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April 28, 2010

Re: 88 Transit Lines, Inc. v.  
Mid Mon Valley Transit Authority  
Docket No. C-2009-2116699  
File No. 1987

James J. McNulty, Secretary  
c/o New Filing Section  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Dear Mr. McNulty:

Enclosed for filing are the original and 9 copies of **Brief on Behalf of Mid Mon Valley Transit Authority, Respondent**, in connection with the above docketed proceeding.

Please acknowledge receipt of the enclosures on the duplicate of this letter of transmittal and return it in the stamped, self-addressed envelope provided.

Very truly yours,

JOHN A. PILLAR

sw

Enclosures

cc: Hon. Mark A. Hoyer, Administrative Law Judge (w/encl.)  
William A. Gray, Esq. (w/encl.)  
Mid Mon Valley Transit Authority (w/encl.)  
David N. Lint, Esq. (w/encl.)

U. S. POSTAL SERVICE CERTIFICATE OF MAILING ENCLOSED

Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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88 TRANSIT LINES, INC., )

Complainant )

v. )

MID MON VALLEY TRANSIT )  
AUTHORITY, )

Respondent. )

Docket No. C-2009-211669

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**BRIEF ON BEHALF OF  
MID MON VALLEY TRANSIT AUTHORITY, RESPONDENT**

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SECRETARY'S BUREAU

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Due Date: April 29, 2010

TABLE OF CONTENTS

I.	STATEMENT OF THE CASE	
II.	STATEMENT OF THE PERTINENT FACTS	
III.	ARGUMENT	
	1. WCTA , A COUNTY-WIDE MUNICIPAL CORPORATION, CONTRACTED WITH MMVTA TO COORDINATE TRANSIT SERVICE FROM AND TO POINTS IN WASHINGTON COUNTY	
	2. THE PUC HAS DISCRETIONARY POWER, ON THE BASIS OF REASONABLENESS, TO DETERMINE QUESTIONS OF EXTENSIONS OF SERVICE BY A MUNICIPAL CORPORATION	
IV.	CONCLUSION	13
	CERTIFICATE OF SERVICE	15

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TABLE OF CITATIONS

Municipal Authorities Act of 1945	3,4,7
66 Pa. C.S. § 1102	7
66 Pa. C.S. §§ 1122, 1141, 1171	7
Restatement of the Law – Agency	9,10

TABLE OF CASES

<u>Borough of Phoenixville v. Pa. P.U.C.</u> , 90 P.U.R.3d 450, 3 Pa.Cmwth. 56, 280 A.2d 471 (1971)	11,12
<u>County of Dauphin v. Pa. P.U.C.</u> , 159 Pa. Cmwth. 649, 634 A.2d 281 (1993)	2,6,13

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APR 28 2010

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88 TRANSIT LINES, INC., )  
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 Complainant )  
 )  
 v. )  
 )  
 MID MON VALLEY TRANSIT )  
 AUTHORITY, )  
 )  
 Respondent. )

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Docket No. C-2009-211669

**I. STATEMENT OF THE CASE**

This case involves a Complaint filed with the Pennsylvania Public Utility Commission (PUC) by 88 Transit Lines, Inc. (88 Transit) against Mid Mon Valley Transit Authority (MMVTA). The Complaint alleges that MMVTA, a municipal corporation, may not transport passengers picked up along Route 88 in Union Township and the Borough of Finleyville, Washington County, and transport them to and from the City of Pittsburgh since Union Township and Finleyville Borough are not members of MMVTA.

MMVTA contracts with First Transit, Inc., the subcontractor, to provide scheduled route service from municipalities that are members of MMVTA to the City of Pittsburgh and return. State Route 88 is the direct route of service. Route 88 goes through Union Township and the Borough of Finleyville and then winds through

Allegheny County to Pittsburgh. The buses stop along Route 88 in Union Township and Finleyville Borough and also in Allegheny County, picking up and discharging passengers.

First Transit, Inc. does not hold regular route authority from the PUC and provides service by virtue of its contract with MMVTA. Prior to July 1, 2009, this service was provided by 88 Transit pursuant to a contract with MMVTA. First Transit was awarded the contract by MMVTA effective July 1, 2009 following the submission of bids by several companies including 88 Transit.

