



Appeal No. 2000299

DOITT v. City Bridge LLC

April 23, 2020

**APPEAL DECISION**

The appeal of Petitioner, the Department of Information Technology and Telecommunications (DOITT), is **granted**.

Petitioner appeals from a master hearing decision by Hearing Officer B. Lamel (Brooklyn), dated January 21, 2020, dismissing eight charges of § 6-05(b) of Title 67 of the Rules of the City of New York (RCNY) for failing to provide working public pay telephone (ppt) services. Having fully reviewed the record, the Tribunal finds that the hearing officer’s decision being appealed is not supported by the law and a preponderance of the evidence. Therefore, the Tribunal finds as follows:

Summons	Law Charged	Hearing Determination	Appeal Determination	Penalty
187221550 (550)	67 RCNY § 6-05(b)	Dismissed	Reversed – In Violation	\$2000
187221632 (632)	67 RCNY § 6-05(b)	Dismissed	Reversed – In Violation	\$2000
187221312 (312)	67 RCNY § 6-05(b)	Dismissed	Reversed – In Violation	\$2000
187221321 (321)	67 RCNY § 6-05(b)	Dismissed	Reversed – In Violation	\$2000
187231330 (330)	67 RCNY § 6-05(b)	Dismissed	Reversed – In Violation	\$2000
187231340 (340)	67 RCNY § 6-05(b)	Dismissed	Reversed – In Violation	\$2000
187231359 (359)	67 RCNY § 6-05(b)	Dismissed	Reversed – In Violation	\$2000
187231377 (377)	67 RCNY § 6-05(b)	Dismissed	Reversed – In Violation	\$2000

**BACKGROUND**

In the summonses, the issuing officers (IOs) affirmed observing that Respondent failed to provide working ppt and operator services at: 155 E. 106<sup>th</sup> St., Manhattan (Manh) on April 4, 2019 (summons 550); 1413 Fifth Ave., Manh on March 26, 2019 (summons 632); 119 Fulton St., Manh on March 7, 2019 (summons 312); and on March 5, 2019 at 252-04 Northern Blvd., Queens (summonses 321 and 330); 250-01 Northern Blvd., Queens (summons 340); 104-31 Roosevelt Ave., Queens (summons 359); and 104-01 Roosevelt Ave., Queens (summons 377).

At the consolidated hearing, held on January 17, 2020, Petitioner’s representative offered inspection reports (IR) for each of the summonses. He argued that: 1) Respondent’s evidence was insufficient to show that the ppts were inoperable during the intervals between the IOs’ inspections, and 2) under 67 RCNY § 6-05(e) Respondent needed to show that it corrected the underlying problem preventing the ppts from working properly to establish a defense, which Respondent failed to do by not showing any proof of correction such as repair invoices. Respondent’s representative submitted affidavits for each ppt cited from an employee of Labra Telecom Inc. (Labra), the company that services Respondent’s ppts. They state that Labra calls the ppts to detect a dial tone and if none is detected, it sends out a technician to repair the ppt. Along with each affidavit was a dial tone report (DTR) indicating whether its remote testing system detected a dial tone during the inspection intervals. Respondent’s representative argued that it was not in violation since each of the DTRs showed the ppts had a dial tone during the week the ppt was inspected. The specific evidence submitted for each summons was as follows.

*Summons 550:* Petitioner’s IR indicated there were no dial tones on March 29, and April 2 and 4 of 2019. Respondent’s Labra DTR showed no dial tones were detected on the inspection dates,

but were detected on April 1 and 3, 2019. *Summons 632*: Petitioner's IR indicated that at this LinkNYC kiosk (LINK) device, the speaker and microphone were not working properly, the volume was low, and the keypad was inoperable on March 21, 2019 at 10:46 a.m. and on March 26, 2019 at 9:34 a.m. The hearing officer reported in his decision that Respondent submitted a Labra call log indicating calls were made from the Link at those same times.<sup>1</sup> *Summons 312*: Petitioner's IR indicated the ppt had a damaged handset on March 5, 6, and 7, 2019 and also no dial tone or 311 operator on the last date. Respondent's Labra DTR showed no dial tones were detected on March 5 and 7, 2019, but one was detected on March 6, 2019. *Summons 321*: Petitioner's IR indicated ppt # 124092 had an inoperable keypad on February 27 and 28, and March 5, 2019. Respondent's Labra DTR showed a dial tone was detected on those three dates. *Summons 330*: Petitioner's IR indicated that ppt #113560 had an inoperable keypad with stuck numbers on February 27 and 28, and March 5, 2019. Respondent's Labra DTR showed a dial tone was detected on the first two inspection dates, but not the third. *Summons 340*: Petitioner's IR indicated the IO was unable to make call as he heard an "invalid number" message while he dialed regardless of the number he tried to call on February 27 and 28, and March 5, 2019. Respondent's Labra DTR showed a dial tone was detected on each of those dates. *Summons 359*: Petitioner's IR indicated there were no dial tones on February 27 and 28, and March 5, 2019. Respondent's Labra DTR detected a dial tone only on February 27, 2019. *Summons 377*: Petitioner's IR indicated there were no dial tones on February 27 and 28, and March 5, 2019. Respondent's Labra DTR detected dial tones on February 27 and 28, 2019.

