

TRANSCEND SERVICES INC
Form SC TO-T/A
March 29, 2012

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

SCHEDULE TO

(Rule 14d-100)

TENDER OFFER STATEMENT UNDER SECTION 14(d)(1) OR 13(e)(1)
OF THE SECURITIES EXCHANGE ACT OF 1934
(Amendment No. 2)

TRANSCEND SERVICES, INC.

(Name of subject company (Issuer))

TOWNSEND MERGER CORPORATION

a wholly owned subsidiary of

NUANCE COMMUNICATIONS, INC.

(Name of Filing Persons (Offerors))

Edgar Filing: TRANSCEND SERVICES INC - Form SC TO-T/A

Common Stock, par value \$0.05 per share
(Title of classes of securities)

893929208
(CUSIP number of common stock)

Todd DuChene

Executive Vice President and General Counsel

Nuance Communications, Inc.

1 Wayside Road

Burlington, MA 01803

Telephone: (781) 565-5000

(Name, address, and telephone number of person authorized to receive notices and communications on behalf of Filing Persons)

Copies to:

Robert Sanchez

Daniel Peale

Wilson Sonsini Goodrich & Rosati

Professional Corporation

1700 K Street NW

Washington, DC 20006

(202) 973-8800

CALCULATION OF REGISTRATION FEE

Transaction Valuation ⁽¹⁾
\$337,786,918

Amount of Filing Fee ⁽²⁾
\$38,710.38

- (1) Estimated for purpose of calculating the filing fee only. The transaction valuation was determined by multiplying the purchase price of \$29.50 per share by the sum of: (i) the 10,696,473 shares of common stock, par value \$0.05 per share (the Shares), of Transcend Services, Inc., a Delaware corporation (the Company), issued and outstanding as of February 29, 2012; and (ii) the 753,931 Shares that are issuable under outstanding stock options to purchase Shares as of February 29, 2012.
- (2) The amount of the filing fee is calculated in accordance with the Securities Exchange Act of 1934, as amended, by multiplying the Transaction Valuation by 0.00011460.

Edgar Filing: TRANSCEND SERVICES INC - Form SC TO-T/A

- Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the form or schedule and the date of its filing.

| | | | |
|---------------------------|---------------|---------------|-----------------------------|
| Amount Previously Paid: | \$38,710.38 | Filing Party: | Nuance Communications, Inc. |
| Form of Registration No.: | Schedule TO-T | Date Filed: | March 20, 2012 |

- Check the box if the filing relates solely to preliminary communications made before the commencement of the tender offer.
Check the appropriate boxes below to designate any transactions to which the statement relates:

- third party tender offer subject to Rule 14d-1
 issuer tender offer subject to Rule 13e-4
 going private transaction subject to Rule 13e-3
 amendment to Schedule 13D under Rule 13d-2

Check the following box if the filing is a final amendment reporting the results of the tender offer:

This Amendment No. 2 to the Tender Offer Statement on Schedule TO (this Amendment) amends and supplements the Tender Offer Statement on Schedule TO filed on March 20, 2012, as amended by Amendment No. 1 to the Tender Offer Statement on Schedule TO filed on March 27, 2012, (as amended or supplemented from time to time, this Schedule TO) and relates to a tender offer by Townsend Merger Corporation, a Delaware corporation (Purchaser) and a wholly owned subsidiary of Nuance Communications, Inc., a Delaware corporation (Nuance). This Schedule TO relates to the offer by Purchaser to purchase all of the outstanding shares (the Shares) of common stock, par value \$0.05 per share, of Transcend Services, Inc., a Delaware corporation (the Company), at a price of \$29.50 per Share, net to the holder in cash without interest (the Offer Price), less any required withholding taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase dated March 20, 2012 (which, together with any amendments and supplements thereto, collectively constitute the Offer to Purchase) and in the related Letter of Transmittal, copies of which are attached as Exhibits (a)(1)(i) and (a)(1)(ii) (which, together with any amendments or supplements thereto, collectively constitute the Offer).

Except as otherwise set forth below, the information set forth in the Schedule TO remains unchanged and is incorporated herein by reference as relevant to the items in this Amendment.

Amendment to the Offer to Purchase

Items 1 through 11 of the Schedule TO, to the extent such Items incorporate by reference the information contained in Section 16 of the Offer to Purchase are amended and supplemented, and Section 16 of the Offer to Purchase is hereby amended and supplemented, as follows.

The subsection Legal Proceedings in Section 16 of the Offer to Purchase entitled Certain Regulatory and Legal Matters, which was amended by Amendment No. 1 to the Schedule TO, is further amended by adding to such subsection:

