

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 October 2, 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 September 30, 2015 at 6:42 a.m., the ppt had no dial tone; (2) on October 1, 2015 at 7:47 a.m., dial tone was restored but the keypad was inoperable; and (3) on October 2, 2015 at 10:32 a.m., the keypad was inoperable. In rebuttal, Respondent offered a call detail report (CDR) for September 29 to October 3, 2015 to show that calls were made from the cited ppt on or between the inspection dates.

The hearing officer, noting that the calls listed on the CDR during the inspection period lasted no more than 14 seconds, found that Respondent did not refute or establish a defense against the charge of inoperability. She therefore 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 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 October 1 and 2, 2015 and thus proved that all the keys on the keypad were operable. Petitioner did not answer the appeal.

### **The Board's determination**

On this record, the Board finds that Respondent established a defense by demonstrating that the inoperable condition of the ppt was not 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 September 30, 2015 and an inoperable keypad on October 1 and 2, 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 the period between inspections. *See 67 RCNY Section 6-05(e)(5)*. Here, the CDR shows that three local calls, lasting 6, 12, and 10 seconds respectively, were made between Petitioner's first and second inspections, and one local call lasting 8 seconds was made between Petitioner's second and third inspections. Consequently, the ppt had a dial tone after the first inspection, when none had been detected, and an operable keypad after the second inspection, when the keyboard had been inoperable. Inoperability, therefore, while intermittently observed, did not continue throughout two 24-hour periods from the first to the third inspections, and Respondent thus established its defense.

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 #

187206719

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

ALLEN CHAPMAN