

Final Cost Calculation Determination for the Telecommunications Relay Services TSO Instrument for the period between 1 July 2014 and 30 June 2015

[2015] NZCC 35

The Commission:

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Date of Final Determination:

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List of defined terms and abbreviations

CapTel	Captioned Telephone service
Deed	TSO deed for TRS between the Crown and Sprint dated 7 July 2011 (including Addendum One, dated 27 September 2011 and Addendum Two, dated 15 February 2015)
MRC	Monthly recurring charge
Sprint	Sprint International New Zealand
SQM	Service quality measure
TDL	Telecommunications Development Levy
TRS	Telecommunications Relay Services as described in the TSO TRS deed
TRS provider	Sprint, the telecommunications relay service provider
TSO	Telecommunications Service Obligations
TSO period	1 July 2014 to 30 June 2015, the period to which this determination applies
TSO provider	Telecommunications Service Obligations provider

Purpose

1. The purpose of this final cost calculation determination (final determination) is to calculate the amount payable by the Crown to Sprint International New Zealand (Sprint), for the provision of Telecommunications Relay Services (TRS) for the period 1 July 2014 to 30 June 2015.

Executive summary

2. This final determination is required under section 94J of the Telecommunications Act 2001 (Act) and relates to the Telecommunications Service Obligations (TSO) for Telecommunications Relay Services (TRS) for the period 1 July 2014 to 30 June 2015.
3. Sprint International New Zealand (Sprint) provides relay services under the “Telecommunications Service Obligations (TSO) Deed for Telecommunications Relay Services (TRS)” (deed) to meet the telephone communication needs of the Deaf, Deafblind, Hearing impaired, and Speech impaired. Sprint is compensated for the provision of the relay services by the Crown.
4. The relevant deed for the purpose of this final determination was entered into by Sprint and the Crown on 7 July 2011, and amended by Addendum 1 signed on 27 September 2011 and Addendum 2 signed on 15 February 2015. It is a TSO instrument under section 70 of the Act.
5. This final determination sets out the specified amount, payable by the Crown to Sprint for the 2014/15 TSO TRS, under the deed and provides information relating to the calculation of that amount.¹
6. The Commerce Commission (Commission) has determined that the total cost for the TRS service for this TSO period is \$2,416,821.59.

Background

7. The Act regulates the supply of telecommunications services in New Zealand.
8. Under subpart 2A of Part 3 of the Act, the Commission is required to produce a cost calculation determination for the deed.
9. Under section 94F(1)(c) of the Act, the Commission is required to provide no more than 20 working days for submissions after giving public notice of the draft cost calculation determination. No submissions were received.
10. This document is the final determination made under section 94J of the Act, in respect of the deed, for the TSO period 1 July 2014 to 30 June 2015.
11. This final determination does not include any confidential material.

¹ Section 94K(b) of the Act.

Cost calculation for the TSO TRS

12. The deed requires the TRS provider to:
 - 12.1 provide a range of conventional relay services including text-to-voice conversation, voice-to-text conversation, and speech-to-speech relay; and meet the following service quality measures (SQMs):²
 - 12.1.1 *speed of answer for ordinary (non-emergency) calls*: at least 85% of calls must be answered by a Relay Assistant within 15 seconds; and
 - 12.1.2 *call congestion for ordinary (non-emergency) calls*: no more than 5% of calls to the TRS system should receive a busy signal.
 - 12.2 The deed also requires the TRS provider to meet the following SQMs for the Captioned Telephone (CapTel) service:
 - 12.2.1 *corrected text accuracy*: a minimum of 98% accuracy for testing levels, not live traffic; and
 - 12.2.2 *average transcription rate*: a minimum of 125 words per minute for testing levels, not live traffic.
13. Schedule 2 of the deed details a specified amount, calculated as the sum of an annual fixed charge and an annual variable charge.
14. The total amount payable to Sprint is the specified amount, less any performance rebate calculated in accordance with the deed.
15. Clause 8.3 of the deed requires the TRS provider to supply an annual audited report on each financial year to the Crown and to the Commission. The annual report must include the total billable minutes and sufficient information to enable the Commission to assess the TRS provider's compliance with the SQMs.³
16. All charges listed in this final determination exclude GST.

