

§ 54.1017

credit draw certificate, shall be sufficient for a draw on the standby letter of credit.

[82 FR 15450, Mar. 28, 2017, as amended at 82 FR 16297, Apr. 4, 2017]

EFFECTIVE DATE NOTES: 1. At 82 FR 15450, Mar. 28, 2017, § 54.1016 was added. This section contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

2. At 83 FR 17942, Apr. 25, 2018, § 54.1016 was amended by revising paragraph (a)(1)(ii) and will not become effective until approval has been given by the Office of Management and Budget.

§ 54.1017 Compliance for Mobility Fund Phase II.

(a) Mobile eligible telecommunications carriers subject to defined build-out milestones in § 54.1015 must notify the Commission and USAC, and the relevant state, U.S. Territory, or Tribal government, if applicable, within ten (10) business days after the applicable deadline if they have failed to meet a build-out milestone.

(1) *Interim build-out milestones.* Upon notification that a mobile eligible telecommunications carrier has defaulted on an interim build-out milestone after it has begun receiving Mobility Fund Phase II support, the Wireline Competition Bureau or Wireless Telecommunications Bureau will issue a letter evidencing the default. For purposes of determining whether a default has occurred, any service a mobile eligible telecommunications carrier offers must meet the performance obligations in § 54.1015(a)(1) and (2). The issuance of this letter shall initiate reporting obligations and withholding of a percentage of the mobile eligible telecommunication carrier's total monthly Mobility Fund Phase II support, if applicable, starting the month following the issuance of the letter:

(i) *Tier 1.* If a mobile eligible telecommunications carrier has a compliance gap of at least five (5) percent but less than 15 percent of the eligible square miles that the mobile eligible telecommunications carrier is required to have covered by the relevant interim milestone at the state level, the Wireline Competition Bureau or Wireless Telecommunications Bureau will issue a letter to that effect. Starting

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three (3) months after the issuance of this letter, the mobile eligible telecommunications carrier will be required to file a report every three (3) months identifying the eligible square miles to which the mobile eligible telecommunications carrier has newly deployed facilities capable of meeting the requisite Mobility Fund Phase II requirements at the state level in the previous quarter. Mobile eligible telecommunications carriers that do not file these quarterly reports on time will be subject to support reductions as specified in § 54.1019(f). The mobile eligible telecommunications carrier must continue to file quarterly reports until the mobile eligible telecommunications carrier reports that it has reduced the compliance gap to less than five (5) percent of the eligible square miles for that interim milestone at the state level and the Wireline Competition Bureau or Wireless Telecommunications Bureau issues a letter to that effect.

(ii) *Tier 2.* If a mobile eligible telecommunications carrier has a compliance gap of at least 15 percent but less than 25 percent of the eligible square miles that the mobile eligible telecommunications carrier is required to have covered by the interim milestone at the state level, USAC will withhold 15 percent of the mobile eligible telecommunications carrier's monthly support for that state and the mobile eligible telecommunications carrier will be required to file quarterly reports. Once the mobile eligible telecommunications carrier has reported that it has reduced the compliance gap to less than 15 percent of the eligible square miles for that interim milestone at the state level, the Wireline Competition Bureau or Wireless Telecommunications Bureau will issue a letter to that effect, and the mobile eligible telecommunications carrier will then move to Tier 1 status.

(iii) *Tier 3.* If a mobile eligible telecommunications carrier has a compliance gap of at least 25 percent but less than 50 percent of the eligible square miles that the mobile eligible telecommunications carrier is required to have covered by the interim milestone at the state level, USAC will withhold

25 percent of the mobile eligible telecommunications carrier's monthly support for that state and the mobile eligible telecommunications carrier will be required to file quarterly reports. Once the mobile eligible telecommunications carrier has reported that it has reduced the compliance gap to less than 25 percent of the eligible square miles for that interim milestone at the state level, the Wireline Competition Bureau or Wireless Telecommunications Bureau will issue a letter to that effect, and the mobile eligible telecommunications carrier will move to Tier 2 status.