MMVTA contends that all transportation performed by First Transit originates in the municipalities that are members of MMVTA. The buses operate over Route 88 to the City of Pittsburgh and traverse Union Township and the Borough of Finleyville. There is no question that MMVTA, as a municipal corporation, may provide transit service from municipalities that are members of MMVTA and may subcontract the service where MMVTA coordinates the rates, routes and service. County of Dauphin v. Pa. P.U.C., 159 Pa. Cmwlth. 649, 634 A.2d 281 (1993). The Complaint raises no question about this aspect of service or the service First Transit provides within Allegheny County, as permitted by Port Authority Transit (PAT). The only question raised by the Complaint is whether MMVTA can direct First Transit to pick up and discharge passengers in Union Township and Finleyville Borough.

## II. STATEMENT OF THE PERTINENT FACTS

The parties have entered into a stipulation of facts which was marked for identification as Complainant's Exhibit 1. In Complainant's Exhibit 1, the following facts were stipulated.

1. MMVTA is a municipal corporation, incorporated under the Municipal Authorities Act of 1945 and amendments thereto.

2. The Township of Union and the Borough of Finleyville, in Washington County, are not members of MMVTA.

3. Since July 1, 2009, First Transit, Inc., pursuant to a contract with MMVTA, has provided scheduled route service along Route 88, which includes picking up passengers in Union Township and Finleyville Borough and transporting them to the City of Pittsburgh, and return.

4. 88 Transit previously provided this service pursuant to a contract with MMVTA.

5. First Transit, Inc. does not hold authority from the PUC to provide scheduled route service.

The testimony, as well as exhibits submitted into evidence, also establishes the following additional facts.

6. MMVTA was incorporated in 1985 (Respondent's Exhibit 1).

7. The member municipalities of MMVTA consist of 21 townships, cities or boroughs (NT 37-38).

8. MMVTA entered into a written contract with Washington County Transportation Authority (WCTA) which provides, in part, that WCTA "agrees to

permit the MMVTA to continue to operate its long standing service along the Route 88 corridor consisting of fixed route, scheduled service” (Respondent’s Exhibit 2).

9. WCTA is a municipal corporation formed under the Municipal Authorities Act of 1945 (Respondent’s Exhibit 3).

10. The agreement between WCTA and MMVTA contemplates additional coordinated services in Washington County.

11. 88 Transit is not currently operating under its regular route authority and said authority has been placed in inactive status (NT 27).

12. If the Complaint is sustained, 88 Transit would not provide service from Union Township and the Borough of Finleyville to and from the City of Pittsburgh (NT 26).

13. 88 Transit is not able to provide service from Union Township and the Borough of Finleyville to the City of Pittsburgh and return due to lack of funding and equipment (NT 28).

14. MMVTA, which has an annual budget of \$3,800,000.00, is funded by the Federal Transit Administration (FTA), the member municipalities of MMVTA, PennDOT, WCTA, Washington County, and the Port Authority of Allegheny County (PAT) (NT 38-40).

15. MMVTA purchases transportation from First Transit for the scheduled route bus service and for paratransit service for persons qualified under the Americans With Disabilities Act (NT 41).

16. MMVTA has 35 buses and operates 42 trips in and out of Pittsburgh. Service is provided seven days a week within Washington County, to and from the City of Pittsburgh, and to and from Westmoreland County (NT 42).

17. FTA regulates the competitive bidding process employed by MMVTA, and other municipal corporations, to “promote fair and open competition” (NT 44).

18. MMVTA collaborates with WCTA, including doing transit studies examining ridership patterns, preparing pilot projects, and engaging consultants (NT 52).

19. PAT provides funding to MMVTA for the scheduled route service it provides in Allegheny County (NT 54).

20. WCTA provides funding to MMVTA for the scheduled route service it provides in Washington County (NT 54).

21. Prior to entering into a contract with WCTA, MMVTA believed that the service it provides through its subcontractor from Union Township and the Borough of Finleyville to and from the City of Pittsburgh was permitted pursuant to a “verbal agreement” with WCTA (NT 56).

22. If the Complaint is sustained, MMVTA would continue to provide scheduled route service along Route 88 from its member municipalities and points in Allegheny County to the City of Pittsburgh and return, but its buses traversing Union Township and Finleyville would not pick up passengers in Union Township and Finleyville Borough (NT 58).

