

Respondent, a provider of public pay telephone (ppt) services, appeals from a recommended decision and order finding it in violation of Section 6-05(b) of Title 67 of the Rules of the City of New York (RCNY) for failure to provide working ppt services. In the notice of violation (NOV), dated November 10, 2015, the issuing officer (IO) stated that Respondent failed to provide a working ppt and operator services.

At the hearing, Petitioner, the Department of Information Technology and Telecommunications, offered inspection reports stating that: (1) on October 29, 2015, the IO could not reach the operator because the regular operator could not hear him and the “311” operator call had low volume; (2) on November 4, 2015, the ppt had no dial tone; (3) on November 6, 2015, the ppt had no dial tone; and (4) on November 10, 2015, the ppt had no dial tone. In rebuttal, Respondent offered a call detail report (CDR) for October 24, 2015 to November 7, 2015 to show that calls were made from the cited ppt on the inspection dates or the dates in between.

The hearing officer noted that the CDR reflected calls spanning from 20 seconds to nearly 20 minutes in length.¹ Nevertheless, the hearing officer found that that the CDR related to the allegations of no dial tone and was insufficient to refute the IO’s inability to reach operator service during his first inspection.

Issue on appeal

The issue on appeal is whether Respondent refuted that the inoperable condition of the ppt was continuous for two 24-hour periods from the date of first inspection through the date of third inspection.

Applicable law

Section 6-05(b) of 56 RCNY provides, in pertinent part, that a ppt “must enable a call to be completed when the proper payment has been made” and “shall provide access to operator service without use of a coin or other payment device.”

Under 67 RCNY Section 6-05(e)(2), before issuing a violation for 67 RCNY Section 6-05(b), Petitioner must conduct two inspections disclosing that ppt service was unavailable on two occasions, each such occasion lasting for a duration of at least twenty-four hours, within a period of ninety calendar days.

Under 67 RCNY Section 6-05(e)(5), the violation is considered to have continued during the period from the time of first inspection through the time of reinspection if the inspections occur within a week of each other, and 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 such period.

¹ The Board notes that the hearing officer misread the CDR. The longest call on the CDR was 2 minutes, 45 seconds in length.

The appeal

On appeal, Respondent's representative contends that he submitted a CDR showing calls made during the inspection period and that this evidence successfully rebutted Petitioner's allegation of inoperability.

Petitioner did not answer the appeal.

The Board's determination

On this record, the Board finds that Respondent refuted that the inoperable condition of the ppt was continuous for two 24-hour periods from the date of first inspection through the date of third inspection. Petitioner's inspections of the cited ppt disclosed that the cited ppt had no dial tone on November 4, 2015 at 4:23 p.m., November 6, 2015 at 12:14 p.m., and November 10, 2015 at 2:26 p.m. Because the inspections were conducted within a week of each other but more than 24 hours apart, the violating condition is considered to have continued during the period between inspections.² 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 such period. *See* 67 RCNY Section 6-05(e)(5).

Here, the CDR shows that two local calls, lasting 26 and 58 seconds respectively, were made between the IO's inspection on November 6, 2015 and his final inspection on November 10, 2015. Therefore, Petitioner did not establish that there were two occasions when inoperability continued for 24 hours during the IO's inspection period, regardless of any intermittent inoperability. Consequently, the Board concludes that Respondent's evidence established a defense.

Accordingly, the Board reverses the hearing officer's recommended decision and order and dismisses the NOV.

² The Board notes that the IO's inspection on October 29, 2015 was not within a week of the date of his final inspection on November 10, 2015, the date of the NOV.

Additional information from ECB records (not in original decision)

Master NOV #

187205664

Name of Respondent's counsel or other
authorized representative (if any)

ALLEN CHAPMAN