2007 Acquisitions.

In addition, we offer incentive programs to our channel distributors and value-added resellers to stimulate demand for our products. Revenues associated with these programs are partially offset by these incentives to our channel distributors and value-added resellers.

Our Application Virtualization Product License revenue accounted for approximately 76.3% of our Product License revenue for the year ended December 31, 2007, 81.0% of our Product License revenue for the year ended December 31, 2006 and 93.2% of our Product License revenue for the year ended December 31, 2005. The decrease in our Application Virtualization Product License revenue as a percent of our total Product License revenue when comparing the year ended December 31, 2007 to the year ended December 31, 2006 is primarily due to increased sales of our Application Networking products, including the full year impact of the addition of our WANScaler products, and to a lesser extent, the addition of our Provisioning Server products in 2007 and the full year impact of our EdgeSight products. During 2008, we expect our Application Virtualization Product License revenue to continue to decrease as a percent of our total Product License revenue primarily due to expected increases in sales of our newly acquired XenServer product and our Application Networking products. License Updates consist of fees related to our Subscription Advantage program that are recognized ratably over the term of the contract, which is typically 12 to 24 months. Subscription Advantage is an annual renewable program that provides subscribers with automatic delivery of software upgrades, enhancements and maintenance releases when and if they become available during the term of the subscription. We anticipate that Subscription Advantage will continue to be of strategic importance to our business throughout 2008 because it fosters long-term customer relationships and gives us improved visibility and predictability due to the recurring nature of this revenue stream. Online Services revenues consist primarily of fees related to online service agreements and are recognized ratably over the contract term. Technical Services revenues are comprised of fees from technical support services which are recognized ratably over the contract term, as well as revenues from product training and certification, and consulting services revenue related to implementation of our products, which is recognized as the services are provided.

	Year Ended December 31,			2007 Compared to 2006	2006 Compared to 2005
	2007	2006	2005 (In thousands)		
Revenues:					
Product licenses	\$ 577,144	\$ 488,487	\$409,435	\$ 88,657	\$ 79,052
License updates	484,669	405,756	331,102	78,913	74,654
Online services	213,744	148,795	99,097	64,949	49,698
Technical services	116,385	91,281	69,088	25,104	22,193
Total net revenues	<u>\$1,391,942</u>	<u>\$1,134,319</u>	<u>\$908,722</u>	<u>\$ 257,623</u>	<u>\$ 225,597</u>

### *Product Licenses*

Product License revenue increased during 2007 when compared to 2006 primarily due to increased sales of our Application Virtualization and Application Networking products and, to a lesser extent due to sales of our Provisioning Server products acquired in 2007. Product License revenue increased during 2006 when compared to 2005 primarily due to the full year impact and increased sales of our Application Networking products and, to a lesser extent, increased sales of our Application Virtualization products. We currently anticipate that our Application Virtualization Product License revenue will be flat to slightly down when comparing the first quarter of 2008 to the fourth quarter of 2007; however, for fiscal year 2008, we expect Product License revenue to increase overall primarily due to growth from our Application Virtualization products, expected growth from sales of our newly acquired XenSource products, and to a lesser extent, increased sales of our Application Networking products.



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**CITRIX SYSTEMS, INC.**  
**CONSOLIDATED STATEMENTS OF INCOME**

	Year Ended December 31,		
	2007	2006	2005
	(In thousands, except per share information)		
<b>Revenues:</b>			
Product licenses	\$ 577,144	\$ 488,487	\$409,435
License updates	484,669	405,756	331,102
Online services	213,744	148,795	99,097
Technical services	116,385	91,281	69,088
Total net revenues	<u>1,391,942</u>	<u>1,134,319</u>	<u>908,722</u>
<b>Cost of revenues:</b>			
Cost of product license revenues	42,984	32,911	14,404
Cost of services revenues	65,027	46,585	26,929
Amortization of product related intangibles	29,596	19,202	16,766
Total cost of revenues	<u>137,607</u>	<u>98,698</u>	<u>58,099</u>
Gross margin	1,254,335	1,035,621	850,623
<b>Operating expenses:</b>			
Research and development	205,103	155,331	108,751
Sales, marketing and support	590,409	480,343	394,153
General and administrative	229,229	178,669	125,425
Amortization of other intangible assets	17,387	16,934	11,622
In-process research and development	9,800	1,000	7,000
Total operating expenses	<u>1,051,928</u>	<u>832,277</u>	<u>646,951</u>
Income from operations	202,407	203,344	203,672
Interest income	49,704	41,210	23,614
Interest expense	(737)	(927)	(2,426)
Other expense, net	(466)	(546)	(506)
Income before income taxes	250,908	243,081	224,354
Income taxes	36,425	60,084	58,745
Net income	<u>\$ 214,483</u>	<u>\$ 182,997</u>	<u>\$165,609</u>
<b>Earnings per share:</b>			
Basic	<u>\$ 1.18</u>	<u>\$ 1.01</u>	<u>\$ 0.96</u>
Diluted	<u>\$ 1.14</u>	<u>\$ 0.97</u>	<u>\$ 0.93</u>
<b>Weighted average shares outstanding:</b>			
Basic	<u>181,501</u>	<u>180,992</u>	<u>172,221</u>
Diluted	<u>187,380</u>	<u>187,725</u>	<u>177,771</u>

See accompanying notes.

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**Form 10-K**

(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2008

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number 0-27084

**CITRIX SYSTEMS, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**75-2275152**  
(I.R.S. Employer  
Identification No.)

**851 West Cypress Creek Road  
Fort Lauderdale, Florida 33309**  
(Address of principal executive offices, including zip code)

**Registrant's telephone number, including area code: (954) 267-3000**

**Securities registered pursuant to Section 12(b) of the Act:**

**Common Stock, \$.001 Par Value**  
(Title of each class)

**The NASDAQ Stock Market LLC**  
(Name of each exchange on which registered)

**Securities registered pursuant to Section 12(g) of the Act: NONE**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer or a non-accelerated filer or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in 12b-2 of the Exchange Act.

☒ Large accelerated filer  
☐ Non-accelerated filer

☐ Accelerated filer  
☐ Smaller reporting company

Indicate by checkmark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of Common Stock held by non-affiliates of the registrant computed by reference to the price of the registrant's Common Stock as of the last business day of the registrant's most recently completed second fiscal quarter (based on the last reported sale price on The Nasdaq Global Select Market as of such date) was \$5,275,208,469. As of February 20, 2009 there were 180,113,587 shares of the registrant's Common Stock outstanding.

**DOCUMENTS INCORPORATED BY REFERENCE**

The registrant intends to file a proxy statement pursuant to Regulation 14A within 120 days of the end of the fiscal year ended December 31, 2008. Portions of such proxy statement are incorporated by reference into Part III of this Annual Report on Form 10-K.

## PART I

**This Annual Report on Form 10-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Actual results could differ materially from those set forth in the forward-looking statements. Certain factors that might cause such a difference are discussed in this report, including in Part I, Item 1A “Risk Factors” beginning on page 12.**

### ITEM 1. *BUSINESS*

#### General

Citrix Systems, Inc. is a Delaware corporation founded on April 17, 1989. We design, develop and market technology solutions that allow applications to be delivered, supported, and shared on-demand with high performance, enhanced security, and improved total cost of ownership, or TCO. We market and license our products through multiple channels such as value-added resellers, or VARs, channel distributors, system integrators, or SIs, independent software vendors, or ISVs, our Websites and original equipment manufacturers, or OEMs.

#### Business Overview

Our goal is to enable a world where virtually anyone can work from almost anywhere. In our drive to achieve our vision, we have been an innovator in the information technology, or IT, industry for almost two decades.

Our three main waves of innovation have had a significant impact on the IT industry:

- Our first wave of innovation, in the mid-1990s, enabled the virtualization of the Windows desktop with our WinFrame® product. This in turn enabled thin-client computing.
- Our second wave of innovation, from the late 1990s to the early 2000s, focused on bringing the advantages of application virtualization and IT centralization to businesses with our MetaFrame® line of presentation server products. When an application is virtualized, the business logic of the application runs on a central server, and only screen pixels, keystrokes, and mouse movements—not actual data—are transmitted via an encrypted channel to the user’s computer. Keeping applications under the centralized control of IT administrators enhances data security and reduces the costs of managing separate clients and applications on every user’s desktop. Through our application virtualization solutions, we became a market leader in server-based computing.
- Our third wave of innovation is ongoing, focusing on a unique and holistic approach to solving application delivery problems, and equipping business to change on-demand. Since 2004, we have transformed Citrix from a company with one product line, to one that offers a broad portfolio of solutions that make people more productive through on-demand access to applications from virtually anywhere. In 2007, with the acquisition of XenSource, we’ve moved Citrix, a pioneer in the application virtualization market, into the adjacent server and desktop virtualization markets. As a result, Citrix is positioned as the only company to offer organizations an end-to-end application delivery infrastructure that leverages the method of application, desktop and server virtualization best suited for the dynamic delivery of applications to virtually any user.

During this period from 2004 to 2008, our revenues have grown from \$741.2 million in 2004 to \$1.58 billion in 2008.

Today, we design, develop, market, sell and support multiple products in an IT market category called Application Delivery Infrastructure. Our product family brand for all our infrastructure solutions is the Citrix Delivery Center™.

We also offer our GoTo services - GoToMyPc®, GoToMeeting®, GoToAssist®, GoToWebinar® and all their variants, collectively called Online Services, through our Online Services division.

#### Products

We develop and market comprehensive solutions across all dimensions of application, server and desktop virtualization as well as application and network optimization under the product brand Citrix Delivery Center™. In many cases, IT organizations have not taken a holistic, architectural approach to application delivery. Instead they have taken an incremental approach creating IT systems for delivering applications that are too static, too complex, and costly to maintain. With the realities of slow-growing technology budgets and fast-changing business needs, the strategic architectural approach to application, server and desktop delivery that we offer has the capacity to enable business change.

This overview provides a discussion of our major products and service offerings in these areas.

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In addition to these major products in these core market areas of application, desktop and server virtualization, and application networking, we offer several feature capabilities customers can choose to add value to our major products including EdgeSight®, Citrix Password Manager, Provisioning Server, Citrix Application Firewall™ and Citrix Easy Call™. Further, we offer a remote access product, called Citrix Access Essentials™, aimed at small businesses supporting up to 75 users.

### ***Online Services***

Online Services is focused on developing and marketing Web-based access, support and collaboration software and services.

- *GoToMyPC®* is an online solution that provides secure, remote access to Windows® PC desktops from virtually any Internet-connected computer. GoToMyPC, which sets up easily with a secure encrypted connection, enables individuals to remotely use any resources hosted on their desktop just as though they were sitting in front of it. GoToMyPC® Pro, tailored for the needs of professionals and small offices, supports up to 50 PCs, rolls out secure, remote access for multiple users in minutes, and features an administration Website in which managers can add, suspend and delete users and run usage reports. GoToMyPC® Corporate is built for businesses that require detailed reporting, in-depth administration features, assign and manage remote-access privileges for employees with advanced security features.
- *GoToMeeting®* is an online, easy-to-use, secure and cost-effective solution for online meetings, training sessions and collaborative gatherings. GoToMeeting allows a user with a PC or Mac and an Internet browser to easily host, attend or participate in an online meeting or session without significant training. GoToMeeting is capable of providing a standard PSTN conference dial-in number, voice over Internet protocol (VOIP), or a user provided dial-in number. It features advanced secure communication architecture that uses industry-standard secure sockets layers, or SSL. The service offers flat-fee pricing for any number of meetings of any length, for up to 15 attendees per meeting. We also offer GoToMeeting® Corporate which supports multiple organizer accounts, unlimited meetings with up to 25 attendees, robust reporting, additional customization options and advanced administrative capabilities.
- *GoToAssist®* is a leading, online, remote technical-support solution that enables organizations to provide secure, on-demand support over the Internet. GoToAssist enables support staff to view and control the desktop of a user, requires no client software or additional resources, works automatically and securely through virtually every firewall, even over dial-up connections, and integrates into existing infrastructure.
- *GoToWebinar®* is a simple and affordable solution to conduct online events, such as large sales presentations and marketing events over the Internet. GoToWebinar has the capacity to scale to 1,000 attendees per event and includes such features as full-service registration with real-time reports, customized branding of Webinar materials, automated e-mail templates, free integrated voice conferencing or toll-free service, VoIP, attendee polling and survey capability, Webinar dashboard to monitor audiences, and easy controls for quickly changing presenters.

In October 2008, we acquired Vapps, an audio services company, with advanced VOIP-based audio technology. We plan to market conference calling services directly to small business users, or SMBs, and enterprises based on Vapps' audio services technology.

### ***Technical Services***

We provide a portfolio of services designed to allow our customers and entities with which we have a technology relationship to maximize the value of our Citrix Delivery Center solutions. These services are available for additional fees to customers.

- *Consulting Services* help ensure the successful implementation of our solutions. Tested methodologies, certified professionals and best practices developed from real-world experience allow our consulting services organization to provide guidance and support to partners and customers to maximize the effectiveness of their access infrastructure implementations.
- *Technical Support Services* accommodate the unique ongoing support needs of customers. Our technical support services are specifically designed to address the variety of challenges facing access infrastructure environments. We offer five support-level options, global coverage and personalized relationship management.
- *Product Training & Certification* teaches customers and partners how to optimally utilize Citrix products and keep their organizations running smoothly. Authorized Citrix training is available when and how it is needed. Traditional or virtual instructor-led training offerings feature Citrix Certified Instructors conducting scheduled classes in a classroom or remote setting at one of approximately 280 Citrix Authorized Learning Centers™, or CALCs, worldwide. CALCs are staffed with

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### *Revenues*

Net revenues include the following categories: Product Licenses, License Updates, Online Services and Technical Services. Product Licenses primarily represent fees related to the licensing of the following major products:

- Our Application Virtualization products, including XenApp;
- Our Application Networking products, including NetScaler, Citrix Repeater and Access Gateway;
- Our Desktop Virtualization product, including XenDesktop; and
- Our Server Virtualization product, including XenServer.

