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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UT 154

In the Matter of	)	
	)	
CENTURYTEL OF OREGON, INC.	)	ORDER
	)	
Proposed Tariff for Telecommunications	)	
Service (Advice No. 237).	)	

DISPOSITION: TARIFF PERMANENTLY SUSPENDED

Background. On July 12, 2002, CenturyTel of Oregon, Inc., and CenturyTel of Eastern Oregon, Inc. (collectively, CenturyTel), filed Tariff Advice No. 237 seeking modifications to its Intrastate Access Service Tariff, Oregon P.U.C. AC-4. The proposed modifications would apply to security deposits posted by interexchange carriers (IXCs) purchasing intrastate access services from CenturyTel. Following discussions with Commission Staff, CenturyTel submitted modified proposed tariff sheets incorporating language changes suggested by Staff (Tariff Advice No. 237, Supplement A submitted August 12, 2002). At the August 20, 2002, Regular Public Meeting, the Commission voted to suspend the tariff sheets in order to allow further review. Docket No. UT 154 was established for this purpose. Opposition to the proposed changes to CenturyTel's deposit requirements was submitted by various IXCs, including AT&T Communications of the Pacific Northwest, Inc. (AT&T); WorldCom; and Sprint Corporation (Sprint). Oregon Exchange Carrier Association (OECA) and Verizon also intervened and participated in this proceeding.

On October 4, 2002, ALJ Crowley issued a Memorandum adopting an issues list to be addressed by the parties in this matter. A hearing was held on December 16 and 17, 2002. Parties submitted opening and reply briefs.

CenturyTel's Current and Proposed Tariffs. CenturyTel is a local exchange carrier (LEC) that provides intrastate access service to IXCs. CenturyTel bills for this service after the service is rendered and collects later. Doing business in this way puts CenturyTel at risk of not being paid for the service. In effect, at any point in time, CenturyTel will have provided the IXC with approximately two months of access service before receiving any payment for those services. To help guard against the risk that an

IXC will fail to pay for services used, CenturyTel's current tariff allows it to collect security deposits from IXCs under certain circumstances. Currently, CenturyTel can collect security deposits only in two situations: when the IXC is a new customer and when the IXC has a history of late payments.

CenturyTel believes that its current tariff exposes it to too great a risk of financial loss. According to CenturyTel the record in this case firmly establishes that defaults in payment of access charges can occur, and when they occur the amount of the losses can be substantial. Therefore, CenturyTel has proposed a tariff that will allow it to collect a security deposit in the same circumstances as allowed by the current tariff, and will also allow it to impose a security deposit if the IXC's debt rating falls below the lowest level of investment grade as calculated by Standard and Poor's, Moody's, or Fitch, or, if the IXC is not rated by those agencies, by Dun and Bradstreet.

Position of the Parties: Overview.

Proponents of the Proposed Tariff: CenturyTel, Verizon, OECA, and Staff. The proponents support CenturyTel's proposed tariff, with modifications. CenturyTel argues that it generally extends credit to IXCs for access service. CenturyTel receives payment after its access services are rendered and the invoice sent. An IXC receives about two months' worth of access service before payment is due CenturyTel. CenturyTel argues that risk attends services rendered on credit, and CenturyTel wants to mitigate and control the risk it is exposed to. According to CenturyTel, its existing tariff is inadequate with respect to the mitigation of major defaults.

For CenturyTel to collect a security deposit under its current tariff, CenturyTel has to establish a history of late payment, demand, and collect a deposit, and execute on the deposit. The proposed tariff would allow CenturyTel to require a security deposit if an IXC's credit worthiness fell below low investment grade. CenturyTel argues that this new criterion is necessary because recent history shows that once an IXC misses payments, it may be too late to implement the protection of a security deposit if the IXC suddenly seeks bankruptcy protection. CenturyTel argues that it has serious concerns about the financial impact of IXC bankruptcies. The other proponents of the proposed tariff agree with CenturyTel.

