



Appeal No. 1901747

DoITT v. Citybridge

February 20, 2020

APPEAL DECISION

The appeal of Respondent, public pay telephone (PPT) franchisee,1 is denied.

Respondent appeals from a recommended decision by Hearing Officer E. Dykhne (Brooklyn), dated October 25, 2019, sustaining four charges of Title 67 of the Rules of the City of New York (RCNY) § 6-05(c), for failing to clean/maintain a PPT as required. Having fully reviewed the record, the Board finds that the hearing officer’s decision is supported by the law and a preponderance of the evidence. Therefore, the Board finds as follows:

Table with 5 columns: Summons, Law Charged, Hearing Determination, Appeal Determination, Penalty. Rows include summons numbers 187235474, 187235263, 187235465, and 187235456, all with charges under RCNY § 6-05(c) and determinations of 'In Violation' and 'Affirmed - In Violation' with a \$250 penalty.

In the summonses, the issuing officer (IO) affirmed observing a “failure to clean/maintain public pay telephone as per requirements of subsection”:

- 474 - At 2880 Broadway, Manhattan on February 5, 2019 at 6:18 a.m., - “tape.”
263 - At 2681 Broadway, Manhattan on February 5, 2019 at 6:26 a.m., - “stickers.”
465 - At 2495 Broadway, Manhattan on February 15, 2019 at 6:33 a.m., - “tape.”
456 - At 2206 Broadway, Manhattan on February 15, 2019 at 6:56 a.m., - “tape.”

At the hearing, held on October 25, 2019, the representative for Petitioner, the Department of Information Technology and Telecommunications (DoITT), relied on the affirmed statements of the IO. In support, Petitioner submitted pictures of the violating conditions, a DoITT printout showing Respondent as owner of the cited LINKs and two inspection reports per summons dated as follows: 474 - February 1, 2019 (stating “unable to make calls; tablet not working; kiosk keypad not working; tape on kiosk lens”) and February 5, 2019 (stating “tape still on kiosk lens; tablet not working; kiosk keypad not working; unable to make calls”); 263 - January 31, 2019 (stating “tape on kiosk lens”) and February 5, 2019 (stating “tape on kiosk lens”); 465 - February 1, 2019 (stating “tape on kiosk lens”) and February 5, 2019 (stating “tape on kiosk lens”); and 456 - January 30, 2019 (stating “tape on kiosk lens”) and February 5, 2019 (stating “tape on kiosk lens”). Respondent’s representative argued that the summonses were vague, the units did not have graffiti, the tape was small and in only one spot, and the tape was an act of vandalism by an unknown assailant. Respondent submitted a police incident slip for criminal

1 On December 10, 2014, the New York City Franchise and Concession Review Committee unanimously approved a non-exclusive franchise agreement that authorizes CityBridge, LLC, to install, operate, and maintain public communications structures on the City’s sidewalks to replace pay telephones. As part of the franchise, CityBridge now owns, maintains, and displays advertising on the remaining public pay telephones as well. The new structures, known as LinkNYC kiosks [LINK], offer free high-speed WiFi and free calling in the US. See https://www1.nyc.gov/site/doitt/initiatives/linknyc.page, last visited December 17, 2019. Under the term of the Franchise Agreement and the RCNY, a LINK kiosk is deemed to be a PPT installation notwithstanding the fact that it provides free telephone calling service.

mischiefs dated April 30, 2019 and a photograph of the alleged unknown assailant standing next to a LINK with a piece of tape on the lens. Petitioner's representative countered that the tape was considered to be like graffiti which made the PPT unclean. In the decision sustaining the charges, the hearing officer credited the IO's affirmed statements in the summonses and found that the reference to "stickers" is interpreted to include "tape."

On appeal, Respondent argues that the summonses should be dismissed because the cited section of law is not applicable to tape on a LINK as tape is not mentioned in the rules, the LINKs were free of graffiti, were maintained in a clean condition, and Respondent should not be responsible for acts of vandalism. Petitioner did not answer the appeal.²

The Board affirms the hearing officer's decision. Section 6-05(c) of 67 RCNY requires that a PPT be maintained clean and free of odors, litter, debris, damage, stickers, graffiti, grime, and rust and should be clean to the touch with all lettering and signage clean and legible and all painted surfaces repainted at least once per year. Respondent's argument, that the cited section of law is not applicable to tape, does not have merit. The cited section requires that the PPT be kept free of stickers, which the Board finds includes tape, as tape has the same adhesive ability and function as a sticker. Furthermore, it is not a defense that the dirty conditions were the result of vandalism. *See NYC v. Coastal Communication Service, Inc.*, Appeal No. 1000034 (June 24, 2010); *See NYC v. Telebeam*, Appeal No. 1300601 (November 21, 2013). Respondent is responsible for maintaining the PPTs. Here, the PPTs were not maintained free of stickers as required by 67 RCNY § 6-05(c).

Accordingly, the Board affirms the hearing officer's decision sustaining four violations of 67 RCNY § 6-05(c) and imposing a penalty of \$250 per summons.

By: OATH Hearings Division Appeals Unit

² Petitioner did, however, respond to a December 26, 2019, request by the Board for briefing on the sole issue of whether Link kiosks constitute PPTs. *See* fn. 1. Petitioner's briefing was received on January 14, 2020. Respondent thereafter failed to submit a response on the issue within the timeframe provided for a response.