

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 December 23, 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 December 16, 2015 at 3:05 p.m., the ppt had no dial tone; (2) on December 18, 2015 at 1:10 p.m., the ppt had no dial tone; and (3) on December 23, 2015 at 12:34 p.m., dial tone was restored but the IO lost a coin. In rebuttal, Respondent offered a call detail report (CDR) for December 15, 2015 to December 23, 2015 to show that calls were made from the cited ppt on or between the inspection dates.

The hearing officer found that while the CDR showed that numerous calls were made during the inspection period, they were insufficient to refute the IO's observation of a lost coin on the third 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 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 "[t]he return mechanism of a public pay telephone shall be in working order and provide customers with return of coins when calls are not completed."

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. For the first time on appeal, Respondent's representative claims that the CDR shows two test calls 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 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. Petitioner's inspections of the cited ppt disclosed that it had no dial tone on December 16 and December 18, 2015, and failed to return a coin on December 23, 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 two local calls lasting 50 seconds and 53 seconds, respectively, were made between the IO's first and second inspections. Further, the CDR shows that eleven local calls, ranging from 11 seconds to 2 minutes, 14 seconds, were made between the IO's second and third inspections. The Board finds that these calls demonstrate that the ppt had a dial tone after the IO's first and second inspections, when allegedly it had none. Therefore, Petitioner did not establish that there were two occasions when inoperability continued for 24 hours during the IO's inspection period, regardless of any intermittent inoperability. Consequently, the Board concludes that Respondent's evidence established a defense.

Accordingly, the Board reverses the hearing officer's recommended decision and order and dismisses the NOV.

Additional information from ECB records (not in original decision)

Master NOV #

187209990

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

ALLEN CHAPMAN