

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of)
Momentum Telecom, Inc., for a Certificate) DOCKET NO. 08-2496-01
of Public Convenience and Necessity to)
Operate as a Competitive Local Exchange) REPORT AND ORDER
Carrier in Utah)

ISSUED: December 10, 2008

SYNOPSIS

By this Report and Order, the Public Service Commission of Utah (Commission) grants the request of Momentum Telecom, Inc. (Applicant) for a Certificate of Public Convenience and Necessity (Certificate) authorizing Applicant to provide public telecommunications services as a competitive local exchange carrier in the geographic service territories served by Qwest as the incumbent local exchange carrier.

PROCEDURAL HISTORY

Applicant filed its Application on May 2, 2008, pursuant to Utah Code Ann. §§ 54-8b-1 *et seq* and in accordance with the provisions of Utah Code Ann. § 54-8b-1 *et seq.*, Utah Admin. Code § 746-349-1 *et seq.*, and the federal Telecommunications Act of 1996, 47 U.S.C. § 151 *et seq.*, seeking a Certificate of Public Convenience and Necessity to operate as a provider of resold and facilities-based local exchange telecommunications services in Utah. On July 23, 2008, the Applicant filed its Amended Application, seeking to add Wendover, Utah to the areas it proposed to serve. On October 6, 2008, the Applicant filed a Second Amended Application (Application) in which the Applicant withdrew its application with respect to Wendover, Moab, and Price.

In a scheduling conference held before the Commission's ALJ, and in a letter subsequently filed by the Applicant on October 13, 2008, the Applicant clarified its position with regards to its Second Amended Application. The Applicant stated that it sought "the Commission's approval to operate as a competitive local exchange carrier in Utah in the geographic service territories served by Qwest as the incumbent local exchange carrier." Further, the Applicant stated that "[i]f at a future date Momentum seeks to expand its service territory beyond the Qwest region, Momentum will seek approval of the same from the Commission at that time."

On October 30, 2008 the Division filed a memorandum recommending approval of the Application, and in part, specifically recommending the Commission waive the \$100,000 bond requirement, and also that it limit the certificate to exclude those exchanges with fewer than 5,000 access lines that are owned or controlled by incumbent local exchange carriers (ILECs) with fewer than 30,000 access lines. Additionally, the Division recommended that the Applicants Certificate be limited to geographic service territories served by Qwest, as per the Applicant's representations.

There were four intervenors, i.e. Carbon/Emery Telecom, Inc., Utah Rural Telecom Association (URTA), Citizens Telecommunications Company of Utah d/b/a Frontier Communications of Utah (Frontier), and Skyline Telecom (Skyline). Carbon/Emery Telecom, Inc. initially opposed the Application. Based on the Applicants' representations, however, Carbon/Emery withdrew its opposition to the Application. Carbon/Emery made this withdrawal on the condition that the Applicant would be authorized to serve Qwest service territories only.

Additionally, Carbon/Emery requested the Commission order the Applicant to obtain Commission approval before expanding into territory outside Qwest service territories, i.e. into areas of rural ILECs.

On November 13, 2008 URTA filed its response to the Application. URTA stated that the Applicant's clarification regarding its intent to serve only Qwest's service territory addressed its concerns with the Application. URTA also requested that the Commission limit the Applicant's Certificate to Qwest's service territory and require that any expansion outside of that territory be approved by the Commission beforehand.

Frontier and Skyline did not file a response to the Application.

Based on the Applicant's representations in the scheduling conference and in its October 13, 2008 letter, there is no opposition to the issuance of the Certificate. The Applicant has established a *prima facie* case in support of the Application.

The Commission held a hearing in the matter on December 4, 2008 before the Administrative Law Judge, Ruben H. Arredondo. Rose Mulvaney-Henry of Boulton, Cummings, Conners, Berry, PLC appeared telephonically for the Applicant. Alex Pearson of Kirton & McConkie also appeared for the Applicant. Bret Anderson of Blackburn & Stoll appeared for Carbon/Emery. Michael Ginsberg, Assistant Attorney General, appeared for the Division. Mr. Casey Coleman testified for the Division in support of the Application. In addition to the testimony presented at the hearing by Mr. Coleman, the ALJ took administrative notice of the Applicant's filings, as well as the recommendations and responses made by other intervenors.

