

IN THE SUPREME COURT OF THE STATE OF NEVADA

RURAL TELEPHONE COMPANY,

Appellant,

vs.

PUBLIC UTILITIES COMMISSION
OF NEVADA, AN ADMINISTRATIVE
AGENCY OF THE STATE OF NEVADA,

Respondent.

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15 OC 00188 1B

APPELLANT RURAL TELEPHONE COMPANY'S REPLY BRIEF

**(Appeal from Order of the First Judicial District Court of the
State of Nevada In and For Carson City)**

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Rural Telephone Company is an Idaho corporation qualified to do business in Nevada as a foreign corporation. It has no parent corporation and no publicly held corporation owns 10% or more of Rural Telephone Company's stock. Partners and associates of ALLISON MacKENZIE, LTD. have appeared for Rural Telephone Company in the proceedings before the Public Utilities Commission of Nevada and the District Court and will appear on behalf of Rural Telephone Company in this appeal.

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APPELLANT RURAL TELEPHONE COMPANY'S REPLY BRIEF

Appellant, RURAL TELEPHONE COMPANY ("RURAL"), by and through its counsel, ALLISON MacKENZIE, LTD., hereby files its Reply Brief in accordance with Nevada Rules of Appellate Procedure ("NRAP") 28(c) and 32.

I.

REPLY ARGUMENT

A. The Commission is Wrong When it Asserts that Strict Compliance With the 30-Day Timeline in NRS 373.703(6) is Required.

In its Answering Brief, the Commission argues that the District Court correctly denied RURAL's Motion for Extension of Time because NRS 703.373(6) requires strict compliance with the 30-day timeline for filing a memorandum of points and authorities in support of a petition for judicial review. Answering Brief

at 8. According to the Commission, because “NRS 703.373(6) does not contain any provision that would allow for a deviation from the 30-day requirement,” the District Court lacked the authority to grant RURAL’s Motion for Extension of Time to file its memorandum of points and authorities in support of the Petition for Judicial Review.¹ Answering Brief at 9.

The Commission cites to Leven v. Frey, 123 Nev. 399, 168 P.3d 712 (2007), to support its assertion that strict compliance with NRS 703.373(6) is warranted in this matter. Answering Brief at 8-9. In Leven, this Court stated that the standard of review in determining “whether a statute’s procedural requirements must be complied with strictly or only substantially is a question of law subject to plenary review.” Leven, 123 Nev. at 402, 168 P.3d at 714.

In Leven, this Court held that strict compliance with the procedural requirements of NRS 17.214 was required to successfully renew a judgment. Id. at 401, 168 P.3d at 714. In reaching this decision, the Court reviewed the various subsections of NRS 17.214 and determined that the language was susceptible to two different meanings; thus, rendering the meaning ambiguous. Id. at 404, 168 P.3d at 716. “Since this language is capable of more than one reasonable

¹ RURAL’s Petition for Judicial Review was timely filed. JA Vol. 1 at 0001-0063. The Commission’s Statement of the Issue could be read to imply RURAL’s Petition for Judicial Review was not timely filed. This is not the issue of this appeal. Answering Brief at 1.

interpretation, it is ambiguous, and we necessarily look to legislative history and our rules of statutory interpretation.” Id.

When construing a statute that is susceptible to more than one reasonable interpretation, the Court in Leven cautioned that it must not give the statute a meaning that will nullify its operation. Id. at 405, 168 P.3d at 716. The Court noted that it has a duty to construe statutes as a whole, so that all provisions are considered together and, to the extent practicable, reconciled and harmonized. Id. “[S]tatutory interpretation should not render any part of a statute meaningless, and a statute’s language ‘should not be read to produce absurd or unreasonable results.’” Id. (quoting Harris Assocs. v. Clark County School Dist., 119 Nev. 638, 642, 81 P.3d 532, 534 (2003)). Therefore, when interpreting an ambiguous statutory provision, the context and spirit of the law, including its multiple provisions, should be examined so as not to produce absurd or unreasonable results. Leven, 123 Nev. at 405, 168 P.3d at 716. Accord I. Cox Constr. Co. v. CH2 Invs., LLC, 129 Nev. Adv. Op. 14, 296 P.3d 1202, 1203 (2013) (“In interpreting a statute, this Court will look to the plain language of its text and construe the statute according to its fair meaning and so as not to produce unreasonable results.”).

