

Decision 09-05-032 May 21, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
88 Telecom Corporation, for Registration
as an Interexchange Carrier Telephone
Corporation pursuant to the provisions of
Public Utilities Code Section 1013.

Application 08-05-031
(Filed May 23, 2008)

**DECISION APPROVING A SETTLEMENT AND ISSUING A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY****1. Introduction**

Pursuant to the Commission's Rules of Practice and Procedure Rule 12.1, the Consumer Protection and Safety Division (CPSD) and 88 Telecom Corporation request approval and adoption of the attached proposed settlement, which resolves all of the issues in the CPSD protest. The parties believe the proposed settlement is in the public interest, reasonable in light of the record, and consistent with law. We approve the settlement and issue a certificate of public convenience and necessity.

2. Company Background

88 Telecom Corporation (88 Telecom), a California Corporation, with offices in San Francisco, is a vendor of prepaid telephone debit cards. 88 Telecom has been in business since January 2004. In May 2008, 88 Telecom filed this application to obtain a certificate of public convenience and necessity (CPCN), to provide inter - and intra - local access and transport area services in California as a non-dominant interexchange carrier, after learning from Qwest

Communications (Qwest) that it must have operating authority in California. 88 Telecom had been operating under the assumption that it already had operating authority through a company called True America Communications, Inc. (True America), which was the previous company owned and operated by Eddie Wong, who was the secretary and co-owner of 88 Telecom at the time of incorporation in 2004. However, because of the inquiry by Qwest, 88 Telecom realized that True America's CPCN had been revoked by Commission Resolution T-16892.

3. Procedural History

On June 30, 2008, CPSD filed a protest of the application alleging (1) 88 Telecom has apparently been operating as a prepaid calling card company for about four years prior to filing this application absent a valid CPCN; and (2) 88 Telecom failed to disclose in its application that one of the company's key officers (Eddie Wong) has been president of six other such telecommunications companies, one of which had been sanctioned by the CPUC.

On October 30, 2008, a prehearing conference (PHC) was held. 88 Telecom's CEO Gang Zhao attended. The presiding Administrative Law Judge (ALJ) ordered 88 Telecom to amend its application.

On December 1, 2008, 88 Telecom filed an amendment to its application (Amendment). In the Amendment, 88 Telecom explained (1) Eddie Wong, shareholder and secretary of 88 Telecom (at the time the application was filed) and formerly president of True America, has sold his interest in 88 Telecom and no longer was associated with the company. The Amendment includes documentation of the share purchase agreement from Wong, showing that he no longer has any financial ownership interest in the company. The Amendment also explained that True America failed to file its annual reports and/or remit

surcharges, which was the reason for True America's CPCN revocation by the Commission on November 19, 2004. (Resolution T-16892.)

The Amendment explains (2) that Zhao and Wong incorporated 88 Telecom as equal co-owners in January 2004, and that Zhao was told incorrectly by Wong that a CPUC "license" had already been obtained, which was the True America CPCN that was later revoked. According to the Amendment, Wong returned to China and has not participated in the operation and management of 88 Telecom since 2004. The Amendment states that Zhao was unaware of the revocation of True America's CPCN and that such certificates are not transferable, until April of 2008 when Qwest (an underlying carrier for 88 Telecom's phone cards) made a request for 88 Telecom's registration number. Qwest's request caused 88 Telecom to become aware of the problem, and shortly thereafter 88 Telecom filed this application.

4. Proposed Settlement

The attached Settlement Agreement (Appendix D hereto) has been negotiated by the parties in good faith; they believe it resolves all of the issues in CPSPD's protest. 88 Telecom has presented documentation that demonstrates that Wong no longer participates in the management of 88 Telecom, and that Wong no longer has any ownership interest in the company. 88 Telecom acknowledges that Public Utilities Code Section 885 requires prepaid debit card companies to comply with the Commission's registration requirements in Public Utilities Code Section 1013, and that 88 Telecom failed to obtain such authority for the reasons stated above. 88 Telecom regrets that it failed to fully advise the Commission of the issues stated above, but asserts that it has attempted to respond rapidly to correct the issues raised in CPSPD's protest. 88 Telecom agrees to meet its regulatory and legal obligations and its responsibilities to its customers and

members of the public. Finally, 88 Telecom agrees to pay a fine of \$8,000 to the State's General Fund.

5. The Proposed Settlement is Reasonable in Light of the Record, Consistent with Law and Precedent, and in the Public Interest

Pursuant to Rule 12.1(d) of the Commission's Rules of Practice and Procedure, settlements must be reasonable in light of the record, consistent with law, and in the public interest. The parties believe that this Settlement Agreement satisfies each of those criteria.