(iv) *Tier 4.* If a mobile eligible telecommunications carrier has a compliance gap of 50 percent or more of the eligible square miles that the mobile eligible telecommunications carrier is required to have covered by the interim milestone at the state level:

(A) USAC will withhold 50 percent of the mobile eligible telecommunications carrier's monthly support for that state, and the mobile eligible telecommunications carrier will be required to file quarterly reports. As with the other tiers, as the mobile eligible telecommunications carrier reports that it has lessened the extent of its non-compliance, and the Wireline Competition Bureau or Wireless Telecommunications Bureau issues a letter to that effect, it will move down the tiers until it reaches Tier 1 (or no longer is out of compliance with the relevant interim milestone).

(B) If, after having 50 percent of its support withheld for six (6) months, the mobile eligible telecommunications carrier has not reported that it has a compliance gap of less than 50 percent, USAC will withhold 100 percent of the mobile eligible telecommunications carrier's monthly support for the state and will commence a recovery action for a percentage of support that is equal to the mobile eligible telecommunications carrier's compliance gap plus 10 percent of the mobile eligible telecommunications carrier's support that has been disbursed to that date.

(v) *Restoration of full support.* If at any point during the support term, the mobile eligible telecommunications carrier reports that it is eligible for

Tier 1 status, it will have its support fully restored, USAC will repay any funds that were recovered or withheld, and it will move to Tier 1 status.

(2) *Final milestone.* Upon notification that the mobile eligible telecommunications carrier has not met a final milestone, the mobile eligible telecommunications carrier will have twelve (12) months from the date of the final milestone deadline to come into full compliance with this milestone.

(i) If the mobile eligible telecommunications carrier does not report that it has come into full compliance with this milestone within twelve (12) months because it fails to meet the 85 percent benchmark (even if it meets the 75 percent benchmark for some or all the census block group(s) or census tract(s)), the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter, and USAC will recover disbursement(s) in an amount of support that is equal to 1.89 multiplied by the average amount of support the mobile eligible telecommunications carrier received per eligible square mile in the state over the six year period multiplied by the number of square miles unserved in the mobile eligible telecommunications carrier's winning areas in the state that would be required to meet the 85 percent benchmark, plus 10 percent of the mobile eligible telecommunications carrier's total Mobility Fund Phase II support received in the state over the six-year period for deployment. After the mobile eligible telecommunications carrier has paid the calculated recovery amount for failure to comply with the final deployment milestone, the Bureaus will calculate a reduced support payment for the remaining support term based on the percentage of deployment coverage completed. The reduced ongoing annual support amount will be the total of the mobile eligible telecommunications carrier's original winning bid amounts for annual support in the state multiplied by the sum of the actual deployment percentage plus 15 percent (*i.e.*, the difference between 100 percent coverage and the required 85 percent minimum coverage), or (annual support) * (percentage covered + 0.15). If at the end of six months the mobile eligible

telecommunications carrier has not fully paid back the support for missing the relevant 85 percent benchmark, the mobile eligible telecommunications carrier shall be liable for repayment of all the support that has been disbursed to the mobile eligible telecommunications carrier for that state, the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter to that effect, and USAC will draw on the letter(s) of credit to recover all the support that has been disbursed to the mobile eligible telecommunications carrier for that state.

(ii) If the mobile eligible telecommunications carrier does not report that it has come into full compliance with this milestone within twelve (12) months because it fails to meet the 75 percent benchmark(s) for any census block group(s) or census tract(s) in the state at the final milestone (even if it meets the 85 percent statewide benchmark), the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter for any such census block group(s) or census tract(s), and USAC will recover disbursement(s) in an amount of support that is equal to 1.89 multiplied by the average amount of support the mobile eligible telecommunications carrier received per eligible square mile in the census block group(s) or census tract(s) in the state over the six year period multiplied by the number of square miles unserved in each of the mobile eligible telecommunications carrier's winning census block group(s) or census tract(s) in the state that would be required to meet their respective 75 percent benchmarks, plus 10 percent of the mobile eligible telecommunications carrier's total Mobility Fund Phase II support received in the relevant census block group(s) or census tract(s) over the six-year period for deployment. The mobile eligible telecommunications carrier will have six months to repay the support USAC seeks to recover. After the mobile eligible telecommunications carrier has paid the calculated recovery amount, the Bureaus will calculate a reduced support payment for the remaining support term. The reduced ongoing annual support amount will be the mobile

