

EXHIBIT 2

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

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

THIS MATTER came before this Court on Defendant Verizon Northwest Incorporated's Motion to Dismiss Plaintiffs' First Amended Complaint. The Court has reviewed the thorough briefing and argument from all parties and concludes as follows:

There is some ambiguity in the literal wording of the statute in question. However, reading the statute as a whole, the legislature intended to create a cause of action under the Washington Consumer Protection Act ("CPA") only for violations of the regulations promulgated by the Washington Utilities and Transportation Commission ("WUTC") and did not create a cause of action for actions beyond or outside of the regulations.

The pleadings contain a claim that can be read as asserting a violation of the regulations. However, plaintiffs' briefing, 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.

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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.

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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.

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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 10th day of October, 2000.
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 16 JUDGE J. KATHLEEN LEARNED
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