In addition, we offer incentive programs to our channel distributors and VARs to stimulate demand for our products. Revenues associated with these programs are partially offset by these incentives to our channel distributors and VARs.

License Updates consist of fees related to our Subscription Advantage program that are recognized ratably over the term of the contract, which is typically 12 to 24 months. Subscription Advantage is an annual renewable program that provides subscribers with automatic delivery of unspecified software upgrades, enhancements and maintenance releases when and if they become available during the term of the subscription. Online Services revenues consist primarily of fees related to online service agreements and are recognized ratably over the contract term. Technical Services revenues are comprised of fees from technical support services which are recognized ratably over the contract term, as well as revenues from product training and certification, and consulting services revenue related to implementation of our products, which is recognized as the services are provided.

	Year Ended December 31,			2008	2007
	2008	2007	2006	Compared to 2007	Compared to 2006
			(In thousands)		
Revenues:					
Product licenses	\$ 620,215	\$ 577,144	\$ 488,487	\$ 43,071	\$ 88,657
License updates	559,340	484,669	405,756	74,671	78,913
Online services	260,065	213,744	148,795	46,321	64,949
Technical services	143,734	116,385	91,281	27,349	25,104
Total net revenues	<u>\$1,583,354</u>	<u>\$1,391,942</u>	<u>\$1,134,319</u>	<u>\$ 191,412</u>	<u>\$ 257,623</u>

### *Product Licenses*

Product License revenue increased during 2008 when compared to 2007 primarily due to increased sales of our Application Networking products, sales of our newer products including our Server and Desktop Virtualization products and to a lesser extent, our Application Virtualization products. Product License revenue increased during 2007 when compared to 2006 primarily due to increased sales of our Application Virtualization and Application Networking products and, to a lesser extent due to sales of our products acquired in 2007. We currently expect Product License sales to decrease when comparing the first quarter of 2009 to the first quarter of 2008 primarily due to anticipated continued weakness in the global economy and its anticipated impact on the IT spending of our customers.

### *License Updates*

License Updates revenue increased during 2008 when compared to 2007 primarily due to increasing renewals related to our Subscription Advantage program over a larger base of subscribers and to a lesser extent an increase in new Subscription Advantage licenses. License update revenue increased during 2007 when compared to 2006 primarily due to a larger base of subscribers and increasing renewals related to our Subscription Advantage program. We currently anticipate that License Updates revenue will increase when comparing the first quarter of 2009 to the fourth quarter of 2008 due primarily to renewals over our installed customer base; however, these increases will be at a slower rate than experienced in 2008.

### *Online Services*

Online Services revenue increased during 2008 when compared to 2007 primarily due to increased sales of our real-time application collaboration services and, to a lesser extent our Web-based access services. Online Services revenue increased during 2007 when compared to 2006 primarily due to increased sales of our real time application collaboration services. We currently expect our Online Services revenue to increase slightly when comparing the first quarter of 2009 to the fourth quarter of 2008; however, we anticipate the overall rate of growth for this group to be slower than experienced in 2008.

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**CITRIX SYSTEMS, INC.**  
**CONSOLIDATED STATEMENTS OF INCOME**

	Year Ended December 31,		
	2008	2007	2006
	(In thousands, except per share information)		
Revenues:			
Product licenses	\$ 620,215	\$ 577,144	\$ 488,487
License updates	559,340	484,669	405,756
Online services	260,065	213,744	148,795
Technical services	143,734	116,385	91,281
Total net revenues	1,583,354	1,391,942	1,134,319
Cost of net revenues:			
Cost of product license revenues	47,801	42,984	32,911
Cost of services revenues	79,303	65,027	46,585
Amortization of product related intangible assets	48,028	29,596	19,202
Total cost of net revenues	175,132	137,607	98,698
Gross margin	1,408,222	1,254,335	1,035,621
Operating expenses:			
Research and development	288,109	205,103	155,331
Sales, marketing and services	669,569	590,409	480,343
General and administrative	256,679	229,229	178,669
Amortization of other intangible assets	22,724	17,387	16,934
In-process research and development	1,140	9,800	1,000
Total operating expenses	1,238,221	1,051,928	832,277
Income from operations	170,001	202,407	203,344
Interest income	31,506	49,704	41,210
Interest expense	(444)	(737)	(927)
Other expense, net	(4,140)	(466)	(546)
Income before income taxes	196,923	250,908	243,081
Income taxes	18,647	36,425	60,084
Net income	\$ 178,276	\$ 214,483	\$ 182,997
Earnings per share:			
Basic	\$ 0.97	\$ 1.18	\$ 1.01
Diluted	\$ 0.96	\$ 1.14	\$ 0.97
Weighted average shares outstanding:			
Basic	183,023	181,501	180,992
Diluted	186,682	187,380	187,725

See accompanying notes.

F-4

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**Form 10-K**

(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2009

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from                      to

Commission File Number 0-27084

**CITRIX SYSTEMS, INC.**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

75-2275152  
(I.R.S. Employer  
Identification No.)

851 West Cypress Creek Road  
Fort Lauderdale, Florida 33309  
(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: (954) 267-3000

Securities registered pursuant to Section 12(b) of the Act:

Common Stock, \$.001 Par Value  
(Title of each class)

The NASDAQ Stock Market LLC  
(Name of each exchange on which registered)

Securities registered pursuant to Section 12(g) of the Act: NONE

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer or a non-accelerated filer or a smaller reporting company. See definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in 12b-2 of the Exchange Act.

☒ Large accelerated filer  
☐ Non-accelerated filer

☐ Accelerated filer  
☐ Smaller reporting company

Indicate by checkmark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of Common Stock held by non-affiliates of the registrant computed by reference to the price of the registrant’s Common Stock as of the last business day of the registrant’s most recently completed second fiscal quarter (based on the last reported sale price on The Nasdaq Global Select Market as of such date) was \$5,836,991,699. As of February 18, 2010 there were 183,826,978 shares of the registrant’s Common Stock outstanding.

#### **DOCUMENTS INCORPORATED BY REFERENCE**

The registrant intends to file a proxy statement pursuant to Regulation 14A within 120 days of the end of the fiscal year ended December 31, 2009. Portions of such proxy statement are incorporated by reference into Part III of this Annual Report on Form 10-K.

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## PART I

This Annual Report on Form 10-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Actual results could differ materially from those set forth in the forward-looking statements. Certain factors that might cause such actual results to differ materially from those set forth in these forward-looking statements are included in Part I, Item 1A “Risk Factors” beginning on page 14.

### ITEM 1. BUSINESS

#### General

Citrix Systems, Inc. is a Delaware corporation founded on April 17, 1989. We design, develop and market technology solutions that enable information technology, or IT, services to be securely delivered through our virtual computing infrastructure on demand – independent of location, device or network. Our customers achieve lower IT operating costs, increased information security, and greater business agility using Citrix technologies that virtualize business meetings, user support, client hardware, desktop operating systems, applications, networks, server hardware and cloud services. We market and license our products directly to enterprise customers, over the web, and through systems integrators, or SIs, in addition to indirectly through value-added resellers, or VARs, value-added distributors, or VADs, and original equipment manufacturers, or OEMs.

#### Business Overview

Our long-term vision is to enable people to work or play – anywhere. For over two decades, we have passionately pursued this vision through successive waves of invention. The first wave, beginning in the early-1990’s, enabled secure remote access to mission critical applications for thousands of road warriors. This required the invention of a new way to “transmit” application screens allowing applications to be virtualized instead of installed on the user’s personal computer, or PC, even over very thin network connections. IT administrators found that virtualized applications on a central server made them more secure, faster running, easier to update and much more accessible. The shifting of computing to servers also allowed the invention of thin-clients and network computers powered by Citrix client and server technologies. Since the early 1990’s we have become a leading provider of server-based computing solutions and our products have been accepted by thousands of organizations as strategic infrastructure for user mobility.

In the early 2000’s, we turned our focus toward new market opportunities created by the massive connectivity of the internet, rapid expansion of network bandwidth, and an explosion of device form factors such as smartphones, tablet PCs, and netbooks. In parallel, customers began to realize the increasing value of mobility technologies like remote access, web collaboration and remote support tools. We also believe that there are similar opportunities emerging in the datacenter to address high operating costs, inflexible infrastructure, and new application architectures.

These opportunities have been the driving forces behind our second wave of invention, building on our core ideas and technologies for virtualizing applications – extending them to adjacent product and technology markets. Since 2004, we have focused our investments on a broader array of technologies, strategic acquisitions and new business models. This has expanded our core capabilities beyond application virtualization to include desktop, client, and server virtualization. It has also made Citrix a leading manufacturer of network appliances, and one of the largest providers of software-as-a-service, or SaaS, in the world.

Today, Citrix serves over 230,000 customers and over 100 million users every day in over 100 countries. Citrix products and services allow people to collaborate, communicate and work virtually anywhere – using any device they choose. Our virtual computing infrastructure IT services are securely delivered on demand, and we believe our datacenter computing resources are simpler, lower cost, and more efficient.

Invention and re-invention has driven our growth. Our diversified product lines, routes to-the-customer, and business models have been enabled by our virtual computing products that enable collaboration as-a-service, desktop as-a-service and infrastructure as-a-service.

#### Products

Our products and services target customers of all sizes – from individuals that subscribe to our GoToMyPC remote access service, to network engineers that purchase our NetScaler web application devices, or the IT professional that licenses our XenDesktop infrastructure products. This section provides an overview of our major product and services offerings.

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### ***Desktop Solutions***

Our Desktop Solutions – XenDesktop and XenApp – reduce the complexity and cost of administering Windows-based applications and desktops in the enterprise.

- *Citrix® XenDesktop™* is a fully integrated desktop virtualization system that gives customers the flexibility to deliver the desktop as a service – dramatically simplifying desktop management for the broadest range of users. XenDesktop is available in a range of packages designed for viral adoption and several market segments. The Express Edition of XenDesktop is offered as a free download from our website to allow IT professionals to conduct no-cost trials. The XenDesktop VDI Edition is designed for virtual desktop projects that only require the hosted virtual machine method of desktop delivery. The Enterprise and Platinum Editions of XenDesktop include all our major virtual desktop delivery models in one integrated package, and also include Citrix XenApp for delivering on-demand applications into virtual or physical desktops. All versions of XenDesktop include Citrix HDX technologies to give users a high-definition experience – even when using multimedia, real-time collaboration, USB devices, and 3D graphics content, while consuming 90 percent less bandwidth than competing solutions. HDX fully leverages the Citrix ICA® protocol and adds Adaptive Orchestration which dynamically optimizes performance and bandwidth to fit each unique user scenario. Each edition comes with user profile management and provisioning services to stream a single desktop image, on-demand, to multiple servers in the datacenter. All editions feature licensing for both Citrix XenServer and Microsoft Hyper-V virtualization infrastructure. The most advanced editions include our FlexCast™ delivery technologies which allow virtual desktops to be hosted in the datacenter or run locally at the endpoint, wherever costs, security or mobility is optimal. We believe that our FlexCast technology dramatically improves our customer's return on their investment and makes desktop virtualization a practical reality for broad, enterprise-wide deployments.
- *Citrix® XenApp™* is a widely-deployed application virtualization solution that allows enterprise applications to be centralized and delivered as an on-demand service. XenApp delivers applications in two ways: (1) hosted – by running application business logic on a central server using our HDX technologies to securely transmit the application's user experience to the endpoint device, or (2) streamed – by running the application locally. Keeping applications under the centralized control of IT administrators enhances data security and reduces the costs of managing separate clients and applications on every user's desktop. The XenApp server runs on Microsoft® Windows Server® 2008, Windows Server 2003 x64 Edition to Windows Server 2003, Windows® 2000 Server and several versions of UNIX®. In 2009, we announced XenApp 5, offering improvements in capacity planning, server provisioning and application management. We offer XenApp as a standalone product in different editions. The Platinum Edition includes the most features and adds powerful capabilities for application performance monitoring, secure sockets layers/virtual private network, or SSL/VPN, advanced SmartAccess™ control and single sign-on application security. The capabilities of XenApp are now available in XenDesktop Enterprise and Platinum Editions to provide a complete desktop virtualization system. XenApp continues to be available as a standalone solution for self-service applications on demand for customers wishing to use it on physical PCs and with competing virtual desktop products.

### ***Online Services***

Online Services is another area where we provide virtualization at the desktop in the form of virtual meetings, web-based desktop support, and remote access. These products are delivered using the SaaS method where customers simply subscribe to our cloud-based online services without making any capital investment. These SaaS-delivered products help customers reduce travel, increase tele-working, and enable cost-effective remote access and support.

- *GoToMeeting®* is an online, easy-to-use, secure and cost-effective solution for online meetings sales demonstrations and collaborative gatherings. GoToMeeting allows a user with a PC or Mac and an Internet browser to easily host, attend or participate in an online meeting or session without significant training. GoToMeeting is capable of providing a standard PSTN conference dial-in number and voice over Internet protocol, or VoIP. It features advanced secure communication architecture that uses industry-standard secure sockets layers, or SSL. The service offers flat-fee pricing for any number of meetings of any length, for up to 15 attendees per meeting. We also offer GoToMeeting® Corporate which supports multiple organizer accounts, unlimited meetings with up to 25 attendees, robust reporting, additional customization options and advanced administrative capabilities. GoToMeeting Corporate also provides optional integrated toll-free audio.

