

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 December 9, 2015 at 10:36 a.m., the IO was unable to reach operator services because the ppt provided a dial tone when he dialed the regular and long-distance operators, and the “311” operator was inaudible; (2) on December 15, 2015 at 10:08 a.m., the ppt had no dial tone; (3) on January 7, 2016 at 9:44 a.m., the ppt had no dial tone; and (4) on January 12, 2016 at 9:56 a.m., the ppt had no dial tone. In rebuttal, Respondent offered a call detail report (CDR) for December 8, 2015 to January 13, 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 inability to reach operator services on the first inspection.

### **Issue on appeal**

The issue on appeal is whether Petitioner established that the inoperable condition of the 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 December 11 and 16, 2015, and on January 8 and 13, 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 ppt was continuous for two 24-hour periods. Petitioner's inspections of the cited ppt disclosed that the IO was unable to reach operator services on December 9, 2015, and that the ppt had no dial tone on December 15, 2015, January 7, 2016, and January 12, 2016. The Board notes that no three consecutive inspections were conducted within a week of each other. Therefore, the violating condition observed on each inspection is not deemed to have continued for twenty-four hours. Consequently, Petitioner failed to establish that the ppt was inoperable on two occasions lasting at least twenty-four hours, as required before issuing a violation. The Board also notes that the CDR shows that numerous local calls were made after the IO's second and third inspections, demonstrating that the ppt had a dial tone when it allegedly had none on these inspections.

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

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Additional information from ECB records (not in original decision)

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Master NOV #

187209606

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

ALLEN CHAPMAN