The Commission, being fully appraised in the matter, enters the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Applicant is qualified to do business in Utah.
2. Applicant requests the Commission grant a Certificate authorizing it to provide public telecommunications services within Utah.
3. Applicant requests that its Certificate be restricted to geographic service territories served by Qwest as the ILEC.
4. Applicant proposes it provide public telecommunication services in Utah, excluding those exchanges with less than 5,000 access lines that are served by incumbent telephone corporations with fewer than 30,000 access lines in the state.
5. Applicant will utilize its managerial expertise to support its Utah operations.
6. Applicant has sufficient technical resources and abilities to provide the public telecommunication services for which it has applied.
7. Applicant has sufficient managerial resources and abilities to provide the public telecommunications services for which it has applied.
8. Applicant has a secure and sufficient source of funding for its Utah operations that will enable it to meet projected capital and operating expenses and to implement its business plans.

9. Applicant has sufficient financial resources and abilities to provide the public telecommunications services for which it has applied.
10. In its provision of intrastate services, Applicant will be subject to competition from other certified telecommunications services providers.
11. Applicant's service offerings will provide customers with a wider range of choices in meeting their telecommunications needs and will support the development of competition.
12. Applicant has applied for exemptions from the requirements of various procedures of the Utah Code and the Commission's Rules and Regulations.
13. Applicant will not require customer deposits or offer any prepaid services in Utah.
14. Applicant has also applied for waivers from the \$100,000 bond requirement.

CONCLUSIONS OF LAW

1. Applicant meets each of the statutory requirements of U.C.A. §§ 54-8b-1.1 *et seq* for issuance of a Certificate as a telecommunications corporation.
2. Applicant meets each of the statutory requirements of U.C.A. §§ 54-8b-1.1 *et seq* for authorization to provide the public telecommunications services for which it has applied.
3. The grant of exemptions from the provisions of the Utah Code and the Commission's Rules and regulations, as set forth in Exhibit B, is in accord with Commission practice and is in the public interest. The grant of waivers, as set forth above, from the provisions

of the Utah Code and the Commission's Rules and regulations, is in accord with Commission practice and is in the public interest.

4. The issuance of a Certificate to the Applicant to provide the telecommunications services for which it has applied is in accord with the legislative policy declarations set forth in Utah Code § 54-8b-1.1 *et seq.* and is in the public interest.
5. Restricting the Applicant's Certificate to geographic service territories where Qwest is the ILEC, is in the public interest.
6. Restricting the Applicant's Certificate to exclude those exchanges with less than 5,000 access lines that are served by incumbent telephone corporations with fewer than 30,000 access lines in the state is in the public interest.
7. The Applicant should be exempt from the \$100,000 bond requirement, and such exemption is not counter to the public interest.

ORDER

The Commission, having entered its Findings and Conclusions above, hereby ORDERS

- a. The Applicant is hereby granted the Certificate attached hereto as Exhibit A, which Exhibit is incorporated by reference into this Order;
- b. The Certificate is restricted to geographic service territories where Qwest is the ILEC;

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- c. Applicant shall provide reports to the Commission and to the Division as set forth in Exhibit B, which Exhibit is incorporated by reference into this Order;
- d. The reporting requirements in Exhibit B shall be binding upon Applicant until modified by the Commission;
- e. Applicant shall be exempt from certain provisions of the Utah Code and the Commission's Rules and Regulations, as set forth in Exhibit B;
- f. Should Applicant seek to provide services outside of the Qwest service territory, it shall seek and obtain Commission review and approval prior to such expansion;
- g. The bond requirement is waived.

