

Final Cost Calculation Determination for the Telecommunications Relay Services TSO Instrument for the period between 1 July 2018 and 30 June 2019

[2019] NZCC 15

The Commission:

Dr Stephen Gale
Dr Jill Walker
Elisabeth Welson
John Crawford

Date of final determination:

5 November 2019

CONTENTS

List of defined terms and abbreviations	3
Purpose	4
Executive summary	4
Background	4
Cost calculation for the TSO TRS	5
Fixed charges	6
Variable charges	6
Variable charges price adjustment formula	6
<i>Table 1 – Variable cost schedule (conventional relay services)</i>	<i>7</i>
<i>Table 2 – Variable cost schedule (CapTel service).....</i>	<i>7</i>
Specified amount	8
<i>Table 3 – Total financial charges for conventional relay services.....</i>	<i>8</i>
<i>Table 4 – Total financial charges for the CapTel service.....</i>	<i>9</i>
Performance rebate	9
Summary	10
Appendix 1 – Fixed charges	12
<i>Table 5 - Fixed charges (GST exclusive).....</i>	<i>12</i>
<i>Table 6 – Fixed charges for the CapTel service</i>	<i>12</i>
Appendix 2 – Legal framework	14
The framework for the determination.....	14

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 (including Addendum One, dated 27 September 2011, Addendum Two, dated 15 February 2015, Addendum Three, dated 3 July 2018, and Variation deed, dated 3 April 2019)
Draft determination	Draft cost calculation determination
Final determination	Final cost calculation determination
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 2018 to 30 June 2019, 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 providing Telecommunication Relay Services (TRS) for the period 1 July 2018 to 30 June 2019.

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 the TRS for the period 1 July 2018 to 30 June 2019.
3. 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. The Crown compensates Sprint for providing the relay services.
4. The relevant deed for the purpose of this final determination was entered into by Sprint and the Crown on 7 July 2011. It was amended by Addendum 1 signed on 27 September 2011, Addendum 2 signed on 15 February 2015, Addendum 3 signed on 3 July 2018, and Variation deed 4 signed on 3 April 2019. It is a TSO instrument under section 70 of the Act.
 - 4.1 Addendum 3 provided a minor alteration to the transition plan in preparation of the expiry of the deed and has no implications on the cost calculations.
 - 4.2 The Variation deed signed on 3 April 2019 extended the term of the deed by one year until 30 June 2020 and specifies fixed and variable charges for the 2019/20 period. The variation has no effect on this 2018/19 determination.
5. This final determination sets out the specified amount payable by the Crown to Sprint for the 2018/19 TSO TRS under the deed, and provides information relating to the calculation of that amount.
6. The Commerce Commission (Commission) has determined that the amount payable by the Crown to Sprint for the 2018/19 TSO TRS is \$2,458,194.30.¹

Background

7. The Act regulates the supply of telecommunications services in New Zealand.

¹ In our draft determination, the specified amount payable to Sprint for the 2018/19 TSO TRS was \$2,449,115.80. As noted in our draft determination, under section 94K(1)(e) of the Act, in calculating the final determination, we must include the additional amount payable for the loss of use of the specified amount. Consequently, the higher figure in this final determination (\$2,458,194.30) captures the additional amount payable for the time value of money over the period commencing at the end of the TSO period (30 June 2019) and ending on the date of the interim payment. We explain our basis for calculating this additional amount in paragraphs 38 to 41 below.

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 determination. The Commission published its draft determination on 3 September 2019 and submissions closed on 10 September 2019. 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 2018 to 30 June 2019.
11. This final determination does not include any confidential material.

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.³
14. The total amount payable to Sprint is the specified amount, less any performance rebate calculated in accordance with the deed.⁴
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

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

³ Section 94K(b) of the Act stipulates that the final determination must contain the dollar amount of the amount specified in the deed.

⁴ 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.

include the total billable minutes and sufficient information to enable the Commission to assess the TRS provider's compliance with the SQMs.⁵

16. The Commission received the annual audited TRS report for 2018/19 from Sprint on 9 August 2019.
17. All charges listed in this final determination exclude GST.

Fixed charges

18. The annual fixed charges for conventional relay services under Schedule 2 of the deed are shown in Table 5, in Appendix 1 of this final determination. There is no fixed charge for conventional relay services for this TSO period (1 July 2018 to 30 June 2019).
19. The annual fixed charge for the CapTel service for this TSO period is \$800,188 as shown in Table 6 (Year 8) in Appendix 1 of this final determination, taken from the amended Schedule 2 of the deed.
20. The combined annual fixed charge for conventional relay services and the CapTel service for this TSO period is therefore \$800,188.

