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Public version

**Final Cost Calculation Determination for the Telecommunications Relay
Services TSO Instrument for the period between 1 July 2012 and 30 June 2013
[2014] NZCC 15**

The Commission:

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Date of Final Determination:

17 June 2014

List of defined terms and abbreviations

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).
MRC	Monthly recurring charge.
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 2012 to 30 June 2013, 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 the provision of Telecommunications Relay Services (TRS) for the period 1 July 2012 to 30 June 2013.

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 2012 to 30 June 2013.
3. Sprint provides relay services under a TSO deed to meet the telephone communication needs of Deaf, deafblind, hearing impaired, and speech impaired people. Sprint is compensated for the provision of the TRS, by the Crown.
4. The relevant deed for the purpose of this final determination was entered into by Sprint and the Crown on 7 July 2011, and amended by an addendum signed on 27 September 2011. It is a TSO instrument under section 70 of the Act.
5. This final determination sets out the specified amount payable by the Crown to Sprint for the 2012/13 TSO TRS under the deed, and provides information relating to the calculation of that amount.^{1,2}
6. The Commerce Commission (Commission) has determined that the cost for the TRS for this TSO period is \$1,782,258.20. This final cost is made up of the scheduled amount determined in the draft cost calculation determination, which was released on 18 October 2013, plus two loss of usage components calculated in paragraphs 44 and 46 of this final determination.³

Background

7. 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 a cost calculation determination for the deed.
9. Under section 94F(1)(c) of the Act, the Commission is required to provide at least 20 working days for submissions after giving public notice of the draft cost calculation determination. 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 2012 to 30 June 2013.

¹ Section 94K(1)(b) of the Act.

² Section 71A(1) defines the specified amount.

³ TRS draft cost calculation determination, 18 October 2013, <http://www.comcom.govt.nz/dmsdocument/11195>.

11. This final determination does not include any confidential material.

Delay caused by the 2012/12 final TDL LAD

12. Section 91 of the Act requires the Commission to publicly disclose a final liability allocation determination (LAD) for the Telecommunications Development Levy (TDL) before publicly disclosing a final TSO cost calculation for the same period.
13. The 2012/13 TDL LAD was significantly delayed due to the investigation of a suspected compliance breach and a modification of our approach to the s79 extended definition of liable person. On 24 April 2014, after completing our compliance investigation and obtaining further information required from QLPs under the modified approach, we released a revised draft TDL LAD. We then released our final TDL LAD on 27 May 2014.
14. Therefore, despite releasing our draft determination for the TRS on 18 October 2013, and receiving no submissions, we have only been able to publish this final determination now.

Cost calculation for the TSO TRS

15. The deed requires the TRS provider to provide a range of conventional relay services including text-to-voice conversation, voice-to-text conversation, and speech-to-speech relay. The TRS provider must also meet the following service quality measures (SQMs):⁴
 - 15.1 speed of answer for ordinary (non-emergency) calls; and
 - 15.2 call congestion for ordinary (non-emergency) calls.
16. On 1 March 2013 a new Captioned Telephone (CapTel) service was introduced.⁵ The deed also requires the TRS provider to meet SQMs regarding the CapTel service. However, measurement of these SQMs will not commence until the first quarter following the initial 12 months of the service's operation.⁶
17. Schedule 2 of the deed details a specified amount, calculated as the sum of an annual fixed charge and an annual variable charge.
18. The total amount payable to Sprint is the specified amount, less any performance rebate calculated in accordance with the deed.
19. Clause 8.3 of the deed requires the TRS provider to supply an annual report on each financial year to the Crown and to the Commission. The annual report

⁴ Telecommunications Service Obligations Deed for Telecommunications Relay Services, 7 July 2011, Schedule 1, Services Description.

⁵ www.captel.co.nz.

⁶ Telecommunications Service Obligations Deed for Telecommunications Relay Services, 7 July 2011, Schedule 3, Specified Service Quality Measures.

must include total billable minutes and service quality performance measures, which are used for this final determination.

20. All charges listed in this final determination exclude GST.

Fixed charges

21. The annual fixed charge for conventional relay services for this TSO period is \$148,748. The fixed charges under Schedule 2 of the deed are shown in Table 1, in Attachment 1 of this final determination.
22. The fixed charge for the CapTel service for this TSO period is \$200,000. Table 2 (Year 2) in Attachment 1 of this final determination, taken from Schedule 2 of the deed, shows an annual fixed charge of \$600,000. However, Sprint will only receive four months of this fixed charge because CapTel was only introduced on 1 March 2013.
23. The combined (conventional relay services plus CapTel) annual fixed charge for this TSO period is therefore, \$348,748.

Variable charges

24. The annual variable charge for each financial year is calculated by adding together the traffic charge and any activity charge specified in Schedule 2 of the deed. There were no activity charges for this TSO period.
25. 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.
26. 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.

Variable charges price adjustment formula

27. Schedule 2 of the deed also includes a price adjustment formula, which is applied for the first time in this final determination. The per minute traffic charges are adjusted in accordance with the Statistics New Zealand Producer Price Index, Telecommunications, Internet and Library Services.
28. The price adjustment formula for this final determination uses the average index for June 2011, September 2011, December 2011, and March 2012, with a base index of March 2010:⁷

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. The formula

$$\text{Adjustment multiplier 2012} = \frac{(\text{Jun 2011} + \text{Sep 2011} + \text{Dec 2011} + \text{March 2012})/4}{\text{March 2010}}$$

29. This equates to an adjustment multiplier of 0.91 (rounded to two decimal places), as can be seen below. The multiplier is then applied to the per minute traffic charges listed in Schedule 2 of the deed to create a new set of 2012/13 charges for conventional relay services and the CapTel service. These can be seen in Table 3 and Table 4, below.

$$\begin{aligned} \text{Adjustment multiplier 2012} &= \frac{(962 + 936 + 914 + 911)/4}{1023} \\ &= 0.91 \end{aligned}$$

Table 3 – Variable cost schedule (conventional relay services)

Monthly call minute volume	Charge per call minute (\$) (30 Sep 2011 - 30 Jun 2012)	Charge per call minute (\$) (1 Jul 2012 - 30 Jun 2013)
0-20,000	8.00	7.28
20,001-40,000	5.11	4.65
40,001-60,000	4.05	3.68
60,001+	3.70	3.37

Table 4 – Variable cost schedule (CapTel service)

Monthly call minute volume	Charge per call minute (\$) (30 Sep 2011 - 30 Jun 2012)	Charge per call minute (\$) (1 Jul 2012 - 30 Jun 2013)
12,500+	2.10	1.91

Specified amount

30. Table 5 shows the total cost calculation for the 2012/13 conventional relay services, based on the fixed charge outlined in paragraph 21, the traffic charges listed in Table 3, and the chargeable minutes for each month.

requires a fixed denominator of the March 2010 index, and the numerator calculates the average index for June, September and December of the year preceding the TRS year.

Table 5 – Total financial charges for conventional relay services

Month	Total billable mins	Price per min (\$)	Variable charge (\$)	Fixed charge (\$)	Total amount due (\$)
Jul-12	25,339	4.65	117,826.35	12,395.67	130,222.02
Aug-12	23,686	4.65	110,139.90	12,395.67	122,535.57
Sep-12	22,729	4.65	105,689.85	12,395.67	118,085.52
Oct-12	23,831	4.65	110,814.15	12,395.67	123,209.82
Nov-12	25,438	4.65	118,286.70	12,395.67	130,682.37
Dec-12	23,872	4.65	111,004.80	12,395.67	123,400.47
Jan-13	23,792	4.65	110,632.80	12,395.67	123,028.47
Feb-13	23,081	4.65	107,326.65	12,395.67	119,722.32
Mar-13	24,011	4.65	111,651.15	12,395.67	124,046.82
Apr-13	24,617	4.65	114,469.05	12,395.67	126,864.72
May-13	25,642	4.65	119,235.30	12,395.67	131,630.97
Jun-13	24,274	4.65	112,874.10	12,395.67	125,269.77
Totals	290,312		\$1,349,950.80	\$148,748.00	\$1,498,698.80

31. The monthly fixed charge in Table 5 is calculated by dividing the annual fixed charge of \$148,748 by 12 and is rounded to two decimal points.
32. Table 6 shows the total cost calculation for the 2012/13 CapTel service, based on the fixed charge outlined in paragraph 22, the traffic charge listed in Table 4, and the chargeable minutes for each month.

Table 6 – Total financial charges for the CapTel service

Month	Billable mins > 12,500	Price per min (\$)	Variable charge (\$)	Fixed charge (\$)	Total amount due (\$)
Mar-13	0	1.91	0.00	50,000.00	50,000.00
Apr-13	7,251	1.91	13,849.41	50,000.00	63,849.41
May-13	12,365	1.91	23,617.15	50,000.00	73,617.15
Jun-13	12,158	1.91	23,221.78	50,000.00	73,221.78
Totals	31,774		\$60,688.34	\$200,000.00	\$260,688.34

33. Only billable CapTel minutes over 12,500 contribute to the variable charge.
34. The combined variable charge for conventional relay services and CapTel is \$1,410,639.14 (\$1,349,950.80 + \$60,688.34).
35. 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 is \$1,759,387.14.⁸

Performance rebate

36. A performance rebate (referred to in section 94G(c) and section 94K(1)(c) of the Act) may be set as part of the final 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 deed.

⁸ Section 94K(1)(b) of the Act.

37. The performance rebate, described in Schedule 2 of the deed, takes account 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.⁹
38. 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.
39. Sprint has complied with both of the applicable SQMs in the deed as listed in paragraph 15 of this final determination. As mentioned in paragraph 16, the CapTel SQMs will not be assessed until the first quarter following the initial 12 months of this service's operation.
40. Therefore, there is no performance rebate for this TSO period.

Financial loss of use component and interim payment

41. 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 (the end of the 2012/13 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.
42. However, the Crown and Sprint agreed to an interim payment for the 2012/13 TRS because of the significant delay (as mentioned in paragraphs 12-14) in finalising the TRS cost calculation. On 17 December 2013, the specified amount was paid to Sprint on behalf of the Crown by the Ministry of Business, Innovation and Employment.
43. Therefore, because Sprint has already received the specified amount, the Commission has calculated the financial loss of use component over the period from the end of the 2012/13 financial year (1 July 2013) to the date of the interim payment (17 December 2013). The amount has been based on the 90-day bank bill rate at 17 December 2013. The Commission considers that this approach is consistent with the purposes of the provision in the Act that enables the financial loss of use component.

⁹ Telecommunications Service Obligations Deed for Telecommunications Relay Services, 7 July 2011, Schedule 2, Performance Rebate.

44. The 90-day bank bill rate on 17 December 2013 was 2.70% per year, and the number of days elapsed over the stipulated period was 170. This means the amount payable for the financial loss of use component is \$22,124.90.
45. Due to the delay in the publication of the final TRS, Sprint has been disadvantaged by not receiving its loss of usage amount until now. We, therefore, consider that it would be consistent with s94K (1)(e) of the Act to add interest on that loss of usage amount using the 90-day bank bill rate.
46. The 90-day bank bill rate on 16 June 2014 was 3.57% per year, and the number of days elapsed was 181. This means the additional loss of use component is \$391.68.
47. The total amount payable by the Crown to the TRS provider is \$1,782,258.20 (the specified amount of \$1,759,387.14 plus the two loss of use components of \$22,124.90 and \$391.68).
48. Since the Crown has already paid the specified amount to Sprint, the outstanding payment required to be made by the Crown to Sprint is the two loss of usage components, which is \$22,516.58 (\$22,124.90 + \$391.68).

Summary

49. This paper calculates the amount payable by the Crown to Sprint for the 2012/13 TSO TRS.
50. The total amount payable by the Crown to the TRS provider is the specified amount and the two loss of use components.
51. The total amount payable was calculated by adding the total annual fixed costs and variable costs for conventional relay services and the new CapTel service, using the charges set out in the deed. No performance rebates were deducted because Sprint met the required service quality measures. Two loss of usage components were also added.
52. The total annual fixed charge is \$348,748.
53. The total annual variable charge is \$1,410,639.14.
54. Therefore, the specified amount is \$1,759,387.14.
55. The two loss of usage components equal \$22,516.58 (\$21,124.90 plus \$391.68).
56. The specified amount has already been paid, so the remaining amount to be paid by the Crown to the TRS provider is the two loss of usage components, which is \$22,516.58 (\$21,124.90 plus \$391.68).

Attachment 1 – fixed charges

Table 1 - Fixed Charges (GST exclusive)¹⁰

	30 Sep 2011 – 30 June 2012	1 July 2012 – 30 June 2013	1 July 2013 – 30 June 2014 ¹¹	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

Table 2 – Fixed charges for the CapTel service¹²

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8
Fixed Charge	\$360,000	\$600,000	\$615,000	\$630,375	\$646,134	\$662,288	\$678,845	\$695,816

¹⁰ Telecommunications Service Obligations Deed for Telecommunications Relay Services, 7 July 2011, Schedule 2, Annual Fixed Charge.

¹¹ 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 as 1 July 2014 – 30 June 2014).

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

Attachment 2 – legal framework

The framework for the determination

57. Part 3 of the Act facilitates the supply of certain telecommunications services to groups of end-users who may not otherwise be supplied with those services on a commercial basis or at an affordable price.
58. 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.
59. 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.
60. 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.
61. 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.
62. Section 94H 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).

63. 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.

64. 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 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.