



Appeal Nos. 1901938 & 2000142 DOITT v. City Bridge LLC February 20, 2020

APPEAL DECISION

The appeal of Respondent, a provider of public pay telephone (ppt) services, is **denied**.

Respondent appeals from part of a recommended master decision by Hearing Officer B. Lamel (Brooklyn), dated December 18, 2019, sustaining three charges of § 6-05(b) of Title 67 of the Rules of the City of New York (RCNY) for failure to provide working ppt services. Having fully reviewed the record, the Board finds that the part of the hearing officer’s decision being appealed is supported by law and a preponderance of the evidence. Therefore, the Board finds as follows:

Summons	Law Charged	Hearing Determination	Appeal Determination	Penalty
187223520 (520)	67 RCNY § 6-05(b)	In Violation	Affirmed-In Violation	\$2,000
187223549 (549)	67 RCNY § 6-05(b)	In Violation	Affirmed-In Violation	\$2,000
187223511 (511)	67 RCNY § 6-05(b)	In Violation	Affirmed-In Violation	\$2,000
187224319	67 RCNY § 6-05(c)	In Violation	Not Appealed	\$250
187224337	67 RCNY § 6-05(c)	In Violation	Not Appealed	\$250
187224346	67 RCNY § 6-05(c)	In Violation	Not Appealed	\$250
187224355	67 RCNY § 6-05(c)	In Violation	Not Appealed	\$250
187224382	67 RCNY § 6-05(c)	In Violation	Not Appealed	\$250
187226014	67 RCNY § 6-05(c)	In Violation	Not Appealed	\$250
187226023	67 RCNY § 6-05(c)	In Violation	Not Appealed	\$250
187226032	67 RCNY § 6-05(c)	In Violation	Not Appealed	\$250
187226142	67 RCNY § 6-42	In Violation	Not Appealed	\$250
187231478	67 RCNY § 6-05(b)	In Violation	Not Appealed	\$250
187231505	67 RCNY § 6-05(c)	In Violation	Not Appealed	\$250
187231880	67 RCNY § 6-42	In Violation	Not Appealed	\$250

BACKGROUND

In the summonses, the issuing officer (IO) affirmed observing on September 10, 2019 and September 24, 2019, at 162 Delancey Street and 1585 Broadway, Manhattan, that Respondent failed to provide working ppt and operator services.

At the hearings, held on December 13, 2019, the representative for Petitioner, Department of Information Technology and Telecommunications (DOITT), offered inspection reports for two ppts inspected on September 10, 2019 at 162 Delancey Street (summonses 520 and 549). Regarding the ppt noted in summons 520, Petitioner submitted inspection reports for June 12, 2019 at 4:11 p.m. and June 19, 2019 at 3:25 p.m. indicating low volume, September 5, 2019 at 3:32 p.m. indicating low volume, and September 6, 2019 at 4:03 p.m. indicating no dial tone. In rebuttal Respondent presented an affidavit from a representative of Labra Telecom Inc., the company that services Respondent’s ppts. Attached to the affidavit is a call detail report (CDR) stating that there were dial tones on June 13, 2019, June 14, 2019, from June 17, 2019 through June 21, 2019, September 5, 2019, September 6, 2019 and September 9, 2019. As to the ppt noted in summons 549, Petitioner submitted inspection reports for June 12, 2019 at 4:08 p.m. stating that there was a broken earpiece, on June 19, 2019 at 3:27 p.m. and on September 5, 2019

at 3:26 p.m. and September 10, 2019 at 4:06 p.m. where a low volume was indicated. Respondent presented an affidavit from a representative of Labra Telecom Inc. stating that a dial tone test is remotely conducted daily to assure that a ppt has a working dial tone. Attached to the affidavit is CDR indicating that the dial tone test showed dial tones on June 12, 2019 through June 14, 2019, June 19, 2019 through June 21, 2019, September 5, 2019, September 6, 2019 and September 10, 2019. Regarding the ppt noted in summons 511, Petitioner's representative submitted inspection reports for September 17, 2019 at 2:32 p.m. indicating low volume, September 19, 2019 at 2:58 p.m. indicating that no operator was reached, and September 24, 2019 at 1:50 p.m. indicating a low volume. Respondent presented an affidavit from a representative of Labra Telecom stating that a dial tone test is remotely conducted daily to assure that a ppt has a working dial tone. Attached to the affidavit is a CDR indicating that there were dial tones on September 17, 2019 through September 20, 2019, and September 23, 2019 through September 25, 2019.

In his decision the hearing officer sustained the three violations, finding that Petitioner established a violation of 67 RCNY § 6-05(b) through credible evidence showing non-working ppts on two occasions each lasting for a duration of at least twenty-four hours. He concluded that Respondent's evidence of working dial tones during the periods of alleged inoperability failed to provide a defense where charges of the ppts' inoperability were for low volume, inability to reach an operator and a broken earpiece.

On appeal, Respondent contends that the proof of the dial tone tests submitted in evidence prove that the ppts were in working condition. She re-submits the affidavits provided at the hearing along with their attached CDRs with the dates of the confirmed dial tones.

Petitioner did not answer the appeal.

ISSUE ON APPEAL

The issue on appeal is whether Respondent refuted that the inoperable condition of the ppts 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 67 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 § 6-05(e)(2), before issuing a violation for 67 RCNY § 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 § 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.

ANALYSIS

For the following reasons, the Board affirms the part of the hearing officer's decision being appealed.

On this record, the Board finds that Petitioner established the inoperability of the ppts continued in each case for two 24-hour periods from the date of the first inspections through the date of the third inspection. 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 § 6-05(e)(5). Here, Petitioner's inspection reports describe the various forms of inoperability as low volume, inability to reach an operator, broken earpiece and no dial tone. In each case, Petitioner's evidence established two 24-hour periods of continuous inoperability from the date of the first inspection through the date of third inspection. The Board finds that Respondent evidence consisting of testing on various dates solely to confirm a dial tone on the ppts does not address the charged allegations of inoperability in the summonses. The Board notes an exception pertaining to summons 520 where Petitioner provided evidence of no dial tone on September 6, 2019 and Respondent's evidence offered in defense consisted of confirmation of a dial tone on September 6, 2019. However, 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. Respondent's evidence did not provide such defense as the September 6, 2019 dial tone test came at the end of the alleged second period of inoperability, where the beginning of the 24-hour period consisted of a low dial tone. Consequently Respondent's evidence was insufficient to show that the twenty-four period of inoperability consisting of both low volume and no dial tone was corrected for the period of September 5, 2019 at 3:32 p.m. to September 6, 2019 at 4:03 p.m.

Accordingly, the Board affirms the part of the hearing officer's decision sustaining three violations of 67 RCNY § 6-05(b) and imposing a civil penalty of \$2,000 for each charge.

By: OATH Hearings Division Appeals Unit