Fixed charges

17. The annual fixed charge for conventional relay services for this TSO period is \$156,278. The fixed charges under Schedule 2 of the deed are shown in Table 5, in Appendix 1 of this final determination.
18. The annual fixed charge for the CapTel service for this TSO period is \$661,893.68 as shown in Table 6 (Year 4) in Appendix 1 of this final determination, taken from the amended Schedule 2 of the deed. This is made

² Telecommunications Service Obligations Deed for Telecommunications Relay Services, 7 July 2011, Schedule 3, Specified service quality measures.

³ This includes a self-assessment by the TRS provider of its compliance with the SQM's.

up of the prorated fee of \$420,250.00 for the period 1 July 2014 to 1 March 2015 and \$241,643.68 for the period 2 March 2015 to 30 June 2015.⁴

19. The combined annual fixed charge, for conventional relay services and the CapTel service, for this TSO period is therefore, \$818,171.68.

Variable charges

20. The annual variable charge for each financial year is calculated by adding together the traffic charge and any activity charge specified in Schedule 2 of the deed.
21. The traffic charge is derived by adding together the total call charges for each month of the financial year. The total call charge for a month is derived by multiplying the chargeable call volume (in whole minutes) for the month by the applicable per minute charge.
22. The chargeable call volume is the aggregate of the duration in seconds (without any session level rounding) recorded for all relay calls in the month, converted to whole minutes. The duration of a relay call is the relay session time measured in seconds from when the incoming call to the TRS system is answered until the incoming call is released by the TRS system.

Variable charges price adjustment formula

23. Schedule 2 of the deed also includes a price adjustment formula. The per minute traffic charges are adjusted in accordance with the Statistics New Zealand Producer Price Index, Telecommunications, Internet and Library Services.
24. The price adjustment formula for this final determination uses the average index for June 2013, September 2013, December 2013, and March 2014, with a base index of March 2010:⁵

$$\text{Adjustment multiplier 2014} = \frac{(\text{Jun 2013} + \text{Sep 2013} + \text{Dec 2013} + \text{Mar 2014})/4}{\text{Mar 2010}}$$

25. This equates to an adjustment multiplier of 0.812, as can be seen below. The multiplier is applied to the per minute traffic charges listed in Schedule 2 of the deed to create a new set of 2014/15 charges for conventional relay services and the CapTel service, as set out in Table 1 and Table 2.

$$\text{Adjustment multiplier 2014} = \frac{(847 + 838 + 827 + 811)/4}{1023}$$

$$= \mathbf{0.812}$$

⁴ The fixed rate for the second period was added in Addendum 2 of the deed to reflect an increase in CapTel operating hours, which commenced on 2 March 2015.

⁵ The adjustment multiplier formula is taken from the Telecommunications Service Obligations Deed for Telecommunications Relay Services, 7 July 2011, Schedule 2, Annual Variable Charge.

Table 1 – Variable cost schedule (conventional relay services)

Monthly call minute volume	Charge per call min (\$) (30 Sep 2011 - 30 Jun 2012)	Charge per call min (\$) (1 July 2012 - 30 Jun 2013)	Charge per call min (\$) (1 July 2013 - 30 Jun 2014)	Charge per call min (\$) (1 July 2014 - 30 Jun 2015)
0-20,000	8.00	7.28	6.83	6.50
20,001-40,000	5.11	4.65	4.36	4.15
40,001-60,000	4.05	3.68	3.46	3.29
60,001+	3.70	3.37	3.16	3.00

Table 2 – Variable cost schedule (CapTel service)

Monthly call minute volume	Charge per call min (\$) (30 Sep 2011 - 30 Jun 2012)	Charge per call min (\$) (1 July 2012 - 30 Jun 2013)	Charge per call min (\$) (1 July 2013 - 30 Jun 2014)	Charge per call min (\$) (1 July 2014 - 30 Jun 2015)
12,500+	2.10	1.91	1.79	1.71

Specified amount

26. Table 3 shows the total cost calculation for the 2014/15 conventional relay services, based on the fixed charge outlined in paragraph 17, the traffic charges listed in Table 1, and the chargeable minutes for each month.

