

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, offered inspection reports stating that: (1) on October 23, 2015 at 12:48 p.m., the IO observed “low volume – vol. button didn’t help”; (2) on October 27, 2015 at 1:21 p.m., there was no dial tone; and (3) on October 29, 2015, the IO could not hear the regular operator and the “311” operator provided a “please dial again” message. In rebuttal, Respondent offered a call detail report (CDR) for October 20, 2015 to October 30, 2015 to show that calls were made from the cited ppt on or between the inspection dates.

The hearing officer noted that the CDR reflected calls of various lengths. While she noted that that they related to the allegations of no dial tone, she found that the CDR was insufficient to refute the IO’s observation of low volume or inability to connect to operator service during his first and third inspections.

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.

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 it had low volume on October 23, no dial tone on October 27, and no regular or "311" operator service because of inaudibility and lack of connection, respectively, on October 29. 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 only three local calls were made between the IO's first and second inspections, lasting 1 minute, 1 second; 7 seconds; and 1 minute, 53 seconds. No other calls were made during the inspection period of October 23 through October 29. Given that only three calls of short duration were made between the IO's first and second inspections, the Board finds that Respondent's evidence was insufficient to show correction of the alleged low volume observed by the IO on his first inspection. Consequently, the Board concludes that Respondent failed to establish a defense to the violation.

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 #

187207433

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

ALLEN CHAPMAN