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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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Application of	)	
	)	
Momentum Telecom, Inc.	)	<b>VERIFIED APPLICATION</b>
	)	
For a Certificate of Public Convenience	)	<b>Docket No. 08-____-01</b>
and Necessity to Operate As a	)	
Competitive Local Exchange Carrier	)	
In Utah	)	

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Momentum Telecom, Inc. (“Momentum” or “Applicant”) hereby submits this application for authority to operate as a telecommunications service provider offering competitive resold and

facilities-based local exchange and long distance telecommunications services within the service territory of Qwest Communications Corporation (“Qwest”), as well as the Price and Moab exchanges, served by Citizens Telecommunications Company of Utah (“Citizens”) and Carbon/Emery Telecom, Inc. (“Emery”) as the Incumbent Local Exchange Carrier (ILEC), respectively, 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.* (“Application”).

### **SYNOPSIS**

Momentum seeks authority from this Commission to operate as a CLEC within Qwest’s service territory, as well as the Moab and Price exchanges. Because these exchanges are served by Citizens and Emery as rural ILECs, Momentum understands that it must meet the additional requirements for certification set forth in Utah Code Ann. § 54-8b-2.1. In satisfaction of these requirements, Momentum states:

- (a) It has sufficient technical, financial and managerial resources and abilities to provide the public telecommunications services applied for;<sup>1</sup>
- (b) The issuance of the certificate to Momentum is in the public interest;
- (c) That one of the following will be established through evidence presented in this matter:
  - i. Citizens and Emery, respectively, control more than 5,000 access lines in the Moab and Price exchanges;
  - ii. Citizens and Emery, respectively, control more than 30,000 access lines in the State of Utah;

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<sup>1</sup> Applicant intends to provide an IP-enabled telephony service, using voice over internet protocol (VoIP) technology. The regulatory regime governing such a service, including issues of cooperative federalism with respect

- iii. Momentum will be able to provide public telecommunications services to any customer or class of customers who request service within any exchange if either (i) or (ii) above are inapplicable;<sup>2</sup> or
- iv. If (i) through (iii) above are inapplicable, Momentum can serve customers within the relevant exchanges consistent with the incumbent's obligation to serve.<sup>3</sup>

### **APPLICATION**

Momentum, for purposes of verification, and in evidence of its fitness to operate and the public need for its services, offers the following information in support of this Application:

Because certain financial information of Momentum and its parent companies is competitively and commercially sensitive, Momentum requests that such information be treated as confidential. Pursuant to standard Commission practice, the materials submitted with this Application for which Momentum seeks confidential treatment are printed on yellow paper and stamped "Confidential".

#### **I. Corporate Information:**

1. The legal name, principal address and telephone number of the applicant corporation is:

Momentum Telecom, Inc.  
2700 Corporate Drive  
Suite 200  
Birmingham, AL 35242  
Phone: (205) 978-4400  
Fax: (205) 978-3402

2. Momentum is a corporation organized under the laws of the State of Delaware on April

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to such regulation, are issues upon which reasonable minds may differ. Momentum has chosen, out of an abundance of caution, to seek this Commission's authority to provide its VoIP service.

<sup>2</sup> See Utah Code Ann. § 54-8b-2.1(4).

<sup>3</sup> *Id.*

20, 2000. Momentum is duly incorporated and is a corporation in good standing in the State of Delaware, and has obtained a certificate of registration to conduct business in the State of Utah.

Copies of relevant documentation to this effect are attached hereto as **Exhibit A**.

3. Momentum's agent for ongoing regulatory correspondence is:

Charles E. Richardson III, Vice President Legal  
Momentum Telecom, Inc.  
2700 Corporate Drive  
Suite 200  
Birmingham, AL 35242  
(205) 978-4411 (Office)  
(205) 978-3402 (Fax)

2. Momentum's representatives to whom all pleadings, orders, and other correspondence regarding this application should be addressed are:

David J. Shaw  
Kirton & McConkie, P.C.  
518 West 800 North, Suite 204  
Orem, UT 84057  
Telephone: (801) 426-2100  
Facsimile: (801) 426-2101  
Email:

Andrew R. Newell  
Newell & Associates, LLC  
P.O. Box 740172  
Arvada, CO 80006-0172  
Telephone: (303) 913-6954  
Facsimile: (303) 200-7863  
Email:

Henry Walker  
Boulton Cummings Connors & Berry, PLC  
1600 Division Street, Suite 700  
Nashville, TN 37203  
(615) 252-4634 (phone)  
(615) 252-4713 (fax)

3. The Applicant's corporate officers which will be responsible for the applicant's day to day operations within the State of Utah are:

Alan Creighton, President/Chief Executive Officer  
Momentum Telecom, Inc.  
2700 Corporate Drive  
Suite 200  
Birmingham, AL 35242  
(205) 978-4440 (Office)  
(205) 978-3402 (Fax)

Dennis Lipford, Vice President, Financial/Treasurer/Chief Financial Officer  
Momentum Telecom, Inc.  
2700 Corporate Drive  
Suite 200  
Birmingham, AL 35242  
(205) 978-4430 (Office)  
(205) 978-3404 (Fax)

Charles E. Richardson III, Vice President & General Counsel  
Momentum Telecom, Inc.  
2700 Corporate Drive  
Suite 200  
Birmingham, AL 35242  
(205) 978-4411 (Office)  
(205) 978-3402 (Fax)

Profiles of these officers have been attached as **Exhibit B**.