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- *GoToWebinar®* is an easy-to-use, do-it-yourself webinar solution, allowing organizations to increase market reach and effectively present online to geographically dispersed audiences. GoToWebinar allows users with a PC or Mac and an Internet browser to easily host, attend or participate in a webinar session without significant training or IT support. GoToWebinar includes such features as full-service registration with real-time reports, customized branding, automated email templates, polling and survey capabilities, webinar dashboard to monitor attendance and participation, easy presenter controls for changing presenters and VoIP and toll-based phone options. The service offers flat-fee pricing for unlimited webinars of any length, for up to 1,000 attendees per webinar.
- *GoToTraining®* is the easy online training tool that allows trainers to deliver content to multiple trainees quickly and effortlessly, allowing organizations to expand their training program while saving time and reducing travel costs. GoToTraining allows users to host and participate in interactive online training sessions from either their PC or Mac. GoToTraining includes such features as full-service registration with real-time reporting and management, online course catalog, automated reminder and follow-up emails, content library to organize and store reusable content, materials, tests, polls, and VoIP and toll-based phone options. The service offers flat-fee pricing for unlimited training sessions of any length, for up to 200 attendees per session.
- *GoToAssist®* is a leading, online, remote technical-support solution that enables individual professionals and organizations of all sizes to provide secure, on-demand support over the Internet. GoToAssist enables support staff to instantly view and control the desktop of a user without the need to pre-install client software. There are two versions: GoToAssist® Express and GoToAssist® Corporate. They both work automatically and securely through virtually every firewall, even over dial-up connections, and they easily integrate into existing infrastructure.
- *GoToMyPC®* is an online solution that provides secure, remote access to PC and Mac from virtually any Internet-connected computer. GoToMyPC, which sets up easily with a secure encrypted connection, enables individuals to remotely use any resources hosted on their desktop just as though they were sitting in front of it. GoToMyPC® Pro, tailored for the needs of professionals and small offices, supports up to 50 PCs, rolls out secure, remote access for multiple users in minutes, and features an administration Website in which managers can add, suspend and delete users and run usage reports. GoToMyPC® Corporate is built for businesses that require detailed reporting, in-depth administration features, assign and manage remote-access privileges for employees with advanced security features.

### ***Datacenter and Cloud Solutions***

Our Datacenter and Cloud Solutions bring lower operating costs, greater flexibility and cloud-enablement to the enterprise datacenter. These products are also designed to power public “clouds” when used by hosting and cloud service providers. Our datacenter and cloud solutions include virtual infrastructure and application networking products.

#### ***Virtual Infrastructure Products***

Citrix XenServer and Citrix Essentials offer powerful virtual infrastructure for improving operational efficiencies in the enterprise datacenter and for public cloud service providers:

- *Citrix®XenServer™* is an enterprise-class platform for managing server virtualization in the datacenter as a flexible aggregated pool of computing and storage resources. Based on the high-performance Xen virtualization engine, XenServer combines comprehensive server virtualization capabilities with scalability, performance and ease-of-use. XenServer is offered free of charge to any user for unlimited production deployment.
- *Citrix Essentials™ for XenServer™ and Hyper-V™*, announced in February 2009, adds a set of advanced management and automation capabilities to the Citrix and Microsoft server virtualization platforms. This solution adds the following capabilities to existing virtualization management systems: lab automation, high availability, provisioning, workflow orchestration and seamless integration with leading storage systems.

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### *Revenues*

Net revenues include the following categories: Product Licenses, License Updates, Online Services and Technical Services. Product Licenses primarily represent fees related to the licensing of the following major products:

- Our Desktop Solutions, comprised primarily of our desktop virtualization product XenDesktop and our application virtualization product XenApp;
- Our Datacenter and Cloud Solutions, comprised primarily of our server virtualization products, XenServer and Essentials for XenServer and Hyper-V and our application networking products NetScaler, Access Gateway and Branch Repeater.

In addition, we offer incentive programs to our VADs and VARs to stimulate demand for our products. Revenues associated with these programs are partially offset by these incentives to our VADs and VARs.

License Updates consist of fees related to our Subscription Advantage program that are recognized ratably over the term of the contract, which is typically 12 to 24 months. Subscription Advantage is an annual renewable program that provides subscribers with automatic delivery of unspecified software upgrades, enhancements and maintenance releases when and if they become available during the term of the subscription. Online Services revenues consist primarily of fees related to online service agreements from our web collaboration, connectivity and remote support products, GoToMeeting, GoToWebinar, GoToTraining, GoToAssist and GoToMyPC which are recognized ratably over the contract term. Technical Services revenues are comprised of fees from technical support services which are recognized ratably over the contract term, as well as revenues from product training and certification, and consulting services revenue related to implementation of our products, which is recognized as the services are provided.

	Year Ended December 31,			2009	2008
	2009	2008	2007	Compared to 2008	Compared to 2007
	(In thousands)				
Revenues:					
Product licenses	\$ 538,975	\$ 620,215	\$ 577,144	\$ (81,240)	\$ 43,071
License updates	604,968	559,340	484,669	45,628	74,671
Online services	308,177	260,065	213,744	48,112	46,321
Technical services	161,968	143,734	116,385	18,234	27,349
Total net revenues	<u>\$1,614,088</u>	<u>\$1,583,354</u>	<u>\$1,391,942</u>	<u>\$ 30,734</u>	<u>\$ 191,412</u>

### *Product Licenses*

Product License revenue decreased during 2009 when compared to 2008 primarily due to decreased sales of our application virtualization products of \$118.7 million partially offset by increased sales of our desktop virtualization product of \$37.1 million. The decrease in our application virtualization product sales was driven primarily by weakness in the global economy as discussed in the Executive Summary above. Product License revenue increased during 2008 when compared to 2007 primarily due to increased sales of our application networking products of \$17.0 million, sales of our server virtualization product of \$12.8 million, sales of our desktop virtualization product of \$5.1 million and sales of our application virtualization products of \$5.0 million. We currently expect Product License sales to increase when comparing the first quarter of 2010 to the first quarter of 2009 primarily due to anticipated improvement in the global economy and its anticipated impact on the IT spending of our customers.

### *License Updates*

License Updates revenue increased during 2009 when compared to 2008 primarily due to renewals related to our Subscription Advantage program over a larger base of subscribers. License Updates revenue increased during 2008 when compared to 2007 primarily due to increasing renewals related to our Subscription Advantage program over a larger base of subscribers of \$51.2 million and an increase in new Subscription Advantage licenses of \$23.5 million. We currently anticipate that License Updates revenue will increase when comparing the first quarter of 2010 to the fourth quarter of 2009 due primarily to renewals over our installed customer base.

### *Online Services*

Online Services revenue increased during 2009 when compared to 2008 primarily due to increased sales of our web collaboration products. Online Services revenue increased during 2008 when compared to 2007 primarily due to increased sales of our web collaboration products of \$33.8 million and our connectivity products of \$12.2 million. We currently expect our Online Services revenue to increase when comparing the first quarter of 2010 to the fourth quarter of 2009.

### *Technical Services*

Technical Services revenue increased during 2009 when compared to 2008 primarily due to increased sales of support services related to our application networking products. Technical Services revenue increased during 2008 when compared to 2007 primarily due to increased sales of support services related to our application networking products of \$18.9 million and an increase in sales of support and consulting related to the implementation of our application virtualization products of \$9.4 million. We currently expect Technical Services sales to increase when comparing the first quarter of 2010 to the first quarter of 2009 consistent with the increase in Product License revenue described above.



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**CITRIX SYSTEMS, INC.**  
**CONSOLIDATED STATEMENTS OF INCOME**

	Year Ended December 31,		
	2009	2008	2007
	(In thousands, except per share information)		
Revenues:			
Product licenses	\$ 538,975	\$ 620,215	\$ 577,144
License updates	604,968	559,340	484,669
Online services	308,177	260,065	213,744
Technical services	161,968	143,734	116,385
Total net revenues	<u>1,614,088</u>	<u>1,583,354</u>	<u>1,391,942</u>
Cost of net revenues:			
Cost of product license revenues	52,160	47,801	42,984
Cost of services revenues	87,233	79,303	65,027
Amortization of product related intangible assets	47,917	48,028	29,596
Total cost of net revenues	<u>187,310</u>	<u>175,132</u>	<u>137,607</u>
Gross margin	<u>1,426,778</u>	<u>1,408,222</u>	<u>1,254,335</u>
Operating expenses:			
Research and development	281,980	288,109	205,103
Sales, marketing and services	679,053	669,569	590,409
General and administrative	239,623	256,679	229,229
Restructuring	26,473	—	—
Amortization of other intangible assets	20,972	22,724	17,387
In-process research and development	—	1,140	9,800
Total operating expenses	<u>1,248,101</u>	<u>1,238,221</u>	<u>1,051,928</u>
Income from operations	<u>178,677</u>	<u>170,001</u>	<u>202,407</u>
Interest income	14,683	31,506	49,704
Interest expense	(426)	(444)	(737)
Other income (expense), net	958	(4,140)	(466)
Income before income taxes	<u>193,892</u>	<u>196,923</u>	<u>250,908</u>
Income taxes	2,875	18,647	36,425
Net income	<u>\$ 191,017</u>	<u>\$ 178,276</u>	<u>\$ 214,483</u>
Earnings per share:			
Basic	<u>\$ 1.05</u>	<u>\$ 0.97</u>	<u>\$ 1.18</u>
Diluted	<u>\$ 1.03</u>	<u>\$ 0.96</u>	<u>\$ 1.14</u>
Weighted average shares outstanding:			
Basic	<u>181,805</u>	<u>183,023</u>	<u>181,501</u>
Diluted	<u>184,985</u>	<u>186,682</u>	<u>187,380</u>

See accompanying notes.

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**Form 10-K**

(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2010

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number 0-27084

**CITRIX SYSTEMS, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**75-2275152**  
(I.R.S. Employer  
Identification No.)

**851 West Cypress Creek Road  
Fort Lauderdale, Florida 33309**  
(Address of principal executive offices, including zip code)

**Registrant's telephone number, including area code: (954) 267-3000**

**Securities registered pursuant to Section 12(b) of the Act:**

**Common Stock, \$.001 Par Value**  
(Title of each class)

**The NASDAQ Stock Market LLC**  
(Name of each exchange on which registered)

**Securities registered pursuant to Section 12(g) of the Act: NONE**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer or a non-accelerated filer or a smaller reporting company. See definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in 12b-2 of the Exchange Act.

☒ Large accelerated filer

☐ Non-accelerated filer

☐ Accelerated filer

☐ Smaller reporting company

Indicate by checkmark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of Common Stock held by non-affiliates of the registrant computed by reference to the price of the registrant’s Common Stock as of the last business day of the registrant’s most recently completed second fiscal quarter (based on the last reported sale price on The Nasdaq Global Select Market as of such date) was \$7,889,515,569. As of February 18, 2011 there were 187,619,084 shares of the registrant’s Common Stock outstanding.

#### **DOCUMENTS INCORPORATED BY REFERENCE**

The registrant intends to file a proxy statement pursuant to Regulation 14A within 120 days of the end of the fiscal year ended December 31, 2010. Portions of such proxy statement are incorporated by reference into Part III of this Annual Report on Form 10-K.

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## PART I

This Annual Report on Form 10-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Actual results could differ materially from those set forth in the forward-looking statements. Certain factors that might cause such actual results to differ materially from those set forth in these forward-looking statements are included in Part I, Item 1A “Risk Factors” beginning on page 12.

### ITEM 1. BUSINESS

#### General

Citrix Systems, Inc. is a Delaware corporation founded on April 17, 1989. We design, develop and market technology solutions that enable IT services to be securely delivered on demand – independent of location, device or network. Our customers achieve lower IT operating costs, increased information security and greater business agility using Citrix technologies that enable virtual computing. We market and license our products directly to enterprise customers, over the web, and through systems integrators, or SIs, in addition to indirectly through value-added resellers, or VARs, value-added distributors, or VADs, and original equipment manufacturers, or OEMs.

#### Business Overview

For over two decades, we have passionately pursued our long-term vision to enable people to work or play – anywhere through successive waves of invention. The first wave, beginning in the early-1990s, enabled secure remote access to mission critical applications for thousands of road warriors. This required the invention of a new way to “transmit” application screens allowing applications to be virtualized instead of installed on the user’s personal computer, or PC, even over very thin network connections. IT administrators found that virtualized applications on a central server made them more secure, faster running, easier to update and much more accessible. The shifting of computing to servers also allowed the invention of thin-clients and network computers powered by Citrix client and server technologies. Since the early-1990s, we have become a leading provider of server-based computing solutions and our products have been accepted by thousands of organizations as strategic infrastructure for user mobility.

In the early 2000s, we turned our focus toward new market opportunities created by the massive connectivity of the internet, rapid expansion of network bandwidth, and an explosion of device form factors such as smartphones, tablet PCs and netbooks. In parallel, customers began to realize the increasing value of mobility technologies like remote access, web collaboration and remote support tools. We also believe that there are similar opportunities emerging in the datacenter to address high operating costs, inflexible infrastructure, and new application architectures.

These opportunities have been the driving forces behind our second wave of invention, building on our core ideas and technologies for virtualizing applications – extending them to adjacent product and technology markets. Since 2004, we have focused our investments on a broader array of technologies, strategic acquisitions and new business models. This has expanded our core capabilities beyond application virtualization to include desktop, client and server virtualization. It has also made Citrix a leading manufacturer of network appliances and one of the largest providers of software-as-a-service, or SaaS, in the world.

Today, Citrix serves over 230,000 customers and over 100 million users every day in over 100 countries. Citrix products and services allow people to collaborate, communicate and work virtually anywhere – using any device they choose. Our virtual computing infrastructure IT services are securely delivered on demand and we believe our datacenter computing resources are simpler, lower cost and more efficient.

Invention and re-invention has driven our growth. Our diversified product lines, routes to-the-customer, and business models have been enabled by our virtual computing products that offer collaboration as-a-service, desktop as-a-service and infrastructure as-a-service.

#### Products and Services

Our products and services target customers of all sizes – from individuals who subscribe to our GoToMyPC remote access service, to network engineers who purchase our NetScaler web application devices, or the IT professional who licenses our XenDesktop infrastructure products. This section provides an overview of our major product and services offerings.

#### Desktop Solutions

Our Desktop Solutions – XenDesktop, XenClient and XenApp – reduce the complexity and cost of administering Windows-based applications and desktops in the enterprise.

