



COMMERCE COMMISSION

Final Cost Calculation Determination for TSO Instrument for Telecommunications Relay Services for the period between 1 July 2009 and 30 June 2010

Final Cost Calculation Determination under section 93C of the Telecommunications Act 2001 ('the Act') of matters set out in section 93E of the Act in the matter of Telecommunications Service Obligations for Telecommunications Relay Services for the period 1 July 2009 to 30 June 2010.

The Commission

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Date of Determination

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LIST OF DEFINED TERMS AND ABBREVIATIONS

Specified Amount	the total amount specified by the TSO Deed as payable by all liable persons to the TSO provider for each financial year of the TSO provider.
Sprint	Sprint International New Zealand Limited.
SQM	service quality measure.
STS	speech to speech service.
Telecom	Telecom New Zealand Limited.
TRS	telecommunications relay services.
TSO	Telecommunications Service Obligations.
TSO Deed	TSO Deed for TRS between the Crown and Sprint dated 9 July 2004, as amended from time to time.
TSO period	1 July 2009 to 30 June 2010, being the period to which this determination applies.
TSO Provider	telecommunications service obligation provider (Sprint for TRS).
TRS Provider	Sprint, the telecommunications relay service provider

EXECUTIVE SUMMARY

Introduction

- i.)* The Telecommunications Act 2001 ('the Act') regulates the supply of telecommunications services in New Zealand.
- ii.)* Sprint provides relay services under the TSO Deed to meet the telephone communication needs of deaf, hearing and speech impaired people.
- iii.)* The TSO Deed is a TSO instrument under section 70 of the Act. As a result, Sprint is compensated for the provision of the relay services by qualifying liable network operators (liable persons).
- iv.)* This Final TSO Cost Calculation Determination determines the dollar amount of the TSO Deed's Specified Amount and material information relating to the calculation of that amount.
- v.)* In a separate cost allocation determination, the Commission determined the proportion of the cost of supply of the services to be met by liable persons.

TRS TSO Charging Schedule

- vi.)* The TSO Deed specifies the basis for determining the total amount payable to Sprint for each year that Sprint provides the relay service.
- vii.)* The total amount payable to Sprint is calculated by deducting any performance rebate from the total annual charge specified in the TSO Deed. The total annual charge is composed of an annual fixed charge and an annual variable charge. The TSO Deed also provides for an agreed charging schedule and addendums which is used by the Commission in conjunction with the TRS call volumes to calculate the annual variable charge.

Liable Persons

- viii.)* The amount payable is borne by network operators who satisfy the requirements of a 'liable person'. The liable persons for the purposes of this determination are:
 - Airnet NZ Ltd;
 - CallPlus Limited;
 - Compass Communications Limited;
 - Orcon Internet Limited;
 - Link Telecom (NZ) Limited
 - Teamtalk Limited;
 - Teletraders (NZ) Limited
 - Telecom New Zealand Limited;
 - TelstraClear New Zealand Limited;
 - Two Degrees Mobile Limited;
 - Vodafone New Zealand Limited;
 - Woosh Wireless Limited; and
 - WorldxChange Communications Limited.

Amount Payable

- ix.) The Specified Amount of the TSO for the 2009/10 TSO period (consisting of the sum of the annual fixed charge and the annual usage charge) is \$2,224,124.95.
- x.) Table 1 shows the TSO-qualified revenue for the 2009/10 TSO period, each liable person's percentage of the total and the TRS TSO charge payable by each liable person for the period from 1 July 2009 to 30 June 2010.¹
- xi.) There were no performance rebates in the 2009/10 TSO period.

Table 1: Reported Carrier Liable Revenue TSO Charge: 1/7/2009-30/6/2010

Party	TSO Qualified Revenue	% of total	TRS TSO Charge (\$)	Loss of use of money (\$)	Total Amount Payable to Sprint (\$)
Telecom	\$2,510,468,000	66.554%	\$1,480,241.42	\$47,219.70	\$1,527,461.12
Vodafone	\$949,866,000	25.181%	\$560,067.29	\$17,866.15	\$577,933.43
TelstraClear	\$235,737,000	6.250%	\$138,997.06	\$4,434.01	\$143,431.07
2degrees	\$29,840,000	0.791%	\$17,594.49	\$561.26	\$18,155.75
Orcon	\$19,978,776	0.530%	\$11,780.04	\$375.78	\$12,155.82
WorldxChange	\$9,341,000	0.248%	\$5,507.71	\$175.70	\$5,683.41
CallPlus	\$8,027,595	0.213%	\$4,733.29	\$150.99	\$4,884.28
Compass	\$5,912,000	0.157%	\$3,485.88	\$111.20	\$3,597.08
Woosh	\$2,061,650	0.055%	\$1,215.61	\$38.78	\$1,254.38
Airnet	\$645,000	0.017%	\$380.31	\$12.13	\$392.44
Teamtalk	\$186,000	0.005%	\$109.67	\$3.50	\$113.17
Linktel	\$16,000	0.000%	\$9.43	\$0.30	\$9.73
Teletraders	\$4,666	0.000%	\$2.75	\$0.09	\$2.84
Total	\$3,772,083,687	100.00%	\$2,224,124.95	\$70,949.59	\$2,295,074.54

¹ The calculations to determine loss of use of money and the total amount payable to Sprint will be set out in the final cost calculation determination

INTRODUCTION

1. The Telecommunications Act 2001 ('the Act') regulates the supply of telecommunications services in New Zealand.
2. Under Part 3 of the Act, the Commission is required to produce separate TSO cost allocation and cost calculation determinations for the TSO Deed.
3. This document is the Final TSO Cost Calculation Determination made under section 93C of Part 3 of the Act in respect of the TSO Deed for the period from 1 July 2009 to 30 June 2010. This Final TSO Cost Calculation Determination is released under Part 3 of the Act and in accordance with the framework set out in Appendix 1 to this Determination.
4. This determination does not include any confidential material.

Cost Calculation Determination for the TRS TSO

The TSO Deed for Telecommunications Relay Services

5. The current TSO Deed requires the TSO Provider to:
 - provide a range of services including text to voice conversation, voice to text conversation and speech to speech relay;
 - meet the following service quality measures:
 - speed of answer for ordinary (non emergency) calls; and
 - call congestion for ordinary (non emergency) calls.
6. The TSO Deed was declared as a TSO instrument under section 70(2) of the Act.
7. As the TSO Deed contains a Specified Amount, the Commission is not required to determine the net cost to Sprint of complying with the TSO instrument.

THE SPECIFIED AMOUNT – THE REQUIREMENTS OF THE TSO DEED

8. The Specified Amount is calculated as the sum of an annual fixed charge and an annual variable charge, as set out in Schedule 2 of the TSO Deed. The total amount payable by liable persons is the Specified Amount less any performance rebate calculated in accordance with the TSO Deed.

ANNUAL FIXED CHARGE

9. The fixed charge is set out in Table 2 and corresponds to the financial year of the TSO provider under the Act. Financial Year 6 coincides with the period for this determination which is from 1 July 2009 to 30 June 2010.

Table 2: Fixed Charges (GST exclusive)²

	Financial Year 1	Financial Year 2	Financial Year 3	Financial Year 4	Financial Year 5	Financial Year 6
Fixed Charge	\$608,499	\$755,833	\$809,599	\$422,613	\$229,120	\$132,373

ANNUAL VARIABLE CHARGE

10. The annual variable charge for each financial year is computed by adding together the traffic charge and that of any other activity charge specified in Schedule 2 of the TSO Deed.

Traffic Charge

11. 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 as set out in Table 3.
12. 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.
13. In November 2009 a new addendum - Addendum Five - was added to the TSO TRS Deed. Addendum Five extended the duration of the Deed for a further 12 months (15 November 2009 to 15 November 2010) and adjusted the per minute charge for relay calls during the additional term.
14. The change in the per minute charge is outlined below in Table 3.

² Addendum Two of the Telecommunications Service Obligations Deed for Telecommunications Relay Services, 15 September 2006, clause 1.3

Table 3: Traffic Charges (GST exclusive)³

Monthly Call Minute Volume	Charge Per Call Minute (1/7/2009 – 14/11/2009)	Charge Per Call Minute (15/11/2009 – 30/6/2010)
0 – 20,000	\$14.73	\$15.55
20,001 – 40,000	\$4.91	\$5.18
40,001 – 60,000	\$4.16	\$4.39
60,001 +	\$3.95	\$4.17

Notes:

- The charge per minute applies only to relay calls.
- STS relay calls are relay calls for the purposes of this table.

Activity Charges

15. The activity charges specified under Schedule 2 of the Deed are as follows:

- **Supplementary Outreach Charge**

A charge of up to \$150,000 excluding GST per annum may be applied for the supply by the TSO Provider of additional quantities of outreach services (above the base quantities supplied that are recovered through the annual fixed charge) to promote the TRS and support TRS users. The extent to which such additional quantities of service are supplied shall be determined at the sole discretion of the Crown.

- **Trial Charge**

A charge may be applied for any service trial that the Crown requests and where the Crown and the TRS Provider have agreed the charge.

- **Other Charges**

A charge may be applied for a service or activity that the Crown requests and where the Crown and the TRS Provider have agreed the charge.

16. There were no activity charges for this TSO period.

PERFORMANCE REBATE

17. The performance rebate is set as part of the Final TSO Cost Calculation Determination for the TRS and constitutes the entire amount of the reduction (if any) in the amount that the TSO provider would receive from all liable persons and is referred to in section 93E(c) of the Act. The rebate takes account of whether the TSO provider's actual service performance complies with the TSO Deed.

18. The performance rebate is composed of two categories of compliance assessment: service availability and service quality. The performance rebate is computed by summing the applicable discounts, if any, for each category.⁴

³ Addendum Five of the Telecommunications Service Obligations Deed for Telecommunications Relay Services, November 2009, Schedule One.

⁴ Telecommunications Service Obligations Deed for Telecommunications Relay Services, 9 July 2004, Schedule 2, Performance Rebate

19. Sprint has complied with both of the applicable service quality measures set out in the Deed⁵. Therefore, performance rebates do not apply for the TSO period.
20. For the 2009/10 TSO period the Specified Amount for the TSO Deed is \$2,224,124.95, (exclusive of GST). This is the sum of the fixed amount in Table 5 and the variable amounts total from Table 4.

Table 4: Specified Variable Amounts

Month	Call Volume (Minutes)	Traffic Charge Per Call Minute	Total Usage Charges
Jul 2009	36,573	\$4.91	\$179,573.43
Aug 2009	33,613	\$4.91	\$165,039.83
Sep 2009	35,632	\$4.91	\$174,953.12
Oct 2009	35,472	\$4.91	\$174,167.52
Nov (1-14) 2009	15,067	\$4.91	\$73,978.97
Nov (15-30) 2009	18,244	\$5.18	\$94,503.92
Dec 2009	32,123	\$5.18	\$166,397.14
Jan 2010	28,675	\$5.18	\$148,536.50
Feb 2010	33,755	\$5.18	\$174,850.90
Mar 2010	39,171	\$5.18	\$202,905.78
Apr 2010	32,040	\$5.18	\$165,967.20
May 2010	34,295	\$5.18	\$177,648.10
Jun 2010	37,303	\$5.18	\$193,229.54
Total	411,963		\$2,091,751.95

Table 5: Specified Annual Fixed Charge⁶

Period	Fixed Charge
Financial Year 6	\$132,373

21. The Specified Amount of the TSO for the 2009/10 TSO period of \$2,224,124.95 consists of the sum of the totals from Table 4 and Table 5.

⁵ See Commerce Commission Media release of 10 September 2010

⁶ Addendum Two of the Telecommunications Service Obligations Deed for Telecommunications Relay Services, 15 September 2006, clause 1.3.

ALLOCATION OF TSO COST TO LIABLE PERSONS

22. The Specified Amount (which is required to be included in the determination under section 93E(b)) less the performance rebate (sections 93E(c)) is allocated amongst the liable persons. For the purpose of section 93E(b), the Specified Amount of the TRS TSO for the 2009/10 TSO period is \$2,224,124.95.
23. Section 93E(d) states that a final cost allocation determination must include “an amount payable by each liable person in relation to the TSO instrument to the TSO provider in respect of the financial year calculated in accordance with section 93F”.
24. The liable persons for this determination are:⁷
 - Airnet NZ Ltd;
 - CallPlus Limited;
 - Compass Communications Limited;
 - Orcon Internet Limited;
 - Link Telecom (NZ) Limited
 - Teamtalk Limited;
 - Teletraders (NZ) Limited
 - Telecom New Zealand Limited;
 - TelstraClear New Zealand Limited;
 - Two Degrees Mobile Limited;
 - Vodafone New Zealand Limited;
 - Woosh Wireless Limited; and
 - WorldxChange Communications Limited.
25. Table 6 shows the TSO-qualified revenue, the percentage of the total for each liable person and the TRS TSO charge payable by each liable person satisfying the requirements specified in section 93E and, in particular, section 93E(d) and (e). Performance rebates do not apply for the TSO period and, therefore, this Determination does not include a determination on the matters set out under section 93E(c).