23. MMVTA establishes all rates for the scheduled route service performed by its contractor and coordinates all transportation services (NT 58-59).



24. Rates charged to passengers who board the buses in Union Township and Finleyville are not greater than the fares paid by passengers boarding the bus in the member municipalities (NT 58-59).

25. 88 Transit did not charge its filed tariff rates for services it provided from Union Township and the Borough of Finleyville to and from the City of Pittsburgh while under contract with MMVTA (NT 30-31).

26. 88 Transit did not pay a PUC assessment on revenue derived from transportation performed from points in Washington and Allegheny Counties to the City of Pittsburgh and return, with the exception of revenues for service in Union Township and the Borough of Finleyville (NT 31).

27. A limitation allowing only one bidder for the regular route service between the MMVTA member municipalities and the City of Pittsburgh would have violated the FTA's regulations and adversely impacted the funding MMVTA requires from the FTA and PennDOT (NT 79-80).

28. The existing contract between MMVTA and First Transit is for three years (NT 58).

### III. ARGUMENT

1. WCTA, A COUNTY-WIDE MUNICIPAL CORPORATION, CONTRACTED WITH MMVTA TO COORDINATE TRANSIT SERVICE FROM AND TO POINTS IN WASHINGTON COUNTY.

Under the Public Utility Code, the PUC does not have jurisdiction over service provided by a municipal corporation within its corporate limits. County of Dauphin v. Pa. P.U.C. supra. As such, a municipal corporation may conduct transit and other

types of utility services within its defined corporate boundaries without being required to obtain a certificate of public convenience from the PUC. 66 Pa. C.S. § 1102. The Public Utility Code defines municipal corporations to include counties, transit authorities such as WCTA and PAT, and other public bodies. 66 Pa. C.S. §§ 1122; 1141; 1171.

WCTA is a municipal corporation as defined in the Municipal Authorities Act of 1945, as amended. As such, it has the legal authority to coordinate mass transportation between points in Washington County, and from points in Washington County to other points in Pennsylvania. MMVTA is also a municipal corporation formed under the Municipal Authorities Act of 1945, as amended. As such, it has the legal authority to conduct mass transportation within the boundaries of its member municipalities and from such points to other points in Pennsylvania, and return. PAT, a transportation authority, is also a municipal corporation and may conduct mass transit operations within Allegheny County. None of the above described transportation services requires operating authority from the PUC.

Typically an authority, such as MMVTA, WCTA or PAT, provides mass transit service utilizing their own equipment and personnel, or subcontracts the work to service providers. Contracts are generally awarded to carriers on the basis of price and quality of service. A carrier must submit bids on the proposed service and the authorities award contracts to the lowest responsible bidder. Passengers are issued trip tickets by the authority to give to the driver in exchange for the trip. Some programs require that the passenger pay for a portion of his ride. The contractor submits trip records to the authority on a weekly basis and is reimbursed by the

authority. The authority establishes various requirements for the subcontractor, including minimum insurance requirements, vehicle maintenance requirements, vehicle record keeping requirements, emergency equipment requirements, and minimum driver qualifications and behavior standards. Further, the authorities may require on-time performance by the carrier, establish a minimum waiting time and provide for riding time requirements whereby carriers must meet certain efficiency standards. The authorities also establish minimum service hours for the transportation. Authorities require that all accidents be reported to it and generally forbid the contractor from discriminating against any person on the basis of race, color, creed, ancestry, age or sex. Contractors generally provide all labor and sometimes provide their own equipment. In this case, MMVTA provides equipment to the subcontractor.

It is not disputed here that MMVTA coordinates and controls the rates, routes and service provided by its subcontractor. It is not disputed that MMVTA may subcontract mass transportation from points within the municipalities that are members of MMVTA to other points in Pennsylvania including the City of Pittsburgh, and return. The only question is whether MMVTA can also permit its subcontractor to pick up passengers in Union Township and the Borough of Finleyville along Route 88, which is the normal route that the buses would take from the member municipalities to the City of Pittsburgh, and return.

