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Attorneys for Momentum Telecom, Inc.

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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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Amended Application of )  
 )  
Momentum Telecom, Inc. )  
 )  
For a Certificate of Public Convenience )  
and Necessity to Operate As a )  
Competitive Local Exchange Carrier )  
In Utah )

**VERIFIED AMENDED APPLICATION**

**Docket No. 08-2496-01**

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Momentum Telecom, Inc. ("Momentum" or "Applicant") hereby submits this Amended

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 Moab exchange, served by Citizens Telecommunications Company of Utah (“Citizens”); the Price exchange served by Carbon/Emery Telecom, Inc. (“Emery”); and the Wendover exchange served by CentraCom Interactive (“CentraCom”) 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.* (“Amended Application”). Momentum is not re-providing the Exhibits to the original Application with this Amended Application, except for a new Verification, as none of the other material contained in the Exhibits has changed since the filing of the original Application.

### **SYNOPSIS**

Momentum seeks authority from this Commission to operate as a CLEC within Qwest’s service territory, as well as the Moab, Price and Wendover exchanges. Because these exchanges are served by Citizens, Emery and CentraCom 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>

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<sup>1</sup> Applicant intends to offer retail local exchange and interexchange services as well as an IP-enabled telephony service that utilizes voice over internet protocol (VoIP) technology. The regulatory regime governing such VoIP service, including issues of state and federal jurisdiction with respect 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.

- (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, Emery and CentraCom, respectively, control more than 5,000 access lines in the Moab, Price and Wendover exchanges;
  - ii. Citizens, Emery and CentraCom, respectively, control more than 30,000 access lines in the State of Utah;
  - 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>

### **AMENDED 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 Amended 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 that were submitted with this Application for which Momentum seeks confidential treatment were printed on yellow paper and stamped "Confidential".

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

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

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

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 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 were attached as **Exhibit A** to the original Application.

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

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)

4. 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  
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1600 Division Street, Suite 700  
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(615) 252-4634 (phone)  
(615) 252-4713 (fax)

5. 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 were attached to Momentum's original Application 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.* Commission precedent indicates that the Commission no longer requires the submission of prepared, written testimony in connection with a CLEC application. Exhibits were provided in support of the original Application.

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 requests authority to offer a variety of services, including local and interexchange services, as well as wholesale interconnection and switching services. Applicant will not construct facilities, but in the case of its wholesale offering, may place a media gateway at its customer's premises, if necessary to serve the relevant exchanges.

4. *Services to be offered.*

a. *Classes of Customers.* Momentum seeks to provide local exchange and interexchange services to end user customers, as well as its IP telephony (VoIP) services, on a wholesale basis, to business and residential cable company customers in partnership with existing cable operators.

b. *Location of Service.* Applicant seeks authority to provide service in the Qwest service territory exchanges, the Citizens exchange of Moab, the Emery exchange of Price, and the CentraCom exchange of Wendover.

c. *Types of Services to be Offered.* Momentum requests authority to offer retail local exchange and interexchange services, as well as IP telephony (VoIP) services on a wholesale basis.

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).* Momentum 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 the original 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. Momentum is the subsidiary of MBS Holdings, Inc.; its affiliates are Momentum Wholesale, LLC and MBS Management, LLC. .

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

10. *Financial Statements.*

a. Attached to the original Application as confidential **Exhibit D** is 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 to the original Application 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** to the original Application 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. In the case of its retail offerings, Momentum will provide CLEC voice and data services using unbundled network elements, resale, or other wholesale facilities and services offerings by Qwest in its territory. Momentum’s wholesale IP-based service will be offered primarily by partnering with small Utah 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 may place a media gateway at partnering cable companies' Head End locations, if necessary.

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 the original Application as **Exhibit B**.

15. *Other Jurisdictions.* Momentum is certified to provide telecommunications services in the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Illinois, Indiana, Kansas, Louisiana, Michigan, Mississippi, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Washington and Wisconsin. Applicant has certification applications pending in Arizona, Colorado, Delaware, Iowa, Maine, Maryland, Massachusetts, New Mexico,

New York, Oklahoma,<sup>4</sup> Pennsylvania, Virginia, and Wyoming. 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.* The original Application included, as **Exhibit A**, Momentum's (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 for the geographic operating areas requested by this Amended Application.

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<sup>4</sup> The Oklahoma hearing was conducted on July 17, 2008, and a recommendation for approval of Momentum's certification there was issued.

DATED this 22<sup>nd</sup> day of July, 2008.

MOMENTUM TELECOM, INC.

By: /s/  
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and

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its attorneys.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22<sup>nd</sup> day of July, 2008, an original, five (5) true and correct copies, and an electronic copy of the foregoing VERIFIED AMENDED 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

and a true and correct copy sent via first class mail to the following:

Stanley K. Stoll  
Kira M. Slawson  
Blackburn & Stoll  
257 East 200 South, #800  
Salt Lake City, Utah 84111

Stephen F. Mecham  
Callister Nebeker & McCullough  
10 East South Temple, Suite 900  
Salt Lake City, Utah 84133

Curt Huttzell, Ph.D.  
Frontier Communications  
P.O. Box 708970  
Sandy, Utah 84070

Signature:     /s/  
David J. Shaw  
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Facsimile: (801) 426-2101  
Email: dshaw@kmclaw.com

*Attorney for Applicant*

## **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

**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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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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**In the Matter of the Application of            )**  
**Momentum Telecom, Inc., for a            )**  
**Certificate of Public Convenience and        )**     **Docket No. 08-2496-01**  
**Necessity to Operate as a Competitive        )**  
**Local Exchange Carrier in Utah            )**

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 Amended 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 21<sup>st</sup> day of July, 2008

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

The foregoing instrument was subscribed and sworn to before me this 21<sup>st</sup> day of July, 2008.

/s/  
Notary Public

My Commission Expires:     8/23/10

Sealed