



Agenda Date: 12/8/08  
Agenda Item: IA

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
**www.nj.gov/bpu/**

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF MOMENTUM )  
TELECOM, INC. FOR AUTHORITY TO PROVIDE )  
LOCAL EXCHANGE AND INTEREXCHANG )  
TELECOMMUNICATIONS SERVICES )  
THROUGHOUT THE STATE OF NEW JERSEY )

ORDER  
DOCKET NO. TE08090709

(SERVICE LIST ATTACHED)

BY THE BOARD:

Pursuant to N.J.S.A. 48:2-1 et seq. and Section 253 of the Federal Telecommunications Act of 1996, 47 U.S.C. §151 et seq., and by letter dated September 8, 2008, Momentum Telecom, Inc. ("Petitioner" or "Momentum") filed a Petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide resold and facilities-based local exchange and interexchange telecommunications services throughout the State of New Jersey. Petitioner has submitted its financial information under seal and has filed a sworn affidavit with substantiation for confidential treatment in accordance with the Board's rules for determining confidentiality, N.J.A.C. 14:1-12 et seq. and in compliance with the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

Momentum is a privately held corporation organized under the laws of the State of Delaware. On April 20, 2000, Momentum was initially incorporated as Momentum Business Solutions, Inc. On September 17, 2003, Momentum Business Solutions, Inc. filed an Amended and Restated Certificate of Incorporation changing its name to Momentum. MBS Holdings, Inc. is the principal owner of Momentum, MBS Management, LLC and Momentum Wholesale, LLC. MBS Management, LLC leases management services and employees to the Momentum companies and Momentum Wholesale, LLC offers Voice over Internet Protocol services. Petitioner's principal offices are located at 2700 Corporate Drive, Suite 200, Birmingham, Alabama 35242.

Petitioner has submitted copies of its Amended and Restated Certificate of Incorporation from the State of Delaware, its New Jersey Certificate of Good Standing and Certificate of Authority to operate as a Foreign Corporation. Petitioner currently offers local exchange and interexchange telecommunications services to retail customers in the Southeastern states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee and is certified to provide telecommunications services in Arkansas, California, Illinois, Indiana, Iowa, Kansas, Maryland, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Washington, Wisconsin and Wyoming. Petitioner states that it

has not been denied authority to provide telecommunications services, its authority has not been revoked in any jurisdiction and it has not been the subject of any civil or criminal proceedings. Petitioner has not commenced negotiations to enter into an interconnection agreement with any incumbent local exchange carriers. However, upon the commencement of negotiation and/or the execution of such agreement, the Petitioner will notify the Board.

Petitioner seeks authority to provide resold and facilities-based local exchange and interexchange telecommunications services to both residential and business customers in the State of New Jersey, and on a wholesale basis to other providers for certain product offerings. According to the Petition, neither Petitioner nor its parent or any of its other subsidiaries currently own or control any telephone network facilities in New Jersey. However, it will utilize a combination of its own facilities and/or resold facilities of other certificated carriers. Petitioner states that its service includes unlimited local and long distance calling, inter and intra local access and transport areas, call waiting and forwarding, call back and return and three (3) way calling to residential and business customers throughout New Jersey. Petitioner maintains a toll-free number for customer service inquiries. Petitioner will file a proposed tariff with the Board.

Petitioner requests a waiver of N.J.S.A. 48:3-7.8 and N.J.A.C. 14:1-4.3, which requires that books and records be kept within the State of New Jersey and be maintained in accordance with the Uniform System of Accounts ("USOA"), respectively. In the interest of efficiency and to prevent undue burden, Petitioner requests permission to maintain its books and records in accordance with Generally Accepted Accounting Principles and to keep all books, records, documents and other writings incident to the conduct of Petitioner's business in the State of New Jersey at Petitioner's corporate office located in Birmingham, Alabama. Petitioner also states, upon written notice from the Board and/or Board Staff, it will provide its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses for examination of the records.

Petitioner asserts that approval of its Petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petitioner also asserts that approval of this Petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings.

With regard to its technical and managerial qualifications, Momentum states that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petitioner has submitted the professional biographies of its key personnel, who, according to Momentum, are well qualified to execute its business plans and have extensive managerial and technical experience in the telecommunications industry.

## DISCUSSION

On February 8, 1996, the Federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. §253(a).

Any grant of authority is subject to the right of the Board as the state regulatory authority to impose requirements necessary to protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. 47 U.S.C. §253(c).

In considering this Petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets of qualified applicants. 47 U.S.C. §253(a). The Board also considers the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services and the Legislature's findings that "competition will promote efficiency, reduce regulatory delay, and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed Momentum's Petition and the information supplied in support thereof, the Board FINDS that the Petitioner is in compliance with the Board's filing requirements to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES the Petitioner to provide local exchange and interexchange telecommunications services throughout New Jersey.