WCTA is a county-wide municipal transit authority. WCTA may conduct, or coordinate through a subcontractor, mass transportation services between all points in Washington County, and from any point within Washington County to the City of Pittsburgh and return. WCTA entered into a written contract with MMVTA, in effect

as its agent or sub-coordinator, to coordinate transportation from municipalities that are in Washington County including those not within the corporate boundaries of MMVTA. While MMVTA can cite no precedent for its contention that a municipal corporation may delegate to another municipal corporation a coordinated transportation service that could be provided by the former municipal corporation, no precedent can be found that would preclude such a conclusion.

The contract between WCTA and MMVTA provides, in part, as follows:

2. Coordinating Transportation and Planning

\* \* \*

- b. The MMVTA will continue to fix, alter, charge and collect fares, rates and other charges for its facilities at reasonable and uniform rates as long as the services and fees do not conflict with the policies and purposes of the Washington County Transit Authority.
- c. The MMVTA and Washington County Transit Authority may coordinate any additional transportation services mutually agreeable dependent upon available funds as the need arises.

In effect, WCTA has delegated to MMVTA, as its agent, to coordinate transit services to and from Washington County subject to the WCTA's oversight as stated in the agreement.

Under the Restatement of the Law – Agency, and particularly § 2.01, dealing with actual authority, an agent acts with actual authority “when, at the time of taking action that has legal consequences for the principal, the agent reasonably believes, \* \* \* that the principal wishes the agent to so act”. In § 2.02 of the Restatement, entitled “Scope of Actual Authority”, the Restatement provides:

- (1) An agent has actual authority to take action designated or implied in the principal's manifestations to the agent and acts necessary or incidental to achieving the principal's objectives, as the agent

reasonably understands the principal's manifestations and objectives when the agent determines how to act.

\* \* \*

- (3) An agent's understanding of the principal's objectives is reasonable if it accords with the principal's manifestations and the inferences that a reasonable person in the agent's position would draw from the circumstances creating the agency.

As to capacity to act as principal, § 3.04 of the Restatement of the Law – Agency provides:

- (1) An individual has capacity to act as principal in a relationship of agency as defined in §1.01 if, at the time the agent takes action, the individual would have capacity if acting in person.

MMVTA submits that since WCTA had the capacity to provide service directly or by a subcontractor to and from Union Township and Finleyville Borough, it could delegate this action to another municipal corporation acting as its agent, here MMVTA. MMVTA in controlling rates, routes and service, that is coordinating the services of its subcontractor, between Union Township and Finleyville Borough and other points, stands in the shoes of WCTA as its agent. This is not unlike the situation that exists in Allegheny County where PAT delegates to MMVTA the right to transport passengers within Allegheny County along Route 88 to and from the City of Pittsburgh. 88 Transit does not question the validity of the service MMVTA provides in Allegheny County.

Under its contract with WCTA, MMVTA has been authorized to extend its mass transit coordination to and from other points in Washington County. Since MMVTA has the equipment and management to coordinate such service, the public interest is served by permitting WCTA to delegate the coordination of mass transit to

MMVTA. The ridership in Union Township and Finleyville Borough will thereby continue to receive mass transit service coordinated by the agent for the WCTA.

2. THE PUC HAS DISCRETIONARY POWER TO AUTHORIZE EXTENSIONS OF SERVICE BY A MUNICIPAL CORPORATION BEYOND ITS CORPORATE BOUNDARY.

Municipal corporations provide various services that are not subject to PUC regulation. In addition to transportation services as previously noted, municipalities also provide water and sewage services within the confines of the municipal corporation boundaries which are beyond Commission regulation.

In Borough of Phoenixville v. Pa. P.U.C., 90 P.U.R.3d 450, 3 Pa.Cmwlth. 56, 280 A.2d 471 (1971), the question presented was "whether the Commission (PUC) may order a municipality to extend utility service to customers located outside its governmental boundaries, where the municipality, without a certificate of public convenience issued by the Commission (PUC), has held itself out to render such service and does render such service to others outside its boundaries". 280 A.2d at 472. The Court held that the PUC had the power to order extraterritorial service where a municipal corporation holds itself out to render uncertificated extraterritorial service. The Borough of Phoenixville had extended its water and sewer service lines beyond the service area it was permitted to serve as a municipal authority. The Court held that the PUC had jurisdiction to determine whether the extension of such service should be continued, even though the Borough did not seek a certificate of public convenience to extend such service. In this regard, the Court stated:

So long as Phoenixville continues to render uncertificated extraterritorial service, it will be within the discretionary power of the Commission, on the basis of reasonableness, to determine questions of extensions of service.

