

**Final Cost Calculation Determination for the
Telecommunications Relay Services TSO Instrument for the
period between 1 July 2020 and 30 June 2021
[2022] NZCC 24**

The Commission: Tristan Gilbertson
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List of defined terms and abbreviations

Act	Telecommunications Act 2001
CapTel	Captioned Telephone service
Deed	TSO deed for TRS between the Crown and Sprint dated 7 July 2011 (includes: Addendum One dated 27 September 2011, Addendum Two dated 15 February 2015, Addendum Three dated 3 July 2018, variation deed dated 3 April 2019 and variation deed dated 1 April 2020)
Draft determination	Draft cost calculation determination
Final determination	Final cost calculation determination
Sprint	Sprint International New Zealand
SQM	Service quality measure
TRS	Telecommunications Relay Services as described in the TSO TRS deed
TRS provider	Sprint, the telecommunications relay service provider until 1 February 2021
TSO	Telecommunications Service Obligations
TSO period	1 July 2020 to 30 June 2021, the period to which this determination applies
TSO provider	Telecommunications Service Obligations provider
Variation	Variation of TSO deed for TRS between the Crown and Sprint, dated 1 April 2020

Purpose

1. The purpose of this final cost calculation determination (final determination) is to specify the amount payable by the Crown to Sprint International New Zealand (Sprint) for providing Telecommunication Relay Services (TRS) for the period 1 July 2020 to 30 June 2021. The amount payable is calculated as the specified amount (the fixed charge plus the variable charge), less any performance rebate for the relevant period.

Executive summary

2. Sprint provided TRS under the “Telecommunications Service Obligations (TSO) deed for Telecommunications Relay Services (TRS)” (the deed) to meet the telephone communication needs of the deaf, deafblind, hearing impaired, and speech impaired from 7 July 2011. The deed was amended several times¹ and eventually terminated on 1 February 2021.
3. The deed is a TSO instrument under section 70 of the Telecommunications Act 2001 (Act). Section 71A of the Act states that a TSO instrument may specify the total amount payable by the Crown under the instrument for each financial year (the specified amount). The deed provides for a specified amount, which is the sum of the total annual fixed charge and total annual variable charge.² Under the deed, the total amount payable is the specified amount less any performance rebate.³
4. Section 94J of the Act requires the Commerce Commission (the Commission) to prepare a final TSO cost calculation determination in respect of each TSO instrument for each financial year.
5. Section 94K specifies the matters that must be included in such a final determination. In the case of the deed, the final determination must set out the dollar amount of the specified amount⁴ and the amount (if any) by which the total amount that the TSO provider would receive from the Crown must be reduced because the TSO provider has not complied with the TSO instrument.⁵ The deed provides that the performance rebate constitutes the entire amount of any such reduction.⁶
6. As such, the task of the Commission under sections 94J and 94K in relation to the deed is to determine the total amount payable by the Crown to Sprint for the TRS in each financial year. This total amount payable is the specified amount (the sum of

¹ The deed was amended by the following documents: Addendum 1 signed on 27 September 2011, Addendum 2 signed on 15 February 2015, Addendum 3 signed on 3 July 2018, a variation deed dated 3 April 2019, and a further variation deed dated 1 April 2020 which extended the term of the deed by one year until 30 June 2021. It also specified fixed and variable charges for the 2020/21 period.

² Clause 4 of the deed.

³ Clause 4 of the deed.

⁴ Section 94K(b) of the Act.

⁵ Section 94K(c) of the Act.

⁶ Schedule 2 of the deed.

the total annual fixed charge and total annual variable charge), less any performance rebate.

7. This final determination relates to Sprint's provision of TRS for the period 1 July 2020 to 30 June 2021 and sets out the amount payable by the Crown to Sprint for the 2020/21 TSO TRS under the deed. It also provides information relating to the calculation of that amount.
8. The Commission has determined that the amount payable by the Crown to Sprint for the 2020/21 TSO TRS is \$2,859,000.