In determining whether strict or substantial compliance is required, the Court in Leven provided the following guidance:

Generally, in determining whether strict or substantial compliance is required, courts examine the statute's provisions, as well as policy and equity considerations. See 3 Norman J. Singer, Statutes and Statutory Construction § 57:19, at 58 (6th ed. 2001). Substantial compliance may be sufficient "to avoid harsh, unfair or absurd consequences." Id. Under certain procedural statutes and rules, however, failure to strictly comply with time requirements can be fatal to a case. In other contexts, a court's requirement for strict or substantial compliance may vary depending on the specific circumstances.

Leven, 123 Nev. at 406-07, 168 P.3d at 717.

In Leven, the Court determined that a judgment creditor must strictly comply with the timing requirement for service set forth in NRS 17.214(3) to successfully renew a judgment. Id. at 409, 168 P.3d at 719. The Court noted that NRS 17.214 requires a judgment creditor to timely file, record, and serve the affidavit of renewal on the judgment debtor to successfully renew a judgment. Id. Because the judgment creditor in Leven failed to timely record and serve the affidavit on the judgment debtor, the judgment creditor did not strictly comply with the statutory procedural requirements. Id. at 409-10, 168 P.3d at 719. The Court reasoned that anything less than strict compliance with the statutory requirements of NRS 17.214 would deprive the judgment debtor of due process rights. Id. at 409, 168 P.3d at 719 ("[B]ecause judgment renewal proceedings are purely statutory in nature and are a measure of rights, a court cannot deviate from those judgment renewal conditions purposefully stated by the Legislature.").

The facts of this case are different from the facts of Leven. In this case, the District Court abused its discretion in denying RURAL's Motion for Extension of Time on the basis that NRS 703.373(6) required strict compliance. See Schleining v. Cap One, Inc., 130 Nev. Adv. Op. 36, 326 P.3d 4, 8 (2014) ("This Court reviews substantial-compliance determinations for an abuse of discretion."). The District Court construed the provisions of NRS 703.373 to conclude that since NRS 703.373(6) does not expressly give the District Court the authority to extend the 30-day timeline to file a memorandum of points and authorities, the District Court had no other option than to deny RURAL's Motion for Extension of Time and dismiss its Petition for Judicial Review. JA Vol. 2 at 2077. This is an absurd and unreasonable result. See I. Cox Constr. Co. v. CH2 Invs., LLC, 129 Nev. Adv. Op. 14, 296 P.3d 1202, 1203 (2013); Leven v. Frey, 123 Nev. 399, 405, 168 P.3d 712, 716.

The purpose of NRS 703.373 is to give an aggrieved party the right to judicial review of a final decision of the Commission. See NRS 703.373(1). The legislative intent behind NRS 703.373 is to provide for a "fast track" procedure for the judicial review process. See Hearing on A.B. 17 Before the Senate Government Affairs Comm., 76th Leg. (Nev. March 25, 2011). The Legislature wanted the judicial review process to take approximately 4 to 6 months, as opposed to the then-current process that was taking 9 to 30 months.

See Hearing on A.B. 17 Before the Senate Government Affairs Comm., 76th Leg. (Nev. April 27, 2011).

