

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 6, 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 30, 2015, the IO was unable to reach the regular operator or “311” operator because of inaudibility; (2) on November 5, 2015 at 2:29 p.m., there was no dial tone; and (3) on November 6 at 4:38 p.m., there was no dial tone. In rebuttal, Respondent offered a call detail report (CDR) for November 4, 2015 to November 13, 2015 to show that calls were made from the cited ppt on November 4 and November 5, 2015.

The hearing officer, observing that the CDR reflected only two days within the inspection period of October 30 to November 6, 2015, did not credit Respondent’s evidence. The hearing officer found further that calls made on November 4 and 5 were 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 the 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.

The appeal

On appeal, Respondent's representative contends that he submitted a CDR showing calls made from the ppt 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 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 of third inspection. Petitioner's inspections of the cited ppt disclosed that no operator service was available on October 30, 2015 because of inaudibility and that the ppt had no dial tone on November 5 and November 6, 2015. 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 a local call was made on November 4, 2015 and a toll-free call was made on November 5, 2015 at 4:54 a.m., both before the IO's second inspection on November 5, 2015. The local call lasted 29 seconds, and the toll-free call lasted 1 minute, 7 seconds. Respondent presented no evidence of any other calls made during the inspection period of October 30 to November 6, 2015. Given that only two calls of short duration were made between the IO's first and second inspections and moreover that neither of them was to the operator, the Board finds that Respondent's evidence was insufficient to show correction of the alleged inability to reach the regular operator or "311" operator because of inaudibility.

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 #

187205527

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

ALLEN CHAPMAN