

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 12, 2016, the issuing officer (IO) stated that Respondent failed to provide a working ppt and operator services at 60 East 52nd Street in Manhattan. The IO cited as the “inoperable ppt” ID 121890.

At the hearing, Petitioner, the Department of Information Technology and Telecommunications, offered three inspection reports, all referring to ppt ID 121890 and the cited location and including the IO’s photographs showing two attached ppts housed in one pedestal. The reports stated that:

- On January 5, 2016 at 5:20 p.m., the IO was unable to reach the “311” operator because of low volume. The IO indicated the position of the ppt tested both as “second from left attached” and “leftmost attached.” He identified the ppt as ID 121890 but stated that it had the “wrong ID.” One of the IO’s included photos of the ppt shows it labeled as ID 121891.
- On January 8, 2016 at 12:14 p.m., the ppt had low volume. The IO indicated that the ppt tested was the “second from the left attached” and that it was ID 121890 but had “121881 on unit,” as is shown in one of his included photos.
- On January 12, 2016 at 4:46 p.m., the ppt tested had no dial tone. The IO indicated that the ppt tested was the “leftmost attached” and was ID 121890 but had “121891 on unit,” as is shown in one of his included photos.

In rebuttal, Respondent offered a call detail report (CDR) for January 4, 2016 to January 14, 2016 to show that calls were made from the cited ppt on or between the inspection dates.

The hearing officer found that although the CDR listed several calls made during the inspection period, they were insufficient to refute the IO’s observation of low volume on his first and second inspections.

Issue on appeal

The issue on appeal is whether Petitioner established that the inoperable condition of the cited ppt was continuous for two 24-hour periods.

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. For the first time on appeal, Respondent's representative claims that the CDR shows test calls made on January 8 and 14, 2016.

Petitioner did not answer the appeal.

The Board's determination

On this record, the Board finds that Petitioner failed to establish that the inoperable condition of the cited ppt was continuous for two 24-hour periods. Each of the IO's three inspection reports includes a photo showing two attached ppts housed in one pedestal at the cited location. The IO's first report describes the cited ppt as both the second from left and the leftmost, his second report describes it as the second from left, and his third report as the leftmost. Moreover, while all three reports state that the cited ppt is labeled with the wrong ID, they identify and depict different incorrect IDs. That ID is 121891 as depicted in the IO's photo included with his first report and as stated in, and depicted in the photo included with, his third report. The IO's second report, however, states that the incorrect ID is 121881, as is shown in his photo included with that report. Because the IO's reports do not show that all three inspections were of the same ppt, Petitioner failed to establish that the cited ppt was inoperable on two occasions lasting at least twenty-four hours, as required before issuing a violation.

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 #

187220936

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

ALLEN CHAPMAN