II. **Supporting Information under Utah Admin. Code § R746-349-3**

In support of its Application, Momentum provides the following information pursuant to Utah Admin. Code § R746-349-3:

1. *Testimony and Exhibits*: Previous CPCN applicants indicate the Commission no longer requires the submission of prepared, written testimony in connection with a CLEC application, Exhibits in support of the Application are set forth and explained in the following

sections.

2. *Proof of Bond.* Pursuant to § R746-349-3.A.2, Momentum respectfully requests the Commission to waive the requirement for a bond or letter of credit, as the Applicant does not intend to collect deposits or advance payments from its customers.

3. *Facilities, Resale of ILEC Services.* Applicant will provide wholesale interconnection and switching services to its wholesale customers. Applicant will not construct facilities, but will place a media gateway at a location, or locations, necessary to serve the relevant exchanges.

4. *Services to be offered.*

a. *Classes of Customers.* Applicant's marketing efforts will be to provide its IP telephony (VoIP) services to business and residential cable company customers in partnership with existing cable operators.

b. *Location of Service.* Applicant seeks authority to provide service in areas served by Emery and Citizens, in the Moab and Price exchanges.

c. *Types of Services to be Offered.* Applicant will offer IP telephony (VoIP) services.

5. *Access to Standard Services.* Applicant will provide its customers with access to ordinary intraLATA and interLATA message toll calling, operator services, directory assistance, directory listings, and emergency services such as 911 and E911 through third parties.

6. *Implementation Schedule Pursuant to 47 U.S.C. § 252(c)(3).* Applicant intends to begin marketing its CLEC services as soon as the Commission issues a CPCN and Applicant executes any necessary interconnection agreements.

7. *Professional Experience and Education of Managerial Personnel.* Applicant's operations will be conducted by its own personnel. Attached to this Application as **Exhibit B**

are the telecommunications technical and managerial experience of the key personnel who will be responsible for Applicant's operations.

8. *Organizational Chart.* Applicant is a Delaware corporation organized on April 20, 2000. The Applicant has no subsidiaries or affiliates.

9. *Chart of Accounts.* A chart of accounts for Applicant, including account numbers and brief descriptions, is attached to this Application as **Exhibit C**.

10. *Financial Statements.*

a. Attached as confidential **Exhibit D** are the audited Consolidated Financial Statements of MBS Holdings, Inc., the parent company of Applicant, for the past two years, all prepared in accordance with generally accepted accounting principles (GAAP) by independent auditors.

b. Attached as **Exhibit E** is a letter from Dennis Lipford, Chief Financial Officer, attesting to the accuracy, integrity and objectivity of the statements in **Exhibit D**, and that they were prepared in accordance with GAAP.

11. *Financial Ability.* Applicant has sufficient financial resources to provide the telecommunications services outlined in this Application, as evidenced by the financials submitted in **Exhibit D**.

12. *Expected Operations.*

a. *Pro forma Projection.* Applicant respectfully requests that this requirement be waived because it has not developed a *pro forma* income or cash flow statement for the next five years. Applicant believes the financials provided in **Exhibit D** demonstrate that Applicant has the resources to provide the services identified in this Application.

b. *Technical Description of Technology.* Momentum will interconnect with the applicable Incumbent Local Exchange Carrier (“ILEC”) to offer competitive telecommunications service alternatives primarily by partnering with small cable companies. While the cable company will provide the "last mile" portion of the network which includes the cable company’s hybrid fiber/coaxial facilities, the same facilities it uses to provide video and broadband Internet access, Momentum will provide all public switched telephone technology, utilizing Momentum’s soft switch and the interconnection agreements Momentum has or will be negotiating with ILECs. Momentum will also place media gateways at partnering cable companies’ Head End locations.

c. *Proposed Facility Locations.* The Applicant will not construct its own facilities, but will place a media gateway at partnering cable companies’ Head End locations.

13. *Implementation Schedule Pursuant to 47 U.S.C. § 252(c)(3).* Applicant intends to begin marketing its telephone service to residential and business customers as soon as the Commission issues a CPCN and Applicant signs any necessary interconnection agreements with incumbent carriers.

14. *Technical and Managerial Abilities.* Applicant’s officers and managers have the necessary managerial and technical abilities to provide the proposed services. Biographies of the key personnel who will be responsible for Applicant’s operations in Utah are attached to this application as **Exhibit B**.

15. *Other Jurisdictions.* Momentum is certified to provide telecommunications services in the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Illinois, Louisiana, Mississippi,



North Carolina, South Carolina, Tennessee, Wisconsin. Applicant has certification applications pending in Indiana, Missouri and Texas. Applicant has not been denied certification in any state. Evidence of the certifications will be provided upon request.

16. *Public Interest.*

Applicant's entry into the Utah marketplace will serve public necessity by providing customers with choices of services and competitive rates. In addition to the benefits delivered to the public by its services, Applicant's entry into the Utah local exchange marketplace will benefit the public by increasing competition among existing carriers, which results in lowered costs and improved overall services.

17. *Authority to Do Business in Utah.* Enclosed as **Exhibit A** are (a) the Articles of Incorporation, filed in the State of Delaware, and (b) a Certificate of Existence, which establishes Applicant's authority to conduct business in Utah.

18. *Unauthorized Switching: Solicitation of New Customers.* Applicant will prevent the unauthorized switching of customers by requiring all new customers to confirm their selection of Momentum as their telecommunications service provider in a manner that complies with Utah Code Ann. § 54-8b-18 and all relevant FCC regulations.

Momentum will comply with all state and federal regulations with respect to changes to a customer's primary interexchange carrier (PIC) selection.

**REQUEST FOR RELIEF**

WHEREFORE, Momentum requests that the Utah Public Service Commission enter an order granting the certificate of authority to extend its geographic operating area to the extent requested by this Application.

DATED this 29<sup>th</sup> day of April, 2008.

MOMENTUM TELECOM, INC.

By: /s/ David J. Shaw  
David J. Shaw  
Kirton & McConkie, P.C.  
518 West 800 North, Suite 204  
Orem, UT 84057  
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Facsimile: (801) 426-2101  
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Andrew R. Newell  
Newell & Associates, LLC  
P.O. Box 740172  
Arvada, CO 80006-0172  
Telephone: (303) 913-6954  
Facsimile: (303) 200-7863  
Email:

and

Henry Walker  
Boult Cummings Connors & Berry, PLC  
1600 Division Street, Suite 700  
Nashville, TN 37203  
(615) 252-4634 (phone)  
(615) 252-4713 (fax)

its attorneys.

## **EXHIBIT LIST**

- Exhibit A** - Copy of Delaware Articles of Incorporation and Certificate of Authority to do business in the State of Utah
- Exhibit B** - Management Profiles
- Exhibit C** - Chart of Accounts [CONFIDENTIAL]
- Exhibit D** - Financial Statements [CONFIDENTIAL]
- Exhibit E** - Attestation Letter from Dennis Lipford, Chief Financial Officer
- Exhibit F** - Verification

**CERTIFICATE OF SERVICE**

I hereby certify that on the 29<sup>th</sup> day of April, 2008, an original, five (5) true and correct copies, and an electronic copy of the foregoing VERIFIED APPLICATION were hand-delivered to:

Ms. Julie Orchard  
Commission Secretary  
Public Service Commission of Utah  
Herbert M. Wells Building, Fourth Floor  
160 East 300 South  
Salt Lake City, Utah 84114

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

David J. Shaw  
Kirton & McConkie, P.C.  
518 West 800 North, Suite 204  
Orem, UT 84057  
Telephone: (801) 426-2100  
Facsimile: (801) 426-2101  
Email:

*Attorney for Applicant*

**Exhibit A**

Articles of Incorporation

Utah Foreign Qualification

## **Exhibit B**

### Management Profiles

## **Exhibit C**

Chart of Accounts [**CONFIDENTIAL**]

[THIS INFORMATION HAS BEEN REDACTED FROM THE PUBLIC  
VERSION OF THIS FILING]



**Exhibit D**  
Financial Statements [**CONFIDENTIAL**]

[THIS INFORMATION HAS BEEN REDACTED FROM THE PUBLIC  
VERSION OF THIS FILING]

**Exhibit E**

Attestation Letter of Dennis Lipford

**Exhibit F**  
Verification

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Momentum Telecom, Inc. )  
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For a Certificate of Public Convenience )  
and Necessity to Extend its Geographic )  
Operating Area to Include the Moab and )  
Price Exchanges )

**VERIFICATION**

**Docket No. 08-\_\_\_\_-01**

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STATE OF ALABAMA )  
COUNTY OF SHELBY )

ss.

I, Charles E. Richardson III, being first duly sworn, depose and state that I am authorized to make this Verification on behalf of Momentum Telecom, Inc.; that I have read the foregoing Application and the attached exhibits and know their content; that they are true and correct to the best of my knowledge, information and belief.

Executed on this 17<sup>th</sup> day of April, 2008

/s/ Charles E. Richardson III  
Charles E. Richardson III

The foregoing instrument was subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_.