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May 12, 2010

Re: 88 Transit Lines, Inc. v. Mid Mon Valley Transit Authority
Docket No. C-2009-2116699
Our File 4020-8-2

Ms. Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

MAILED WITH U.S. POSTAL SERVICE
CERTIFICATE OF MAILING FORM 3817

Dear Ms. Chiavetta:

We enclose for filing with the Commission the signed original and nine (9) copies of the Reply Brief of Complainant 88 Transit Lines, Inc. in connection with the above-captioned proceeding.

A copy of the Reply Brief has been sent to Administrative Law Judge Mark A. Hoyer and two (2) copies have been served on the attorney for the Respondent. We are also sending to the Administrative Law Judge a copy by email in Microsoft Office Word format pursuant to his letter dated March 30, 2010.

Please acknowledge receipt and filing of the enclosed on the duplicate copy of this letter of transmittal and return it to the undersigned in the self-addressed, stamped envelope provided.

Very truly yours,

VUONO & GRAY, LLC

William A. Gray

cw/78905

Enclosures

cc: Honorable Mark A. Hoyer
John A. Pillar, Esq.
88 Transit Lines, Inc.

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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SECRETARY'S BUREAU

ORIGINAL

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. C-2009-2116699

88 TRANSIT LINES, INC.
v. MID MON VALLEY TRANSIT AUTHORITY

REPLY BRIEF OF COMPLAINANT
88 TRANSIT LINES, INC.

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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Due Date: May 14, 2010

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Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. C-2009-2116699

88 TRANSIT LINES, INC.
vs. MID MON VALLEY TRANSIT AUTHORITY

REPLY BRIEF OF COMPLAINANT
88 TRANSIT LINES, INC.

I. STATEMENT OF THE CASE

88 Transit Lines, Inc. (“88 Transit” or “Complainant”) filed a Complaint against Mid Mon Valley Transit Authority (“the Transit Authority” or “Respondent”) at Docket No. C-2009-2116699 alleging that Respondent, a municipal corporation, was providing service originating beyond its corporate limits without securing authority from the Public Utility Commission, which is prohibited by the Public Utility Code.

A hearing was held in Pittsburgh on February 24, 2010 before Administrative Law Judge Mark A. Hoyer. Main Briefs were filed on behalf of the Complainant and Respondent. The Main Brief filed by the Respondent sets forth factual and legal arguments which must be addressed by the Complainant. The Complainant therefore hereby files this Reply Brief to respond to the Main Brief filed by the Respondent.

II. REBUTTAL ARGUMENT

A. RESPONDENT CANNOT AVOID SECURING A CERTIFICATE OF PUBLIC CONVENIENCE FROM THE COMMISSION TO PROVIDE SERVICE BEYOND ITS CORPORATE LIMITS BY MERELY SECURING THE PERMISSION OF THE WASHINGTON COUNTY TRANSPORTATION AUTHORITY.

The Public Utility Code requires a Certificate of Public Convenience for “any municipal corporation to acquire . . . or begin to operate, any plant, equipment or other facilities for the rendering or furnishing to the public of any public utility service beyond its corporate limits . . .” (emphasis added) 66 Pa. C.S. §1102(a)(5). The Public Utility Code also provides that “any public utility service being furnished or rendered by a municipal corporation beyond its corporate limits shall be subject to regulation and control by the commission as to service and extensions, with the same force and in like manner as if such service were rendered by a public utility.” 66 Pa. C.S. §1501. The parties stipulated that the Transit Authority is a municipal corporation formed under The Municipality Authorities Act of 1945 and amendments thereto. (Complainant’s Ex. 1)

Respondent first took the position that it was a municipal corporation and could provide service where pickups were made within its corporate limits and also outside its corporate limits. When challenged, Respondent retreated from that position and now admits that it cannot provide service originating outside of its corporate limits, but is now attempting to do an end run around PUC regulation under the Public Utility Code by getting permission from the Washington County Transportation Authority (“WCTA”), which itself does not provide scheduled route service in Washington County, to make pickups in connection with its scheduled route service outside of its corporate limits in

Finleyville Borough and Union Township. Significantly, when 88 Transit was the subcontractor for the Transit Authority (until June 30, 2009), the service from Finleyville Borough and Union Township was provided under 88 Transit's PUC authority. (18) There was an understanding between the Transit Authority and 88 Transit that pickups outside of the corporate limits of the Transit Authority were handled under 88 Transit's PUC authority. (18) 88 Transit continued to pay PUC assessments in connection with service provided to the Transit Authority where the pickups were outside of the corporate limits of the Transit Authority. (19) The Transit Authority knew that it needed to have PUC authority, either itself or through its contractor, to provide service outside of its corporate limits and chose to ignore that fact once 88 Transit was no longer its contractor.

