

**Final Cost Calculation Determination for the  
Telecommunications Relay Services TSO Instrument for the  
period between 1 July 2016 and 30 June 2017  
[2017] NZCC 23**

**The Commission:**

Dr Stephen Gale  
Elisabeth Welson  
Dr Jill Walker

**Date of determination:**

21 September 2017

















discounts (if any) for each category and then subtracting them from the specified amount.<sup>11</sup>

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.
36. 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**

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 2016/17 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 agreed to an interim payment for the 2016/17 TRS. On 12 September 2017, \$2,815,103.15 (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 2016/17 financial year to the date of the interim payment (12 September 2017). The amount is based on the 90-day bank bill rate at 12 September 2017. We consider this approach is consistent with the purposes 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.
40. The specified amount is \$2,447,915.78, the 90-day bank bill rate on 12 September 2017 was 1.94% per year, and the number of days elapsed over the stipulated period was 74. This means the amount payable for the financial loss of use component is \$9,628.02.

---

<sup>11</sup> Telecommunications Service Obligations Deed for Telecommunications Relay Services, 7 July 2011, Schedule 2, Performance Rebate.

**Summary**

41. This final determination calculates the amount payable by the Crown to Sprint for the 2016/17 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.
  - 42.1 The total annual fixed charge is \$761,631.00;
  - 42.2 The total annual variable charge is \$1,683,880.09;
  - 42.3 The annual updating charge is \$2,404.69;
  - 42.4 The loss of usage component is \$9,628.02; and
  - 42.5 The total amount payable by the Crown to the TRS provider is **\$2,457,543.80**.

## Appendix 1 – Fixed charges

**Table 5 - Fixed Charges (GST exclusive)<sup>12</sup>**

	30 Sep 2011 – 30 June 2012	1 July 2012 – 30 June 2013	1 July 2013 – 30 June 2014 <sup>13</sup>	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
<b>Fixed Charge</b>	\$145,120	\$148,748	\$152,467	\$156,278	\$160,185	\$0	\$0	\$0

**Table 6 – Fixed charges for the CapTel service<sup>14</sup>**

	Year 1	Year 2	Year 3	Year 4 <sup>15</sup>	Year 5	Year 6	Year 7	Year 8
<b>Fixed Charge</b>	\$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

<sup>12</sup> Telecommunications Service Obligations Deed for Telecommunications Relay Services, 7 July 2011, Schedule 2, Annual Fixed Charge.

<sup>13</sup> 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).

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

<sup>15</sup> 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

43. 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.
44. 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.
45. 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.
46. 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.

47. 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.

48. 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).

49. 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](#).

50. 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.