Table 3 – Total financial charges for conventional relay services

Month	Total billable minutes	Price per min (\$)	Variable charge (\$)	Fixed charge (\$)	Total amount due (\$)
Jul-14	22,396.00	4.15	92,943.40	13,023.17	105,966.57
Aug-14	18,007.00	6.50	117,045.50	13,023.17	130,068.67
Sep-14	24,229.00	4.15	100,550.35	13,023.17	113,573.52
Oct-14	21,067.00	4.15	87,428.05	13,023.17	100,451.22
Nov-14	19,221.00	6.50	124,936.50	13,023.17	137,959.67
Dec-14	20,629.00	4.15	85,610.35	13,023.17	98,633.52
Jan-15	20,601.00	4.15	85,494.15	13,023.17	98,517.32
Feb-15	21,132.00	4.15	87,697.80	13,023.17	100,720.97
Mar-15	20,626.00	4.15	85,597.90	13,023.17	98,621.07
Apr-15	16,354.00	6.50	106,301.00	13,023.17	119,324.17
May-15	17,198.00	6.50	111,787.00	13,023.17	124,810.17
Jun-15	16,900.00	6.50	109,850.00	13,023.17	122,873.13
Total	238,360.00		1,195,242.00	156,278.00	1,351,520.00

27. The monthly fixed charge in Table 3 is calculated by dividing the annual fixed charge of \$156,278 by 12 and is rounded to two decimal points.
28. The Activity Charges section of Schedule 2 of the deed includes an Annual Updating Charge, which allows Sprint to recoup the Travel Expenses and Conference Expenses of the Ministry's TRS Contract Administrator (or designated alternate) attending the annual STARS conference, or similar events.⁶ The expense for the NASRA and TEDPA 2015 conferences is \$12,567.22.
29. Table 4 shows the total cost calculation for the 2014/15 CapTel service, based on the fixed charge outlined in paragraph 18, the traffic charge listed in Table 2, and the chargeable minutes for each month.

⁶ Telecommunications Service Obligations Deed for Telecommunications Relay Services, 7 July 2011, Schedule 2, Activity Charges.

Table 4 – Total financial charges for the CapTel service

Month	Billable Captel mins > 12,500	Price per min (\$)	Variable charge (\$)	Fixed charge (\$)	Total amount due (\$)
Jul-14	20,673.00	1.71	35,350.83	52,531.25	87,882.08
Aug-14	18,535.00	1.71	31,694.85	52,531.25	84,226.10
Sep-14	20,258.00	1.71	34,641.18	52,531.25	87,172.43
Oct-14	19,200.00	1.71	32,832.00	52,531.25	85,363.25
Nov-14	19,690.00	1.71	33,669.90	52,531.25	86,201.15
Dec-14	21,990.00	1.71	37,602.90	52,531.25	90,134.15
Jan-15	18,039.00	1.71	30,846.69	52,531.25	83,377.94
Feb-15	15,247.00	1.71	26,072.37	52,531.25	78,603.62
Mar-15	17,431.00	1.71	29,807.01	60,410.92	90,217.93
Apr-15	17,342.00	1.71	29,654.82	60,410.92	90,065.74
May-15	17,489.00	1.71	29,906.19	60,410.92	90,317.11
Jun-15	17,055.00	1.71	29,164.05	60,410.92	89,574.97
Total	222,949.00		381,242.79	661,893.68	1,043,136.47

30. Only billable CapTel minutes over 12,500 contribute to the variable charge.
31. The combined variable charge for conventional relay services (\$1,195,242.00) and CapTel (\$381,242.79) is \$1,576,484.79.
32. The specified amount for this TSO period is the total fixed charge (fixed charge for conventional relay services plus fixed charge for CapTel service) plus the total variable charge (variable charge for conventional relay services plus variable charge for CapTel service), plus an Annual Updating Charge, which equals \$2,407,223.69.

Performance rebate

33. The final determination must include any price reduction of the amount that the TSO provider would receive from the Crown if its service performance does not comply with the deed.⁷
34. This price reduction, described in Schedule 2 of the deed as a performance rebate, takes account of two categories of compliance assessment: service availability and service quality. The price reduction is calculated by identifying the applicable discounts (if any) for each category and then subtracting them from the specified amount.⁸
35. The service availability discount would have applied if the conventional TRS launch was delayed beyond 1 October 2011. As the conventional TRS was launched on time, in 2011, the service availability discount does not apply for this TSO period. The deed does not specifically mention a service availability discount for the CapTel service, so it has not been assessed as part of this final determination.