5.1. The Proposed Settlement is Reasonable in Light of the Record

The parties have developed a factual record, contained in the application, the transcript of the PHC, applicant's amendment to its application, and the joint statement of facts agreed to in the Settlement Agreement. The parties believe that 88 Telecom has fully responded to CPSD's concerns raised in its protest. 88 Telecom has acknowledged its failure to obtain a valid CPCN, and that as a prepaid calling card vendor it is subject to the Commission's jurisdiction.

As a consequence, 88 Telecom has sought Commission authority to operate and has divested Wong of any ownership of the company. In addition, 88 Telecom has agreed to pay \$8,000 to the State's General Fund. This settlement was negotiated by the Settling Parties in good faith, and the parties believe that the remedial measures are supported by the record.

The Settlement Agreement is based on the record developed by the parties, and is reasonable because it effectively resolves the specific issues raised on the record.

5.2. The Proposed Settlement is Consistent with Law and Precedent

The parties assert that the Settlement Agreement is consistent with existing law. The parties are unaware of any conflict with any provisions of law, other than those rectified by the Settlement Agreement.

The terms of the Settlement Agreement are consistent with precedent established by the Commission. In Decision (D.) 04-01-039, the Commission fined Telecom Consultants, Inc. for operating approximately three months without a CPCN. Given the relatively modest size of the company's resources and the inadvertent nature of the offense, we assessed a penalty of \$500 for the three months of unauthorized operation. Similarly, in D.04-05-049, we fined Evercom Systems Inc. for selling prepaid phone cards for more than five years without a valid CPCN. We imposed a fine of \$2,000 per year (totaling \$11,000) for operating five and a half years without a CPCN.

5.3. The Proposed Settlement is in the Public Interest

The Settlement Agreement is in the public interest because 88 Telecom is acknowledging its failure to obtain prior operating authority and has taken remedial steps. 88 Telecom has eliminated Wong from its operations, agreed that it is subject to the Commission's jurisdiction, and agreed to make a payment to the State's General Fund. These measures should serve to protect California consumers, to assure the integrity of the Commission's jurisdiction and processes, and to rectify a violation of law. 88 Telecom is acting affirmatively to ensure it will meet its regulatory obligations and its responsibilities to its customers and members of the public.

5.4. Settlement Conference

Rule 12.1(b) requires the parties to hold a public settlement conference providing all parties to the proceeding an opportunity to review and discuss the settlement. The only two parties to this proceeding are CPSD and 88 Telecom, who have had sufficient opportunity to review and discuss the settlement.

6. Discussion

88 Telecom filed an application for a CPCN to provide inter - and intra - local access and transport area services in California as a non-dominant interexchange carrier. This application was filed pursuant to the registration process adopted in D.97-06-107 and related decisions.

The applicant is qualified to use the registration process and has complied with the filing requirements for a registration application. The protest of CPSD has been satisfied. The applicant was qualified to and requested an exemption from tariffing requirements. Applicant also agreed to abide by the consumer protection rules adopted in D.98-08-031, as modified from time to time. Therefore, the applicant should be granted a CPCN to provide this service.

7. Waiver of Comment Period

Pursuant to Rule 14.6(b) of the Commission's Rules of Practice and Procedure, all parties stipulated to waive the 30-day public review and comment period required by Section 311 of the Public Utilities Code and the opportunity to file comments on the proposed decision. Accordingly, this matter was placed on the Commission's agenda directly for prompt action.

8. Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and Robert Barnett is the assigned ALJ in this proceeding.

Findings of Fact

1. Applicant operated without a CPCN for four years. It should pay a fine of \$8,000.
2. The applicant is qualified to and has requested an exemption from tariffing requirements.
3. Applicant agrees to abide by the consumer protection rules adopted in D.98-08-031, as modified from time to time.

Conclusions of Law

1. Applicant should be granted the requested CPCN subject to the conditions in the attached appendices, and shall pay a fine of \$8,000.
2. Applicant should be granted an exemption from the requirement to file tariffs.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to 88 Telecom Corporation to operate as a switchless reseller of inter - local access and transport area and, to the extent authorized by Decision 94-09-065, intra - local access and transport area telecommunications services offered by communication common carriers in California subject to the conditions set forth in the attached appendices. Applicant is assigned corporate identification number U7105C which shall be included in the caption of all filings made with this Commission.
2. Applicant is exempt from the requirement to file tariffs subject to the conditions set forth in the attached appendices.

3. 88 Telecom shall pay a fine of \$8,000 to the General Fund of the State of California within six months of the effective date of this order, in five monthly payments of \$1,334 and one payment of \$1,330; the first payment to be made no later than 30 days after the effective date of this order. 88 Telecom shall send its checks made payable to the State of California's General Fund to this Commission's Fiscal Office at the State Office Building, 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. The number of this decision shall be shown on the face of the check.

4. Application 08-05-031 is closed.

This order is effective today.

Dated May 21, 2009, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners