

NEIL PRICE  
DEPUTY ATTORNEY GENERAL  
IDAHO PUBLIC UTILITIES COMMISSION  
PO BOX 83720  
BOISE, IDAHO 83720-0074  
(208) 334-0314  
IDAHO BAR NO. 6864

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Street Address for Express Mail:  
472 W. WASHINGTON  
BOISE, IDAHO 83702-5983

Attorney for the Commission Staff

## **BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF THE APPLICATION OF</b>	)	
<b>MOMENTUM TELECOM, INC. FOR A</b>	)	<b>CASE NO. MNT-T-08-2</b>
<b>CERTIFICATE OF PUBLIC CONVENIENCE</b>	)	
<b>AND NECESSITY TO PROVIDE LOCAL</b>	)	<b>COMMENTS OF THE</b>
<b>EXCHANGE AND RESOLD</b>	)	<b>COMMISSION STAFF</b>
<b>TELECOMMUNICATIONS SERVICES.</b>	)	

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The Staff of the Idaho Public Utilities Commission, by and through its Attorney of Record, Neil Price, Deputy Attorney General, in response to the Notice of Application and Notice of Modified Procedure, issued on March 17, 2009, Order No. 30749, submits the following comments.

### **BACKGROUND**

On August 4, 2008, Momentum Telecom, Inc. ("Momentum") filed an Application for a Certificate of Public Convenience and Necessity pursuant to *Idaho Code* §§ 61-526 through 528, IDAPA 31.01.01.111 and Commission Order No. 26665 to provide facilities-based local exchange and resold interexchange telecommunications services within the State of Idaho. On December 30, 2008, Momentum filed copies of its Local Exchange Telecommunications Tariff, revised in accordance with Staff's recommendations to enhance the Company's intent to offer local service in addition to its Voice over Internet Protocol (VoIP) services.

Momentum resubmitted its additional information and emphasized that it will offer facilities-based local exchange and resold interexchange services to Idaho consumers as well as some wholesale services to other providers.

Momentum proposes to offer services throughout Idaho in geographic areas currently served by incumbent local exchange carriers ("ILECs") Qwest Corporation and Verizon Northwest Inc.

Momentum has not yet negotiated an interconnection agreement with an ILEC in Idaho.

Momentum states that it will use its own soft switch to provide its facilities-based services.

## **STAFF ANALYSIS**

While Momentum has filed an Application for a CPCN to offer local exchange services, Momentum has stated that it will provide wholesale switching and interconnection VoIP services to cable providers and similarly situated wholesale customers through the use of its own soft switches and media gateways. Momentum's interconnected VoIP offering, while not considered traditional circuit switched basic local exchange service, requires that Momentum be able to obtain telephone numbers from the Number Pool Administrator and requires Momentum's interconnection with the appropriate local exchange providers. Current industry numbering standards, along with Federal Communications Commission (FCC) rules require that a provider requesting its initial block of telephone numbers in a particular state provide evidence to the Number Pool Administrator that the provider has either: (1) a license or authority issued by the FCC; or (2) that it holds a CPCN issued by the appropriate state regulatory body, such as a public utilities commission.

As of the date of these comments, the FCC has not made a determination of the regulatory status of interconnected VoIP services. Therefore, it remains unclear whether fixed-location (non-nomadic) interconnected VoIP telecommunications offerings currently are properly classified as telecommunications services or information services under the definitions contained in the Telecommunications Act of 1934, as amended by the Telecommunications Act of 1996 (Telecommunications Act). If the FCC were to make a determination that interconnected VoIP offerings, such as those proposed by Momentum in this Application, are information services; or, if the FCC were to preempt state regulation of all VoIP services, no regulation of such services could lawfully be undertaken or continued by this Commission.

However, denying the Application for a CPCN has the practical effect of denying Momentum entry into the Idaho telecommunications market. Without numbering resources, Momentum cannot provide its interconnected fixed VoIP service to Idaho customers. Staff believes that approval of this Application would be consistent with the Commission's obligation, under state and federal statutes, to promote competition for telecommunications services, including basic local exchange service. Staff believes that, because interconnected fixed VoIP service is the functional equivalent of circuit switched local exchange services, granting this Application for a CPCN would encourage competition within Idaho. It would also afford Momentum the same numbering resources that are currently used by the Idaho ILECs without question or restriction of the services they are offering.

Momentum has filed for Certificates in a number of states. In Colorado, the Company was granted a CPCN to provide local exchange telecommunications services as well as a Letter of Registration (LOR) to provide emerging competitive telecommunications services throughout the state of Colorado. See Docket No. 08A-126T. In Iowa, Momentum was granted a similar certification.

With the initial filing, Staff was concerned about the approaching 208 area code exhaust. To address this concern Momentum filed an addendum to its Application wherein it stated that "as part of its Application it will comply with all federal and state guidelines that monitor and regulate the Idaho area code. Specifically, Momentum will comply with Commission Order No. 30425 – Mandatory Pooling." Momentum also explicitly agreed that it will comply with all Commission Rules of Procedures and Idaho Code.


In the event that the FCC makes a determination that VoIP services are information services or such VoIP services are not subject to state regulation, this CPCN to provide local exchange telecommunications circuit switched local exchange service will still be required by Momentum.

#### **STAFF RECOMMENDATION**

1. Staff recommends that Momentum be granted a CPCN subject to the following conditions:
  - a. The granting of this Certificate will be conditioned upon the Company complying with the Number Pool Administrator and Idaho Commission Order No. 30425, which requires NRUF and Utilization reporting.

- b. As a provider of intrastate regulated local exchange services and in accordance with the Commission's Rules of Procedure, Momentum will be required to report and contribute, as appropriate, to the Idaho Universal Service Fund, Idaho Telecommunications Relay System, ITSAP and any requisite annual reporting that may be deemed appropriate in the future for competitive telecommunication providers.
- c. Upon issuance of the Certificate, Momentum shall file a completed and final price list with all its rates, terms and conditions to have on file with the Commission.

Respectfully submitted this 7th day of April 2009.

  
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Neil Price  
Deputy Attorney General

Technical Staff: Carolee Hall

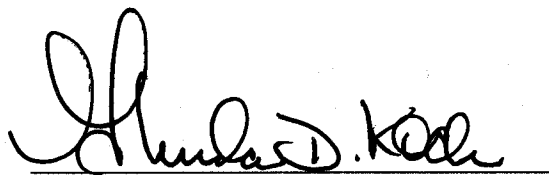
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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 7TH DAY OF APRIL 2009, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. MNT-T-08-2, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

ROSE MULVANY HENRY  
BOULT CUMMINGS ET AL  
STE 700  
1600 DIVISION ST  
NASHVILLE TN 37203

ALAN CREIGHTON /CEO  
MOMENTUM TELECOM INC  
2700 CORPORATE DR  
STE 200  
BIRMINGHAM AL 35242

  
\_\_\_\_\_  
SECRETARY

CERTIFICATE OF SERVICE