Respondent argues beginning at page 8 of its Main Brief that WCTA is a county-wide municipal transit authority and, as such, has lawfully delegated to Respondent permission to provide the service which is the subject of this complaint, which is clearly service originating outside of Respondent's corporate limits. Significantly, however, the Memorandum of Understanding entered into between Respondent and WCTA provides that Respondent will continue to fix the rates and they will not be fixed by WCTA, including the rates in Finleyville Borough and Union Township. (69) WCTA will not provide the buses or the drivers to drive the buses that will make the pickups in Finleyville Borough and Union Township, but rather the buses will be owned by Respondent and the drivers will be provided by Respondent. (69) The witness for WCTA admitted that it does not even provide scheduled route service, which is the service Respondent provides where the pickups are made in Finleyville Borough and Union Township. (86) The witness for

WCTA admitted that Respondent mentioned the need to enter into the Memorandum of Understanding because Finleyville Borough and Union Township were outside of its corporate limits. (94-95)

Respondent argues in its Main Brief that the situation here is similar to the situation with the Port Authority of Allegheny County, which Respondent states, “is also a municipal corporation and may conduct mass transportation operations within Allegheny County.” In fact, the situation involving the Port Authority of Allegheny County is completely different than the situation involving Respondent. The Port Authority of Allegheny County is not subject to the Municipality Authorities Act of 1945, as is Respondent, but rather is subject to the Second Class County Port Authority Act, 55 P.S. §551 et seq. This statute gives the Port Authority of Allegheny County exclusive jurisdiction over all transportation in Allegheny County, with certain specified limited exceptions not relevant hereto. See *Port Authority of Allegheny County v. Pennsylvania Public Utility Commission*, 494 Pa. 250, 256, 431 A.2d 243, 246 (1981). The Port Authority of Allegheny County is authorized by the Second Class County Port Authority Act to make arrangements with anyone it wants to provide service in Allegheny County since it has exclusive jurisdiction over service within Allegheny County. The PUC does not have the power to grant someone authority to provide scheduled route service in Allegheny County because of the Second Class County Port Authority Act. The Municipality Authorities Act does not confer in a municipal corporation exclusive jurisdiction, as evidenced by the fact that both WCTA and the Respondent provide service in Washington County. The best evidence that The Municipality Authorities Act does not

vest exclusive jurisdiction in a transit authority is the fact that WCTA has authority throughout Washington County and yet Respondent also has authority in 21 municipalities in Washington County. In the case of WCTA, it provides primarily shared ride service, while the service provided by Respondent is scheduled route service. Neither of these authorities have exclusive jurisdiction over service in Washington County, unlike the Port Authority of Allegheny County, which has exclusive jurisdiction in Allegheny County, except as specifically provided in the Second Class County Port Authority Act. The PUC does have the power to grant authority, including scheduled route authority, in Washington County because of the fact that the Municipality Authorities Act of 1945 does not confer exclusive jurisdiction in a municipal corporation, unlike the Second Class County Port Authority Act.

Stated simply, WCTA cannot delegate to Respondent, as its agent, the right to provide service from these two specific points in Washington County, merely to divest the PUC of jurisdiction over that service under the Public Utility Code. The attempt by Respondent in its Main Brief to establish a principal/agent relationship between Respondent and WCTA must fail. WCTA doesn't even provide scheduled route service in Washington County and cannot delegate to Respondent the right to merely make pickups at two points along Respondent's scheduled route under an agency theory. Significantly, there is no mention in the Memorandum of Understanding executed by Respondent and WCTA that there is a principal/agent relationship between the parties. If the parties had intended to create a principal/agent relationship they would have stated that in the

Memorandum of Understanding. The real intent of the parties, as stated in the Memorandum of Understanding, is as follows:

The MMVTA does not have specific statutory authority to operate in Finleyville and Union Township in Washington County. The Washington County Transportation Authority hereby agrees to permit the MMVTA to continue to operate its long standing service along the Route 88 corridor consisting of fixed-route, scheduled service.

