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Attorneys for Momentum Telecom, Inc.

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Second 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 SECOND AMENDED
APPLICATION**

Docket No. 08-2496-01

Momentum Telecom, Inc. (“Momentum” or “Applicant”) hereby submits this Second Amended Application¹ 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”), 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.* (“Second Amended Application”). Momentum is not re-providing the Exhibits to the original Application with this Second 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 all points in Utah except that Momentum does not seek authority to provide local exchange service in areas with fewer than 5,000 access lines that are owned or controlled by incumbent local exchange carriers with fewer than 30,000 access lines.

SECOND 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 Second Amended Application:

¹ Momentum filed its Verified Application on April 30, 2008 and its Verified Amended Application on July 22, 2008 to expand the territory of its requested authority. The sole purpose of this Verified Second Amended Application is to withdraw Momentum’s request for authority in the Price, Moab and Wendover exchanges.

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 the original Application for which Momentum seeks confidential treatment were 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 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
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Orem, UT 84057
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Rose Mulvany Henry
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1600 Division Street, Suite 700
Nashville, TN 37203
(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
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(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 all points in Utah except that Momentum does not seek authority to provide local exchange service in areas with fewer than 5,000 access lines that are owned or controlled by incumbent local exchange carriers with fewer than 30,000 access lines..

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 practicable after 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 Utah cable companies or other similarly situated wholesale partners. 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 may 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 practicable after 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, California, Colorado, Florida, Georgia, Kentucky, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Michigan, Mississippi, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Washington, Wisconsin and Wyoming. Applicant has certification applications pending in Arizona, Delaware, Idaho, Maine, Massachusetts, New Jersey, New York, Virginia, West 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 Second Amended Application.

DATED this 6th day of October, 2008.

MOMENTUM TELECOM, INC.

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and

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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 6th day of October, 2008, an original, five (5) true and correct copies, and an electronic copy of the foregoing VERIFIED SECOND 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

I further certify that on the 6th day of October, 2008, true and correct copies of the foregoing VERIFIED SECOND AMENDED APPLICATION were sent via United States mail, first class, postage prepaid to the following:

PATRICIA E. SCHMID, ESQ.
OFFICE OF THE ATTORNEY GENERAL
160 East 300 South, Fifth Floor
Post Office Box 140857
Salt Lake City, Utah 84114-0857

STEPHEN F. MECHAM, ESQ.
CALLISTER, NEBEKER & McCULLOUGH
Gateway Tower East, Suite 900
10 East South Temple
Salt Lake City, Utah 84133

BROCK E. JOHANSEN, ESQ. (By telephone)
LAW OFFICE OF BROCK E. JOHANSEN
445 East SR 29
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Orangeville, Utah 84537

KIRA M. SLAWSON, ESQ.
BLACKBURN & STOLL, LC
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SPENCER J. COX, ESQ.
SKYLINE TELECOM
35 South State
Post Office Box 7
Fairview, Utah 84629

CURT HUTTSELL, Ph.D.
FRONTIER COMMUNICATIONS
Post Office Box 708970
Sandy, Utah 84070-8970

Signature: /S/ David Shaw

David J. Shaw
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Orem, UT 84057
Telephone: (801) 426-2100
Facsimile: (801) 426-2101
Email:
Attorneys 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

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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

VERIFICATION

STATE OF UTAH

)

ss.

COUNTY OF UTAH

)

I, David J. Shaw, attorney of record for Momentum Telecom, 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 Second 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 6th day of October, 2008.

/S/ David J. Shaw
Attorney for Applicant

The foregoing instrument was subscribed and sworn to before me this 6th day of October, 2008.

/S/ Marcy White
Notary Public

My Commission Expires 03/24/2010.