



Draft Cost Calculation Determination for the Telecommunications Relay Services TSO Instrument for the period between 1 July 2011 and 30 June 2012

The Commission:

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List of defined terms and abbreviations

CapTel	Captioned Telephone service.
Current deed	TSO deed for TRS between the Crown and Sprint dated 7 July 2011 (including Addendum One dated 27 September 2011).
Former deed	TSO deed for TRS between the Crown and Sprint dated 9 July 2004 (including Addendums One to Six and a variation dated November 2010).
TSO TRS deeds	The current deed and the former deed.
MRC	Monthly recurring charge.
Sprint	Sprint International New Zealand Limited.
SQM	Service quality measure.
TDL	Telecommunications Development Levy.
TRS	Telecommunications Relay Services as described in the TSO TRS deeds.
TSO	Telecommunications Service Obligations.
TSO period	1 July 2011 to 30 June 2012, the period to which this determination applies.
TSO provider	Telecommunications service obligation provider.
TRS provider	Sprint, the telecommunications relay service provider.

Executive summary

1. This draft cost calculation determination is required under section 94F of the Telecommunications Act 2001 (the 'Act') and relates to the Telecommunications Service Obligations (TSO) for Telecommunications Relay Services (TRS) for the period 1 July 2011 to 30 June 2012.
2. Sprint International New Zealand Ltd (Sprint) provides relay services under the TSO TRS deeds to meet the telephone communication needs of deaf, hearing impaired, and speech impaired people. Sprint is compensated for the provision of the relay services by the Crown.
3. There are two relevant TSO TRS deeds for the purpose of this draft TSO cost calculation determination because a new deed was entered on 7 July 2011, leaving the old deed to apply for three months of this TSO period. Both TSO TRS deeds are TSO instruments under section 70 of the Act and both are relevant to the TSO period under consideration in this draft TSO cost calculation determination.
4. This draft TSO cost calculation determination sets the specified amount¹ based on the requirements in the TSO TRS deeds and provides information relating to the calculation of that amount.
5. The Commerce Commission (the 'Commission') has determined that the cost for the TRS service for the 2011/12 TSO period is **\$1,876,114.62** (including a financial loss of use component) excluding GST.
6. On 21 February 2013, the Crown made an interim payment to Sprint of \$1,844,510.28 (excluding GST) due to the delays in the release of the TRS cost calculation determination. As a consequence, the outstanding payment required to be made by the Crown to Sprint is \$31,604.34.

Background

7. The Telecommunications Act 2001 (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 cost calculation determinations for the TSO TRS deeds.
9. This document is the draft TSO cost calculation determination made under section 94F of the Act, in respect of the TSO TRS deeds, for the TSO period 1 July 2011 to 30 June 2012.
10. The closing date for submissions on this draft TSO cost calculation determination is 5pm 29 March 2013. Submissions should be sent by email to: ben.oakley@comcom.govt.nz.

¹ Section 94G(b) of the Act.

11. This draft TSO cost calculation determination does not include any confidential material.

Cost calculation for the TSO TRS

12. The 2011/12 TSO period is from 1 July 2011 to 30 June 2012 and is covered by two deeds. The Crown and the TRS provider entered into an extended term of the TSO TRS deed (dated 9 July 2004) on 6 April 2011 that expired on 30 September 2011 (former deed). Therefore, the former deed applies for the part of the TSO period from 1 July 2011 to 30 September 2011.
13. A new TSO TRS deed was agreed to on 7 July 2011 (current deed) and came into effect when the former deed expired. Therefore, the current deed applies for the remaining part of the TSO period, from 1 October 2011 to 30 June 2012.
14. Both TSO TRS deeds being used for this draft cost calculation determination require the TRS provider to:
 - 14.1 provide a range of services including text-to-voice conversation, voice-to-text conversation, and speech-to-speech relay; and meet the following service quality measures (SQMs):²
 - 14.1.1 speed of answer for ordinary (non-emergency) calls; and
 - 14.1.2 call congestion for ordinary (non-emergency) calls.
15. The current deed also requires the TRS provider to meet SQMs regarding the Captioned Telephone (CapTel) service. However, measurement of these SQMs will not commence until the first quarter following the initial 12 months of the service's operation.³ The service start date for CapTel was 1 March 2013.⁴
16. Both TSO TRS deeds contain a specified amount, calculated as the sum of an annual fixed charge and an annual variable charge, as set out in Schedule 2 of each TSO TRS deed.
17. The total amount payable to Sprint is the specified amount less any performance rebate calculated in accordance with the TSO TRS deeds.
18. Section 9.3 of the former deed and 8.3 of the current deed require the TRS provider to supply an annual report on each financial year to the Crown and to the Commission. The annual report includes total billable minutes and service quality performance measures which are used for this cost calculation.

² Schedule 3 of both the current and the former deed.

³ Schedule 3 of the current deed.

⁴ www.captel.co.nz

Fixed charges

19. The fixed charge outlined by the former deed consisted of a monthly recurring charge (MRC) of \$7,000 for Speech-to-Speech and a fixed MRC of \$4,031.08 (annual charge of \$48,373 divided by 12).⁵
20. This equates to a monthly fixed cost of \$11,031.08 and a total fixed cost of \$33,093.25 for the period 1 July 2011 to 30 September 2011.
21. The fixed charge according to the current deed is set out in the second column of Table 1.⁶

Table 1 - Fixed Charges (GST exclusive)⁷

	30 Sep 2011 – 30 June 2012	1 July 2012 – 30 June 2013	1 July 2014 – 30 June 2014	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

22. Therefore, the total fixed charge for the 2011/2012 TRS is \$178,213.25 (\$33,093.25 + \$145,120).

Variable charge

23. According to the TSO TRS deeds, the annual variable charge for each financial year is calculated by adding together the traffic charge and any other activity charge specified in Schedule 2 of the TSO TRS deeds. There are no additional activity charges in the 2011/12 TRS period.
24. Under both TSO TRS deeds, 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.
25. Table 2 below sets out the per minute call charges according to the former deed, and Table 3⁸ below displays the call charges according to the current deed.
26. Under both TSO TRS deeds, the chargeable call volume is the aggregate of the duration in seconds (without any session level rounding) recorded for all relay

⁵ Schedule 2 and Addendum 6 of the former deed.

⁶ It is assumed that the dates for the third financial period in Table 1 should be 1 July 2013 – 30 June 2014 (incorrectly printed in the deed).

⁷ Schedule 2 of the current deed contains an annual fixed charge for the captioned telephone service but this charge is not applicable as this service was not supplied during the TSO period.

⁸ The current deed includes a price adjustment formula for charges per call minute based on the Statistics New Zealand Producer Price Index (Telecommunications, Internet and Library Services). However, the first adjustment will be applied from 1 July 2012 and is not required for this draft TSO cost calculation determination.

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.

Table 2 – Former deed variable cost schedule⁹

Monthly call minute volume	Charge per call minute (1 July 2011 – 30 September 2011)
0 – 20,000	\$15.55
20,001 – 40,000	\$5.18
40,001 – 60,000	\$4.39
60,001+	\$4.17

Table 3 – Current deed variable cost schedule¹⁰

Monthly call minute volume	Charge per call minute (1 October 2011 – 30 June 2012)
0 – 20,000	\$8.00
20,001 – 40,000	\$5.11
40,001 – 60,000	\$4.05
60,001+	\$3.70

27. The annual variable charge includes activity charges as specified under Schedule 2 of the TSO TRS deeds. There were no activity charges for this TSO period.
28. Table 4 below shows the total cost calculation for the 2011/2012 TRS using the fixed charges outlined in paragraphs 19 to 22, the traffic charges listed in Table 2 and Table 3, and the chargeable minutes for each month during the year.

⁹ This table is from schedule 2 and Addendum 6 of the former deed.

¹⁰ This table is from schedule 2 of the current deed.

Table 4 – Total financial charges

	Month	Chargeable Mins	Charge Per Min	Variable Charge	Fixed Charge	Total
TRS Deed 2004 (Addendum 6, 2011)	Jul-11	31865	\$5.18	\$165,060.70	\$11,031.08	\$176,091.78
	Aug-11	30410	\$5.18	\$157,523.80	\$11,031.08	\$168,554.88
	Sep-11	26167	\$5.18	\$135,545.06	\$11,031.08	\$146,576.14
TRS Deed 2011	Oct-11	29473	\$5.11	\$150,607.03	\$16,124.44	\$166,731.47
	Nov-11	27024	\$5.11	\$138,092.64	\$16,124.44	\$154,217.08
	Dec-11	25518	\$5.11	\$130,396.98	\$16,124.44	\$146,521.42
	Jan-12	28530	\$5.11	\$145,788.30	\$16,124.44	\$161,912.74
	Feb-12	26752	\$5.11	\$136,702.72	\$16,124.44	\$152,827.16
	Mar-12	27370	\$5.11	\$139,860.70	\$16,124.44	\$155,985.14
	Apr-12	23880	\$5.11	\$122,026.80	\$16,124.44	\$138,151.24
	May-12	25110	\$5.11	\$128,312.10	\$16,124.44	\$144,436.54
	Jun-12	22775	\$5.11	\$116,380.25	\$16,124.44	\$132,504.69
	Total		324874		\$1,666,297.08	\$178,213.25

29. \$16,124.44 in Table 4 above represents the monthly fixed charge, calculated by dividing \$145,120 by the nine applicable months.

Specified amount

30. The specified amount¹¹ for the 2011/12 TSO period is \$1,844,510.33 excluding GST.

Performance rebate

31. A performance rebate (referred to in section 94G(c) and section 94K(1)(c) of the Act) may be set as part of the draft TSO cost calculation determination. The rebate constitutes the reduction (if any) in the amount that the TSO provider would receive from the Crown if its service performance does not comply with the TSO TRS deeds.
32. The performance rebate, described in Schedule 2 of the TSO TRS deeds, comprises of two categories of compliance assessment: service availability and service quality. The performance rebate is calculated by identifying the applicable discounts (if any) for each category and then subtracting them from the specified amount.¹²
33. Sprint has complied with both of the applicable service quality measures set out in the TSO TRS deeds. Therefore, there is no performance rebate for this TSO period.

¹¹ Section 94G(b) of the Act.

¹² Telecommunications Service Obligations Deed for Telecommunications Relay Services, 7 July 2011, Schedule 2, Performance Rebate.

Financial loss of use component and interim payment

34. Section 94K(1)(e) of the Act requires the Commission to calculate the TRS provider's specified amount with a financial loss of use component, calculated over the period commencing at the end of the TSO period (which is the end of the 2011/12 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 as at the date of the final TRS cost calculation determination.
35. However, the Crown and Sprint have agreed to an interim payment for the 2011/12 TRS because of significant delays in progressing the TRS cost calculation.¹³ On 21 February 2013, \$2,121,186.82 (\$1,844,510.28 plus GST) was paid to Sprint on behalf of the Crown by the Ministry of Business, Innovation and Employment.
36. Therefore, because Sprint has already received the specified amount, the Commission has tabulated the financial loss of use component over the period from the end of the 2011/12 financial year to the date of the interim payment (21 February 2013). The amount has been based on the 90-day bank bill rate as at 21 February 2013. The Commission considers this approach is consistent with the purposes of the provision in the Act enabling the financial loss of use component.
37. The 90-day bank bill rate for 21 February 2013 is 2.65%, and the number of days elapsed over the stipulated period is 236. This means the amount payable for the financial loss of use component is \$31,604.29.
38. The total amount payable by the Crown to the TRS provider is **\$1,876,114.62** (including the financial loss of use component and excluding GST).
39. Given that the Crown has made an interim payment of \$1,844,510.28¹⁴ (excluding GST) to Sprint, the outstanding payment required to be made by the Crown to Sprint is \$31,604.34 (excluding GST).

Summary

40. This paper calculates the amount payable by the Crown to Sprint for the 2011/12 TSO TRS.
41. The total amount payable was calculated by adding the fixed costs and variable costs, set out in the former and current deeds. No performance rebates were deducted because Sprint met the required service quality measures.

¹³ Section 91 of the Act requires the Commerce Commission to complete a liability allocation determination for the Telecommunications Development Levy (TDL) before finalising a TSO cost calculation for the same period. The 2011/12 TDL liability allocation determination has been significantly delayed due to the requirement for an addition implementation policy development process to support the Levy's first full year of operation.

¹⁴ The amount paid differs to the specified amount due to more detailed rounding by the Commission.

42. A financial loss of use component was then added to compensate Sprint for the period from 1 July 2012 until the interim payment was made on 21 February 2013.
43. The total amount payable by the Crown to the TRS provider is **\$1,876,114.62** (excluding GST).
44. The remaining payment required to be made by the Crown to Sprint is \$31,604.34 (excluding GST).

Appendix 1 – legal framework

The framework for the determination

45. 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.
46. 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.
47. 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 TSO TRS Deeds.
48. Section 94F relates to the preparation of a draft TSO cost calculation determination for the TRS and provides as follows:

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.
49. Section 94G sets out the matters that must be included in the Commission's draft TSO cost calculation determination for the TRS. As the TSO TRS deeds include 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.
50. 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. Section 94H provides as follows:

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).

51. 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. Section 94J provides as follows:

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.
52. Section 94K sets out the matters that must be included in the Commission’s final TSO cost calculation determination for the TRS. As the TSO TRS deeds include 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.