

**TAB 34**

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
2 IN AND FOR THE COUNTY OF KING

3		
4	SANDY JUDD, et al.,	)
5	Plaintiffs,	) No. 00-2-17565-5 SEA
6	vs.	) PARTIAL DECISION ON SUMMARY
7	AMERICAN TELEPHONE AND	) JUDGMENT AND ORDER FOR FURTHER
8	TELEGRAPH COMPANY, et al.,	) BRIEFING
9	Defendants.	)

10 THIS MATTER came before this Court on Defendant Verizon  
11 Northwest Incorporated's Motion to Dismiss Plaintiffs' First  
12 Amended Complaint. The Court has reviewed the thorough briefing  
13 and argument from all parties and concludes as follows:  
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15 There is some ambiguity in the literal wording of the  
16 statute in question. However, reading the statute as a whole,  
17 the legislature intended to create a cause of action under the  
18 Washington Consumer Protection Act ("CPA") only for violations  
19 of the regulations promulgated by the Washington Utilities and  
20 Transportation Commission ("WUTC") and did not create a cause of  
21 action for actions beyond or outside of the regulations.  
22

23 The pleadings contain a claim that can be read as asserting  
24 a violation of the regulations. However, plaintiffs' briefing,  
25 recitation of facts and oral argument in no way allege

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1 violations of the regulations. Instead, they challenge the  
2 validity and sufficiency of the WUTC regulations, exclusions and  
3 waivers.  
4

5 This proceeding is not the proper one for a challenge to  
6 the WUTC action. The Administrative Procedure Act governs such  
7 a challenge and the State would need to be a party to the  
8 action. It was suggested at oral argument that if the agency  
9 had clearly exceeded the bounds of its authority and had issued  
10 regulations that were "void" as a result, that such issue could  
11 be raised in this Court. Although the Court may indeed have the  
12 ultimate authority to void regulations issued "outside the  
13 statutory authority of jurisdiction of the agency," such still  
14 has to be done pursuant to the provisions of the APA.  
15

16 Plaintiffs have not provided authority for why they can  
17 litigate a challenge to the regulations in this proceeding. The  
18 case cited, Ward v. LaMonico, 47 Wn. App. 373 (1987), was  
19 decided approximately two years before the effective date of  
20 current RCW 34.05.510 establishing the exclusive means of  
21 judicial review of agency action.  
22

23 For the reasons cited by Defendants WUTC, the defendants  
24 are all entitled to be dismissed from this action unless it is  
25 alleged that they have actually violated any WUTC regulation.

1 If such is alleged, this matter should be stayed and that issue  
2 referred to the agency for determination of a violation under  
3 the doctrine of primary jurisdiction.  
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5 The Court will defer entry of orders of dismissal for ten  
6 days. Plaintiffs may submit within such time a supplemental  
7 brief (not to exceed 10 pages) regarding an assertion of  
8 violations of the regulations. Defendants shall have 5 days to  
9 respond, plaintiffs 2 days to reply. Thereupon, the Court will  
10 either dismiss or stay and refer to the WUTC without further  
11 oral argument.  
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13 DATED this 10<sup>th</sup> day of October, 2000.  
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16 JUDGE J. KATHLEEN LEARNED  
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