Variable charges

21. The annual variable charge is calculated by adding together the traffic charge and any activity charge specified in Schedule 2 of the deed.
22. The traffic charge is determined by adding together the total call charges for each month of the financial year. The total call charge for a month is determined by multiplying the chargeable call volume (in whole minutes) for the month by the applicable per-minute charge.
23. The chargeable call volume is the combined 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

24. Schedule 2 of the deed also includes a price adjustment formula. The variable charge per call minute is adjusted in accordance with the Statistics New Zealand Producer Price Index, Administrative Services. The Producer Price index used in the calculation of the Variable Charges Price Adjustment Formula was changed in Addendum 2 of the deed to better reflect the dominant labour cost component for delivering relay services, with the replacement formula taking effect from 1 July 2015.⁶

⁵ This includes a self-assessment by the TRS provider of its compliance with the SQMs.

⁶ Previously, the price adjustment formula was calculated using the Statistics New Zealand Producer Price Index, Telecommunications, Internet and Library Services.

25. The price adjustment formula for this final determination uses the average index for June 2017, September 2017, December 2017, and March 2018, with a base index of March 2014:⁷

$$\text{Adjustment multiplier 2018} = \frac{(\text{Jun 2017} + \text{Sep 2017} + \text{Dec 2017} + \text{Mar 2018})/4}{\text{Mar 2014}}$$

26. This equates to an adjustment multiplier of 1.051, as can be seen below:

$$\text{Adjustment multiplier 2018} = \frac{(1116 + 1123 + 1125 + 1121)/4}{1067}$$

27. The multiplier is applied to the per-minute traffic charges listed in Schedule 2 of the deed to create a new set of 2018/19 charges for conventional relay services and the CapTel service, as set out in Table 1 and Table 2.⁸

Table 1 – Variable cost schedule (conventional relay services)

Monthly call minute volume	Charge per call min (\$) (1 July 2016 - 30 Jun 2017)	Charge per call min (\$) (1 July 2017 - 30 Jun 2018)	Charge per call min (\$) (1 July 2018 - 30 Jun 2019)
0-20,000	6.63	6.72	6.83
20,001-40,000	4.24	4.29	4.36
40,001-60,000	3.36	3.40	3.46
60,000+	3.07	3.11	3.16

Table 2 – Variable cost schedule (CapTel service)

Monthly call minute volume	Charge per call min (\$) (1 July 2016 - 30 Jun 2017)	Charge per call min (\$) (1 July 2017 - 30 Jun 2018)	Charge per call min (\$) (1 July 2018 - 30 Jun 2019)
12,500+	1.74	1.76	1.79

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

⁸ Variable cost schedules from earlier TSO periods can be found in the cost calculation determinations for each relevant period, available at <https://comcom.govt.nz/regulated-industries/telecommunications/industry-levy-and-service-obligations/telecommunications-service-obligations/previous-trs-cost-calculations>.

Specified amount

28. Table 3 shows the total cost calculation for the 2018/19 conventional relay services; based on the billable minutes for each month, the traffic charges listed in Table 1, and the fixed charge outlined in paragraph 18. As noted in paragraph 18, there is no fixed charge for this period.

Table 3 – Total financial charges for conventional relay services

Month	Total billable mins	Price per min (\$)	Variable charge (\$)	Fixed charge (\$)	Total amount due (\$)
Jul-18	20,162	\$4.36	\$87,906.32	\$0.00	\$87,906.32
Aug-18	19,147	\$6.83	\$130,774.01	\$0.00	\$130,774.01
Sep-18	16,947	\$6.83	\$115,748.01	\$0.00	\$115,748.01
Oct-18	16,824	\$6.83	\$114,907.92	\$0.00	\$114,907.92
Nov-18	18,323	\$6.83	\$125,146.09	\$0.00	\$125,146.09
Dec-18	15,785	\$6.83	\$107,811.55	\$0.00	\$107,811.55
Jan-19	19,639	\$6.83	\$134,134.37	\$0.00	\$134,134.37
Feb-19	19,137	\$6.83	\$130,705.71	\$0.00	\$130,705.71
Mar-19	20,973	\$4.36	\$91,442.28	\$0.00	\$91,442.28
Apr-19	18,977	\$6.83	\$129,612.91	\$0.00	\$129,612.91
May-19	20,580	\$4.36	\$89,728.80	\$0.00	\$89,728.80
Jun-19	17,481	\$6.83	\$119,395.23	\$0.00	\$119,395.23
Totals	223,975		\$1,377,313.20	\$0.00	\$1,377,313.20

29. 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 of Business, Innovation and Employment's TRS Contract Administrator (or designated alternate) attending the annual STARS conference, or similar events.⁹ There were no Activity Charges incurred for this TSO period.

⁹ Telecommunications Service Obligations Deed for Telecommunications Relay Services, 7 July 2011, Schedule 2, Activity Charges.