- *Citrix® XenDesktop®* is a fully integrated desktop virtualization system that gives customers the flexibility to deliver the desktop as a service – dramatically simplifying desktop management for a broad range of users. XenDesktop is available

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in a range of packages designed for viral adoption and several market segments. The Express Edition of XenDesktop is offered as a free download from our website to allow IT professionals to conduct no-cost trials. The XenDesktop VDI Edition is designed for virtual desktop projects that only require the hosted virtual machine method of desktop delivery. The Enterprise and Platinum Editions of XenDesktop include all our major virtual desktop delivery models in one integrated package, and also include the capabilities of Citrix XenApp for delivering on-demand applications into virtual or physical desktops. All versions of XenDesktop include Citrix HDX technologies to give users a high-definition experience – even when using multimedia, real-time collaboration, USB devices, and 3D graphics content – while consuming 90 percent less bandwidth than competing solutions. HDX leverages the Citrix ICA® protocol and adds Adaptive Orchestration which helps optimize performance and bandwidth to fit each unique user scenario. Each edition comes with user profile management and provisioning services to stream a single desktop image, on-demand, to multiple servers in the datacenter. All editions feature licensing for both Citrix XenServer and Microsoft Hyper-V virtualization infrastructure. The most advanced editions include our FlexCast™ delivery technologies which allow virtual desktops to be hosted in the datacenter or run locally at the endpoint, wherever costs, security or mobility is optimal. We believe that our FlexCast technology dramatically improves our customer's return on their investment and makes desktop virtualization a practical reality for broad, enterprise-wide deployments.

- *Citrix® XenApp®* is a widely-deployed application virtualization solution that allows enterprise applications to be centralized and delivered as an on-demand service. XenApp delivers applications in two ways: (1) hosted – by running application business logic on a central server using our HDX technologies to securely transmit the application's user experience to the endpoint device, or (2) streamed – by running the application locally. Keeping applications under the centralized control of IT administrators enhances data security and reduces the costs of managing separate clients and applications on every user's desktop. The XenApp server runs on Microsoft® Windows Server® 2008, Windows Server® 2008 R2, Windows Server 2003 x64 Edition to Windows Server 2003, Windows® 2000 Server and several versions of UNIX®. In 2010, we announced Citrix XenApp 6, offering new enhancements for advanced management and scalability, a rich multimedia experience over any network and self-service applications with universal device support from PC to Mac to smartphone. We offer XenApp as a standalone product in different editions. The Platinum Edition includes the most features and adds powerful capabilities for application performance monitoring, secure sockets layers/virtual private network, or SSL/VPN, advanced SmartAccess™ control and single sign-on application security. The capabilities of XenApp are now available in XenDesktop Enterprise and Platinum Editions to provide a complete desktop virtualization system. XenApp continues to be available as a standalone solution for self-service applications on demand for customers wishing to use it on physical PCs and with competing virtual desktop products.
- Citrix® XenClient™ is a high-performance, bare-metal hypervisor that runs directly on the client device hardware, dividing up the resources of the machine and enabling multiple operating systems to run side by side in complete isolation. XenClient is available as a free download on citrix.com.

Citrix Receiver™ is the client side of XenApp and XenDesktop. Citrix Receiver is available as a free download from citrix.com supporting numerous types of client devices. Citrix Receiver uses the Citrix HDX Technologies (discussed below) to communicate with XenApp and XenDesktop.

### *Online Services*

Online Services is another area where we provide virtualization at the desktop – in the form of web collaboration, including virtual meetings, web-based desktop support and remote access. These products are delivered using the SaaS method where customers simply subscribe to our cloud-based online services without making any capital investment. These SaaS-delivered products help customers reduce travel, increase teleworking and enable cost-effective remote access and support.

#### *Web Collaboration*

- GoToMeeting® is an online, easy-to-use, secure and cost-effective solution for online meetings, sales demonstrations and collaborative gatherings. GoToMeeting allows a user with a PC or Mac and an Internet browser to easily host, attend or participate in an online meeting or session without significant training. GoToMeeting is capable of providing a standard public switch telephone network, or PSTN, conference dial-in number and voice over Internet Protocol, or VoIP. It features advanced secure communication architecture that uses industry-standard secure sockets layers, or SSL. The service offers flat-fee pricing for any number of meetings of any length, for up to 15 attendees per meeting. We also offer GoToMeeting® Corporate which supports multiple organizer accounts, unlimited meetings with up to 25 attendees, robust reporting, additional customization options and advanced administrative capabilities. GoToMeeting Corporate also provides optional integrated toll-free audio.
- GoToWebinar® is an easy-to-use, do-it-yourself webinar solution, allowing organizations to increase market reach and effectively present online to geographically dispersed audiences. GoToWebinar allows users with a PC or Mac and an Internet browser to easily host, attend or participate in a webinar session without significant training or IT support. GoToWebinar includes such features as full-service registration with real-time reports, customized branding, automated email templates, polling and survey capabilities, webinar dashboard to monitor attendance and participation, easy presenter controls for changing presenters and VoIP and toll-based phone options. The service offers flat-fee pricing for unlimited webinars of any length, for up to 1,000 attendees per webinar.

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- *GoToTraining®* is the easy online training tool that allows trainers to deliver content to multiple trainees quickly and effortlessly, allowing organizations to expand their training program while saving time and reducing travel costs. GoToTraining allows users to host and participate in interactive online training sessions from either their PC or Mac. GoToTraining includes such features as full-service registration with integrated payment processing, real-time reporting and management, online course catalog, automated reminder and follow-up emails, content library to organize and store reusable content, materials, tests, polls, toll-free audio and VoIP options. . The service offers flat-fee pricing for unlimited training sessions of any length, for up to 200 attendees per session.
- *Integrated HiDef Audio* is provided with the GoToMeeting, GoToWebinar and GoToTraining products, providing a seamless audio and web experience and the ability to record audio and web sessions, mute/unmute callers and recognize speakers from an easy-to-use interface.
- *HiDef Audio* provides standalone audio options with reservationless audio conferencing for SMBs and large organizations. HiDef Corporate® and HiDef Conferencing® provide real-time reporting to manage users and costs effectively, with web controls to allow moderators to manage conferences without the costs of an operator.

### *Remote IT Support*

- *GoToAssist®* is a leading, online, remote technical-support solution that enables individual professionals and organizations of all sizes to provide secure, on-demand support over the Internet. GoToAssist enables support staff to instantly view and control the desktop of a user without the need to pre-install client software. GoToAssist comes in the following versions: GoToAssist Express®, GoToAssist Pro™, GoToAssist® Corporate, and GoToAssist® FastChat™. The solutions work automatically and securely through virtually every firewall, even over dial-up connections, and they easily integrate into existing infrastructure. GoToAssist Pro also integrates with GoToManage for full remote IT monitoring capabilities.
- *GoToManage®* is a leading IT management online solution that enables IT professionals to monitor and control their IT infrastructure. It provides instant answers to computer, server and network questions. GoToManage creates an IT “system of record” — providing businesses and IT consultants with the ability to discover and identify network devices, monitor critical servers and applications in real time, manage network usage and bandwidth consumption and track configuration changes. GoToManage is simple to deploy, can be accessed from anywhere and requires no costly server infrastructure. The solution also integrates with GoToAssist Pro to provide remote IT support and monitoring capabilities.

### *Remote Access*

- *GoToMyPC®* is an online solution that provides secure, remote access to PC and Mac from virtually any Internet-connected computer. GoToMyPC, which sets up easily with a secure encrypted connection, enables individuals to remotely use any resources hosted on their desktop just as though they were sitting in front of it. GoToMyPC® Pro, tailored for the needs of professionals and small offices, supports up to 50 PCs, rolls out secure, remote access for multiple users in minutes, and features an administration website in which managers can add, suspend and delete users and run usage reports. GoToMyPC® Corporate is built for businesses that require detailed reporting, in-depth administration features, assign and manage remote-access privileges for employees with advanced security features.

## ***Datacenter and Cloud Solutions***

Our Datacenter and Cloud Solutions bring lower operating costs, greater flexibility and cloud-enablement to the enterprise datacenter. These products are also designed to power public “clouds” when used by hosting and cloud service providers. Our datacenter and cloud solutions include virtual infrastructure and application networking products.

### ***Application Networking Products***

Citrix NetScaler, Citrix Access Gateway and Citrix Repeater Solutions improve the performance, security and costs of delivering applications, desktops and web content over both public and private networks:

- *Citrix® NetScaler®* is an all-in-one Web application delivery controller that makes applications run five times faster by application accelerator methods such as HTTP compression and caching, ensuring application availability through advanced L4-7 load balancer and content switching methods, increasing application security with an integrated application firewall and substantially lowering costs by offloading servers for server consolidation. It reduces Web application TCO, optimizes the user experience and makes sure that applications are always available. NetScaler comes in both built-for-purpose MPX-series hardware appliances powered by our nCore technology and an economical form factor with our VPX virtual appliance that operates with any standard industry server using our XenServer technology.
- *Citrix Access Gateway™* is an SSL/VPN that securely delivers applications with policy-based SmartAccess control. Users have easy-to-use secure access to the applications and data they need to be productive. Organizations can cost effectively extend access to datacenter resources from outside the office, while maintaining unprecedented control through comprehensive SmartAccess policies.
- *Citrix Repeater™ Solutions* provide high-performance application delivery to branch office users that increase productivity and reduce IT costs in the enterprise branch by delivering local area network-like application performance over the wide area network, or WAN. Appliance products in the Citrix Repeater family of solutions, including Citrix Branch Repeater™

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	Year Ended December 31,			2010	2009
	2010	2009	2008	Compared to 2009	Compared to 2008
	(In thousands)				
<b>Revenues:</b>					
Product licenses	\$ 619,452	\$ 538,975	\$ 620,215	\$ 80,477	\$ (81,240)
License updates	682,246	604,968	559,340	77,278	45,628
Online services	360,617	308,177	260,065	52,440	48,112
Technical services	212,347	161,968	143,734	50,379	18,234
Total net revenues	<u>\$1,874,662</u>	<u>\$1,614,088</u>	<u>\$1,583,354</u>	<u>\$ 260,574</u>	<u>\$ 30,734</u>

### *Product Licenses*

Product License revenue increased during 2010 when compared to 2009 primarily due to increased sales of our Datacenter and Cloud Solutions, led by NetScaler, of \$41.3 million and increased sales of our Desktop Solutions, led by XenDesktop and related programs of \$41.2 million. Product License revenue decreased during 2009 when compared to 2008 due to decreased sales of our Desktop Solutions, primarily XenApp, of \$81.5 million. The decrease in XenApp sales in 2009 was driven primarily by weakness in the global economy. We currently expect Product License sales to increase when comparing the first quarter of 2011 to the first quarter of 2010.

### *License Updates*

License Updates revenue increased during 2010 when compared to 2009 primarily due to an increase in new Subscription Advantage sales, led by increased XenDesktop product sales. License Updates revenue increased during 2009 when compared to 2008 primarily due to renewals related to our Subscription Advantage program over a larger base of subscribers. We currently anticipate that License Updates revenue will increase when comparing the first quarter of 2011 to the first quarter of 2010 and when comparing the first quarter of 2011 to the fourth quarter of 2010 due primarily to renewals of Subscription Advantage.

### *Online Services*

Online Services revenue increased during 2010 when compared to 2009 and during 2009 compared to 2008 primarily due to increased sales of our web collaboration products. We currently expect our Online Services revenue to increase when comparing the first quarter of 2011 to the first quarter of 2010 and when comparing the first quarter of 2011 to the fourth quarter of 2010 due primarily to sales of our web collaboration products.

### *Technical Services*

Technical Services revenue increased during 2010 when compared to 2009 primarily due to increases in support revenues of \$22.5 million driven by increased sales of our Datacenter and Cloud Solutions and an increase in consulting revenues of \$15.4 million related to increased sales of our Enterprise division's products. Technical Services revenue increased during 2009 when compared to 2008 primarily due to increased sales of support services related to our Datacenter and Cloud Solutions. We currently expect Technical Services revenues to increase when comparing the first quarter of 2011 to the first quarter of 2010 consistent with the increase in Product License revenue described above.

### *Deferred Revenue*

Deferred revenues are primarily comprised of License Updates revenue from Subscription Advantage, Technical Services revenues related to our support services and consulting contracts and Online Services revenues from annual service agreements for our Online Services. Deferred revenues increased approximately \$160.1 million as of December 31, 2010 compared to December 31, 2009 primarily due to increased sales and renewals of our Subscription Advantage product of \$102.0 million and increased sales of our support services of \$50.3 million. We currently expect deferred revenue to continue to increase in the first quarter of 2011.

While it is generally our practice to promptly ship our products upon receipt of properly finalized purchase orders, we sometimes have product license orders that have not shipped. Although the amount of such product license orders may vary, the amount, if any, of such product license orders at the end of a particular period has not been material to total revenue at the end of any fiscal year. We do not believe that backlog, as of any particular date, is a reliable indicator of future performance.

### *International Revenues*

International revenues (sales outside the United States) accounted for approximately 42.7% of our net revenues for the year ended December 31, 2010, 43.6% of our net revenues for the year ended December 31, 2009 and 45.8% for the year ended December 31, 2008. For detailed information on international revenues, please refer to Note 12 to our consolidated financial statements included in this Annual Report on Form 10-K for the year ended December 31, 2010.