Opponents of the Proposed Tariff: AT&T, Sprint, WorldCom. The opponents believe that CenturyTel's proposed tariff is unnecessary. They argue that CenturyTel has not adequately enforced the security deposit provisions of its current tariff. They maintain that CenturyTel has not shown how its proposal would have prevented the uncollectibles it experienced from the recent telecommunications bankruptcies. They argue that CenturyTel has failed to show that the proposed revisions are just and reasonable and that CenturyTel has therefore failed to carry its burden under ORS 759.180 and 759.185.

The IXCs argue further that the proposed tariff would not offer CenturyTel a significant level of protection beyond what it already has and that the standard of credit worthiness based on debt rating has no relation to companies' failure to pay. The IXCs also argue that approval of CenturyTel's proposed tariff would threaten the financial security of an already financially challenged industry and would affect end users of telecommunications services negatively by perhaps eliminating some of the IXCs from the marketplace.

In the following, we discuss the position of the parties issue by issue:

Issue 1.[1] **Are the security deposit criteria proposed by CenturyTel appropriate?** ***Proponents of the Proposed Tariff.*** The proponents argue that CenturyTel's proposed deposit requirements are appropriate protection from the increased risk that IXCs will enter bankruptcy and leave CenturyTel with increased uncollectibles. Staff argues that any business, regulated or not, should appropriately manage its credit risk. Management of credit risk is appropriate and prudent for regulated local exchange carriers (LECs) such as CenturyTel as well. Staff points out that LECs are not immune to concerns regarding payment defaults, most recently as they relate to access service provided to IXCs. Financial upheaval in the telecommunications industry has caused several IXCs to default on access service payments to LECs and to seek protection from creditors under federal bankruptcy law. Staff considers it reasonable for LECs to be proactive in managing their access service credit risk through implementing more stringent security deposit requirements at state and federal levels.

CenturyTel submitted a chart illustrating the risk it runs from sudden bankruptcy of an IXC.

Month	Access Minutes	Access Charges	End of Month
1	10,000,000	$300,000	Bill for Month 1 issued
2	10,000,000	$300,000	Bill for Month 2 issues Month 1 payment due, no payment made Late Payment/Termination Notice issued for Month 1
3	10,000,000	$300,000	Bill for Month 3 issued Month 2 payment due, no payment made for Month 1 or Month 2 Service terminated
			IXC files bankruptcy petition

[1] CenturyTel initially filed a tariff using the word "may" in Section 2.4.1(A), allowing it discretion in when to require a security deposit. To remove the possibility of discriminatory application of the security deposit requirement, Staff proposed to replace "may" with "shall." CenturyTel agreed to this modification. Because of this modification, the comments below do not address the problem of discriminatory application of the tariff.

Assumptions:
- Only shows switched access
- Access composite rate is $.03 per minute
- IXC is current on payments entering Month 1
- IXC has no previous incidents of late payments
- IXC debt rating was downgraded to Moody's Ba2 four months before Month 1

According to CenturyTel, this chart shows how it would have to absorb three months' worth of defaulted access payments if there were no modification of the existing tariff. Under the proposed tariff, CenturyTel would be able to require a deposit when the IXC's debt rating was downgraded, rather than waiting until the bill for the third month issued and the two months' overdue bills established a history of late payments.

Staff further argues that the proposed security deposit tariff, with Staff's modifications, strikes a balance between appropriate management of credit risk for the LEC and the legitimate business interests of its access service customers. Staff notes that the Federal Communications Commission (FCC) recently denied Verizon's petition for a tariff providing additional protection on the interstate side of operations. *Petition for Emergency Declaratory and Other Relief,* WC Docket No. 02-202, FCC 02-337 (released December 23, 2002 (FCC Policy Statement).[2] The FCC acknowledged that recent bankruptcies give evidence of an unstable industry and that future bankruptcies are possible. However, the FCC found that Verizon's proposal was overbroad and potentially discriminatory. Staff believes that the modifications it has proposed address the concerns expressed in the FCC Policy Statement.

Opponents of the Proposed Tariff. AT&T argues that the criteria for collection of a security deposit are inappropriate, inconsistent with sound public policy, potentially discriminatory, and lacking evidence of need. AT&T argues that public policy is not well served by adopting debt rating standards as a trigger for requiring a security deposit. A company's debt rating does not track with late payments, and use of debt ratings could be anticompetitive. According to AT&T, CenturyTel proposes a shift of working capital to improve its financial position. Requirement of a security deposit could push the IXC closer to financial instability or force it to pay high interest rates in capital markets to secure the cash for the deposit, leading to liquidity problems.

AT&T argues that CenturyTel does not need the proposed tariff because it has failed to use its current tariff provisions to minimize its exposure to the risk of default. There is also no evidence in the record that the proposed tariff would have prevented CenturyTel's uncollectibles from the WorldCom and Global Crossing bankruptcies. AT&T points out that those two bankruptcies account for 95 percent

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[2] We take official notice of the Verizon decision pursuant to OAR 860-014-0050.

of CenturyTel's uncollectibles. CenturyTel could have collected a security deposit from WorldCom and Global Crossing under its current tariff, but failed to do so. The record shows that both companies had late payment problems well before their bankruptcy filings. Consequently, AT&T argues, CenturyTel has not met its burden to show that its proposed tariff is just and reasonable.

Sprint adds that the bankruptcy courts are generally ensuring that incumbent LECs providing continuing service to bankrupt carriers are receiving adequate assurance of payment. Sprint believes that the CenturyTel tariff is overly broad. Sprint argues that the tariff will further distress the industry. Sprint also points out that CenturyTel could have used its current tariff to require a deposit from WorldCom or Global Crossing and did not do so.

WorldCom joins the above IXCs in urging that the proposed tariff would cause substantial harm to access customers. WorldCom contends that most current risk factors are one time events, and that for the carriers in bankruptcy, it has yet to be determined how much uncollectible debt they will leave behind. WorldCom also argues that there is no evidence that the uncollectibles have increased enough to justify such a drastic shift as the proposed tariff represents. Finally WorldCom contends that CenturyTel has not adequately exploited its current tariff. Finally, WorldCom points out that the Commission's price regulation process protects CenturyTel against bad debt. Its revenue requirement may include an allowance for uncollectibles.

Issue 2. Is it appropriate to require an additional security deposit where an IXC's billing increases beyond the amount initially used to estimate a deposit? If so, is CenturyTel's proposed tariff paragraph 2.4.1(A)(2) (concerning percentage size increase in billings and using a three month average of the total charges billed) a proper approach? ***Proponents.*** The proposed tariff provides that if an IXC that has paid a deposit increases its billing by 10 percent, CenturyTel will request an additional deposit. CenturyTel points out that the 10 percent increase would not trigger the initial deposit requirement. Staff points out that without this provision, CenturyTel would have to extend additional credit to customers that are already an existing credit risk. Staff proposes including CenturyTel's concession that it will reduce the required deposit if IXC revenues fall by 10 percent. (¶ 2.4.1(A)(2)).

CenturyTel points out that the proposed 10 percent increase applies only to companies that have already posted a deposit. A 10 percent increase in billings would not trigger a deposit requirement.

Opponents. AT&T argues that it is not appropriate to require an additional security deposit when IXC billing increases beyond the amount initially used to estimate the deposit. This proposal, according to AT&T, creates a disincentive to IXCs to increase sales. A competitor's gain in market share would increase the cost of doing business beyond the incremental cost of supplying an additional service. Also, a rate increase that causes an IXC's billing to increase by 10 percent could trigger the tariff provision.

Issue 3. What are the possible alternatives to a security deposit? What are the advantages and disadvantages of these alternatives? *Proponents.* This issue deals with alternatives to a cash deposit. Staff originally proposed adding a surety bond to the cash deposit option. CenturyTel, Verizon, and OECA all expressed concern that surety bonds are overly cumbersome and difficult to execute on. Staff also proposed an irrevocable standby letter of credit on mutually agreeable terms and a one month security deposit coupled with a one month prepayment. In response to these comments, Staff deleted its recommendation of a surety bond.

Opponents. AT&T is concerned with the standby letter of credit option, because it fears that if CenturyTel refuses to agree to the terms, no letter of credit option will exist in a practical sense. Also, because an IXC has only 14 days to remit a deposit under the proposed tariff, the short time line may preclude noncash options.