The Board also FINDS that in accordance with N.J.S.A. 48:2-59 and 48:2-60 and N.J.S.A. 52:27EE-52 the Petitioner is subject to an annual assessment by both the Board and the Division of Rate Counsel, respectively. The Board notes that the Petitioner will not be permitted to provide telecommunications services until a tariff is filed with the Board.

The Board HEREBY ORDERS that:

- 1) Petitioner shall file its tariff with the Board.
- 2) Pursuant to N.J.S.A. 48:2-16(2)(b) and N.J.A.C. 14:3-6.3, Petitioner shall file an annual report as of December 31 of each year, which is due on or before March 31 of the following year. Pursuant to N.J.S.A. 48:2-16.3, if Petitioner fails to file an annual report by the due date, Petitioner shall be subject to a penalty of \$5.00 for each day thereafter until such report is filed.
- 3) Pursuant to N.J.S.A. 48:2-62, Petitioner shall file a statement of gross intrastate revenues from operations form (AR3-1) as of December 31 of each year, which is due on or before June 1 of the following year.

On or before February 1<sup>st</sup> of each year, the Petitioner will receive from the Division of Audits an annual report package and a statement of gross intrastate revenues from operations form for the preceding calendar year. The purpose of these documents is to report the Petitioner's financial information and gross intrastate revenues from operations as of December 31 of each year. The annual report and a statement of gross intrastate revenues from operations form are due on or before March 31 and June 1 of the following year, respectively. If Petitioner does not receive these documents, it is Petitioner's responsibility to obtain them from the Board. It is also the Petitioner's responsibility to ensure timely filing of these reports.

Regarding the Petitioner's request for waivers of the Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that the Petitioner maintains its books and records in accordance with USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board books and records upon 48 hours notice, and in the manner requested, and to pay to the Board

any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES the Petitioner's request for the exemptions from maintaining its books and records in accordance with USOA and in New Jersey.

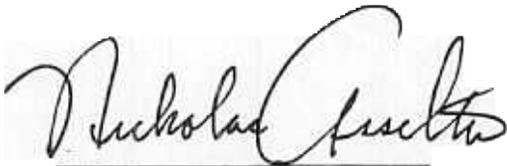
DATED: 12/9/08

BOARD OF PUBLIC UTILITIES  
BY:

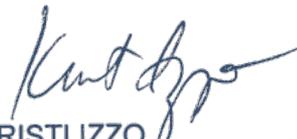
  
JEANNE M. FOX  
PRESIDENT

  
FREDERICK F. BUTLER  
COMMISSIONER

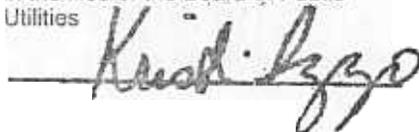
  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
NICHOLAS ASSELTA  
COMMISSIONER

  
ELIZABETH RANDALL  
COMMISSIONER

ATTEST:   
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



IN THE MATTER OF THE PETITION OF MOMENTUM TELECOM, INC.  
FOR AUTHORITY TO PROVIDE LOCAL EXCHANGE AND  
INTEREXCHANGE TELECOMMUNICATIONS SERVICES  
THROUGHOUT THE STATE OF NEW JERSEY

DOCKET NO. TE08090709

SERVICE LIST

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| <p>1. <b><u>Petitioner's Contact Person:</u></b></p> <p>Teri Hennington, Regulatory Manager<br/>Momentum Telecom, Inc.<br/>2700 Corporate Drive, Suite 200<br/>Birmingham, Alabama 35242</p> | <p>4. <b><u>Public Advocate:</u></b></p> <p>Stefanie A. Brand, Esquire<br/>Director, Division of Rate Counsel<br/>Department of Public Advocate<br/>31 Clinton Street, 11<sup>th</sup> Floor<br/>P. O. Box 46005<br/>Newark, New Jersey 07101</p> |
| <p>2. <b><u>Petitioner's Attorney:</u></b></p> <p>Bradford M. Stern, Esq.<br/>Rothfelder Stern, LLC<br/>Attorneys At Law<br/>625 Central Avenue<br/>Westfield, New Jersey 07090</p>          | <p>5. <b><u>Deputy Attorney General:</u></b></p> <p>Jessica L. Campbell, DAG<br/>Department of Law &amp; Public Safety<br/>Division of Law<br/>124 Halsey Street, 5<sup>th</sup> Floor<br/>P. O. Box 45029<br/>Newark, New Jersey 07102</p>       |
| <p>3. <b><u>Board's Staff:</u></b></p> <p>Dennis J. Moran<br/>Director, Division of Audits<br/>Board of Public Utilities<br/>Two Gateway Center<br/>Newark, New Jersey 07102</p>             | <p>6. <b><u>Board's Staff:</u></b></p> <p>Anthony Centrella, Director<br/>Division of Telecommunications<br/>Board of Public Utilities<br/>Two Gateway Center<br/>Newark, New Jersey 07102</p>  |