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**CITRIX SYSTEMS, INC.**  
**CONSOLIDATED STATEMENTS OF INCOME**

	Year Ended December 31,		
	2010	2009	2008
	(In thousands, except per share information)		
<b>Revenues:</b>			
Product licenses	\$ 619,452	\$ 538,975	\$ 620,215
License updates	682,246	604,968	559,340
Online services	360,617	308,177	260,065
Technical services	212,347	161,968	143,734
Total net revenues	1,874,662	1,614,088	1,583,354
<b>Cost of net revenues:</b>			
Cost of product license revenues	66,682	52,160	47,801
Cost of services revenues	106,234	87,233	79,303
Amortization of product related intangible assets	50,504	47,917	48,028
Total cost of net revenues	223,420	187,310	175,132
Gross margin	1,651,242	1,426,778	1,408,222
<b>Operating expenses:</b>			
Research and development	326,647	281,980	288,109
Sales, marketing and services	729,754	679,053	669,569
General and administrative	258,875	239,623	256,679
Amortization of other intangible assets	14,279	20,972	22,724
Restructuring	971	26,473	—
In-process research and development	—	—	1,140
Total operating expenses	1,330,526	1,248,101	1,238,221
Income from operations	320,716	178,677	170,001
Interest income	14,577	14,683	31,506
Interest expense	(458)	(426)	(444)
Other (expense) income, net	(1,015)	958	(4,140)
Income before income taxes	333,820	193,892	196,923
Income taxes	57,379	2,875	18,647
Consolidated net income	276,441	191,017	178,276
Less: Net loss attributable to non-controlling interest	624	—	—
Net income attributable to Citrix Systems, Inc.	\$ 277,065	\$ 191,017	\$ 178,276
<b>Net income per share attributable to Citrix Systems, Inc. stockholders:</b>			
Net income per share attributable to Citrix Systems, Inc. stockholders - basic	\$ 1.49	\$ 1.05	\$ 0.97
Net income per share attributable to Citrix Systems, Inc. stockholders - diluted	\$ 1.46	\$ 1.03	\$ 0.96
<b>Weighted average shares outstanding:</b>			
Basic	185,959	181,805	183,023
Diluted	190,335	184,985	186,682

See accompanying notes.

# UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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## Form 10-K

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(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2011

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_.

Commission File Number 0-27084

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## CITRIX SYSTEMS, INC.

*(Exact name of registrant as specified in its charter)*

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Delaware

*(State or other jurisdiction of  
incorporation or organization)*

75-2275152

*(IRS Employer  
Identification No.)*

851 West Cypress Creek Road  
Fort Lauderdale, Florida 33309

*(Address of principal executive offices, including zip code)*

**Registrant's Telephone Number, Including Area Code:**  
**(954) 267-3000**

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**Securities registered pursuant to Section 12(b) of the Act:**

**Common Stock, \$.001 Par Value**  
**(Title of each class)**

**The NASDAQ Stock Market LLC**  
**(Name of each exchange on which registered)**

**Securities registered pursuant to Section 12(g) of the Act: NONE**

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Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). ☒ Yes ☐ No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in 12b-2 of the Exchange Act.

☒ Large accelerated filer

☐ Accelerated filer

☐ Non-accelerated filer

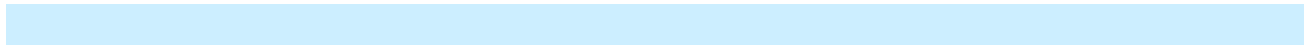
☐ Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

The aggregate market value of Common Stock held by non-affiliates of the registrant computed by reference to the price of the registrant’s Common Stock as of the last business day of the registrant’s most recently completed second fiscal quarter (based on the last reported sale price on The Nasdaq Global Select Market as of such date) was \$14,773,638,960. As of February 17, 2012 there were 185,577,251 shares of the registrant’s Common Stock, \$.001 par value per share, outstanding.

#### **DOCUMENTS INCORPORATED BY REFERENCE**

The registrant intends to file a proxy statement pursuant to Regulation 14A within 120 days of the end of the fiscal year ended December 31, 2011. Portions of such proxy statement are incorporated by reference into Part III of this Annual Report on Form 10-K.





- *Citrix CloudPortal* is a comprehensive portal for provisioning hosted applications, desktops, services and IaaS from the cloud. The multi-tenant platform automates business and operations support services thereby saving time and money while empowering customers with self-service day-to-day administration. CloudPortal simplifies cloud services by making management consistent and easy through a Web portal for on-boarding, provisioning, adds-moves-changes and usage reports.

### **Software as a Service**

Citrix's SaaS businesses deliver Web collaboration, including virtual meetings, Web-based desktop support, remote access and data sharing to customers worldwide. Our SaaS products are delivered as a subscription service and customers are able to subscribe to our SaaS products without making any capital investment. These SaaS products delivered as a subscription service help customers reduce travel, increase tele-working and enable cost-effective remote access, support and storage.

#### **Web Collaboration**

- *GoToMeeting*® is an online, easy-to-use, secure and cost-effective product for online meetings, sales demonstrations and collaborative gatherings. GoToMeeting allows a user with a PC or Mac and an Internet browser to easily host, attend or participate in an online meeting or session without significant training. Mobile devices are supported on GoToMeeting, allowing a participant to join a GoToMeeting from an Apple iOS supported device (iPhone or iPad) or an Android smart phone or tablet. GoToMeeting is capable of providing a standard public switch telephone network, or PSTN, conference dial-in number, voice over Internet Protocol, or VoIP, and high-definition video conferencing. It features an advanced, secure communication architecture that uses industry-standard SSL encryption. The product offers flat-fee pricing for any number of meetings of any length, for up to 15 attendees per meeting and is available in French, German, Italian, Spanish and English. GoToMeeting also comes with application programming interfaces, or APIs allowing users to integrate GoToMeeting into management systems and Web sites. We also offer GoToMeeting® Corporate which supports multiple organizer accounts, unlimited meetings with up to 25 attendees, robust reporting, additional customization options and advanced administrative capabilities. GoToMeeting Corporate also provides optional integrated toll-free audio.
- *GoToWebinar*® is an easy-to-use, do-it-yourself webinar product, allowing organizations to increase market reach and effectively present online to geographically dispersed audiences. GoToWebinar allows users with a PC or Mac and an Internet browser to easily host, attend or participate in a webinar session without significant training or IT support. Mobile devices are supported on GoToWebinar, allowing a participant to join a GoToWebinar from an Apple iOS supported device (iPhone or iPad) or an Android smart phone or tablet. GoToWebinar includes such features as full-service registration with real-time reports, customized branding, automated email templates, polling and survey capabilities, webinar dashboard to monitor attendance and participation, easy presenter controls for changing presenters and VoIP and toll-based phone options. GoToWebinar also offers registration and reporting APIs via the Go To Developer Center. The product offers flat-fee pricing for unlimited webinars of any length for up to 1,000 attendees per webinar. GoToWebinar Premier includes such features as full scale video content, mobile accessibility, no download required and is priced on monthly or per event options.
- *GoToTraining*® is an easy online training tool that allows trainers to deliver content to multiple trainees quickly and effortlessly, allowing organizations to expand their training program while saving time and reducing travel costs. GoToTraining allows users to host and participate in interactive online training sessions from either their PC or Mac. GoToTraining includes such features as full-service registration with integrated payment processing, real-time reporting and management, online course catalog, automated reminder and follow-up emails, content library to organize and store reusable content, materials, tests, polls, integrated payment system, toll-free audio and VoIP options. GoToTraining provides free APIs allowing full learning management system, or LMS, integrations through the Go To Developer Center. The product offers flat-fee pricing for unlimited training sessions of any length, for up to 200 attendees per session.
- *Integrated Toll Free Audio* is provided with the GoToMeeting, GoToWebinar and GoToTraining products, providing a seamless audio and Web experience and the ability to record audio and Web sessions, mute/unmute callers and recognize speakers from an easy-to-use interface.
- *HiDef Corporate* provides standalone audio options with reservationless audio conferencing for small and medium-sized businesses, or SMBs, and large organizations. HiDef Corporate® provides real-time reporting to manage users and costs effectively, with Web controls to allow moderators to manage conferences without the costs of an operator.

#### **IT Support**

- *GoToAssist*® is a leading, online, remote technical-support product that enables individual professionals and organizations of all sizes to provide secure, on-demand support over the Internet. GoToAssist enables support staff to instantly view and control the user's PC and Mac without the need to pre-install client software. GoToAssist comes in



the following versions: GoToAssist® Express, GoToAssist® Corporate, and GoToAssist® FastChat. The solutions work automatically and securely through virtually every firewall, even over dial-up connections, and easily integrate into existing infrastructure.

- *GoToManage®* is an online IT management product that enables IT professionals to monitor and control their IT infrastructure and remotely support people and unattended computers. Our industry-leading crawler technology in GoToManage monitoring creates an IT “system of record” providing customers with the ability to discover and identify network devices, monitor critical servers, manage network usage and bandwidth consumption and track configuration changes. GoToManage remote support provides the capability to remotely support users and also to view and control unattended network devices. Limited GoToManage capabilities are available at no cost on the iPad with full capabilities made available with a paid subscription. GoToManage is simple to deploy, can be accessed from virtually any Internet connection and requires no costly server infrastructure.

#### ***Remote Access***

- *GoToMyPC®* is an online product that provides secure, remote access to PC and Mac from virtually any Internet-connected computer. Access to a PC and Mac are available from an iOS supported smartphone or tablet (iPhone and iPad) and from any Android based tablet. GoToMyPC, which sets up easily with a secure encrypted connection, enables individuals to remotely use any resources hosted on their desktop just as though they were sitting in front of it. GoToMyPC® Pro, tailored for the needs of professionals and small offices, supports up to 50 PCs, rolls out secure, remote access for multiple users in minutes, and features an administration website in which managers can add, suspend and delete users and run usage reports. GoToMyPC® Corporate is built for businesses that require detailed reporting, advanced security features and the ability to assign and manage remote-access privileges for employees.

#### ***Data Sharing***

- *ShareFile* is a market leading data sharing and collaboration product. Acquired by Citrix in October 2011, the ShareFile product line makes it easier for businesses of all sizes to securely store, sync and share business documents and files, both inside and outside their companies. ShareFile's centralized cloud storage capability also allows users to share files across multiple devices and access them from virtually any location. ShareFile's technology enables Citrix to make common data services, like search, share, sync, secure, authenticate, open and preview, available to a wide range of applications, services and use cases through a set of open APIs; extend secure data sharing to new and existing applications stored in public and private clouds and accessed from different business and consumer devices; and connect data seamlessly into the way people collaborate, ensuring that the right documents and files are always accessible when needed and always up to date.

#### ***License Updates***

We provide a convenient way for customers to budget for their product version upgrades annually without having to anticipate variable costs throughout the year.

- *Subscription Advantage* provides a convenient way for customers to budget for their software version upgrades annually without having to anticipate variable costs throughout the year. The original purchase of these products is typically bundled with one year of Subscription Advantage or customers may elect to purchase subscriptions separately. Subscription Advantage allows customers to update software versions as they become available during the period of the subscription for free.

#### ***Technical Services***

We provide a portfolio of technical services to our business partners and customers to manage the quality of implementation, operation and support of our solutions. These services are available for additional fees paid on an annual or transactional basis.

- *Consulting Services* help ensure the successful implementation of our solutions. Tested methodologies, certified professionals and best practices developed from real-world experience allow our consulting services organization to provide guidance and support to partners and customers to maximize the effectiveness of their access infrastructure implementations. For pre- and post-sale consulting, Citrix Consulting, a consulting services organization, provides both exploratory and fee-based consulting services. These services include on-site systems design and implementation services targeted primarily at enterprise-level clients with complex IT environments. Citrix Consulting is also responsible for the development of best practice knowledge that is disseminated to businesses with which we have a business relationship and end-users through training and written documentation. Leveraging these best practices enables our integration resellers to provide more complex systems, reach new buyers within existing customer organizations and provide more sophisticated system proposals to prospective customers.

subscribers with automatic delivery of unspecified software upgrades, enhancements and maintenance releases when and if they become available during the term of the subscription.

Technical Services revenues are comprised of fees from technical support, which includes hardware and software maintenance, and are recognized ratably over the contract term, as well as revenues from product training and certification, and consulting services revenue related to the implementation of our products, which are recognized as the services are provided. SaaS in our Enterprise division includes fees from sales of our ShareFile products, which are delivered as a subscription service and are recognized ratably over the contract term.

Our Online Services division's revenues consist of fees related to our SaaS products from our Web collaboration products which primarily include our GoToMeeting, GoToWebinar, Hi-Def Audio, and GoToTraining services, our connectivity product, GoToMyPC, and our remote IT support which primarily include GoToAssist and GoToManage. Our Online Services revenue is recognized ratably over the contract term.

During the first quarter of 2012, we performed a review of the historical presentation of the revenue categories presented in our consolidated statements of income. As a result, we will adopt a revised presentation, which we believe is more comparable to those presented by other companies in our industry and better reflects our evolving product offerings, for example, our new software maintenance products. Beginning in the first quarter of 2012 technical support and hardware and software maintenance revenues, which are currently presented in Technical Services, and License Updates will be classified together as License Updates and Maintenance. Product training and certification and consulting services, which are currently presented in Technical Services, will be classified together as Professional Services. The classification of Product Licenses and Software as a Service will remain unchanged. This change in our presentation will not affect our total net revenues, total cost of net revenues or gross margin.

	Year Ended December 31,			2011 Compared to 2010	2010 Compared to 2009
	2011	2010	2009		
	(In thousands)				
Revenues:					
Product Licenses	\$ 744,513	\$ 619,452	\$ 538,975	\$ 125,061	\$ 80,477
License Updates	741,834	682,246	604,968	59,588	77,278
Software as a Service	430,213	360,617	308,177	69,596	52,440
Technical Services	289,832	212,347	161,968	77,485	50,379
Total net revenues	<u>\$ 2,206,392</u>	<u>\$ 1,874,662</u>	<u>\$ 1,614,088</u>	<u>\$ 331,730</u>	<u>\$ 260,574</u>

#### *Product Licenses*

Product License revenue increased during 2011 when compared to 2010 primarily due to increased sales of our Desktop Solutions, led by XenDesktop of \$141.5 million and increased sales of our Datacenter and Cloud Solutions, led by NetScaler, of \$86.9 million. Product License revenue increased during 2010 when compared to 2009 primarily due to increased sales of our Datacenter and Cloud Solutions, led by NetScaler, of \$41.3 million and increased sales of our Desktop Solutions, led by XenDesktop and related programs of \$41.2 million. We currently target Product License sales to increase when comparing the first quarter of 2012 to the first quarter of 2011.

#### *License Updates*

License Updates revenue increased during 2011 when compared to 2010 primarily due to an increase in Subscription Advantage renewal sales over a larger base of subscribers. License Updates revenue increased during 2010 when compared to 2009 primarily due to an increase in new Subscription Advantage sales, led by increased XenDesktop product sales. We currently are targeting that License Updates revenue will increase when comparing the first quarter of 2012 to the first quarter of 2011 and when comparing the first quarter of 2012 to the fourth quarter of 2011. As described above, in the first quarter of 2012 License Updates revenue will be classified in Maintenance revenues.