Issue 4. Are CenturyTel's provisions for refunding or crediting the deposit adequate? Issue 6. What are the conditions that trigger a return of the security deposit? *Proponents.* Staff proposed some modifications to the refund provisions of CenturyTel's proposed tariff (paragraph 2.4.1(A)(2)(e), and CenturyTel proposed further modifications, as follows:

> At such time as the provision of the service to the customer is terminated, the Telephone Company will credit the amount of any cash security deposit to the customer's account and will refund any credit balance which may remain. The telephone company will refund or credit such a deposit to the account of an existing customer when: 1) a new customer without established credit establishes commercially acceptable credit as defined above; 2) an existing customer that previously had fallen below commercially acceptable credit as defined above reestablishes such credit, and has not subsequently triggered any other condition justifying a security deposit; 3) an existing customer that had previously failed to pay two monthly bills by the bill due date within a twelve month period of time establishes a one-year prompt payment record, and has not subsequently triggered any other condition justifying a security deposit; or 4) an existing customer that had previously provided a security deposit substitutes an alternative form of security as defined above.

Staff agrees with CenturyTel's modifications to its proposal. OECA wishes to specify that the alternative form of security be at least equal to the amount of the security deposit, but Staff argues that that is implicit in the language proposed above.

Opponents. AT&T noted that Staff's original proposal contained ambiguities. These have been addressed in CenturyTel's modifications.

Issue 5. CenturyTel's proposed security deposit language allows for discontinuance of service if an IXC fails to provide a security deposit. What provisions, if any, should be made for customer notification and migration to other IXCs for continuation of long distance service? ***Proponents.*** CenturyTel's current tariff does not contain provisions for the notification and migration of end user customers to other IXCs for continuation of long distance service in the event an IXC is terminated as a CenturyTel customer for failure to provide a security deposit. Paragraph 2.1.8 in CenturyTel's existing tariff gives CenturyTel the right to discontinue service with 30 days' written notice if an access service customer fails to provide a required payment or security deposit. Paragraph 2.4.1(A)(2)(e) of CenturyTel's proposed tariff gives access service customers 14 days, upon written notice, to provide a required security deposit. Under the existing tariff and proposed security deposit requirements, access service customers have 44 days before their service can be discontinued for failure to provide a security deposit.

Staff supports the inclusion of tariff provisions that govern the migration of end user long distance customers to other IXCs. End user long distance customers in CenturyTel's service territory have either a single IXC that provides intraLATA and interLATA toll service, or two IXCs, one for each toll function. Staff believes that CenturyTel should not be required to notify end user customers that they are at risk of losing their long distance service because their IXC is unable or unwilling to provide a required security deposit. Staff maintains that it is the responsibility of the IXC to inform customers of such an eventuality.

Staff proposed that CenturyTel's tariff should contain an explanation of the procedure that it will use to migrate those end user customers who have not had a chance to select an alternative IXC. Staff wants to guarantee that end user long distance customers experience no disruption of service when CenturyTel discontinues access service to their current IXC. Staff also wishes the Commission to prevent CenturyTel from assigning these end user customers to alternative IXCs in a manner that favors any long distance service provider affiliated with CenturyTel. Staff therefore proposed a process similar to that used to allocate end user customers who did not select a primary interexchange carrier (PIC) at the inauguration of long distance competition. This involved a random allocation process by CenturyTel of those end users who did not submit a PIC to IXCs in proportion to the results obtained from those end users who did submit a PIC ballot.

Verizon made a counterproposal to Staff's. Verizon contends that allocation schemes, however well designed, are costly, ineffective, and frustrating to consumers as well as burdensome to the LEC. Verizon also notes that such random allocation may conflict with the FCC's slamming rules. Verizon argues that customers are best served by allowing them to locate and select their own IXC if their current provider fails and leaves the market. Customers can dial around to reach a long distance carrier until they select a presubscribed carrier. Staff agrees that Verizon's proposal should be adopted. Staff therefore advocates deleting the following sentence from Staff's modified version of CenturyTel's proposed tariff:

> A long distance end user who fails to select an alternative interexchange carrier prior to discontinuance of the customer's service, shall be randomly allocated to an alternative interexchange carrier by the Telephone Company in proportion to the distribution of long distance end users to other interexchange carriers at that time.
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> Staff recommends replacing that sentence with this one:
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> A long distance end user who fails to select an alternative interexchange carrier prior to discontinuance of the customer's service must use the connection method known as "dial around" (i.e., using a 10-10-XXX access code) until such time as the customer selects an alternative interexchange carrier.
>
> CenturyTel agrees to this change.
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> *Opponents* did not comment on this issue.