DATED at Salt Lake City, Utah this 10th day of December, 2008.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

G#60018

EXHIBIT A

In the Matter of the Application of Momentum Telecom, Inc., for a Certificate of Public Convenience and Necessity to Operate as a Competitive Local Exchange Carrier in Utah)))))))	<u>DOCKET NO. 08-2496-01</u> <u>CERTIFICATE</u>
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ISSUED: December 10, 2008

By the Commission:

The Public Service Commission of Utah, pursuant to Utah Code Ann. § 54-8b-2.1, hereby issues a Certificate of Public Convenience and Necessity authorizing Momentum Telecom, Inc. to provide public telecommunication services within the State of Utah in geographic service territories where Qwest is the incumbent local exchange carrier.

DATED at Salt Lake City, Utah, this 10th day of December, 2008.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

EXHIBIT B

I. Annual Report: Momentum Telecom, Inc. (Grantee) shall file an Annual Report, on or before March 31st of each year, unless said Grantee requests and obtains an extension.

The Annual Report shall contain the following:

A. Annual Revenues from operations attributable to the State of Utah by major service categories. Such information would be provided on a “Total Utah” and “Utah Intrastate” basis. “Total Utah” will consist of the total of interstate and intrastate revenues. “Utah Intrastate” will reflect only revenues derived from intrastate tariffs, price lists, or contracts. Both Total Utah and Intrastate Utah revenues shall be reported according to at least the following classes of service:

1. private line and special access,
2. business local exchange,
3. residential local exchange,
4. measured interexchange, and
5. vertical services.

Business local exchange, residential local exchange and vertical service revenue will be reported by geographic area, to the extent feasible.

B. Annual Expenses and Estimated Taxes attributed to operations in the State of Utah.

- C. **Year End Balances by Account for Property, Plant, Equipment, Annual Depreciation, and Accumulated Depreciation** for telecommunications investment in Utah. The Actual Depreciation Rates which were applied in developing annual and accumulated depreciation figures shall also be shown.
- D. **Financial Statements** maintained in accordance with generally accepted accounting principles in the ordinary course of business. These financial statements shall at a minimum include an income statement, balance sheet and statement of cash flows.
- E. **List of Services** offered to customers and the geographic areas in which those services are offered. This list shall be current and shall be updated whenever a new service is offered or a new area is served.
- F. **Number of Access Lines in Service** by geographic area, segregated between business and residential customers.
- G. **Number of Messages and Minutes of Services** for measured services billed to end users.
- H. **List of Officers and Responsible Contact Personnel** updated annually.
- I. **Chart of Accounts.** In addition to the foregoing, Grantee will provide its chart of accounts as existing and updated (no less than annually). Grantee will also work with the Division in good faith to develop a method of estimating intrastate expenses and investments.

II. **Applicable Statutory Provisions and Exemptions from Statutes and Waiver of Regulations.** Grantee shall be exempted from the following statutory provisions and regulations:

A. Exemptions from Title 54

54-3-8, 54-3-19	Prohibitions of discrimination
54-7-12	Rate increases or decreases
54-4-21	Establishment of property values
54-4-24	Depreciation rates
54-4-26	Approval of expenditures

B. Waivers of Regulations

R746-340-2(D)	Uniform System of Accounts (47 C.F.R. 32)
R746-340-2(E)(1)	Tariff filings required
R746-340-2(E)(2)	Exchange Maps
R746-341	Lifeline ¹
R746-344	Rate case filing requirements
R746-401	Reporting of construction, acquisition and disposition of assets
R746-405	Tariff formats
R746-600	Accounting for post-retirement benefits

¹This regulation would be waived only until the Commission establishes Lifeline rules that may include Grantee or until it begins to provide residential local exchange service.

III. **Obligations with Respect to Provision of Services.** Grantee agrees to provide service within specified geographic areas upon reasonable request and subject to the following conditions:

- A. Grantee's obligation to furnish service to customers is dependent upon the availability of suitable facilities on its own network and the networks of underlying carriers. Grantee will provide a map identifying the areas within the state of Utah where it is offering any services. The map will be updated as Grantee serves new areas and no less frequently than annually.
- B. Grantee will only be responsible for the operation and maintenance of services that it provides.

IV. **Modification:** It is anticipated that to the extent such requirements impact competitive entry or impact effective competition that they will be subject to the rule making requirements of the Utah Code Ann. § 54-8b-2.2 and that the provisions set forth herein shall be superseded by any such rule adopted by the Commission.