#### *Software as a Service*

Software as a Service revenues increased during 2011 when compared to 2010 and during 2010 compared to 2009 primarily due to increased sales of our Online Services division's Web collaboration products. We currently target our Software as a Service revenues to increase when comparing the first quarter of 2012 to the first quarter of 2011 and when comparing the first quarter of 2012 to the fourth quarter of 2011 due primarily to increased sales of our Web collaboration products.

**CITRIX SYSTEMS, INC.**  
**CONSOLIDATED STATEMENTS OF INCOME**

	Year Ended December 31,		
	2011	2010	2009
	(In thousands, except per share information)		
Revenues:			
Product licenses	\$ 744,513	\$ 619,452	\$ 538,975
License updates	741,834	682,246	604,968
Software as a Service	430,213	360,617	308,177
Technical services	289,832	212,347	161,968
Total net revenues	2,206,392	1,874,662	1,614,088
Cost of net revenues:			
Cost of product license revenues	74,393	66,682	52,160
Cost of services revenues	153,063	106,234	87,233
Amortization of product related intangible assets	54,741	50,504	47,917
Total cost of net revenues	282,197	223,420	187,310
Gross margin	1,924,195	1,651,242	1,426,778
Operating expenses:			
Research and development	343,727	326,647	281,980
Sales, marketing and services	839,818	729,754	679,053
General and administrative	307,270	258,875	239,623
Amortization of other intangible assets	16,390	14,279	20,972
Restructuring	24	971	26,473
Total operating expenses	1,507,229	1,330,526	1,248,101
Income from operations	416,966	320,716	178,677
Interest income	13,819	14,577	14,683
Other (expense) income, net	(288)	(1,473)	532
Income before income taxes	430,497	333,820	193,892
Income taxes	74,867	57,379	2,875
Consolidated net income	355,630	276,441	191,017
Less: Net loss attributable to non-controlling interest	692	624	—
Net income attributable to Citrix Systems, Inc.	\$ 356,322	\$ 277,065	\$ 191,017
Net income per share attributable to Citrix Systems, Inc. stockholders:			
Net income per share attributable to Citrix Systems, Inc. stockholders — basic	\$ 1.90	\$ 1.49	\$ 1.05
Net income per share attributable to Citrix Systems, Inc. stockholders — diluted	\$ 1.87	\$ 1.46	\$ 1.03
Weighted average shares outstanding:			
Basic	187,315	185,959	181,805
Diluted	190,641	190,335	184,985

See accompanying notes.

# Master Subscription Agreement

## MSA ORDER FORM



Valid If Signed and Returned to Citrix Online By:

OF ID #:

Please return ALL PAGES of the signed Agreement to (805) 690-6471

Citrix Online LLC  
6500 Hollister Avenue  
Goleta, CA 93117 USA

### CUSTOMER DATA SUMMARY

CONTACT INFORMATION	BILLING INFORMATION
Customer: _____	Purchase Order #: _____ <input type="checkbox"/> Not Applicable
Address: _____	Billing Address: (if different) _____
Main Contact: _____	Billing Contact: _____
Telephone: _____	Telephone: _____ Fax: _____
Fax: _____	Email: _____
Email: _____	Billing Frequency: (check one) <input type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Annually
Setup Contact: _____	Billing Method: Invoices shall be delivered to Customer via email.
Telephone: _____	<input type="checkbox"/> Check here if Customer requires paper invoice
Fax: _____	Payment Process: Customer shall pay to Citrix Online all Fees set forth herein within thirty (30) days of date of invoice pursuant to <u>Section 4</u> of this Agreement.
Email: _____	<input type="checkbox"/> Check here if Customer elects to pay by electronic funds transfer ("EFT") (Requires completion of <u>Exhibit B</u> to this Agreement)
Citrix Online Account Executive Name: _____	<input type="checkbox"/> Check here if Customer elects to pay by credit card transaction (Requires completion of separate credit card authorization form found at <a href="http://www.citrixonline.com/billing">www.citrixonline.com/billing</a> .)
Email: _____	<input type="checkbox"/> Check here if Customer elects to pay by check.

### SERVICE & FEE SUMMARY

Service	Number of Named Authorized User(s)	Annual Subscription Fee Per Named Authorized User	TOTAL ANNUAL SUBSCRIPTION FEE	Implementation/Option Fee Per Named Authorized User	TOTAL IMPLEMENTATION /OPTION FEE
GoToAssist®					
GoToMeeting®*					
GoToMyPC®					
Options**/Other					

\*Ten (10) or more GoToMeeting Named Authorized Users includes GoToWebinar® at no additional fee.

\*\* Option specifications can be found at [www.CitrixOnline.com/ProductOptions](http://www.CitrixOnline.com/ProductOptions).

Please Note: The Citrix Online customer/technical support services are set forth in Exhibit A to this Agreement.

This Agreement shall commence on \_\_\_\_\_ (the "Effective Date") and will continue for \_\_\_\_ months (the "Initial Commitment Term"), and thereafter in accordance with Section 3 of this Agreement. By signing below, Citrix Online and Customer each certifies that it has read, understands and agrees to the provisions set out in this MSA Order Form and the attached Terms and Conditions, the combination of which comprises this Master Subscription Agreement (this "Agreement").

CUSTOMER: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CITRIX ONLINE LLC

Signature: \_\_\_\_\_

Name: Kaylin Potepan

Title: Billing Process Manager

Date: \_\_\_\_\_

# Master Subscription Agreement: TERMS AND CONDITIONS

This Master Subscription Agreement is entered into as of the Effective Date, by and between Citrix Online LLC, a Delaware limited liability company and a wholly-owned subsidiary of Citrix Systems, Inc. ("Citrix Online"), and "Customer," as identified on the MSA Order Form. By signing the MSA Order Form, each party certifies that it has read, understands and agrees to the provisions set out in the MSA Order Form and these Terms and Conditions, the combination of which comprises the Master Subscription Agreement (this "Agreement"). The "Effective Date" of this Agreement shall be as stated on the MSA Order Form.

**1. Description of Services.** Citrix Online's remote access service products consist of GoToAssist®, GoToMeeting®, GoToWebinar® and GoToMyPC® (individually and collectively referred to as the "Services"), as more fully described in subsections (a) through (d) immediately below. The MSA Order Form identifies the specific Service(s) subscribed to by Customer and indicates the number of Named Authorized User(s) for each Service. "Named Authorized Users" shall mean (i) for the GoToAssist, GoToMeeting and GoToWebinar Services, the Customer-designated individuals (i.e., employees, contractors, consultants, etc.) whom may access the Services in accordance with this Agreement, and (ii) for the GoToMyPC Service, the Customer-designated host PCs which may be accessed by authorized individuals (i.e., employees, contractors, consultants, etc.) in accordance with this Agreement. The following describes the Services currently offered by Citrix Online:

**a. GoToAssist.** By subscribing to the GoToAssist Service, Customer may access and use the GoToAssist screen-sharing application for the sole purpose of enabling Named Authorized Users to provide remote assistance to its internal and external customers.

**b. GoToMeeting.** By subscribing to the GoToMeeting Service, Customer may access and use the GoToMeeting online meeting application for the sole purpose of conducting online meetings between Named Authorized Users and their respective invited attendees.

**c. GoToWebinar.** By subscribing to the GoToWebinar Service, Customer may access and use the GoToWebinar web conferencing application for the sole purpose of conducting online Webinars between Named Authorized Users and their respective invited attendees.

**d. GoToMyPC.** By subscribing to the GoToMyPC Service, Customer may access and use the GoToMyPC remote-access screen-sharing application for the sole purpose of enabling authorized individuals to remotely access and control Named Authorized Users.

## **2. Customer Rights and Restrictions.**

**a.** During the Term of this Agreement, and upon payment of all applicable Fees, Customer may access and use

the Services subscribed to hereunder pursuant to and in accordance with the provisions of this Agreement.

**b.** Citrix Online will enable Named Authorized Users to access and utilize the Services as contemplated herein.

**c.** In connection with the Services subscribed to hereunder, Citrix Online will make available to Customer remote training session(s) via telephone and the Internet for all individuals whom are either Named Authorized Users or authorized to access Named Authorized Users hereunder.

**d.** Customer may not reverse engineer, decompile or otherwise attempt to decipher any code in connection with the Services or any other aspect of Citrix Online's technology.

**e.** Customer may reassign Named Authorized Users without incurring additional fees.

**f.** Subject to Sections 4 and 9(n), Customer may subscribe to additional Services, including new service offerings as may be made available from time to time, and/or increase the number of Named Authorized Users by providing Citrix Online with (i) a completed Citrix Online Add-On Order Form, (ii) a Customer-issued purchase order, or (iii) a written amendment to this Agreement signed by both parties.

**g.** Customer may inform its Named Authorized Users, customers and employees that the Services subscribed to hereunder are powered by Citrix Online.

**h.** No other rights are granted hereunder except as expressly set forth in this Agreement.

## **3. Term and Termination.**

**a. Term.** Following the Initial Commitment Term (as defined in the MSA Order Form), this Agreement shall automatically renew for successive one-year terms (each, a "Renewal Term"). The Initial Commitment Term and any Renewal Term(s) shall collectively be referred to herein as the "Term."

**b. Termination by Non-Renewal.** Customer may elect to not renew and to terminate this Agreement by providing Citrix Online with written notice of non-renewal at least thirty (30) days prior to the end of the Initial Commitment Term. Such written notice of non-renewal must be submitted to Citrix Online at [corporatecancellations@citrixonline.com](mailto:corporatecancellations@citrixonline.com).

**c. Termination for Convenience.** Following the Initial Commitment Term, Customer may terminate this Agreement during any subsequent Renewal Term for any reason or no reason by providing Citrix Online at least forty-five (45) days' written notice, and Citrix Online will refund to Customer any prepaid but unused Subscription Fees (if any). Such written notice of termination must be submitted to Citrix Online at [corporatecancellations@citrixonline.com](mailto:corporatecancellations@citrixonline.com).

**d. Termination for Cause.** At any time, either party may terminate this Agreement immediately upon written notice to the other party (i) if the other party breaches any of its

**Online Subscription Agreement: TERMS OF SERVICE**

*Updated on January 7, 2011*

CLICK FOR PRINTABLE VERSION

**IMPORTANT – READ CAREFULLY:**

BY COMPLETING THE ELECTRONIC ACCEPTANCE PROCESS AND CLICKING THE ACCEPTANCE BUTTON, YOU WARRANT THAT YOU: (i) ARE 18 YEARS OF AGE OR OLDER; (ii) HAVE THE AUTHORITY TO, OR ARE AUTHORIZED TO SIGN FOR AND BIND, THE CONTRACTING PARTY DEFINED BELOW AS "CUSTOMER" TO THE TERMS OF SERVICE OF THIS ONLINE SUBSCRIPTION AGREEMENT ("**AGREEMENT**"); AND (iii) HAVE READ, UNDERSTAND AND AGREE ON BEHALF OF CUSTOMER TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THIS AGREEMENT, YOU MUST NOT CLICK THE ACCEPTANCE BUTTON; YOUR REGISTRATION PROCESS WILL BE DISCONTINUED AND YOU MAY NOT USE THE SERVICES.

This Agreement is a legal and binding instrument entered into as of the Effective Date by and between Citrix Online and Customer. Citrix Online reserves the right to amend this Agreement from time to time on notice to Customer. The most current version of this Agreement can be reviewed by clicking the "Terms of Service" hypertext link located on the Citrix Online website and shall control if different than this Agreement. Customer/technical support is available via the product support websites and email, as set forth below:

**Product Support Websites:**

**GoToAssist Service/GoToAssist Pro**

[www.help.gotoassist.com](http://www.help.gotoassist.com)

[www.help.gotoassist.de](http://www.help.gotoassist.de) (Germany)

[www.help.gotoassist.fr](http://www.help.gotoassist.fr) (France)

**GoToManage Service**

[www.gotomanage.com/help](http://www.gotomanage.com/help)

**GoToMeeting Service, GoToWebinar Service and**

**GoToTraining Service**

<http://support.gotomeeting.com>

<http://support.gotomeeting.de> (Germany)

<http://support.gotomeeting.fr> (France)

**GoToMyPC Service**

<http://support.gotomypc.com>

**Email:** [support@citrixonline.com](mailto:support@citrixonline.com)

**1. Definitions.** As used in this Agreement, the following defined terms shall apply:

**1.1. Agreement** means these Terms of Service as may be amended from time to time and any other documents incorporated by reference.

**1.2. Citrix Online** means the Citrix Online entity set forth in Section 10 of this Agreement.

**1.3. Confidential Information** means any non-public information and/or materials provided by a party under this Agreement to the other party and reasonably understood to be confidential.

**1.4. Customer** means the legal entity or individual that enters into this Agreement.

**1.5. Devices and Server(s)** means the following for purposes of the GoToManage Service: (i) device is a physical or virtual machine including, but not limited to, computers, servers, printers, switches, IP phones and routers connected to a network; and (ii) server is a physical or virtual machine that shares resources (e.g., access to data files, programs and other peripheral devices) with other devices on a network.

**1.6. Effective Date** means the date of electronic acceptance of this Agreement by Customer.

1.7. **My Account** means Customer's specific page within the Citrix Online website where Customer subscribes to the Services and provides Customer account information such as Registration Data and Payment Information. Customer may access its My Account page at any time and update certain account information.

1.8. **Named Authorized User(s)** (sometimes referenced as "NAU") means (i) those Customer-designated individuals who may access and use the Services in accordance with this Agreement. Each Named Authorized User must have a unique identifier (i.e. "Named User ID" as defined below), and (ii) for the GoToMyPC Service, Customer-designated host PCs which may be accessed by authorized individuals in accordance with this Agreement. Customer-designated individuals may include, by way of example, employees, contractors, consultants and agents or third parties with which Customer transacts business as determined by Customer.

1.8.1. **Named User ID** means the unique identifier of each Customer-designated individual authorized to use the Services. A Named User ID may not be of a generic nature (e.g., [john.doe@company.com](mailto:john.doe@company.com) is a unique Named User ID; whereas [support@company.com](mailto:support@company.com), [user1@company.com](mailto:user1@company.com), [trainer@company.com](mailto:trainer@company.com), etc., are examples of generic user identifiers).

1.9. **Payment Information** means limited Customer information related to billing and payment matters collected by Citrix Online during the online registration process. Such Payment Information will include a valid debit card or credit card number with available credit sufficient to pay the applicable Subscription Fees, an election of a preferred billing frequency, and other information as required by Citrix Online.

1.10. **Privacy Policy** means the Citrix Online Privacy Policy which can be viewed by clicking the "Privacy Policy" hypertext link located on the Citrix Online website.

1.11. **Registration Data** means limited Customer information collected by Citrix Online during the online registration process.

1.12. **Services** means Citrix Online's remote access and web collaboration products consisting of the services set forth in Section 2 of this Agreement and as subscribed to by Customer.

1.13. **Subscription Fee** means the fee for Customer's use of and access to the Services as subscribed to by Customer.

1.14. **Term** means the term of this Agreement commencing on the Effective Date and continuing until the expiration of all subscription period(s), including any renewal subscription period(s), for Services as stated on Customer's My Account page.

2. **Description of Services.** Citrix Online's remote access and web collaboration products include GoToAssist<sup>®</sup> Express, GoToAssist<sup>®</sup> Corporate, GoToAssist<sup>®</sup> Corporate FastChat, GoToAssist<sup>®</sup> Pro, GoToManage<sup>™</sup>, GoToMeeting<sup>®</sup>, GoToWebinar<sup>®</sup>, GoToTraining<sup>®</sup>, GoToMyPC<sup>®</sup> and GoView<sup>®</sup> services (individually and collectively referred to as the "Services"), as more fully described in subsections 2.1 through 2.9 immediately below. The selection(s) made and submitted by Customer during the online registration process will identify the specific Service(s) subscribed to by Customer hereunder and the number of Named Authorized Users for each Service, all of which shall be listed on Customer's My Account page within the Citrix Online website. Notwithstanding, this Agreement will apply to any Services subscribed to by Customer at any time on or after the Effective Date. The following describes the Services currently offered by Citrix Online:

2.1. **GoToAssist Express.** By subscribing to the GoToAssist Express Service, Customer may access and use the GoToAssist Express screen-sharing application for the sole purpose of enabling a Named Authorized User to provide live remote assistance to its internal and external customers.

2.2. **GoToAssist Corporate.** By subscribing to the GoToAssist Corporate Service, Customer may access and use the GoToAssist screen-sharing application for the sole purpose of enabling Named Authorized Users to provide live remote assistance to their internal and external customers.

2.3. **GoToAssist Corporate FastChat.** By subscribing to the GoToAssist Corporate FastChat Service, Customer may access and use the GoToAssist chat-only application for the purpose of enabling Named Authorized Users to provide live chat-only assistance to their internal and external customers.

2.4. **GoToAssist Pro.** By subscribing to the GoToAssist Pro Service, Customer may access and use the GoToAssist Pro screen-sharing application for the purpose of enabling Named Authorized Users to provide live remote assistance to Customer's internal and external customers, remote support for unattended computers and servers, and the basic offering of GoToManage.

2.5. **GoToManage.** By subscribing to the GoToManage Service, Customer may access and use the GoToManage application for the purpose of monitoring information technology networks, Devices and Server(s), maintaining inventory management of such Devices and Server(s) and performing associated analysis and reporting.

2.6. **GoToMeeting.** By subscribing to the GoToMeeting Service, Customer may access and use the GoToMeeting online meeting application for the purpose of enabling Named Authorized Users to conduct online meetings with their respective invited attendees.

2.7. **GoToWebinar.** By subscribing to the GoToWebinar Service, Customer may access and use the GoToWebinar web conferencing application for the purpose of enabling Named Authorized Users to conduct webinars with their respective invited attendees.

2.8. **GoToTraining**. By subscribing to the GoToTraining Service, Customer may access and use the GoToTraining online training application for the purpose of enabling Named Authorized Users to conduct online training sessions with their respective invited attendees. Use of the service allows synchronous online training sessions, distribution of course materials, testing and assessments, publishing upcoming courses to a catalog, and maintaining a reusable content library.

2.9. **GoToMyPC**. By subscribing to the GoToMyPC Service, Customer may access and use the GoToMyPC remote-access screen-sharing application for the sole purpose of enabling authorized individuals to remotely access and control Named Authorized Users.

2.10. **GoView Beta**. By subscribing to the GoView Beta Service, Customer may enable Named Authorized Users to access and use the GoView screen recording, editing, and hosting service to easily create and share recorded content online.

3. **Online Registration**. To subscribe to Services via the various Citrix Online product websites, Customer must complete the online registration process, including Customer's electronic acceptance of this Agreement, and Citrix Online must then accept such online registration. Citrix Online may reject an online registration by a potential Customer in its sole discretion and is not obligated to provide a reason for its rejection. In the event a potential Customer's online registration is rejected by Citrix Online, such potential Customer may submit a new online registration for re-evaluation by Citrix Online.

3.1. **Registration Data**. All Registration Data provided by or on behalf of Customer must be current, complete and accurate, and Customer is solely responsible for updating such Registration Data as necessary. Citrix Online reserves the right to terminate this Agreement immediately in the event any Registration Data is found to be inaccurate, incomplete and/or not current at any time. Customer is hereby informed that Registration Data is subject to automatic processing by Citrix Online for the purposes of managing Customer's account. Customer will have access to Registration Data and may update or correct it as necessary.

3.2. **Account Password/Security**. As part of the online registration process, Customer will choose a password and a user name. Customer is entirely responsible for maintaining the confidentiality of its password and account, and Customer is solely responsible for any and all activities that occur under its account. Customer agrees to notify Citrix Online immediately of any unauthorized use of its account or any other breach of security. Citrix Online shall not be liable for any loss that Customer may incur as a result of a third party using its password or account, either with or without its knowledge. Customer may be held liable for losses incurred by Citrix Online and/or another party due to a third party using Customer's account or password.

3.3. **Payment Information**. All Payment Information provided by or on behalf of Customer must be current, complete and accurate, and Customer is solely responsible for updating such Payment Information as necessary. Customer hereby authorizes Citrix Online, from time to time, to take steps to determine whether the debit card or credit card number provided is valid. Citrix Online reserves the right to terminate this Agreement immediately in the event any Payment Information is found to be inaccurate, incomplete and/or not current at any time. Citrix Online shall not be responsible for any overdraft charge or other fees that may be incurred by Citrix Online's use of Customer's debit card or credit card for payment hereunder.

3.4. **Trial and Promotional Offers**. From time to time, Citrix Online may offer certain trial and/or promotional offers. Citrix Online reserves the right to discontinue or modify coupons, credits, trials and promotional offers at its discretion and without notice. Any such trial or promotional offers may not be combined with other coupons, credits, trials, promotions or any other discounts, and are limited to one (1) per Customer. The details of any trial or promotional offers applicable to Customer shall be listed on Customer's My Account page.

3.5. **Privacy**. Citrix Online's use of any information provided by Customer, including without limitation, Registration Data and Payment Information, is set forth in Citrix Online's current Privacy Policy.

#### 4. **Customer Rights and Restrictions**.

4.1. **Customer Access and Use**. During the Term of this Agreement, and upon payment of all applicable Subscription Fees, Customer may access and use the Services pursuant to and in accordance with the provisions of this Agreement. Citrix Online will enable Customer and its Named Authorized Users to access and utilize the Services as contemplated by the Agreement. Thereafter, Customer shall be solely responsible for selecting and managing its users and providing each of them with the information necessary for access to and use of the Services. Customer may reassign Named Authorized Users, Devices and/or Server(s) without incurring additional fees provided that the number of such Named Authorized Users, Devices and/or Server(s) does not increase. Customer may inform its users, customers and employees that the Services are powered by Citrix Online. Customer understands that the Services do not allow calls to the emergency services numbers (e.g., in the United States 911, or in the United Kingdom 999 and 112). If Customer's broadband connection fails, the Services and some related voice service will also fail. The Services may cease to function if there is a power cut or failure. These failures may be caused by reasons outside of the control of Citrix Online.

4.2. **Reverse Engineering**. Except to the extent permitted by law, Customer may not modify, distribute, prepare derivative works of, reverse engineer, reverse assemble, disassemble, decompile or otherwise attempt to decipher any code used in connection with the Services and/or any other aspect of Citrix Online's technology.

4.3. **Abuse**. Customer shall not access and/or engage in any use of the Services (i) in a manner that abuses or materially disrupts the networks, security systems, Services and/or websites of Citrix Online and/or (ii) to communicate any message or material that is deemed harassing, threatening, indecent, obscene, slanderous, or otherwise unlawful.



COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

Volume I

\*\*\*\*\*  
CITRIX,  
Appellant,  
vs  
COMMISSIONER OF REVENUE,  
Appellee.  
\*\*\*\*\*

Before: Commissioner Frank J. Scharaffa

Clerk: Helen Mary Warren

Held at: Appellate Tax Board

100 Cambridge Street

Boston, Massachusetts 02114

Date held: February 10, 2016

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10:21:28 1 server software. Please, describe for us the main  
10:21:32 2 functions that your team had in doing that?

10:21:35 3 A. Sure. At the high level, I divide the set of  
10:21:41 4 factions. On the proactive side, we are talking about  
10:21:51 5 making sure that we have enough capacity on all these  
10:21:55 6 various subsystems that I mentioned to be able to handle  
10:21:59 7 additional customer traffic on a trending basis. On the  
10:22:03 8 reaction side, it is much more about being able to get  
10:22:08 9 alarms from our infrastructure and services and being  
10:22:13 10 able to activate them to fix any issues that our  
10:22:16 11 customers might be perceiving.

10:22:21 12 Q. So the proactive side, that would involve  
10:22:23 13 observation?

10:22:25 14 A. That's correct.

10:22:29 15 Q. What kinds of things are you observing?

10:22:32 16 A. Primarily, we are looking at any sort of fault in  
10:22:36 17 any of the other components that I mentioned. We have a  
10:22:41 18 million data points coming to us every five minutes or  
10:22:45 19 so. A lot of them have threshold associated with them.  
10:22:51 20 Those might indicate some faults. We might have the  
10:22:57 21 redundant systems, and we have the ability to switch  
10:23:04 22 between primary and redundant system. That's one. The  
10:23:07 23 other is in terms of managing capacity. As I said, we  
10:23:13 24 might not have enough capacity to be able to service the

10:24:47 1 A. 24 by 7. Constantly.

10:24:50 2 Q. What is the goal of the process overall?

10:24:52 3 A. I want to make sure our customer experience is  
10:24:55 4 preserved. For example, if you want to get into a  
10:24:58 5 meeting, it probably would be acceptable to get the  
10:25:02 6 meeting started within a few seconds; but not if you  
10:25:05 7 have to wait for ten minutes. Our primary job is to  
10:25:11 8 preserve that.

10:25:12 9 Q. You said customer experience. What is the  
10:25:21 10 customer ultimately looking for?

10:25:27 11 A. The ability to connect with other entities.  
10:25:34 12 Depending on the product.

10:25:36 13 Q. That's what CITRIX is providing?

10:25:39 14 A. That's correct.

10:25:41 15 Q. Let me turn to the reaction function that you  
10:25:46 16 described. What kind of sorts of things are included in  
10:25:50 17 the reaction function.

10:25:51 18 A. Typically, we are talking about reacting to an  
10:25:56 19 external stimulus, for example, malicious party might  
10:26:00 20 decide to handicap into our services. We might have a  
10:26:04 21 legitimate influx of a very large number of customers  
10:26:07 22 that we were not expecting. So we have to react to  
10:26:11 23 these events to preserve the user experience for as many  
10:26:15 24 customers as we can.

10:26:20 1 Q. How do you get the information to which you are  
10:26:24 2 reacting, from what channels?

10:26:27 3 A. Again, it is a multichannel input. Very similar  
10:26:34 4 to customers calling in, in which case we know customer  
10:26:40 5 for one of the monitoring systems is informing us of an  
10:26:44 6 issue or there are electronics that are rating systems,  
10:26:53 7 forms that customer for the session and all of that  
10:26:56 8 aggregates back to us.

10:27:03 9 Q. If there is some issue to which you need to  
10:27:08 10 react, what is the process that then follows?

10:27:15 11 A. In the reactive case, we probably, depending on  
10:27:18 12 the severity of the issue, will open a high priority  
10:27:23 13 incident, and depending on what percentage of the user  
10:27:25 14 base impacted will either have a priority one or  
10:27:30 15 priority two bridge open, which means everybody who is  
10:27:33 16 relevant to that particular issue jumps on and we  
10:27:39 17 actively diagnose the problem before we get to a  
10:27:42 18 solution. Once we have a solution, we go to change  
10:27:46 19 process and push that solution through to the  
10:27:49 20 infrastructure of the software.

10:27:51 21 Q. How much work is involved in the diagnostic  
10:27:54 22 aspect?

10:27:58 23 A. Quite a bit. It is not unlike a medical  
10:28:05 24 practice. We will have a priority one incident probably

10:28:08 1 once a month, priority to probably once a week or more.  
10:28:13 2 Then priority incidents consistently over time. I think  
10:28:18 3 the number was about four thousand, in all, over a  
10:28:22 4 quarter.

10:28:26 5 Q. So once you diagnose what the issue is, what then  
10:28:33 6 do you do with the issue?

10:28:34 7 A. It depends on what the issue is. We can go, once  
10:28:40 8 we have a root cause, it could be related to capacity,  
10:28:44 9 which means some component is overflowing in which case  
10:28:48 10 we engage what is called great limiting. We are  
10:28:52 11 preserving customers' experience, and denying other  
10:28:58 12 customers or switch to a component, component failure,  
10:29:03 13 we need to have enough redundancy to be able to switch,  
10:29:06 14 too.