Submissions

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 determination. The Commission gave public notice of its draft determination on 31 May 2022 and submissions closed on 15 June 2022. No submissions were received.

Cost calculation for the TSO TRS

10. The 2020 variation to the TRS deed required the TRS provider to:
 - 10.1 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 measure (SQMs):⁷
 - 10.1.1 *call congestion for ordinary (non-emergency) calls*: no more than 5% of calls to the TRS system should receive a busy signal.
 - 10.2 The variation also requires the TRS provider to meet the following SQMs for the Captioned Telephone (CapTel) service:
 - 10.2.1 *corrected text accuracy*: a minimum of 98% accuracy for testing levels, not live traffic; and
 - 10.2.2 *average transcription rate*: a minimum of 125 words per minute for testing levels, not live traffic.
11. Schedule 2 of the variation detailed a specified amount, calculated as the sum of an annual fixed charge and an annual variable charge.⁸
12. The amount payable to Sprint by the Crown is the specified amount, less any performance rebate calculated in accordance with the deed.⁹

⁷ Telecommunications Service Obligations deed for Telecommunications Relay Services, variation dated 1 April 2020, Schedule 3, Specified service quality measures.

⁸ Section 94K(b) of the Act stipulates that the final determination must contain the dollar amount resulting from the charging method specified in the deed.

⁹ Section 94K(c) of the Act requires a reduction of the amount which would otherwise have been due under the deed where there is non-compliance with the deed.

13. Clause 8.3 of the deed required the TRS provider to supply an annual audited report (annual 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 (and so determine the need for a performance rebate).¹⁰
14. The annual report must be provided within 40 working days of the end of the financial year. Under s 93 of the Act, the Commission is required (no later than 60 working days after the end of each financial year) to assess Sprint's compliance with the deed during that financial year and to notify Sprint and the Minister of any non-compliance.
15. Alongside the annual report, as outlined in the deed, Sprint was also to provide an independent auditor's report on whether the methodology and results in the TRS Provider's Assessment are appropriate to achieve a robust analysis of compliance with each of the SQMs.
16. The Commission has not received the annual report (and associated auditor's report) for 2020/21 from Sprint. MBIE, as the agency acting on behalf of the Crown in administering the contract with Sprint, would ordinarily receive the annual report from Sprint and provide it to the Commission. We are advised by MBIE that Sprint did not provide MBIE with a final annual report. As such, the Commission has had no option but to proceed with its statutory obligation to produce this final determination without receiving the annual report.
17. Despite being unable to use the annual report as our basis to assess whether Sprint has complied with the SQMs, we have nonetheless been able to obtain SQM information provided by Sprint as part of its monthly reporting obligations under the deed. This information, while unaudited, is the best information available to us to make an assessment of SQM compliance and to determine the performance rebate. Our calculation of the performance rebate (including the information used for that calculation) is explained in more detail below.
18. All charges listed in this final determination exclude GST.

Fixed charges

19. The annual fixed charge for conventional relay services under Schedule 2 of the variation for this TSO period is \$1,620,000.¹¹
20. The fixed charge is to be paid in monthly instalments until the end of the TSO period. If the deed is terminated early, the remainder of the fixed charge can either continue

¹⁰ This includes a self-assessment by the TRS provider of its compliance with the SQMs.

¹¹ In previous TRS TSO periods separate fixed charges were specified for conventional and CapTel services. You can find these figures in the 2019/20 TRS TSO determination accessible at https://comcom.govt.nz/__data/assets/pdf_file/0027/225783/TRS-TSO-draft-cost-calculation-determination-for-the-period-1-July-2019-to-30-June-2020-29-September-2020.pdf.

to be paid in monthly instalments, or in a lump sum, as specified in Schedule 2 of the variation.