Here, RURAL substantially complied with NRS 703.373(6) in that it timely filed a Motion for Extension of Time requesting a 30-day extension of time to file a memorandum of points and authorities in support of its Petition for Judicial Review. JA Vol. 1 at 0103-0114. After not receiving a ruling from the District Court on the Motion for Extension of Time, RURAL filed a memorandum of points and authorities in support of its Petition for Judicial Review within the requested 30-day extension period. JA Vol. 2 at 0222-0271.

There was no harm or prejudice to the Commission by RURAL requesting a 30-day extension of time. Further, there was no harm or prejudice to the Commission by RURAL filing the memorandum of points and authorities in support of its Petition for Judicial Review within the requested 30-day extension period. There was, however, significant harm and prejudice to RURAL when the District Court denied RURAL's Motion for Extension of Time and dismissed RURAL's Petition for Judicial Review on the basis that RURAL failed to strictly comply with NRS 703.373(6). There is nothing in the legislative history to support the District Court's conclusion that NRS 703.373(6) precluded the District Court from granting a 30-day extension. The District Court's dismissal of RURAL's

Petition for Judicial Review resulted in the harsh and unfair consequence of depriving RURAL of judicial review of the Commission's final decision.

B. The Legislative History of NRS 703.373 Does Not Support the Commission's Contention That the Legislature Intended Strict Compliance With NRS 703.373(6).

In its Answering Brief, the Commission misconstrues the legislative history of NRS 703.373 to support the contention that "the Legislature intended for the 30-day timeline [in NRS 703.373(6)] to be inflexible." Answering Brief at 11, 12. Moreover, at the top of page 14 of the Answering Brief, the Commission improperly quotes only a portion of the relevant testimony contained in the legislative history. The full discourse of the question and answer is as follows:

Assemblywoman Neal: You mentioned in your testimony that you were seeking to shorten the process and now you want to be exempt from the court doing judicial review on PUC decisions. Is that correct?

David Noble: No, under NRS 703.373 there is a process for judicial review already. What NRS 233B.039 does on top of that is to allow for cross-petitions. It allows for extended briefing and new evidence to come in. Those were never things that were contemplated for judicial review of the PUC. It is strictly a procedural mechanism. It was a question of whether to follow NRS 703.373 or NRS 233B.039 judicial review provisions.

JA Vol. 1 at 0162. Hearing on A.B. 17 Before the Assembly Government Affairs Comm., 76th Leg. (Nev. February 9, 2011). A review of the complete question and answer illustrates that the legislative intent was to prevent cross-petitions,

extended briefing related to cross-petitions, and to prohibit new evidence from coming in as part of a judicial review under NRS 703.373.

There is nothing in the legislative history of NRS 703.373 that supports the Commission's contention that the Legislature intended to prohibit a court from granting an extension of time to file a memorandum of points and authorities in support of a petition for judicial review. In fact, such prohibition would be unconstitutional under the separation of powers doctrine as discussed in section D. below. See also RURAL's Opening Brief at 27-31.

In its Answering Brief, the Commission cites to McKay v. Board of Supervisors of Carson City, 102 Nev. 644, 730 P.2d 438 (1986), to support its argument that the 30-day timeline in NRS 703.373(6) is inflexible. Answering Brief at 12. The Commission's reliance on McKay is misplaced.

In McKay, the Court determined that the statute at issue was ambiguous because it was capable of two or more reasonable meanings. Id. at 649, 730 P.3d at 442. Thus, the Court examined the legislative intent to decide whether a closed meeting of a public body to terminate a city manager violated Nevada's Open Meeting Law. "An ambiguous statute can be construed "in line with what reason and public policy would indicate the legislature intended." Id. (quoting Robert E. v. Justice Court, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983)). The Court in McKay reviewed the legislative intent behind Nevada's Open Meeting

Law and held that the spirit and policy behind the law favored open meetings. Id. at 651, 730 P.2d at 443. The Court reasoned that since closed session consideration of dismissal or termination was expressly deleted from an amendment to the law, such express deletion “is significant evidence that the legislature did not intend to allow a termination decision to be conducted in a closed meeting.” Id.

