OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Appeals Unit

66 John St., 10th Floor
New York, NY 10038
Telephone: (212) 436-0624
Fax: (212) 436-0714

Appeal No. 2000160 **DOITT v. CityBridge LLC** **March 5, 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 17, 2019, sustaining five 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
187224373 (373)	67 RCNY § 6-05(b)	In Violation	Affirmed-In Violation	$2,000
187224391 (391)	67 RCNY § 6-05(b)	In Violation	Affirmed-In Violation	$2,000
187224410 (410)	67 RCNY § 6-05(b)	In Violation	Affirmed-In Violation	$2,000
187231890 (890)	67 RCNY § 6-05(b)	In Violation	Affirmed-In Violation	$2,000
187231909 (909)	67 RCNY § 6-05(b)	In Violation	Affirmed-In Violation	$2,000
187223044	67 RCNY § 6-05(b)	In Violation	Not Appealed	$2,000
187224530	67 RCNY § 6-05(b)	Dismissed	Not Appealed	$0
187224364	67 RCNY § 6-05(b)	Dismissed	Not Appealed	$0
187231853	67 RCNY § 6-05(b)	Dismissed	Not Appealed	$0
187331871	67 RCNY § 6-05(b)	Dismissed	Not Appealed	$0

BACKGROUND

In the summonses, the issuing officer (IOs) affirmed observing on March 13, 2019 at 575 First Avenue (Summons 909) and 645 First Avenue (Summons 890), on June 14 (Summons 410) and June 24, 2019 (Summons 373) at 1 Bowling Green, and on June 19, 2019 at 3845 Broadway (Summons 391), Manhattan, that Respondent failed to provide working ppt and operator services.

At the hearing, held on December 13, 2019, the representative for Petitioner, Department of Information Technology and Telecommunications (DOITT), and Respondent's representative offered their respective evidence for each charge, as follows:

Summons 909 – Petitioner offered photographs of the ppt and inspection reports indicating an inoperable keypad on March 8, 2019 at 5:56 a.m., March 12, at 5:32 a.m. and March 13 at 5:45 am. Respondent submitted an affidavit from a representative of Labra Telecom Inc. (Labra), the company that services Respondent's ppts, as to the records maintained for the ppt at issue. Annexed to the affidavit is a call detail report (CDR) stating that dial tones were detected through its remote testing system demonstrating that the ppt passed the dial tone test for March 8, March 12, and March 13. The hearing officer sustained the charge, crediting the evidence of both parties but concluding that while Petitioner's evidence established the charge, Respondent's evidence did not establish a defense because while a dial tone could be detected, Petitioner charged an inoperable keypad, not a lack of dial tone.

Summons 890 – Petitioner submitted the IO's reports indicating an inoperable keypad on March 8, 2019 at 6:16 a.m., March 12 at 5:40 a.m. and March 13 at 5:51 a.m. Respondent submitted an affidavit from Labra's representative annexing a CDR stating that dial tones were detected through its system on March 8, March 12 and March 13. The hearing officer sustained the charge, crediting the evidence of both parties but concluding that while Petitioner's evidence established the charge, Respondent's evidence did not establish a defense because while a dial tone could be detected, Petitioner charged a low volume, not a lack of dial tone.

Summons 410 – Petitioner submitted the IO's reports indicating that there was low volume on May 24, 2019 at 4:14 p.m., and June 7 at 4:07 p.m., and no dial tone on June 14 at 3:45 p.m. Respondent submitted an affidavit from Labra's representative annexing a CDR stating that dial tones were detected through its system on May 24, May 31, June 7, and June 14. The hearing officer sustained the charge, crediting the evidence of both parties but concluding that while Petitioner's evidence established the charge, Respondent's evidence did not establish a defense because while a dial tone could be detected, Petitioner's evidence charged a low volume commencing June 7 and continuing, not just a lack of dial tone on June 14, and Respondent's evidence showed no correction of low volume within the week of June 7 to June 14.

Summons 373 – Petitioner submitted the IO's reports indicating that there was low volume on May 24, 2019 at 4:20 p.m., May 31 at 3:37 p.m., June 7 at 4:17 pm., and June 14 at 3:36 p.m. Respondent submitted an affidavit from Labra's representative annexing a CDR stating that dial tones were detected through its system on May 24, May 31, June 7 and June 14. The hearing officer sustained the charge, crediting the evidence of both parties but concluding that while Petitioner's evidence established the charge, Respondent's evidence did not establish a defense because while a dial tone could be detected, Petitioner charged low volume, not a lack of dial tone.

Summons 391 – Petitioner submitted the IO's reports indicating a low volume on June 4, 2019 at 10:28 a.m., an inaudible 311 and busy signal when dialing "0" on June 11, 2019 at 10:11 a.m., and low volume on June 13 at 10:27 a.m. and June 18 at 10 51 a.m. Respondent submitted an affidavit from Labra's representative annexing a CDR stating that dial tones were detected through its system on June 4, June 11, June 13 and June 18 and an additional CDR showing that calls were made on June 4 to 311 and the operator, four calls were made on June 11, three calls were made on June 13 and four calls were made on June 18. The hearing officer sustained the charge, crediting the evidence of both parties but concluding that while Petitioner's evidence established the charges, Respondent evidence failed to show audibility and proper volumes on calls made.

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, and for Summons 391, the additional CDR showing calls made on the dates in question.

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 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 § 6-05(e)(5). Here, Petitioner's inspection reports describe the various forms of inoperability as low volume, inability to reach an operator and/or 311, inoperable keypad, and no dial tone. In each case, Petitioner's evidence established two twenty-four 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 to confirm a dial tone on the ppts does not address the charged allegations of inoperability in the summonses. As to Summons 391, the CDR showing calls made on dates with various inoperability other than lack of dial tone, likewise did not address the allegations.

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

By: OATH Hearings Division Appeals Unit