⁷ Section 94K(c) of the Act.

⁸ Telecommunications Service Obligations Deed for Telecommunications Relay Services, 7 July 2011, Schedule 2, Performance Rebate.

36. Sprint's audited annual reported shows that it has complied with all of the applicable SQMs in the deed as listed in paragraph 12 of this final determination. Therefore, there is no price reduction for this TSO period.

Financial loss of use component

37. Section 94K(1)(e) of the Act requires the Commission to calculate the additional amount payable for the loss of use of the specified amount. This covers the period commencing at the end of the TSO period (the end of the 2014/15 financial year) to the date of the final TSO cost calculation determination. The loss of use component is calculated by multiplying the days elapsed for the period in question by the 90-day bank bill rate applicable at the date of the final TRS cost calculation determination.
38. However, the Crown and Sprint have agreed to an interim payment for the 2014/15 TRS. On 18 August 2015, \$2,768,307.24 (the specified amount plus GST) was paid to Sprint on behalf of the Crown by the Ministry of Business, Innovation and Employment.
39. Therefore, because Sprint has already received the specified amount, we have calculated the financial loss of use component over the period from the end of the 2014/15 financial year to the date of the interim payment (18 August 2015). The amount is based on the 90-day bank bill rate at 18 August 2015. We consider this approach is consistent with the purposes of the provision in the Act enabling the financial loss of use component.
40. The specified amount is \$2,407,223.69, the 90-day bank bill rate on 18 August 2015 was 2.97% per year, and the number of days elapsed over the stipulated period was 49. This means the amount payable for the financial loss of use component is \$9,597.90.

Summary

41. This paper calculates the amount payable by the Crown to Sprint for the 2014/15 TSO TRS.
42. The total amount payable was calculated by adding the total annual fixed costs and variable costs for conventional relay services and the CapTel service, using the charges set out in the deed. An Annual Updating Charge was also added. There were no price reductions because Sprint met all of the required SQMs.
43. The total annual fixed charge is \$818,171.68
44. The total annual variable charge is \$1,576,484.79.
45. The annual updating charge is \$12,567.22.
46. The loss of usage component is \$9,597.90.
47. The total amount payable by the Crown to the TRS provider is **\$2,416,821.59**.

Appendix 1 – fixed charges

Table 5 - Fixed Charges (GST exclusive)⁹

	30 Sep 2011 – 30 June 2012	1 July 2012 – 30 June 2013	1 July 2013 – 30 June 2014 ¹⁰	1 July 2014 – 30 June 2015	1 July 2015 – 30 June 2016	1 July 2016 – 30 June 2017	1 July 2017 – 30 June 2018	1 July 2018 – 20 June 2019
Fixed Charge	\$145,120	\$148,748	\$152,467	\$156,278	\$160,185	\$0	\$0	\$0

Table 6 – Fixed charges for the CapTel service¹¹

	Year 1	Year 2	Year 3	Year 4 ¹²	Year 5	Year 6	Year 7	Year 8
Fixed Charge	\$360,000	\$600,000	\$615,000	\$630,375 (1 July 2014 – 1 March 2015) \$724,931 (2 March 2015 – 30 June 2015)	\$743,054	\$761,631	\$780,672	\$800,188

⁹ Telecommunications Service Obligations Deed for Telecommunications Relay Services, 7 July 2011, Schedule 2, Annual Fixed Charge.

¹⁰ It is assumed that the dates for the third financial period in Table 5 should be 1 July 2013 – 30 June 2014 (incorrectly printed in the deed as 1 July 2014 – 30 June 2014).

¹¹ Telecommunications Service Obligations Deed for Telecommunications Relay Services, 7 July 2011, Schedule 2, Annual Fixed Charge.

¹² It is assumed that the dates for Year 4 in Table 6 should be 1 July 2014 – 1 March 2015 (incorrectly printed in the deed as 1 July 2014 – 14 December 2014) and 2 March 2015 – 30 June 2015.