The Court held that Phoenixville may not unilaterally refuse to continue to supply water and sewer service at points beyond the limits of its territory where such service will not result in undue physical or financial hardship to Phoenixville Borough or to its water and sewage plants. 280 A.2d at 474.

There is no question that the residents of Union Township and Finleyville Borough will be adversely impacted if this Complaint is sustained and if MMVTA cannot authorize its subcontractor to pick up passengers along Route 88 in those municipalities. The service provided by MMVTA in Union Township and Finleyville Borough does not adversely impact the municipalities which are part of MMVTA. In fact, the municipalities actually benefit from the revenues MMVTA generates from serving Union Township and Finleyville Borough. Moreover, it would be unreasonable to deny the residents of Union Township and Finleyville Borough service which has been provided to them continuously since 1985.

There is no other service available, including service from the Complainant. While Complainant may argue that it holds operating authority from the PUC to conduct scheduled route service along the routes in question, while First Transit does not, the fact is that 88 Transit really did not provide service over the entire route as a common carrier. 88 Transit did not charge its tariff rates and paid no assessment for revenues received by contract from MMVTA except for revenues received from service in Union Township and Finleyville Borough. 88 Transit provided the service under its agreement with MMVTA and was paid from the subsidies MMVTA received

from PennDOT, WCTA, FTA, PAT and MMVTA's member municipalities. Moreover, 88 Transit placed its operating authority in suspension and has no equipment.

The continuation of service along Route 88, including service to Union Township and Finleyville Borough, is a natural extension of the authorized service of MMVTA. The residents of Union Township and Finleyville Borough are not discriminated against in any way such as by paying higher rates. The two municipalities have established natural and special locations for the buses to stop, including a large park-and-ride lot located across the street from the boundary of Carroll Township, which is a member municipality. In County of Dauphin v. Pa. P.U.C., *supra*, the Court held that "the reason for regulating extraterritorial service is so that the municipality cannot discriminate against users who are outside the corporate limits". 634 A.2d at 282.

MMVTA submits that the continuation of service by its subcontractor in Union Township and the Borough of Finleyville may be permitted in the Commission's discretion based on the fact that the service is clearly in the public interest, is non-discriminatory, and would result in an undue hardship if discontinued.

#### IV. CONCLUSION

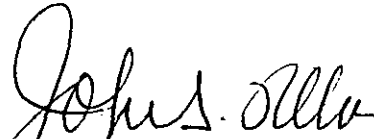
On the basis of the foregoing Statement of Facts and Argument, Respondent requests that the following conclusions be made:

1. that WCTA, a municipal corporation, may subcontract coordination services to MMVTA to render mass transit service within the corporate boundary of WCTA;



2. that MMVTA may permit its subcontractor to pick up and discharge passengers in Union Township and Finleyville Borough, Washington County, under MMVTA's contract with WCTA;
3. that the Commission may exercise its discretion to permit extraterritorial service by a municipal corporation which has held itself out to provide such service and such result will not result in undue hardship to the municipality; and
4. that the Complaint of 88 Transit Lines, Inc. be dismissed.

Respectfully submitted,



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JOHN A. PILLAR  
Attorney for  
MID MON VALLEY TRANSIT AUTHORITY,  
Respondent

Due Date: April 29, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a true and correct copy of the within **Brief on Behalf of Mid Mon Valley Transit Authority, Respondent**, upon the following parties as indicated, this 28<sup>th</sup> day of April, 2009:

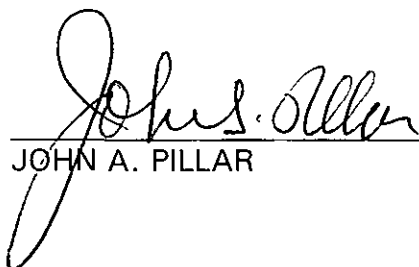
HON. MARK A. HOYER (1 copy via first-class mail and  
Administrative Law Judge 1 copy via e-mail: mhoyer@state.pa.us)  
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JOHN A. PILLAR