On March 28, 2012, a third, substantially similar, purported class action lawsuit was filed by Samir Salva, seeking to assert claims on behalf of a class of all of the Company's stockholders, excluding the named defendants and their affiliates. The lawsuit was filed in the Superior Court of Fulton County in the State of Georgia, Case No. 2012CV213285 (the Salva Action). The Salva Action names as defendants the Company, Purchaser and Nuance, as well as certain of the Company's officers and members of its Board of Directors (including the Individual Defendants). The Salva Action alleges that the Individual Defendants breached their fiduciary duties to the Company's stockholders by, among other things, (a) causing the Company to agree to be sold for allegedly insufficient consideration, (b) agreeing to various terms in the Merger Agreement that allegedly deter other buyers from offering a superior price for the Company, and (c) denying the Company's stockholders access to information allegedly needed to assess the Offer and Merger. Further, the Salva Action alleges that the Company and Nuance aided and abetted the breaches of fiduciary duty alleged against the Individual Defendants. The Salva Action seeks among other relief: (i) class certification, (ii) a declaration that the Individual Defendants' support of the Merger constitutes a breach of fiduciary duty, (iii) an injunction prohibiting the Offer and Merger, (iv) a order compelling the Individual Defendants to obtain a better transaction, (v) rescission of the Merger, (vi) a constructive trust over improper benefits received by the defendants and (vii) an award of costs, including attorney's fees and expert's fees.

The Company, Purchaser and Nuance believe the lawsuits to be without merit and intend to defend against them vigorously. There can be no assurance, however, with regard to the outcome of these lawsuits.

Item 12. Exhibits.

| Exhibit Number | Description |
|----------------|--|
| (a)(1)(i) | Offer to Purchase, dated March 20, 2012.* |
| (a)(1)(ii) | Form of Letter of Transmittal.* |
| (a)(1)(iii) | Form of Notice of Guaranteed Delivery.* |
| (a)(1)(iv) | Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.* |
| (a)(1)(v) | Form of Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.* |
| (a)(1)(vi) | Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9.* |
| (a)(1)(vii) | Form of Summary Advertisement as published on March 20, 2012 in <i>The New York Times</i> .* |
| (b) | None. |
| (d)(1) | Agreement and Plan of Merger, dated as of March 6, 2012, by and among Nuance Communications, Inc., Townsend Merger Corporation and Transcend Services, Inc., incorporated by reference to Exhibit 2.1 to the Form 8-K filed by Nuance on March 7, 2012.* |

| Exhibit Number | Description |
|-----------------------|--|
| (d)(2) | Form of Tender and Voting Agreement, incorporated by reference to Exhibit 10.1 to the Form 8-K filed by Nuance on March 7, 2012.* |
| (d)(3) | Confidentiality Agreement, dated as of July 15, 2011, as amended October 27, 2011 by and between Nuance Communications, Inc. and Transcend Services, Inc.* |
| (d)(4) | Offer Letter between Nuance Communications, Inc. and Larry Gerdes.* |
| (d)(5) | Offer Letter between Nuance Communications, Inc. and Susan McGrogan.* |
| (d)(6) | Offer Letter between Nuance Communications, Inc. and Lance Cornell.* |
| (d)(7) | Form of Non-Compete and Non-Solicitation Agreement entered into between Nuance Communications, Inc. and each of Larry Gerdes, Susan McGrogan and Lance Cornell.* |
| (g) | Not applicable |
| (h) | Not applicable |

* Previously filed.

Item 13. Information Required by Schedule 13 E-3.

Not applicable.

After due inquiry and to the best of its knowledge and belief, each of the undersigned certifies that the information set forth in this statement is true, complete and correct.

TOWNSEND MERGER CORPORATION

By: /s/ Thomas L. Beaudoin
Name: Thomas L. Beaudoin

Title: President

NUANCE COMMUNICATIONS, INC.

By: /s/ Thomas L. Beaudoin
Name: Thomas L. Beaudoin

Title: Executive Vice President and Chief Financial
Officer

Dated: March 29, 2012

EXHIBIT INDEX

| Exhibit Number | Description |
|-----------------------|--|
| (a)(1)(i) | Offer to Purchase, dated March 20, 2012.* |
| (a)(1)(ii) | Form of Letter of Transmittal.* |
| (a)(1)(iii) | Form of Notice of Guaranteed Delivery.* |
| (a)(1)(iv) | Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.* |
| (a)(1)(v) | Form of Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.* |
| (a)(1)(vi) | Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9.* |
| (a)(1)(vii) | Form of Summary Advertisement as published on March 20, 2012 in <i>The New York Times</i> .* |
| (b) | None. |
| (d)(1) | Agreement and Plan of Merger, dated as of March 6, 2012, by and among Nuance Communications, Inc., Townsend Merger Corporation and Transcend Services, Inc., incorporated by reference to Exhibit 2.1 to the Form 8-K filed by Nuance on March 7, 2012.* |
| (d)(2) | Form of Tender and Voting Agreement, incorporated by reference to Exhibit 10.1 to the Form 8-K filed by Nuance on March 7, 2012.* |
| (d)(3) | Confidentiality Agreement, dated as of July 15, 2011, as amended October 27, 2011 by and between Nuance Communications, Inc. and Transcend Services, Inc.* |
| (d)(4) | Offer Letter between Nuance Communications, Inc. and Larry Gerdes.* |
| (d)(5) | Offer Letter between Nuance Communications, Inc. and Susan McGrogan.* |
| (d)(6) | Offer Letter between Nuance Communications, Inc. and Lance Cornell.* |
| (d)(7) | Form of Non-Compete and Non-Solicitation Agreement entered into between Nuance Communications, Inc. and each of Larry Gerdes, Susan McGrogan and Lance Cornell.* |
| (g) | Not applicable |
| (h) | Not applicable |

* Previously filed.