Issue 7. What is the appropriate interest rate to be paid on security deposits? ***Proponents.*** Staff and the other proponents of the tariff argue that the appropriate interest rate set in OAR 860-021-0210 should be the interest rate paid on the security deposit. ***Opponents*** argue that the interest rate should reflect the cost of money.

Issue 8. How would a deposit system work where both the LEC and IXC each bill the other for services on a monthly basis? What if the carriers have net amounts owed? ***Proponents***. Commission Staff proposed language that would take into account a netting of amounts owed when the LEC and the customer bill each other for services on a monthly basis. CenturyTel expressed concern that Staff's proposal assumed that CenturyTel would be in a position to net payments owed an IXC against access charges owed to CenturyTel. CenturyTel points out that given various contractual constraints, this may not always be the case. If a contract prohibits CenturyTel from netting payments owed the IXC, the existence of those obligations will not mitigate the risk associated with CenturyTel extending access services to the IXC on a credit basis. CenturyTel, along with OECA, makes the point that netting is valid only if it is allowed in the underlying contracts. Taking all the proponents' positions together, Staff's proposed language for Section 1.4.1(A)(4) should be modified to read:

> In arrangements where the Telephone Company and the Customer bill each other for services on a monthly basis, and where underlying contractual arrangements allow a netting of payments against access charges, the required security deposit will not exceed an amount equal to one month of the net estimated total rates and charges for service(s) owed

to the Telephone Company. This one month deposit shall be calculated based on a monthly average of the net total charges billed and rendered by the Telephone Company for the most recent three month period after subtracting amounts owed to the customer by the Telephone Company.

Opponents do not oppose this modification.

Issue 9. Is there a threshold level of financial risk that justifies CenturyTel's proposed security deposit requirements? If so, what is the risk and how does the proposed tariff satisfy CenturyTel's risk concerns? Issue 10. Is there a risk that IXCs will default on their payments to LECs for consumption of access services? Is payment history a good indicator that an IXC will not default in the future? These issues are addressed in the Overview section, above.

Issue 11. Are debt ratings issued by nationally recognized credit rating agencies reasonable indicators of the level of risk associated with extending credit to particular IXCs? *Proponents.* The proponents argue that debt ratings issued by nationally recognized credit rating agencies are a good tool to identify the level of risk associated with extending credit to particular IXCs. Debt ratings are an objective, universally accepted measure of an entity's ability to meet its financial obligations. Entities with debt ratings below investment grade have a greater risk of payment default. The criteria on which debt ratings are built are probabilities of payment default based on forward looking operational, financial, competitive, economic, and managerial factors. Payment history predicts only based on the past. The proponents of the proposed tariff argue that forward looking debt ratings provide an excellent adjunct to payment history.

CenturyTel originally proposed a debt rating of Standard & Poor's BBB as a trigger for requiring a security deposit. Staff modified CenturyTel's proposal to BBB-, the highest noninvestment grade.

Staff argues that there is a positive correlation between a low credit rating and default on corporate debt payments. Staff provides the following table, from Moody's Investor Service Global Credit Research Special Comment, "Default & Recovery Rates of Corporate Bond Issuers," February 2002, page 33:

Annual Default Rates by Debt Rating 1996-2001 (expressed as percentages)							
Moody's Debt Rating	Investment grade?	1996	1997	1998	1999	2000	2001
Aaa	Yes	0.00	0.00	0.00	0.00	0.00	0.00
Aa	Yes	0.00	0.00	0.00	0.00	0.00	0.00
A	Yes	0.00	0.00	0.00	0.00	0.00	0.17
Baa	Yes	0.00	0.00	0.12	0.11	0.39	0.30
Ba	No	0.00	0.19	0.64	1.03	0.91	1.19
B	No	1.49	2.16	4.15	5.88	5.42	9.35
Caa-C	No	13.99	14.67	15.09	20.05	18.15	32.50
All investment grades		0.00	0.00	0.04	0.04	0.14	0.17
All noninvestment grades		1.70	2.09	3.43	5.65	5.88	10.22
All grades		0.54	0.68	1.26	2.20	2.34	3.77

Staff points out that based on the above, 43.04 percent of corporations with a debt rating below investment grade defaulted on their corporate debt payments in 2001. The correlation between debt ratings and default rates is, Staff argues, statistically significant and clear.

Staff also maintains that companies that default on corporate debt default also on trade debt. Staff cites to the XO and Global Crossing bankruptcies. Of XO's 30 largest unsecured creditors, 19 entries were for those owed trade debt. Of Global Crossing's 50 largest, 45 were owed trade debt. Staff concludes that corporate debt ratings are an excellent predictor of the probability of access charge payment default. In response to the parties who assert that Dun and Bradstreet uses different criteria and that there may be discrimination against companies who do not issue corporate debt, Staff replies that nothing in the record indicates that companies that do not issue debt would be prejudiced by being subject to Dun and Bradstreet ratings. These ratings have been used by businesses for many years and are also objective and not subject to manipulation.

Opponents. These parties argue that debt ratings are not reasonable indicators of the level of risk CenturyTel experiences in extending credit to the IXCs. There is no empirical evidence, these parties contend, that a company rated below investment grade will not pay its expenses when they come due. The default level for rated debt does not correlate with the default on operating expenses. Even assuming a relation between default on rated debt and on operating expenses, the default rate for the top noninvestment grade for 2001, according to the chart Staff presents above, is 1.19 percent. Opponents to the proposed tariff argue that credit scoring is overly broad as a trigger for the security deposit. It targets any customer presenting any risk of nonpayment.

WorldCom argues that the term "investment grade" was developed by regulatory bodies to denote obligations eligible for investment by institutions like banks, insurance companies, and savings and loan companies. WorldCom argues that there is no ground for the Commission to find that the risk level for a pension fund or bank is appropriate as a benchmark for CenturyTel's security deposit. WorldCom also expresses concern about carriers that Standard and Poor's does not evaluate, which could mean that carriers would be subject to discrimination.

Issue 12. What guarantees should the LEC provide to the IXC that the security deposit will not be attached by creditors of the LEC and will be available when the LEC is required to return it to the IXC? The parties did not address this issue, and it was not addressed in testimony. We do not consider this an active issue.

Issue 13. Does the law require that CenturyTel must apply its proposed tariff to all carriers equally, and in a nondiscriminatory way? If so, does CenturyTel's proposed tariff allow it too much discretion in how it applies the security deposit criteria? This issue is addressed and put to rest by CenturyTel's agreeing to use "shall" rather than "may" in its proposed tariff.

Issue 14. Should the criteria be the same for small and large interexchange carriers (IXCs)? If not, and if different treatment is lawful, how should the criteria differ? How should small and large IXCs be defined? All parties addressing this issue agree that small and large carriers should be treated equally. The substitution of "shall" for "may" eliminates discretion in this area as well.

Issue 15. Should state and federal security deposit requirements be consistent? ***Proponents.*** CenturyTel argues that interstate and intrastate access tariffs need not be the same. As a consequence, the FCC's policy statement has no bearing here. OECA agrees. Staff argues that there is no legal requirement that Oregon follow federal law on deposit requirements for intrastate access service. Still, Staff believes that consistency between federal and state requirements is desirable to the extent possible. Staff did not find the FCC's Verizon policy statement persuasive. The proposed tariff there, Staff notes, was much broader than the tariff here. Also the proposed tariff before the FCC was potentially discriminatory, and the substitution of "shall" for "may" in CenturyTel's tariff eliminates that problem in the proposed tariff.