eligible telecommunications carrier's original winning bid amount for annual support in any such census block group or census tract, multiplied by the sum of the actual deployment percentage plus 25 percent (*i.e.*, the difference between 100 percent coverage and the required 75 percent minimum coverage), or (annual support) * (percentage covered + 0.25). If at the end of six months the mobile eligible telecommunications carrier has not fully paid back the support for missing the relevant 75 percent benchmark(s), the mobile eligible telecommunications carrier shall be liable for repayment of all the support that has been disbursed to the mobile eligible telecommunications carrier for that state, the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter to that effect, and USAC will draw on the letter(s) of credit to recover all the support that has been disbursed to the mobile eligible telecommunications carrier for that state. In the event that USAC draws on a letter of credit to recover all the support that has been disbursed to the mobile eligible telecommunications carrier for a state, the mobile eligible telecommunications carrier's participation in Mobility Fund Phase II in that state will immediately end and no further support will be paid.

(3) *Compliance reviews.* If, subsequent to the mobile eligible telecommunications carrier's final milestone but during the remaining support term, USAC determines in the course of a compliance review that the mobile eligible telecommunications carrier does not have sufficient evidence to demonstrate that it is offering service to the required percentage of square miles by census block group or census tract, or state, USAC shall withhold support for a period not to exceed six months until the mobile eligible telecommunications carrier demonstrates that it is again providing the requisite service to the required percentage of square miles. Once the mobile eligible telecommunications carrier demonstrates that it is providing the requisite service to the required percentage of square

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miles and USAC has verified the demonstration, USAC will pay any withheld support and resume ongoing disbursements. If the mobile eligible telecommunications carrier does not provide a verifiable demonstration of coverage within the permitted six-month period, USAC shall recover an amount of support that is equal to 1.89 times the average amount of support per square mile received in the winning bid area over the six-year deployment period for the relevant number of square miles for which the mobile eligible telecommunications carrier has failed to produce sufficient evidence, plus 10 percent of the mobile eligible telecommunications carrier's total support received in that winning bid area over the six-year deployment time period, and will calculate a reduced ongoing annual support amount as set out in paragraphs (a)(2)(i) and (ii) of this section, as appropriate.

(b) [Reserved]

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§ 54.1018 Mobility Fund Phase II disbursements.

(a) A winning bidder for Mobility Fund Phase II support will be advised by public notice whether it has been authorized to receive such support. The public notice will detail how disbursements will be made.

(b) Mobility Fund Phase II support will be available for monthly disbursement to a winning bidder authorized to receive such support for ten years from the first day of the month that follows the month in which the Mobility Fund Phase II auction closes.

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§ 54.1019 Annual reports.

(a) A winning bidder authorized to receive Mobility Fund Phase II support shall submit an annual report no later than July 1 in each year for the ten (10) years after it is so authorized.

(b) The party submitting the annual report must certify that it has been au-

thorized to do so by the winning bidder.

(c) Each annual report shall be submitted to the Office of the Secretary of the Commission, clearly referencing the appropriate docket for Mobility Fund Phase II reporting; the Administrator; and the relevant state commissions, relevant authority in a U.S. Territory, or Tribal governments, as appropriate, until such time that the Administrator announces that annual reports shall be filed solely via the Administrator's online portal.

(d) In each annual report, a recipient of Mobility Fund Phase II support shall certify that it is in compliance with all requirements for receipt of such support to continue receiving Mobility Fund Phase II disbursements.

(e) Winning bidders have a continuing obligation to maintain the accuracy and completeness of the information provided in their long-form applications and their annual reports. All winning bidders shall provide information about any substantial change that may be of decisional significance regarding their eligibility for Mobility Fund Phase II support and compliance with Mobility Fund Phase II requirements as an update to their annual report submitted to the entities listed in § 54.1019(c). Such notification of a substantial change, including any reduction in the percentage of eligible square miles being served or any failure to comply with any of the Mobility Fund Phase II requirements, shall be submitted within ten (10) business days after the reportable event occurs.

(f) In order for a recipient of Mobility Fund Phase II support to continue to receive support for the following calendar year, it must submit the annual report required by this section annually by July 1 of each year. Mobile eligible telecommunications carriers that file their reports after the July 1 deadline shall receive a reduction in support pursuant to the following schedule:

(1) A mobile eligible telecommunications carrier that files after the July 1 deadline, but by July 8, will have its support reduced in an amount equivalent to seven (7) days of support;

(2) A mobile eligible telecommunications carrier that files on or after