

Respondent, a provider of public pay telephone (ppt) services, appeals from two recommended decisions finding it in violation of Section 6-05(b) of Title 67 of the Rules of the City of New York (RCNY) for failing to provide working ppt and operator services. In both summonses, the issuing officer affirmed that on December 8, 2016, the ppt at the cited location failed “to provide working ppt and operator services. Inoperable ppt.”

The hearing

At the consolidated hearing, the representative for Petitioner, the Department of Information Technology and Telecommunications (DOITT), submitted three inspection reports for each ppt.¹ According to the hearing officer, the reports all named Telebeam Telecommunications Corp. (Telebeam) as the owner on the dates of inspection: December 1, 2, 6, and 8, 2016. Petitioner’s representative argued that: 1) there was no policy to stay issuing summonses after a ppt transfer, and 2) Respondent was responsible for the ppts once it became the owner, despite Telebeam’s being named on all the inspection reports.

Respondent’s chairman testified as follows. The ppts were part of a recent large purchase of 1,200 ppts from Telebeam. Respondent had not even obtained the keys to the ppts to change the locks or signs until December 12, 2016. It did not own the ppts on the dates of the prior inspections supporting the violations; it only owned them on the last cited date. He argued that it was DOITT’s policy to allow a new owner 90 days to get new ppts operational. He was unaware that the two ppts were not working when they were purchased.

In the two recommended decisions, the hearing officer found: 1) Respondent failed to refute Petitioner’s cases, 2) Petitioner’s inspection reports did not conclusively prove Telebeam owned the ppts even though the photographs show Telebeam’s plaques on the ppts, and 3) Petitioner has no rule or policy that new ppt owners have 90 days before they may be cited for violations. Accordingly, she sustained the violations.

The issue

The issue on appeal is whether Petitioner established that Respondent failed to maintain the cited ppts on at least two occasions.

The relevant law

Section 6-01 defines “owner” to mean “a natural person or business entity that owns, leases, or is otherwise responsible for the installation, operation and maintenance of a [ppt].”

Section 6-05(b) of 67 RCNY requires that a ppt be operated and maintained in a condition to enable a call to be completed when proper payment has been made and to provide access to operator service without use of a coin or other payment device.

Section 6-05(e) of 67 RCNY provides, in pertinent part:

¹ Petitioner’s inspection reports were not retained in the digital record.

(2) A [summons] may be issued for a violation of subdivision (b) of this section where inspections have disclosed that telephone service was unavailable on two occasions, each such occasion lasting for a duration of at least twenty-four (24) hours, within a period of ninety (90) calendar days. Each twenty-four hour period in which a failure to provide telephone service continues shall constitute a separate occasion on which an offense has occurred.

* * * *

(5) A violation shall be considered to have continued throughout a period specified in this subdivision when a condition set forth in subdivisions (a), (b), (c) or (d) of this section has been identified upon at least two inspections that encompass such period within one hundred sixty-eight (168) hours; provided that, demonstration by an owner that the condition underlying such violation was corrected within such period shall be a defense to an action pursuant to §6-05.

The appeal

On appeal, Respondent's chairman repeats that Telebeam owned the cited ppts on the inspection dates prior to December 8, 2016. Respondent had no keys for the ppts until after the date of violation. For the first time on appeal, he presents a letter from DOITT's Commissioner acknowledging that Respondent did not own the ppts at the time of the first two inspections and acquired the ppts from Telebeam on December 8, 2016. However, per 48 RCNY Section 6-19(b), the Board will not consider any evidence not presented to the hearing officer.

Petitioner did not answer the appeal.

The Board's determinations

Having fully reviewed the record, the Board finds that the hearing officer's decisions are not supported by the law and a preponderance of the evidence and grants the appeals.

On the above record, the Board finds that Petitioner did not establish that Respondent failed to maintain the cited ppts on at least two occasions. Under Section 6-05(e)(2) of 67 RCNY, a summons may only be issued for a violation of Section 6-05(b) of 67 RCNY "where inspections have disclosed that telephone service was unavailable on two occasions, each such occasion lasting for a duration of at least twenty-four (24) hours, within a period of ninety (90) calendar days." Neither summons cites an occasion other than December 8, 2016 when the respective ppt was inoperable while Respondent was the owner. The summonses are insufficient to meet the requirements under Section 6-05(e)(2) of 67 RCNY without further evidence. *See NYC v. Telebeam Telecomm. Corp.* (Appeal No. 1201115, March 28, 2013). Therefore, Petitioner was required to present additional evidence that Respondent failed to maintain the ppt on at least one other occasion while it was responsible for the ppt. However, all of Petitioner's inspection reports indicate that Telebeam was the entity responsible on all the other inspection dates. No evidence presented shows that Respondent had any control over the ppts on the prior inspection dates that would make it responsible for maintaining the inoperable ppts on at least two occasions. As Petitioner did not establish its case for the summonses, the burden did not shift to Respondent to rebut.

Accordingly, the Board reverses the two hearing decisions and dismisses both summonses.

Additional information from OATH records (not in original decision)

Master NOV #

179974740

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

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