



Appeal No. 1901746

DoITT v. Citybridge

February 20, 2020

APPEAL DECISION

The appeal of Respondent, public pay telephone (PPT) franchisee,1 is denied.

Respondent appeals from a recommended decision by Hearing Officer E. Dykhne (Brooklyn), dated November 1, 2019, sustaining a charge of Title 67 of the Rules of the City of New York (RCNY) § 6-05(c) for failing to maintain/clean a PPT as required. Having fully reviewed the record, the Board finds that the hearing officer’s decision is supported by the law and a preponderance of the evidence. Therefore, the Board finds as follows:

Table with 5 columns: Summons, Law Charged, Hearing Determination, Appeal Determination, Penalty. Row 1: 187231110, 67 RCNY § 6-05(c), In Violation, Affirmed – In Violation, \$250

In the summons, the issuing officer (IO) affirmed that on February 5, 2019, at 7:14 a.m., he observed the following at 2081 Broadway, Manhattan, “failure to clean/maintain public pay telephone as per requirements of subsection - Tape.”

At the hearing, the representative for the Petitioner, the Department of Information Technology and Telecommunications (DoITT), relied on the affirmed statement of the IO and submitted two inspection reports for the cited PPT, dated January 30, 2019, and February 5, 2019, respectively. The comments of the first inspection report stated “tape on [LINK] lens, dusty tablet”; the comments of the second inspection report stated “tape removed from kiosk lens, [LINK] kiosk dirty, right advertising panel not working.” Respondent’s representative testified that the tape was removed at the time of summons issuance and pointed to Petitioner’s comments on the second inspection report. Petitioner’s representative countered that the tape was removed but the sticky residue remained. In the decision, the hearing officer credited the summons and found that the violating conditions existed as charged in the summons.

On appeal, Respondent argues that the summons should be dismissed because the cited section of law is not applicable to tape on a LINK as tape is not mentioned in the rules, the LINK was free of graffiti, was maintained in a clean condition, and, as per Petitioner’s inspection report, the tape was already removed when the summons was issued. Petitioner did not timely answer the appeal.2

1 On December 10, 2014, the New York City Franchise and Concession Review Committee unanimously approved a non-exclusive franchise agreement that authorizes CityBridge, LLC, to install, operate, and maintain public communications structures on the City’s sidewalks to replace pay telephones. As part of the franchise, CityBridge now owns, maintains, and displays advertising on the remaining public pay telephones as well. The new structures, known as LinkNYC kiosks [LINK], offer free high-speed WiFi and free calling in the US. See https://www1.nyc.gov/site/doitt/initiatives/linknyc.page, last visited December 17, 2019. Under the term of the Franchise Agreement and the RCNY, a LINK kiosk is deemed to be a PPT installation notwithstanding the fact that it provides free telephone calling service.

2 Petitioner did, however, respond to a December 26, 2019 request by the Board for briefing on the sole issue of whether Link kiosks constitute PPTs. See fn. 1. Petitioner’s briefing was received on January 14, 2020. Respondent thereafter failed to submit a response on the issue within the timeframe provided for a response.

The Board affirms the hearing officer's decision. Section 6-05(c) of 67 RCNY requires that a PPT be maintained clean and free of odors, litter, debris, damage, stickers, graffiti, grime, and rust and should be clean to the touch with all lettering and signage clean and legible and all painted surfaces repainted at least once per year. Respondent's argument, that the cited section of law is not applicable to tape, does not have merit. The cited section requires that the PPT be kept free of stickers, which the Board finds includes tape, as tape has the same adhesive ability and function as a sticker.

The Board further finds Respondent failed to establish a valid defense even though the tape may have been removed prior to the issuance of the summons. Here, the violating condition cited on the summons was for tape that was on the LINK. The first inspection by Petitioner was on January 30, 2019, and the second was within one hundred sixty-eight (168) hours on February 5, 2019. *See* 67 RCNY §§ 6-05(e)(3) & (5). The February 5, 2019, inspection report stated that the tape had been removed from the kiosk lens by that date; however, Petitioner's representative testified that sticky residue from the tape still remained. Moreover, the latter inspection report also stated instances of dirt and inoperable parts; thus, the PPT was not maintained as required by 67 RCNY § 6-05(c).

Accordingly, the Board affirms the hearing officer's decision.

*By: OATH Hearings Division Appeals Unit*