



July 10, 2000

Ms. Marge Schmuckal, Zoning Administrator
City of Portland
389 Congress Street
Portland, ME 04101

Dear Ms. Schmuckal:

I manage the satellite system installation business for Hughes Network Systems, the company Edward Jones has contracted with for telecommunications services to/from its more than 4,000 branch offices located throughout the country. I am requesting your assistance.

I have been told by Edward Jones that there is an issue being raised by the City of Portland regarding the need for a permit for the small satellite antenna installed at 1424 Washington Avenue in Portland.

When the antenna was installed back in February, my local installers (Communications Link Service Corp.) contacted the City of Portland. Various telephone calls were exchanged with the personnel in the zoning office. On March 17th my installers were asked to send to Jennifer (in the zoning office) drawings showing the antenna's location and to also send specifications on the system. These were sent the same day, as requested.

On March 31st, Jennifer agreed with my installers that per the Federal law the installation was exempt from any permits and zoning variances.

The current installation is a temporary one because we were requested to install a pole, and in February the ground was too hard to dig a hole for the pole. So, a temporary mount resting on the ground was utilized. We now want to return as was agreed to and move the antenna to its permanent location on a pole. I have been told that the city will now not allow this to happen without Edward Jones going through an extensive and costly planning and zoning review.

I have had the Hughes Network Systems legal department and our outside attorneys review the federal regulations with regard to satellite antennas and they have indicated that per federal law a building permit or zoning variance is not required for this equipment.

I have also discussed this issue with the Federal Communications Commission (FCC) in Washington, DC, and they agree with our findings. They refer to the new Federal law that went into effect in April of 1996 stating that a municipality may not

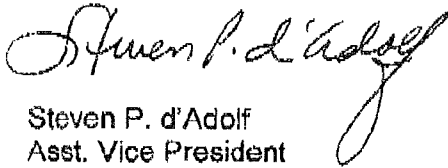
require a building permit or zoning variance satellite antennas 2.0 meters or less in an area being used for commercial or industrial purposes, and that the federal law specifically pre-empts all local regulations with regard to this matter. I have enclosed a letter from our Washington attorneys summarizing the law.

Hughes has installed more than 150,000 of its small satellite systems throughout the U.S., with more than 1,000 in the state of Maine. I think you are aware, the satellite antenna being utilized by Edward Jones is not for the reception of HBO, or CNN, etc., it is for critical computer information required by the office. **In fact, the Edward Jones office can not operate without this vital link.**

Hughes wants to be supportive of the needs of the City of Portland and wants to work with you to get this issue resolved. However, by Federal law we are not to be required to spend a lot of extra time and money on municipal approvals. I would appreciate if you would remove the roadblock that is holding up the completion of this installation. If the issue can be resolved with the submission of additional drawings, please let me know.

If you have any questions please feel free to contact me at the address noted below, or via phone at (858) 452-4743 or via to FAX to (858) 452-4886. Email to sdadolf@hns.com

Yours Truly,



Steven P. d'Adolf
Asst. Vice President
Implementation Services

cc: Edward Jones Corporate Headquarters

An example of a clearly defined safety objective might be one in which the regulation states that the installation must be installed to withstand specific wind loading in case of a hurricane.

However, such a regulation must be reasonable. Lengthy procedures or requirements to pay more than minimal costs to comply are not considered reasonable.

3. Aesthetic regulation of small satellite antennas is not permitted. For example, a municipality may not require screening just to hide what it considers an ugly small satellite antenna. A municipality may seek an exception in an extreme or unusual case, such as a historic district.

4. The burden to prove a regulation reasonable falls on the municipality, not on the installer.

5. A municipality may not undertake any civil, criminal, administrative, or other legal action to enforce any regulation covered by the preemption unless the municipality has first obtained a ruling from the FCC or a court of competent jurisdiction.

