

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 October 29, 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 (DoITT), offered inspection reports stating that: (1) on October 23, 2015, the volume of the cited ppt was low; (2) on October 27, 2015, the IO was unable to reach the regular operator because of inaudibility or the “311” operator because “‘311’ provided dial tone”; and (3) on October 29, 2015, the IO was unable to reach the regular operator again because of inaudibility or the “311” operator because he got a “please dial again” message. In rebuttal, Respondent offered a call detail report (CDR) for October 21, 2015 to October 30, 2015 to show that calls were made from the cited ppt on the inspection dates and the dates in between.

The hearing officer, observing that the CDR indicated that no call made during the relevant period lasted longer than 24 seconds, found that Respondent had failed to refute Petitioner’s case and sustained the NOV.

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 the third inspection.

Applicable law

Section 6-05(b) of 56 RCNY provides, in pertinent part, that a ppt “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.

The appeal

On appeal, Respondent's representative contends that he submitted a CDR showing calls made from the ppt from October 23 through October 29, 2015 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 failed to refute that the inoperable condition of the ppt was continuous for two 24-hour periods from the date of first inspection through the date the third inspection. Petitioner's inspections of the cited ppt on October 23, 27, and 29 disclosed that regular operator or "311" operator service was unavailable because of low volume or failure to connect. 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. 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 no calls to the regular operator or "311" operator made on October 23 through October 29 lasted more than 15 seconds, and the longest call was a local call lasting 24 seconds. The short duration of the operator calls support the IO's observations of low volume or failure to connect. Consequently, the Board concludes that Respondent's evidence was insufficient to refute Petitioner's case of ppt inoperability.

Accordingly, the Board affirms the hearing officer's recommended decision and order sustaining a violation of 67 RCNY 6-05(b) and imposing a civil penalty of \$2,000.

Additional information from ECB records (not in original decision)

| Master NOV # | Name of Respondent's counsel or other authorized representative (if any) |
|--------------|--|
| 187208634 | ALLEN CHAPMAN |