The statute at issue in this case is different than the statute at issue in McKay. In McKay, the Legislature had amended Nevada’s Open Meeting Law to delete the express provision allowing a public body to dismiss or terminate a public officer or employee in a closed session. Id. at 650, 664 P.2d at 442. Thus, the Court in McKay concluded that such express deletion meant that the Legislature intended to require open meetings for the decision to terminate a public employee. Id. at 650, 664 P.2d at 443. In this case, the Legislature never intended for the 30-day timeline in NRS 703.373(6) to be inflexible. Further, the Legislature never deleted an express provision from NRS 703.373(6) allowing extensions of time. Instead, the legislative intent behind NRS 703.373 is to give an aggrieved party the right to judicial review of a final decision of the Commission. Therefore, the Commission’s argument that the 30-day timeline in NRS 703.373(6) is inflexible is without merit.

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C. This Court Has Held That Substantial Compliance With a Statute or Rule is Appropriate to Avoid Harsh, Unfair and Absurd Consequences.

In its Answering Brief, the Commission argues that RURAL cited to no case law “where a court has disregarded a statutory timeline.” Answering Brief at 15. The Commission misconstrues RURAL’s argument. RURAL is not advocating that this Court disregard the timeline set forth in NRS 703.373(6). Rather, RURAL is requesting that this Court reverse the District Court’s denial of its Motion for Extension of Time as being an abuse of discretion because the District Court had the authority to grant an extension of time and RURAL substantially complied with the timeline set forth in NRS 703.373(6).

This Court has held that substantial compliance with the statutory notice requirements for mechanics’ liens is sufficient where actual notice occurs and there is no prejudice to the party entitled to notice. See Las Vegas Plywood & Lumber, Inc. v. D & D Enters., 98 Nev. 378, 380, 649 P.2d 1367, 1368 (1982) (“The purpose of NRS 108.227(1) is to notify the property owner of the lien; therefore, substantial compliance with the requirements of the statute will suffice if the owner receives actual notice and is not prejudiced.”) In Las Vegas Plywood & Lumber, Inc. v. D & D Enters., NRS 108.227(1) required the claimant to serve a copy of the mechanic’s lien on the record owner of the property within 30 days. Id. at 379 n.1, 649 P.2d at 1368 n.1. In relevant part, NRS 108.227(1) required that “a copy of the claim shall be served upon the record owner of the property within

30 days” Id. (emphasis added). Although the statute contained the directive “shall,” the claimant did not strictly comply with NRS 108.227(1) when the claimant mistakenly posted the mechanic’s lien on the wrong property. Id. The Court held that the claimant’s substantial compliance was sufficient to perfect the mechanic’s lien because the property owner received actual notice and was not prejudiced. Id. at 380-81, 649 P.2d at 1368-69.

This Court has also held that an 83-day-old broker’s price opinion (BPO) substantially complied with the rule requiring that the BPO be completed within 60 days before a mediation under Nevada’s Foreclosure Mediation Program Rules. See Markowitz v. Saxon Special Servicing, 129 Nev. Adv. Op. 69, 310 P.3d 569, 569 (2013) (“We conclude that because a current appraisal or broker’s price opinion is intended to facilitate good-faith mediation negotiations, the rule’s content-based provision governing the appraisal’s age is directory rather than mandatory, and thus, substantial compliance with the 60-day provision satisfies the mediation rule.”). In Markowitz v. Saxon Special Servicing, the relevant foreclosure mediation rule in place at the time required the beneficiary of a deed of trust to submit an appraisal and/or BPO prepared no more than 60 days before the mediation. Id. at ___, 310 P.3d at 570-71. In relevant part, the foreclosure mediation rule required that “[t]he beneficiary of the deed of trust or its representative shall produce an appraisal done no more than 60 days before the

commencement date of the mediation” Id. at ___, 310 P.3d at 571 (emphasis added). Despite the directive “shall” contained in the rule, the Court did not require strict compliance. Id. at ___, 310 P.3d at 573. Rather, the Court held that substantial compliance with the rule was sufficient to facilitate good-faith negotiations at the mediation and that the homeowners would not be prejudiced or harmed by the deed-trust beneficiary’s substantial compliance. Id.

