

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 November 4, 2015 at 4:04 p.m., the IO observed “low volume – vol. button didn’t help”; (2) on November 6, 2015 at 12:02 p.m., the regular and long-distance operators were inaudible and the “311” operator had low volume; and (3) on November 10, 2015 at 2:14 p.m., there was no dial tone. In rebuttal, Respondent offered a call detail report (CDR) for November 1, 2015 to November 11, 2015 to show that calls were made from the cited ppt on or between the inspection dates.

The hearing officer sustained the violation. Noting that the CDR reflected calls spanning from 1 second to 7½ minutes in length, she found that it nonetheless related only to the November 10th allegation of no dial tone and was insufficient to refute the other conditions observed by the IO during his November 4th and 6th 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 ppt disclosed conditions of low volume on November 4, 2015, no regular, long-distance, or "311" operator service because of inaudibility/low volume on November 6, 2015, and no dial tone on November 10, 2015. Where inspections are conducted within a week of each other but more than 24 hours apart, the ppt's inoperability 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 the inoperability was corrected within such period. *See* 67 RCNY Section 6-05(e)(5).

Here, the CDR shows that two local calls were made between the IO's first and second inspections, one lasting 1 minute, 3 seconds and the other lasting 44 seconds. As these were the only calls during this period, and of such short duration, the Board finds that they are insufficient to show correction of the low volume detected by the IO on his first inspection. The CDR shows further that two calls were also made between the IO's second and third inspections. As neither was to any operator service, the Board finds that they are insufficient to show correction of the inability to reach the regular or long-distance operator or the "311" operator because of inaudibility/low volume observed by the IO during his second inspection. Therefore, Respondent's CDR did not establish a defense to the charge.

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 #

187205646

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

ALLEN CHAPMAN