



COMMERCE COMMISSION

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

Draft Cost Calculation Determination under section 93A of the Telecommunications Act 2001 ('the Act') of matters set out in section 93A and 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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Anita Mazzoleni
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Date of Determination

16 November 2009

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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 draft 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;
 - Telecom New Zealand Limited;
 - Teletraders(NZ) Ltd
 - 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 variable 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 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	tba	tba
Vodafone	\$949,866,000	25.181%	\$560,067.29	tba	tba
TelstraClear	\$235,737,000	6.250%	\$138,997.06	tba	tba
2degrees	\$29,840,000	0.791%	\$17,594.49	tba	tba
Orcon	\$19,978,776	0.530%	\$11,780.04	tba	tba
WorldxChange	\$9,341,000	0.248%	\$5,507.71	tba	tba
CallPlus	\$8,027,595	0.213%	\$4,733.29	tba	tba
Compass	\$5,912,000	0.157%	\$3,485.88	tba	tba
Woosh	\$2,061,650	0.055%	\$1,215.61	tba	tba
Airnet	\$645,000	0.017%	\$380.31	tba	tba
Teamtalk	\$186,000	0.005%	\$109.67	tba	tba
Linktel	\$16,000	0.000%	\$9.43	tba	tba
Teletraders	\$4,666	0.000%	\$2.75	tba	tba
Total	\$3,772,083,687	100.00%	\$2,224,124.95	tba	tba

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 draft TSO Cost Calculation Determination made under section 92 of Part 3 of the Act in respect of the TSO Deed for the TSO period.
4. The closing date for submissions on the draft TSO Cost Calculation Determination is 5pm, 30 November 2010. Submissions should be sent by email to: daniel.vincent@comcom.govt.nz.
5. This determination does not include any confidential material.

Cost Calculation Determination for the TRS TSO

The TSO Deed for Telecommunications Relay Services

6. 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.
7. The TSO Deed was declared as a TSO instrument under section 70(2) of the Act.
8. 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

9. 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

10. 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

11. 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

12. 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.
13. 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.
14. 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.
15. 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

16. 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.
17. There were no activity charges for this TSO period.
18. The Crown and Sprint came to an agreement for Sprint to provide a trial video relay service (VRS). This agreement is outlined in Addendum Four of the Telecommunications Service Obligations (TSO) Deed for Telecommunications Relay Services. This trial is funded directly by the Crown and is not subject to any assessment by the Commerce Commission.

PERFORMANCE REBATE

19. The performance rebate is set as part of the TSO 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 93A(c) and section 93E(c) of the Act. The rebate takes account of whether the TSO provider's actual service performance complies with the TSO Deed.

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

20. 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
21. Sprint has complied with both of the applicable service quality measures set out in the Deed. Therefore, performance rebates do not apply for the TSO period.
22. 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 Charge⁵

Period	Fixed Charge
Financial Year 6	\$132,373

23. 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.

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

⁵ 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

24. The Specified Amount (which is required to be included in the determination under section 93A(b) and section 93E(b)) less the performance rebate (sections 93A(c)) is allocated amongst the liable persons.
25. 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”.
26. The liable persons for this determination are:⁶
- Airnet NZ Ltd;
 - CallPlus Limited;
 - Compass Communications Limited;
 - Orcon Internet Limited;
 - Link Telecom (NZ) Limited
 - Teamtalk Limited;
 - Telecom New Zealand Limited;
 - Teletraders(NZ) Ltd
 - TelstraClear New Zealand Limited;
 - Two Degrees Mobile Limited;
 - Vodafone New Zealand Limited;
 - Woosh Wireless Limited; and
 - WorldxChange Communications Limited.
27. Table 6 shows the TSO-qualified revenue, the percentage of the total for each liable person and the TRS TSO charge satisfying the requirements specified in section 93A and section 93E.

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	tba	tba
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Teletraders	\$4,666	0.000%	\$2.75	tba	tba
Total	\$3,772,083,687	100.00%	\$2,224,124.95	tba	tba

⁶ Commerce Commission, *Draft TSO Cost Allocation Determination for period 1 July 2009 to 30 June 2010*, 16 November 2010.

APPENDIX 1 – LEGAL FRAMEWORK

The Framework for the Determination

28. 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.
29. Part 3 prescribes the annual procedures for determining the amounts payable by liable persons to the TSO provider in respect of each TSO instrument.
30. The Commission is required under section 80 to make an annual assessment of the TSO provider's compliance with the TSO Deed.
31. 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.
32. 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.
 33. 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.

34. 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.