Table 6 : Reported Carrier Liable Revenue and TSO Charge: 1/7/2009-30/6/2010

Party	TSO Qualified Revenue	% of total	TRS TSO Charge (\$)	Loss of use of money (\$)	Total Amount Payable to Sprint (\$)
Telecom	\$2,510,468,000	66.554%	\$1,480,241.42	\$47,219.70	\$1,527,461.12
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Teletraders	\$4,666	0.000%	\$2.75	\$0.09	\$2.84
Total	\$3,772,083,687	100.00%	\$2,224,124.95	\$70,949.59	\$2,295,074.54

⁷ Commerce Commission, *TSO Cost Allocation Determination for period 1 July 2008 to 30 June 2009*, 4 December 2009

Dated this 15 of December 2010

A handwritten signature in blue ink, consisting of a circular loop followed by a long, sweeping horizontal line that ends in a small hook.

Dr. Ross Patterson
Telecommunications Commissioner

APPENDIX 1:TRS TSO COST CALCULATION PROCEEDINGS

The Framework for this Final TSO Cost Calculation Determination

26. Section 70 deals with the declaration of TSO instruments. Subsection (1) of this section provides:
- The purpose of this section is to facilitate the supply of certain telecommunications services to groups of end-users within New Zealand to whom those telecommunications services may not otherwise be supplied on a commercial basis or at a price that is considered by the Minister to be affordable to those groups of end-users.
27. Part 3 of the Act is designed to facilitate 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.
28. Part 3 prescribes the annual procedures for determining the amounts payable by liable persons to the TSO provider in respect of each TSO instrument.
29. The Commission is required under section 80 to make an annual assessment of the TSO provider's compliance with the TSO Deed. This Determination does not address this matter and has been addressed in separate correspondence by the Commission.
30. Under section 81, every liable person must provide to the Commission the financial and other information specified by the Commission. Section 81 states:
- Liable persons and TSO provider must produce certain information to Commission**
- Not later than 60 working days after the end of each financial year of a TSO provider under a TSO instrument, every liable person in relation to the TSO instrument and (if the TSO instrument does not contain a specified amount) the TSO provider must provide to the Commission—
- (a) any prescribed information or, if there is no prescribed information, information specified by the Commission, for the purpose of enabling the Commission to prepare a draft determination under section 88(1)(a) and (b) and to make its determination under section 91(1)(a) and (b); and
 - (b) a report prepared by a qualified auditor that includes a statement of whether or not the information complies with—
 - (i) any prescribed requirements relating to that information; or
 - (ii) if there are no prescribed requirements, any requirements of the Commission.
31. Section 92 of the Act requires the Commission to make reasonable efforts to do the following things not later than 120 working days after the end of each financial year of a TSO provider under a TSO instrument:
- (a) prepare a draft TSO cost calculation determination;
 - (b) give public notice of that draft determination;
 - (c) include in the public notice the closing date for submissions, which must not be later than 20 working days after the date of giving public notice.
32. Section 93 of the Act provides as follows:

Requirements for draft TSO cost calculation determination

In preparing a draft TSO cost calculation determination of the matters referred to in section 93A(c), the Commission must consider the steps (if any) taken by the TSO provider

between the time of any notification under section 80(b) and 15 working days before public notice is given under section 92(b) to remedy any non-compliance by the TSO provider with the TSO instrument.

33. Section 93A sets out the matters that must be included in the Commission's draft TSO cost calculation determination. As the TSO Deed includes a Specified Amount, the draft determination need only include the following matters set out under section 93A(b) to (e):

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) in all cases, the amount (if any) by which the total amount that the TSO provider would receive from all liable persons 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 making the determination; and
- (e) the reasons for the determination.

34. The Commission released a draft TSO Cost Calculation Determination on 16 November 2010 and concluded its consultation on 30 November 2010.

35. Section 93C requires the Commission to make a final cost calculation determination for the TSO Deed and the matters that must be included in that determination are set out in section 93E. As the TSO Deed includes a Specified Amount section 93E(a) does not apply, and the Final TRS Cost Calculation Determination for the TSO period must include the following matters as set out under section 93E:

Matters to be included in final TSO cost calculation determination

A final cost calculation determination made under section 93C 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) in all cases, the amount (if any) by which the total amount that the TSO provider would receive from all liable persons in relation to the TSO instrument must be reduced because the TSO provider has not complied with the TSO instrument; and
- (d) an amount payable by each liable person in relation to the TSO instrument to the TSO provider in respect of the financial year calculated in accordance with section 93F; and
- (e) an amount payable by each liable person in relation to the TSO instrument to the TSO provider for the loss of use of the amount referred to in paragraph (c), calculated at the 90-day bank bill rate (as at the date of the final determination) for

Appendix 1:trs TSO cost calculation proceedings

the period commencing from the end of the TSO provider's financial year and ending with the date of the final determination.