In the decision dismissing all the summonses, the hearing officer credited all the evidence. He found that: 1) Respondent refuted the allegations on *Summons 632* as its call logs showed calls were made on March 21, 2019 at 10:46 a.m. and on March 26, 2019 at 9:34 a.m.; 2) Respondent refuted the allegations on all the other summonses because Respondent's evidence showed that either a call was made or a dial tone was detected within the intervals or on the inspection dates; 3) Since Petitioner failed to show that the ppts were inoperable continuously for the two required 24 hour periods, 67 RCNY § 6-05(e) was inapplicable.

On appeal, Petitioner repeats its hearing arguments. It adds that the evidence shows that the ppts remained inoperable despite Labar's detecting dial tones. It further argues that dismissing the charges based on one detected dial tone would undermine public policy and allow ppt owners to evade their obligations and leave the public with ppts that work erratically or intermittently.

Respondent did not answer the appeal.

### **ISSUE ON APPEAL**

The issue on appeal is whether Respondent refuted that the ppts were continuously inoperable under 67 RCNY § 6-05(e).

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<sup>1</sup> Respondent's evidence was not retained in the digital file. Under the terms of CityBridge's franchise agreement with New York City and the RCNY, a LINK is deemed to be a ppt notwithstanding the fact that it provides free telephone calling service. See *DoITT v. Citybridge*, Appeal No. 1901746 (February 20, 2020).

**APPLICABLE LAW**

Section 6-05(b) of 67 RCNY requires that a ppt be operated and maintained in a condition to enable a call to be completed when proper payment has been made and to provide access to operator service without use of a coin or other payment device.

Section 6-05(e) of 67 RCNY provides, in pertinent part:

(2) A [summons] may be issued for a violation of subdivision (b) of this section where inspections have disclosed that telephone service was unavailable on two occasions, each such occasion lasting for a duration of at least twenty-four (24) hours, within a period of ninety (90) calendar days. Each twenty-four hour period in which a failure to provide telephone service continues shall constitute a separate occasion on which an offense has occurred.

\* \* \* \*

(5) A violation shall be considered to have continued throughout a period specified in this subdivision when a condition set forth in subdivision . . . (b) . . . of this section has been identified upon at least two inspections that encompass such period within one hundred sixty-eight (168) hours; provided that, demonstration by an owner that *the condition underlying such violation was corrected within such period* shall be a defense to an action pursuant to §6-05. [Emphasis supplied.]

**ANALYSIS**

For the following reasons, the Board reverses the hearing officer's master decision.

On this record, the Board finds that Respondent failed to refute that the ppts were continuously inoperable as required under 67 RCNY § 6-05(e). Here, Petitioner's evidence showed that ppts were continuously inoperable for two 24-hour periods from the date of the first inspections through the date of the third inspection. *See DOITT v. CityBridge LLC*, Appeal No. 2000160 (March 5, 2020). Petitioner's inspection reports describe various forms of inoperability such as: low volume, inability to reach an operator, broken handset, stuck keypads, speaker and microphone malfunctions, "invalid number" messages interfering with dialing, and no dial tones. A defense to the violation may be established if the owner of the ppt can demonstrate that the condition underlying such violation was corrected within the period between inspections. *See 67 RCNY § 6-05(e)(5)*. Further, a ppt provider "may rebut a charge that a ppt did not have a dial tone through the use of *call records that show calls were made from the ppt* within the period between inspections" (emphasis supplied). *See NYC v. BAS Communications, Inc.*, Appeal No. 0900277 (December 3, 2009). Although Respondent presented evidence of remote dial tone detection from the cited ppts, no evidence shows that any calls were made *from the ppts* except for the IO's attempted calls on the LINK. Moreover, Respondent failed to address the low volume, unusable keypads, and other equipment failures that prevented the IOs from completing calls on the LINK and the other ppts. Consequently Respondent's evidence was insufficient to show that the ppts were continuously operable for two 24-hour periods or establish a defense. *See DOITT v. City Bridge LLC*, Appeal Nos. 1901938 & 2000142 (February 20, 2017).

Accordingly, the Tribunal reverses the hearing officer's dismissal of eight charges of 67 RCNY § 6-05(b), sustains the violations, and imposes total civil penalties of \$16,000 (\$2,000 x 8).

*By: OATH Hearings Division Appeals Unit*