

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 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 on November 5, 6, and 10, 2015, the cited ppt had no dial tone. Respondent's representative admitted the violation.

Based on Petitioner's evidence, the hearing officer 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 the third inspection.

The appeal

On appeal, Respondent's representative contends that he submitted a call detail report 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

Respondent's appeal is denied. 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. Here, Petitioner's inspections disclosed that the cited ppt had no dial tone on November 5, 6, and 10. 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). Contrary to Respondent's representative's assertion on appeal, he offered no evidence to show that the cited ppt was operable on or between the IO's inspections.

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 #

187205581

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

ALLEN CHAPMAN