Variable charges

21. The annual variable charge is stated in the variation to be \$177,000 per month.
22. As specified in Schedule 2 of the variation, the Crown is required to pay the TRS Provider on a monthly basis unless the deed is terminated, after which date the annual variable charge will no longer be payable.
23. The deed between the Crown and the TRS Provider was terminated on 1 February 2021, so variable charges were only paid between the months of July 2020 and January 2021 (inclusive).
24. The total variable charge is therefore calculated as the number of months the deed was active, multiplied by the monthly variable charge. As the deed was active for a seven-month period, the total variable charge is:

$$\$177,000 \times 7 = \$1,239,000$$

Specified amount

25. The specified amount for this TSO period is the total fixed charge plus the total variable charge, which comes to \$2,859,000. Table 1 in Appendix 1 outlines the breakdown of fixed and variable charges for the period. We have received written confirmation from MBIE that payments of invoices were made in line with obligations under the contract between Sprint and the Crown.

Performance rebate

26. 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.¹²
27. This price reduction, described in Schedule 2 of the variation 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.¹³
28. As we noted above, Sprint did not provide the annual report and audit report which we have in previous years used to assess whether Sprint has complied with all the applicable SQMs in the deed as listed in paragraph 10 above. However, we have been able to review the monthly reports provided by Sprint to MBIE under the

¹² See above, footnote 4.

¹³ Telecommunications Service Obligations Deed for Telecommunications Relay Services, 7 July 2011, Schedule 2, Performance Rebate.

variation for the months of July 2020 to January 2021.¹⁴ According to the information provided in these reports, Sprint complied with the SQMs during the relevant period.

29. In the absence of any information to suggest the monthly performance assessment reports do not provide an accurate report of compliance with the SQMs, including not receiving any information in submissions on our draft determination, there is no reason for us to conclude the SQMs were not met. Therefore, our final view is that no performance rebate was incurred for the TSO Period.

Summary

30. This final determination calculates the amount payable by the Crown to Sprint for the 2020/21 TSO TRS.
31. The amount payable was determined by calculating the specified amount (by adding the total annual fixed charge and variable charge), using the charges set out in the variation, less any performance rebate.
- 31.1 The total annual fixed charge is \$1,620,000;
- 31.2 The total annual variable charge is \$1,239,000;
- 31.3 The total specified amount is therefore \$2,859,000;
- 31.4 On the basis of the information available to us, we are satisfied that there were no performance rebates for the period; and
- 31.5 Therefore, the total amount payable by the Crown to the TRS provider is **\$2,859,000.**

¹⁴ TRS Monthly Reports from Sprint to MBIE for the months of January 2020 to December 2020, released under the Official Information Act, found at: <https://www.mbie.govt.nz/dmsdocument/18477-request-for-data-regarding-the-national-relay-service-annex-three-oiaresponse-pdf>; TRS Monthly Report from Sprint to MBIE for January 2021, provided by MBIE to the Commerce Commission; TRS Monthly Report from Sprint to MBIE for January 2021, provided by MBIE to the Commerce Commission.

Appendix 1 – Summary of charges

Table 1 – A summary of the monthly charges under the variation.

Month invoice is for	Annual Fixed Charge - monthly rate (\$1,620,000 per annum)	Annual Variable Charge - monthly rate	Total amount paid
Jul-20	\$135,000	\$177,000	\$312,000
Aug-20	\$135,000	\$177,000	\$312,000
Sep-20	\$135,000	\$177,000	\$312,000
Oct-20	\$135,000	\$177,000	\$312,000
Nov-20	\$135,000	\$177,000	\$312,000
Dec-20	\$135,000	\$177,000	\$312,000
Jan-21	\$135,000	\$177,000	\$312,000
Feb-21	\$135,000	N/A	\$135,000
Mar-21	\$135,000	N/A	\$135,000
Apr-21	\$135,000	N/A	\$135,000
May-21	\$135,000	N/A	\$135,000
Jun-21	\$135,000	N/A	\$135,000
	\$1,620,000	\$1,239,000	\$2,859,000

Appendix 2 – Legal framework

The framework for the determination

32. 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.
33. 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.
34. 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.
35. 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.

36. 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.

37. Section 94H of the Act requires the Commission to consider the steps taken (if any) by the TSO provider (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).

38. Section 94J set outs the requirements that the Commission must follow in preparing 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.

39. 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.