10:29:07 15 Q. Okay. Are there configurations that can be  
10:29:13 16 adjusted to address problems?

10:29:15 17 A. Absolutely. Primarily way of dealing with a lot  
10:29:18 18 of the issues.

10:29:22 19 Q. What if there is a complete component failure,  
10:29:26 20 what happens then?

10:29:27 21 A. If we have a redundant component standing by, our  
10:29:32 22 job is to redirect traffic over to that component.  
10:29:37 23 Otherwise, sometimes we have to escalate to our  
10:29:41 24 equipment vendors and work with them to solve a problem

10:29:44 1 that we cannot solve by ourselves.

10:29:46 2 Q. Does the reaction function ever involve reaction  
10:29:50 3 to extras at this issues?

10:29:51 4 A. Yes.

10:29:51 5 Q. What would you do in that case?

10:29:54 6 A. If you have any stand by capacity, we will throw  
10:29:59 7 that into the mix. If not, we will engage with a third  
10:30:03 8 party that is set up as an overflow. In worst case,  
10:30:07 9 will start load shedding. That is what I was  
10:30:10 10 mentioning, when we preserve the sort of user experience  
10:30:14 11 of a few customers, but deny service to others.

10:30:19 12 Q. How often, well, I think you already answered  
10:30:23 13 this. I apologize. Let me go back to your reference to  
10:30:28 14 a priority point incident. Can you just give us a sense  
10:30:32 15 of how important something has to be in order to be  
10:30:36 16 designated Priority One?

10:30:37 17 A. The definition for that, if any of our services,  
10:30:41 18 more than ten percent of the user base is impacted, that  
10:30:44 19 is when we call a Priority One. Everything else stops.  
10:30:50 20 We have full access to any engineer or otherwise in the  
10:30:55 21 company. We continue to escalate the issue. Sometimes  
10:31:00 22 all the way up to the GM.

10:31:02 23 Q. This would include people outside of technical  
10:31:05 24 operations team?

10:32:39 1 now?

10:32:41 2 A. Partly, yes.

10:32:45 3 Q. Tell us if you would a little bit about where  
10:32:52 4 your team's responsibility is to the change process  
10:32:55 5 begins?

10:32:56 6 A. So in a company like ours, part of the  
10:33:03 7 information team, goes through a series of steps, called  
10:33:09 8 software development lifecycle. Copies of the  
10:33:12 9 infrastructure not used by our end users, which are  
10:33:16 10 built for testing, and so the software is progressively  
10:33:20 11 put through these parts of the pipeline, gets handed to  
10:33:24 12 my team in what we call the staging system, reproduction  
10:33:28 13 system, that is, before we promote it to the life  
10:33:36 14 systems.

10:33:37 15 Q. When you say testing, what does that mean?

10:33:41 16 A. We run a series of interactions with the system  
10:33:46 17 to be sure that it is doing yesterday in addition to the  
10:33:51 18 new feature functionality that we are trying to release.

10:33:56 19 COMMISSIONER SCHARAFFA: Can I interrupt at  
10:33:59 20 this point. You began by talking about hardware and you  
10:34:05 21 described what hardware consists of. What is software?

10:34:13 22 THE WITNESS: Software is all the  
10:34:14 23 functionality that we add on top of the hardware. Our  
10:34:21 24 unique value to come across in the sense that it is all



10:39:24 1 after the other? What is the delay in between them?

10:39:28 2 A. Typically, it varies by the, will the risk  
10:39:32 3 management exercise. Varies by how risky the new  
10:39:37 4 release is. Typically we will pick up a tranche.

10:39:46 5 Q. What happens in that week between two tranches  
10:39:50 6 being activated?

10:39:51 7 A. Listening to all personal challenges. After you  
10:39:55 8 had a session on-line, you will see a popup that says  
10:39:58 9 please give us feedback about this event. People who  
10:40:02 10 call into a call center and will see from  
10:40:06 11 instrumentation that being built into the system. So  
10:40:10 12 three different channels, I guess, that were keeping our  
10:40:16 13 ear up.

10:40:17 14 Q. So information within the system, electronic  
10:40:20 15 feedback forms and calls to call centers were the three  
10:40:23 16 channels?

10:40:23 17 A. Yes.

10:40:23 18 Q. By the way, those call centers, are those  
10:40:28 19 operated by your team?

10:40:29 20 A. No.

10:40:30 21 Q. Who operates the call centers?

10:40:32 22 A. Our global customer support team. Also call our  
10:40:36 23 care team, they customer face-calls.

10:40:41 24 Q. How many people is that?

10:40:43 1 A. Approximately, 200.

10:40:45 2 Q. So the customer care team gets the call, they  
10:40:47 3 have conveyed the information to your team so you can  
10:40:50 4 figure out what is happening with this update?

10:40:52 5 A. That's correct. We are very tied to that sense.

10:40:58 6 Q. How long does it generally take to deploy the  
10:41:03 7 update from the time it gets to your team to the time it  
10:41:06 8 is active for all customers?

10:41:08 9 A. It depends on the complexity. It could be a few  
10:41:15 10 weeks.

10:41:17 11 Q. How frequently are software or hardware upgrades  
10:41:22 12 being deployed?

10:41:24 13 A. All the time. I think we were ten major changes  
10:41:30 14 a week.

10:41:44 15 Q. I am going to show you a document. Could you  
10:41:59 16 tell me what that is?

10:42:01 17 A. A job description is to senior network engineer.

10:42:05 18 Q. Is this a position for somebody on your team?

10:42:09 19 A. That's correct.

10:42:12 20 Q. That is kind of person that would be involved in  
10:42:15 21 some of the process that we were just discussing?

10:42:18 22 A. That's correct.

10:42:20 23 Q. How many people would have the responsibilities  
10:42:26 24 that are described there or similar responsibilities on

10:42:30 1 your team?

10:42:30 2 A. Probably, sixty percent of the team.

10:42:33 3 Q. So how many people in total?

10:42:36 4 A. About 65, seventy for these job families.

10:42:46 5 Q. The position description summarizes the  
10:42:49 6 qualifications and responsibilities with that position?

10:42:53 7 A. Yes.

10:42:55 8 MR. SCHNALL: I offer it.

10:42:58 9 MS. TOYE: I don't have any objection, your  
10:43:01 10 Honor.

10:43:03 11 THE CLERK: The senior network job  
10:43:07 12 description will be marked as Appellant's Exhibit Number  
10:43:12 13 94.

10:43:48 14 Q. So question have been discussing the server  
10:43:50 15 software. The parties have also stipulated that CITRIX  
10:43:56 16 provides a locally installed client software  
10:44:01 17 application. The endpoint software. That allows access  
10:44:04 18 to the on-line offerings by connecting a host computer  
10:44:08 19 or remote computer to CITRIX's web servers. If I refer  
10:44:13 20 to endpoint software, would you understand me to be  
10:44:17 21 referring to what I just described?

10:44:18 22 A. I would.

10:44:30 23 Q. How does a customer get access to the endpoint  
10:44:33 24 software?

10:44:34 1 A. They download it from one of our websites.

10:44:37 2 Q. Do you have to be a customer to download the  
10:44:40 3 endpoint software from the website?

10:44:42 4 A. No. I believe you can download it as anyone.

10:44:46 5 Q. So, yes, have to be a customer, no, do not have  
10:44:51 6 to be a customer?

10:44:52 7 A. No. Do not have to be a customer.

10:44:54 8 Q. Do you have to be a customer to execute the  
10:44:59 9 endpoint software on a computer?

10:45:00 10 A. No.

10:45:01 11 Q. Or to install it on a computer?

10:45:03 12 A. No.

10:45:08 13 Q. Does the customer or non-customer that downloads  
10:45:13 14 the endpoint software have to pay CITRIX anything?

10:45:16 15 A. No.

10:45:18 16 Q. Do they have to pay anything if they have to  
10:45:21 17 install the endpoint software on their computer?

10:45:23 18 A. No.

10:45:24 19 Q. Do they have to pay anything to execute the  
10:45:27 20 application on their computer?

10:45:28 21 A. No.

10:45:29 22 Q. What do customers pay CITRIX for?

10:45:34 23 A. To access the service.

10:45:41 24 Q. If I am not a customer, and I don't have a paid

10:45:45 1 account, we said I can execute the endpoint software,  
10:45:50 2 does that software communicate with the server software?  
10:45:54 3 A. It can, yes.  
10:45:58 4 Q. What is it that the server software will not do  
10:46:02 5 if I am not a CITRIX customer?  
10:46:05 6 A. The first thing, it will not allow you to get  
10:46:09 7 into a session.  
10:46:12 8 Q. So it will not authenticate a connection?  
10:46:17 9 A. It will not go through authentication or  
10:46:21 10 authorization.  
10:46:21 11 Q. So I will not be able to access my home PC, if it  
10:46:28 12 were to Go To My Own PC?  
10:46:30 13 A. Yes.  
10:46:30 14 Q. That is because I have not paid for the service?  
10:46:32 15 A. Yes.  
10:46:33 16 Q. The parties have also stipulated, well, I want to  
10:46:38 17 turn to the specifics, first Go To My PC and then the  
10:46:43 18 other on-line offerings. The parties stipulated that Go  
10:46:48 19 To My PC allows users to securely access and operate  
10:46:52 20 their personal computers from a remote location or  
10:46:55 21 device that security securely connects to a person's  
10:47:00 22 personal computer through CITRIX's web service. What  
10:47:05 23 happens from the customer's perspective when he actually  
10:47:09 24 makes a connection using Go To my PC?

11:24:17 1 PowerPoint or Word.

11:24:19 2 Q. Is that CITRIX's software?

11:24:20 3 A. No.

11:24:25 4 Q. Let me turn back now to the server software.

11:24:30 5 COMMISSIONER SCHARAFFA: Let me get the big  
11:24:32 6 perspective here. To do all of this, you need to be  
11:24:36 7 connected to the internet?

11:24:38 8 THE WITNESS: Yes.

11:24:38 9 COMMISSIONER SCHARAFFA: You do that by your  
11:24:40 10 ordinary telecommunication connection?

11:24:42 11 THE WITNESS: Yes.

11:24:43 12 COMMISSIONER SCHARAFFA: For that service,  
11:24:47 13 the user pays a tax to the telecommunication company?

11:24:52 14 THE WITNESS: Exactly.

11:24:52 15 COMMISSIONER SCHARAFFA: That is separate  
11:24:53 16 from you people?

11:24:55 17 THE WITNESS: Yes. Correct.

11:24:56 18 COMMISSIONER SCHARAFFA: I have to keep  
11:24:58 19 perspective. This telecommunication stuff is, I don't  
11:25:02 20 do computers, you know.

11:25:23 21 Q. Okay. The parties have stipulated that CITRIX  
11:25:28 22 controls the server software, and technical operations  
11:25:32 23 team is responsible for that control.

11:25:36 24 Is your team using the server software?

11:25:42 1 A. As much as the pilot is using the flame.

11:25:46 2 Q. So in this analogy, the software is like the  
11:25:50 3 flame that needs to be kept up in the air?

11:25:53 4 A. Yes.

11:25:53 5 Q. And your team is doing that?

11:25:55 6 A. That's correct.

11:26:01 7 Q. Can customers control the server software?

11:26:04 8 A. No.

11:26:05 9 Q. Can they control where traffic goes on the  
11:26:09 10 network?

11:26:10 11 A. They do not.

11:26:14 12 COMMISSIONER SCHARAFFA: You didn't ask if  
11:26:16 13 they did. He asked you if they can.

11:26:19 14 A. They cannot. They cannot.

11:26:22 15 Q. Thank you.

11:26:24 16 Can they control which server is used  
11:26:30 17 to run a screen sharing session?

11:26:32 18 A. They cannot.

11:26:33 19 Q. Can they control what happens when network  
11:26:37 20 capacity is challenged?

11:26:38 21 A. No.

11:26:39 22 Q. Can your team do all of those things that I just  
11:26:45 23 asked about?

11:26:46 24 A. Yes.

11:26:47 1 Q. Does your team do all of those things?

11:26:49 2 A. They do.

11:26:52 3 Q. What is the function of the server software?

11:27:01 4 A. It picks from, essentially, connects various  
11:27:05 5 entities together. When somebody launches, wishes to go  
11:27:11 6 into my PC session, it connects to our service, which  
11:27:16 7 then authorizes, makes sure that the person has access  
11:27:20 8 to that service, I'm sorry, authenticates it, makes sure  
11:27:25 9 that the person has access to the service, authorizes  
11:27:30 10 it. Product service might have multiple aspects and the  
11:27:35 11 customer may have aspect to a few of them. That is the  
11:27:38 12 authorization piece. At that point, it selects the part  
11:27:41 13 of the infrastructure that particular session will land  
11:27:46 14 on from all of the thousands of pieces that I mentioned  
11:27:49 15 before.

11:27:50 16 Q. Does it do anything to maintain system integrity?

11:27:55 17 A. Yes.

11:27:56 18 Q. What does it do?

11:28:03 19 A. So in the basic sense, it does load management,  
11:28:07 20 where if you have one little server, like you send, all  
11:28:12 21 of our customers do, that is going to degrade the  
11:28:16 22 components of the user experience. It does load  
11:28:20 23 distribution across our infrastructure to make sure  
11:28:25 24 everybody has similar experience.



## **CERTIFICATE OF SERVICE**

I, Matthew D. Schnall, hereby certify under the penalties of perjury that on March 21, 2019, I caused true and accurate copies of the foregoing to be filed via the Massachusetts Odyssey File & Serve website and served copies upon the following counsel by electronic and first class mail:

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### **CERTIFICATION UNDER MASS. R. APP. P. 16(K)**

The Appellant, Citrix Systems, Inc., certifies that this brief complies with the Massachusetts Rules of Appellate Procedure that pertain to the filing of briefs. The brief is in the Times New Roman font, with a text size of 14 point, and headings in either 14 or 16 point. The brief was composed in Microsoft Word, version 1808, build 10730.20205, and it contains 1993 words in the argument section based upon the word count provided by that software.

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