30. Table 4 shows the total cost calculation for the 2018/19 CapTel service, which is based on the billable minutes for each month, the traffic charge listed in Table 2, and the fixed charge outlined in paragraph 19.¹⁰

Table 4 – Total financial charges for the CapTel service

Month	Billable Captel mins ¹¹	Price per min (\$)	Variable charge (\$)	Fixed charge (\$)	Total amount due(\$)
Jul-18	15,624	\$1.79	\$27,966.96	\$66,682.33	\$94,649.29
Aug-18	15,772	\$1.79	\$28,231.88	\$66,682.33	\$94,914.21
Sep-18	14,569	\$1.79	\$26,078.51	\$66,682.33	\$92,760.84
Oct-18	14,708	\$1.79	\$26,327.32	\$66,682.33	\$93,009.65
Nov-18	12,103	\$1.79	\$21,664.37	\$66,682.33	\$88,346.70
Dec-18	11,756	\$1.79	\$21,043.24	\$66,682.33	\$87,725.57
Jan-19	11,492	\$1.79	\$20,570.68	\$66,682.33	\$87,253.01
Feb-19	9,672	\$1.79	\$17,312.88	\$66,682.33	\$83,995.21
Mar-19	11,613	\$1.79	\$20,787.27	\$66,682.33	\$87,469.60
Apr-19	11,121	\$1.79	\$19,906.59	\$66,682.33	\$86,588.92
May-19	13,365	\$1.79	\$23,923.35	\$66,682.33	\$90,605.68
Jun-19	9,945	\$1.79	\$17,801.55	\$66,682.33	\$84,483.88
Totals	151,740		\$271,614.60	\$800,188.00	\$1,071,802.60

31. The monthly fixed charge in Table 4 is calculated by dividing the annual fixed charge by 12.
32. The combined variable charge for conventional relay services (\$1,377,313.20) and CapTel (\$271,614.60) is \$1,648,927.80.
33. 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), which comes to \$2,449,115.80.

Performance rebate

34. 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
35. 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.¹³

¹⁰ Only CapTel minutes over 12,500 are billable and contribute to the variable charge.

¹¹ Minutes specified in this column are the minutes in excess of 12,500.

¹² See above, footnote 4.

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

36. 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.
37. Sprint's audited annual report 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

38. 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 2018/19 financial year) to the date of the final 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 determination.
39. However, the Crown and Sprint agreed to an interim payment for the 2018/19 TRS. On 31 October 2019, \$2,816,483.17 (the specified amount plus GST) was paid to Sprint on behalf of the Crown by the Ministry of Business, Innovation and Employment.
40. 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 2018/19 financial year to the date of the interim payment (31 October 2019). The amount is based on the 90-day bank bill rate at 31 October 2019. We consider this approach is consistent with the purpose of the provision in the Act enabling the financial loss-of-use component to be added to the amount payable by the Crown to the TSO provider.
41. The specified amount is \$2,449,115.80, the 90-date bank bill rate on 31 October 2019 was 1.10% per year, and the number of days elapsed over the period 30 June 2019 to 31 October 2019 is 123. This means the amount payable for the financial loss of use component is \$9,078.50.

Summary

42. This final determination calculates the amount payable by the Crown to Sprint for the 2018/19 TSO TRS.
43. 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. There were no Activity Charges incurred for this TSO period. There were also no price reductions because Sprint met all of the required SQMs.

43.1 The total annual fixed charge is \$800,188.00;

- 43.2 The total annual variable charge is \$1,648,927.80;
- 43.3 The loss of use component is \$9,078.50; and
- 43.4 The total amount payable by the Crown to the TRS provider is **\$2,458,194.30**.

Appendix 1 – Fixed charges

44. Tables 5 and 6 are applicable until 30 June 2019.

Table 5 - Fixed charges for conventional relay services (GST exclusive)¹⁴

	30 Sep 2011 – 30 June 2012	1 July 2012 – 30 June 2013	1 July 2013 – 30 June 2014 ¹⁵	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 – 30 June 2019
Fixed Charge	\$145,120	\$148,748	\$152,467	\$156,278	\$160,185	\$0	\$0	\$0

Table 6 – Fixed charges for the CapTel service¹⁶

	Year 1	Year 2	Year 3	Year 4 ¹⁷	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

¹⁴ Telecommunications Service Obligations Deed for Telecommunications Relay Services, 7 July 2011, Schedule 2, Annual Fixed Charge.

¹⁵ 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).

¹⁶ Telecommunications Service Obligations Deed for Telecommunications Relay Services, 7 July 2011, Schedule 2, Annual Fixed Charge.

¹⁷ 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.

45. The Variation deed signed 3 April 2019 deletes the fixed charges tables (tables 5, 6) and replaces them with tables 7 and 8 below. This will be applicable for the 2019/20 TRS cost calculations. The variation is effective on 01 July 2019.

Table 7 - Fixed charges for conventional relay services from 1 July 2019 (GST exclusive)¹⁸

									Year 9 1 July 2019 – 30 June 2020
Fixed Charge									\$222,852

Table 8 – Fixed charges for the CapTel service from 1 July 2019¹⁹

									Year 9 1 July 2019 – 30 June 2020
Fixed Charge									\$840,000

¹⁸ Variation deed (3 April 2019).

¹⁹ Variation deed (3 April 2019).

Appendix 2 – Legal framework

The framework for the determination

46. 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.
47. 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.
48. 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.
49. 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.

50. 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.

51. 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).

52. 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.

53. 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.