In this case, strict compliance with the 30-day timeline set forth in NRS 703.373(6) would result in a harsh and unfair consequence to RURAL by forever barring RURAL from challenging the Commission’s final decision in Docket No. 14-11006. The Commission was not prejudiced or harmed because it told RURAL to file a motion for extension of time, because a 30-day extension was only 20 days longer than the 10-day extension offered by the Commission and would not affect the “fast track” judicial review process. The purpose of NRS 703.373 is to give an aggrieved party the right to judicial review of a final decision of the Commission. See NRS 703.373(1). It is unreasonable to conclude that the Legislature intended to deny an aggrieved party the right to judicial review simply by requesting a 30-day extension of time to file a memorandum of points and authorities in support of a petition for judicial review under NRS 703.373(6). Therefore, this Court should reverse the District Court’s dismissal of RURAL’s

Petition for Judicial Review and remand this matter to the District Court with instruction to conduct judicial review pursuant to NRS 703.373.

D. The Commission Cannot Refute the Applicability of the Separation of Powers Doctrine to This Case.

In its Answering Brief, the Commission cites to Washoe Medical Center v. District Court, 122 Nev. 1298, 148 P.3d 790 (2006), and Alemi v. District Court, 2016 WL 115651, Docket No. 66917 (Jan. 7, 2016) (unpublished disposition), to support its contention that the separation of powers doctrine does not apply to this case. Answering Brief at 17-20.

This Court's holding in Washoe Medical Center does not nullify the separation of powers doctrine espoused in Borger v. District Court, 120 Nev. 1021, 1029, 102 P.3d 600, 606 (2004).² In Borger, this Court stated that when a statute interferes with the judiciary's inherent authority to manage its own affairs, the statute is a violation of the separation of powers doctrine. Borger, 120 Nev. at 1029, 102 P.3d at 606 (as a coequal branch of government, the judiciary possesses the inherent power to do what is reasonably necessary to administer justice). Accord Tate v. Board of Medical Examiners, 131 Nev. Adv. Op. 67, 356 P.3d 506,

² In Alemi v. District Court, 2016 WL 115651, Docket No. 66917 (Jan. 7, 2016) (unpublished disposition), the Court stated in a footnote that the dictum in Borger anticipated allowing amendments to a complaint that does not comply with NRS 41A.071, and that the holding in Washoe Medical Center is controlling. Alemi, 2016 WL 115651 at n.3. The unpublished disposition of Alemi does not nullify the separation of powers analysis contained in Borger.

511 (2015) (holding that a statute prohibiting a court from entering a stay of a decision of the Board of Medical Examiners pending judicial review violated the separation of powers doctrine and impermissibly encroached on the court's power to do what is reasonably necessary to administer justice).

In Washoe Medical Center, this Court directed the district court to dismiss the plaintiff's medical malpractice action because, although the plaintiff filed her complaint before the statute of limitations ran, the plaintiff did not obtain the affidavit of a medical expert first reviewing and validating the claims as required by NRS 41A.071. Washoe Medical Center, 122 Nev. at 1306, 148 P.3d at 795. The Court determined that the failure to file the supporting affidavit prior to the expiration of the statute of limitations rendered the complaint a nullity and precluded the court from allowing the plaintiff to amend the complaint. Id. at 1304, 148 P.3d at 794. In reaching this decision, the Court noted that the substantive policy expressed in NRS 41A.071 against the filing of frivolous medical malpractice actions trumped the liberal amendment of pleadings in NRCP 15(a). Id.

