

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 January 13, 2016, 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 January 7, 2016, the IO could not reach the operator because when he dialed the regular operator, he received a “nothing has been selected” recorded message after the prompt, and the “311” operator call was inaudible; (2) on January 12, 2016, the IO could not reach the operator because the regular operator was inaudible after the prompt and he got a dial tone when he dialed the “311” operator; (3) on January 13, 2016, the IO could not reach the operator because he got silence when he dialed the regular operator and a dial tone when he dialed the “311” operator. In rebuttal, Respondent offered a call detail report (CDR) for January 6, 2016 to January 14, 2016 to show that calls were made from the cited ppt on the inspection dates or the dates in between.

The hearing officer found that the CDR was insufficient to refute the IO’s inability to reach operator services 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 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 during the inspection period and that this evidence successfully rebutted Petitioner's allegation of inoperability. For the first time on appeal, Respondent's representative asserts that the CDR shows that test calls were made on January 8 and 9, 2016

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 operator services were not available on January 7, 2016 at 4:24 p.m., January 12, 2016 at 3:57 p.m., and January 13, 2016 at 4:18 p.m. 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 seven local calls, lasting from 56 seconds to 5 minutes, 2 seconds were made between the IO's inspection on first inspection on January 7, 2015 and his final inspection on January 13, 2016. However, the IO on three inspections was unable to access operator service without a coin, as required by 67 RCNY Section 6-05(b). As none of the calls listed on the CDR was to any operator service, the Board finds that they are insufficient to show correction of the inability to reach the regular or the "311" operator because of inaudibility and other problems observed by the IO during his inspections. Therefore, Respondent's CDR did not establish a defense to the charge.

Accordingly, the Board affirms the hearing officer's recommended decision and order finding 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 #

187220890

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

ALLEN CHAPMAN