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federal regulation of radio frequency emissions is not preempted by this section. For purposes of this paragraph (a), reasonable means that the local regulation:

(1) Has a clearly defined health, safety, or aesthetic objective that is stated in the text of the regulation itself; and

(2) Furthers the stated health, safety or aesthetic objective without unnecessarily burdening the federal interests in ensuring access to satellite services and in promoting fair and effective competition among competing communications service providers.

(b)(1) Any state or local zoning, land-use, building, or similar regulation that affects the installation, maintenance, or use of a satellite earth station antenna that is two meters or less in diameter and is located or proposed to be located in any area where commercial or industrial uses are generally permitted by non-federal land-use regulation shall be presumed unreasonable and is therefore preempted subject to paragraph (b)(2) of this section. No civil, criminal, administrative, or other legal action of any kind shall be taken to enforce any regulation covered by this presumption unless the promulgating authority has obtained a waiver from the Commission pursuant to paragraph (e) of this section, or a final declaration from the Commission or a court of competent jurisdiction that the presumption has been rebutted pursuant to paragraph (b)(2) of this section.

(2) Any presumption arising from paragraph (b)(1) of this section may be rebutted upon a showing that the regulation in question:

(i) Is necessary to accomplish a clearly defined health or safety objective that is stated in the text of the regulation itself;

(ii) Is no more burdensome to satellite users than is necessary to achieve the health or safety objective; and

(iii) Is specifically applicable on its face to antennas of the class described in paragraph (b)(1) of this section.

(c) Any person aggrieved by the application or potential application of a state or local zoning or other regulation in violation of paragraph (a) of this section may, after exhausting all

§ 25.104 Preemption of local zoning of earth stations.

(a) Any state or local zoning, land-use, building, or similar regulation that materially limits transmission or reception by satellite earth station antennas, or imposes more than minimal costs on users of such antennas, is preempted unless the promulgating authority can demonstrate that such regulation is reasonable, except that non-

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nonfederal administrative remedies. A petitioner shall file a petition with the Commission requesting a declaration that the state or local regulation in question is preempted by this section. Nonfederal administrative remedies, which do not include judicial appeals of administrative determinations, shall be deemed exhausted when:

(1) The petitioner's application for a permit or other authorization required by the state or local authority has been denied and any administrative appeal and variance procedure has been exhausted;

(2) The petitioner's application for a permit or other authorization required by the state or local authority has been on file for ninety days without final action;

(3) The petitioner has received a permit or other authorization required by the state or local authority that is conditioned upon the petitioner's expenditure of a sum of money, including costs required to screen, pole-mount, or otherwise specially install the antenna, greater than the aggregate purchase or total lease cost of the equipment as normally installed; or

(4) A state or local authority has notified the petitioner of impending civil or criminal action in a court of law and there are no more nonfederal administrative steps to be taken.

(d) Procedures regarding filing of petitions requesting declaratory rulings and other related pleadings will be set forth in subsequent Public Notices. All allegations of fact contained in petitions and related pleadings must be supported by affidavit of a person or persons with personal knowledge thereof.

(e) Any state or local authority that wishes to maintain and enforce zoning or other regulations inconsistent with this section may apply to the Commission for a full or partial waiver of this section. Such waivers may be granted by the Commission in its sole discretion, upon a showing by the applicant that local concerns of a highly specialized or unusual nature create a necessity for regulation inconsistent with this section. No application for waiver shall be considered unless it specifically sets forth the particular regulation for which waiver is sought. Waiv-

ers granted in accordance with this section shall not apply to later-enacted or amended regulations by the local authority unless the Commission expressly orders otherwise.

(f) A satellite earth station antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite services, that is one meter or less in diameter or is located in Alaska is covered by the regulations in § 1.4000 of this chapter.

[61 FR 10898, Mar. 18, 1996, as amended at 61 FR 46562, Sept. 4, 1996]

EFFECTIVE DATE NOTE: At 61 FR 46562, Sept. 4, 1996, § 25.104 was amended by revising paragraph (b)(1) and adding paragraph (f). These paragraphs contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.