Not surprisingly, the Respondent admits at page 9 of its Main Brief that it can find no precedent for its argument that a municipal corporation may delegate the right to provide service under its charter to another municipal corporation under The Municipality Authorities Act of 1945.

Respondent cannot avoid securing a Certificate of Public Convenience from the Commission to provide service beyond its corporate limits by merely securing the permission of WCTA.

B. THE PHOENIXVILLE CASE IS NOT CONTROLLING SINCE RESPONDENT IS NOT SEEKING TO EXTEND THE SERVICE THAT IT HAS BEEN PROVIDING OUTSIDE OF ITS CORPORATE LIMITS.

Respondent's reliance upon the *Borough of Phoenixville v. Pa. P.U.C.*, 3 Pa.Cmwlt. 56, 280 A.2d 471 (1971) is misplaced. The rationale in the *Phoenixville* case is to prohibit a municipal corporation that has taken it upon itself to provide extra territorial service from then not providing extra territorial service to a certain segment of the public. In the *Phoenixville* case, the court noted in a footnote that 800 of Phoenixville's 4500 water customers were actually located outside of its boundaries. Phoenixville then decided not to

extend its service to someone else. The key language in the *Phoenixville* case is the following:

As soon as a borough holds itself out to render uncertificated extraterritorial service and renders such service, it is within the jurisdiction of the commission to determine whether extension of such service should be granted. In effect, if a municipality decides that it will not apply to the commission for a certificate of public convenience to delineate its utility service area outside its boundaries, then as each new proposed extension is presented to the Commission, the Commission has jurisdiction to determine the extent of the extraterritorial utility service area for the municipality. (emphasis added)

Respondent is not seeking to extend its uncertificated extraterritorial service from Finleyville Borough and Union Township, but rather is seeking to continue to provide that uncertificated extraterritorial service in Finleyville Borough and Union Township without holding a Certificate of Public Convenience.

Respondent's position in this case would defeat the entire certification process established in the Public Utility Code which specifically requires a Certificate of Public Convenience for "any municipal corporation to acquire . . . or begin to operate, any plant, equipment or other facilities for the rendering or furnishing to the public of any public utility service beyond its corporate limits . . ." (emphasis added) 66 Pa.C.S. §1102(a)(5).

The Commission should require Respondent to comply with the Public Utility Code and should direct Respondent to cease and desist from providing service outside of its corporate limits until such time as it becomes properly certificated.

III. CONCLUSION

For all of the foregoing reasons, and the additional reasons set forth in Complainant's Main Brief, Complainant respectfully requests that the Complaint at Docket No. C-2009-2116699 be sustained and that the relief requested in Complainant's Main Brief be granted.

Respectfully submitted,

VUONO & GRAY, LLC

By: _____

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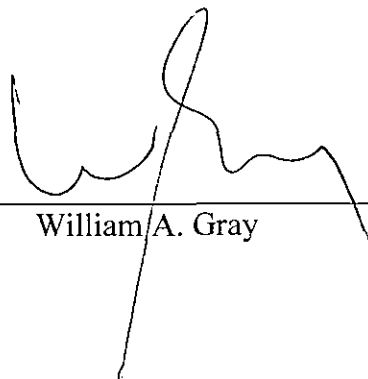
Due Date: May 14, 2010

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CERTIFICATE OF SERVICE

William A. Gray, Esq., attorney for Complainant, 88 Transit Lines, Inc., hereby certifies that on the 12th day of May, 2010, he did serve a true and correct copy of the foregoing Reply Brief of Complainant upon the following counsel, by first class mail, postage prepaid, at the address as set forth below:

John A. Pillar, Esq.
680 Washington Road
Suite B101
Pittsburgh, PA 15228

A handwritten signature in black ink, appearing to read 'W.A. Gray', is written over a horizontal line. The signature is stylized and cursive.

William A. Gray



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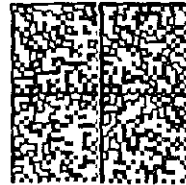
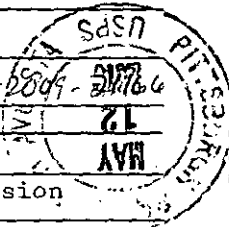
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From: Vuono & Gray, LLC
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88 v. Mid Mon Valley C-0504-2010
Reply Brief

To: Ms. Rosemary Chiavetta
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