In Baxter v. Dignity Health, 131 Nev. Adv. Op. 76, 357 P.3d 927, 929 (2015), this Court discussed the tension between the statutory requirements set forth in NRS 41A.071 and the inherent authority of the courts "to adopt procedural rules designed to secure litigants their fair day in court." Id. In Baxter, the

required affidavit was not filed with the complaint. Id. at ___, 357 P.3d at 928. Rather, the affidavit was filed the following day and the district court dismissed the medical malpractice action for failure to attach the affidavit to the complaint. Id. This Court reversed the district court’s dismissal of the action, concluding that the defendants were in “no worse position” than if the plaintiff had attached the affidavit to the complaint instead of filing it one day later. Id. at ___, 357 P.3d at 931. The Court stated that such conclusion “does not disserve the substantive policies the Legislature established in NRS 41A.071” in ensuring that plaintiffs file non-frivolous medical malpractice actions ““in good faith based upon competent expert medical opinion.”” Id. (quoting Zohr v. Zbieglen, 130 Nev. Adv. Op. 74, 334 P.3d 402, 405 (2014)).

The holdings in Borger, Washoe Medical Center, and Baxter analyze the filing of an affidavit required by statute. The facts of this case are distinguishable because this case involves the District Court’s refusal to consider RURAL’s timely Petition for Judicial Review on the basis that RURAL requested a 30-day extension of time to file a memorandum of points and authorities in support of the Petition for Judicial Review. The District Court misconstrued NRS 703.373 when it concluded that it did not have the power to grant RURAL’s Motion for Extension of Time. JA Vol. 2 at 0277. Under the separation of powers doctrine, the Legislature may not encroach on the power of the courts to do what is

reasonably necessary to administer justice. Therefore, the District Court erred when it determined that it lacked the authority to grant a 30-day extension of time to RURAL to file a memorandum of points and authorities in support of its Petition for Judicial Review.

E. The Commission is Being Disingenuous When it Argues that RURAL Failed to Cite Any Legal Authority in Support of Its Motion for Extension of Time.

The Commission asserts that since “Rural failed to cite any supporting legal authority to support its Motion [for Extension of Time]” the District Court was correct in denying RURAL’s Motion for Extension of Time. Answering Brief at 7, 20. In its Order, the District Court stated: “The failure of a moving party to file a memorandum of points and authorities in support of a motion shall constitute a consent to the denial of the motion.” JA Vol. 2 at 0277-0278. In support of this statement, the District Court cited to Rule 15(5) of the First Judicial District Court Rules (“FJDRC”).³ JA Vol. 2 at 0278.

³ In relevant part, FJDCR 15(5) states as follows:

Rule 15. Motions and similar moving papers in civil cases.

....

5. The failure of a moving party to file a memorandum of points and authorities in support of a motion shall constitute a consent to the denial of the motion; a failure of an opposing party to file a memorandum of points and authorities in opposition to

RURAL did file a memorandum of points and authorities with its Motion for Extension of Time in compliance with FJDCR 15(5). JA Vol. 1 at 0104-0105. First, RURAL cited to NRS 703.373(8) to support the premises that judicial review of a final decision of the Commission is akin to an appeal in that the court must conduct the review without a jury and confined to the record. JA Vol. 1 at 104. Second, RURAL cited to NRAP 31(b)(3) to show that the rules of appellate procedure provided for motions for extension of time for filing a brief. JA Vol. 1 at 0104. Third, RURAL cited to NRS 233B.133(6) to show that in analogous judicial review proceedings governed by NRS Chapter 233B, a court, for good cause show, may extend the time allowed for filing a memorandum of points and authorities in support of a petition for judicial review. JA Vol. 1 at 0104. Furthermore, RURAL's counsel filed an affidavit with the Motion for Extension of Time showing good cause for the 30-day extension request. JA Vol. 1 at 0109-0111.