Appendix 2 – legal framework

The framework for the determination

48. Part 3 of the Act facilitates the supply of certain telecommunications services to groups of end-users who may not otherwise be supplied those services on a commercial basis or at an affordable price.
49. Subpart 2A of Part 3 prescribes the annual procedures for determining the amounts payable by the Crown to the TRS provider in respect of its TSO instruments.
50. The Commission is required under section 93 to make an annual assessment of the TRS provider's compliance with its TSO instruments. Accordingly, the Commission must assess the TRS provider's compliance with the deed.
51. Section 94F requires the Commission to prepare a draft TSO cost calculation determination for the TRS:

94F Commission to prepare draft TSO cost calculation determination

- (1) The Commission must—
 - (a) prepare a draft TSO cost calculation determination in respect of each TSO instrument for each financial year; and
 - (b) give public notice of that draft determination; and
 - (c) include in the public notice the closing date for submissions, which must be not later than 20 working days after the date of giving public notice.
 - (2) The Commission must make reasonable efforts to do the things referred to in subsection (1) not later than 120 working days after the end of the financial year.
52. Section 94G sets out the matters that must be included in the Commission's draft TSO cost calculation determination for the TRS. As the deed includes a specified amount, the draft determination need only include the following matters set out under section 94G(b) to (e):

94G Matters to be included in draft TSO cost calculation determination

A draft TSO cost calculation determination must include,—...

- (b) if the TSO instrument contains a specified amount, the dollar amount of the specified amount and all material information that—
 - (i) relates to the calculation of that amount; and

- (ii) would not, in the opinion of the Commission, be likely to unreasonably prejudice the commercial position of the TSO provider; and
 - (c) the amount (if any) by which the total amount that the TSO provider would receive from the Crown in relation to the TSO instrument must be reduced because the TSO provider has not complied with the TSO instrument; and
 - (d) the methodology applied by the Commission in preparing the determination; and
 - (e) the reasons for the determination.
53. Section 94H of the Act requires the Commission to consider the steps taken (if any) by the TSO provider (including the TRS provider) to remedy any non-compliance with the TSO instrument:

94H Requirements for draft TSO cost calculation determination

In preparing a draft TSO cost calculation determination of the matters referred to in section 94G(c), the Commission must consider the steps taken (if any) by the TSO provider to remedy any non-compliance by the TSO provider with the TSO instrument between the date the TSO provider was notified of the non-compliance under section 93(b) and the date that is 15 working days before public notice is given under section 94F(1)(b).

54. Section 94J set outs the requirements that the Commission must follow with respect to the preparation of the final TSO cost calculation determination for the TRS:

94J Commission to prepare final TSO cost calculation determination

- (1) The Commission must—
 - (a) prepare a final TSO cost calculation determination; and
 - (b) give public notice of that final determination; and
 - (c) give a copy of that final determination to the Minister, all liable persons, and the TSO providers in relation to the TSO instrument.
- (2) The Commission must make reasonable efforts to do the things referred to in subsection (1) not later than 40 working days after the closing date for submissions specified in accordance with section 94F(1)(c).
- (3) This section is subject to sections 94 and 94C.

55. Section 94K sets out the matters that must be included in the Commission’s final TSO cost calculation determination for the TRS. As the deed includes a specified amount, the final determination need only include the following matters set out under section 94K(1)(b) to (g):

94K Matters to be included in final TSO cost calculation determination

- (1) A final TSO cost calculation determination must include,—
- (b) if the TSO instrument contains a specified amount, the dollar amount of the specified amount and all material information that—
 - (i) relates to the calculation of that amount; and
 - (ii) would not, in the opinion of the Commission, be likely to unreasonably prejudice the commercial position of the TSO provider; and
 - (c) the amount (if any) by which the total amount that the TSO provider would receive from the Crown in relation to the TSO instrument must be reduced because the TSO provider has not complied with the TSO instrument; and
 - (d) the amount payable by the Crown to the TSO provider in relation to the TSO instrument in respect of the financial year calculated—...
 - (ii) in the case of a TSO instrument that contains a specified amount, by subtracting the amount of the reduction (if any) referred to in paragraph (c) from the specified amount referred to in paragraph (b) ; and
 - (e) the amount payable by the Crown to the TSO provider in relation to the TSO instrument for the loss of use of the amount referred to in paragraph (d), calculated at the 90-day bank bill rate (as at the date of the final determination) for the period commencing from the end of the financial year and ending with the date of the final TSO cost calculation determination; and
 - (f) the methodology used by the Commission in preparing the determination; and
 - (g) the reasons for the determination.