Despite the foregoing legal authority cited by RURAL in its Motion for Extension of Time, the District Court erroneously concluded that “[b]ecause Rural failed to cite any legal authority to support its motion for an extension its motion must be denied for that reason as well.” JA Vol. 2 at 0278. Although the District Court and the Commission may not agree with the applicability of the legal

any motion within the time permitted shall constitute a consent to the granting of the motion.

authority cited by RURAL in its memorandum of points and authorities in support of its Motion for Extension of Time, it is disingenuous to assert that RURAL “failed to cite any legal authority to support its Motion.” Answering Brief at 7, 20.

In addition, the District Court failed to consider FJDCR 9 when it denied RURAL’s Motion for Extension of Time. FJDCR 9 addresses motions for extension of time.⁴ Instead of expeditiously ruling on RURAL’s Motion for Extension of Time as required by NRS 703.373(10) and FJDCR 9(1), the District Court did not rule on the Motion for Extension of Time until more than fifty (50) days after the Motion had been filed. JA Vol. 2 at 0272-0279. Moreover, by the time the District Court had ruled on the Motion for Extension of Time, RURAL

⁴ FJDCR 9 reads as follows:

Rule 9. Extensions or shortening of time.

1. Except as otherwise provided, all applications for extension of time shall be made by motion and upon 5 days’ notice to all parties and to the Judge who shall set the motions for early hearing.

2. No ex parte motions for extension of time shall be granted, except that the Court may, upon the filing and service of a notice of motion for extension of time pursuant to DCR 17, and upon a showing of good cause, order a temporary extension pending the determination of the ex parte motion. This rule shall in no way contravene FJDCR 7.

3. For good cause, the Judge may make ex parte orders shortening time as set forth in DCR 17.

had already filed the memorandum of points and authorities in support of its Petition for Judicial Review. JA Vol. 2 at 0222-0271. Thus, rendering the Motion for Extension of Time moot.

After denying the arguably moot Motion for Extension of Time, the District Court proceeded to dismiss RURAL's Petition for Judicial Review on the basis that the memorandum of points and authorities was not filed within the 30-day timeline set forth in NRS 703.373(6). JA Vol. 2 at 0278. The District Court's Order completely disregards FJDCR 1(4) which states:

4. Whenever it appears to the Court that a particular situation does not fall within any of these rules, or that the literal application of a rule would work hardship or injustice in any case, the Court shall make such order as the interests of justice require.

(Emphasis added.)

Under the circumstances of this case, the interests of justice require that RURAL be afforded judicial review of the Commission's final decision. The District Court should not have denied RURAL's Motion for Extension of Time. Further, the District Court should not have dismissed RURAL's Petition for Judicial Review. The interests of justice require that this Court reverse and remand this matter to the District Court with instruction to conduct judicial review of the Commission's final decision.

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II.

CONCLUSION

Based on the foregoing, the District Court abused its discretion when it denied RURAL's Motion for Extension of Time on the basis that strict compliance with the 30-day timeline set forth in NRS 703.373(6) is required. This Court should find that substantial compliance with NRS 703.373(6) is all that is required and that, under the facts of this case, RURAL did substantially comply with NRS 703.373(6). Further, this Court should reverse the District Court's dismissal of RURAL's Petition for Judicial Review. The actions of the District Court deprived RURAL of its right to judicial review of the final decision of the Commission in contravention of NRS 703.373. Therefore, the District Court's Order Denying Motion for Extension of Time, Order Striking Opening Brief and dismissal of RURAL's Petition for Judicial Review should be reversed, and this matter remanded for judicial review to proceed before the District Court.

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DATED this 1st day of September, 2016.

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CERTIFICATE OF COMPLIANCE (BASED UPON NRAP FORM 9)

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2007 in 14 point Times New Roman type style.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 4,727 words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

///

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c)(1), I hereby certify that I am an employee of ALLISON MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

- ☐ Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada
- ☐ Hand-delivery - via Reno/Carson Messenger Service
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