According to Staff, the chief concern in the relationship between interstate and intrastate tariffs is whether CenturyTel can block a noncompliant IXC's intrastate interexchange traffic while allowing interstate long distance to originate and terminate without interference. CenturyTel believes it can perform separated blocking. If not, CenturyTel has stated that it will allow the IXC's interstate traffic to proceed unimpeded. If it encounters problems with blocking, CenturyTel has stated that it will report these to the Commission.

Opponents. AT&T argues that CenturyTel can block originating traffic on the DSM 100 switches but there is a question whether it can block originating traffic on DSM 10 switches. It cannot block terminating traffic on either switch. AT&T argues that CenturyTel cannot discontinue service from an IXC until it can do so under both federal and state tariffs, and then only for originating traffic.

WorldCom agrees that it is unclear whether CenturyTel can enforce inconsistent state and federal access tariffs. If CenturyTel cannot disconnect only for failure to pay intrastate access charges, enforcement of different tariffs is impossible.

Issue 16. Should the Commission consider the potential financial impact upon the IXCs in deciding whether to approve CenturyTel's tariff? ***Proponents.*** These parties argue for a balanced approach, considering the impact of CenturyTel's tariff on all parties. CenturyTel notes that an IXC with a low credit rating must expect that there are negative consequences to letting credit slip, including the fact that a security deposit might be required. The Commission, according to CenturyTel, should not shield IXCs from these consequences.

Opponents. These parties also urge the Commission to take a balanced approach but believe that Staff's approach is not balanced. The IXCs contend that the provisions of the proposed tariff could further stress an already distressed segment of the telecommunications industry.

Issue 17. Do security deposits generally violate the barrier to entry provisions of the Telecommunications Act of 1996 (the Act)? Does the security deposit tariff proposed by CenturyTel violate the Act? The IXCs proposed this issue and did not develop it. Staff argues that the proposed tariff provisions are not a barrier to entry because the current tariff has the same provision for entrants without credit.

Discussion and Resolution. For us the critical issue with CenturyTel's proposed tariff is Issue 11, the use of debt ratings as a trigger for requiring a security deposit from IXCs. We acknowledge that the IXC segment of the telecommunications industry is troubled and will likely remain unstable for a time to come. We understand that LECs such as CenturyTel need to protect themselves against losses incurred as a result of default on payments by IXCs. However, we find that the record does not demonstrate a sufficiently close connection between the highest noninvestment grade debt rating and the risk that an IXC will default on corporate debt or other payments. We cannot therefore approve the tariff, which asks that a debt rating of Standard and Poor's BBB- (or equivalent for other rating agencies).

The parties have expended considerable time and effort to argue their positions in this case, and we do not want their time to be spent without result. Therefore, we draw some conclusions about the proposal of using corporate debt ratings as a trigger for requiring a security deposit on which CenturyTel may rely if it files a security deposit tariff in the future. We find that the proponents of the tariff have shown that the corporate debt rating systems are objective and have a long history of use to predict a company's overall financial soundness. Our rejection of the proposed tariff is based on CenturyTel's reliance on the BBB- rating as a trigger for the security deposit.

We see from the chart Staff presented, above, that in 2001 only 1.19 percent of the highest rank of noninvestment grade rated companies defaulted on corporate debts. Only 9.35 percent of those in the next rank defaulted. However, of those in the lowest rank, 32.5 percent defaulted in 2001. We find this figure to be significant of likely default on other obligations of the company in the lowest noninvestment grade. Therefore, we would entertain a tariff from CenturyTel using the lowest rank of noninvestment grade debt rating (Caa–C) as a trigger for a security deposit.

We invite CenturyTel to file a new tariff proposal with a lower debt rating rank as a trigger for the security deposit. We also note that CenturyTel's current tariff lacks a definition of what is meant by a history of late payments. That deficiency was addressed well in the proposed tariff, as was the issue of migration of customers, on which CenturyTel's current tariff is silent. We also encourage CenturyTel to explore other ways of protecting itself from exposure to default in a future filing. CenturyTel could, for instance, propose to collect a security deposit ten days after one missed payment, if notice and opportunity to cure were adequate. CenturyTel could also shorten the payment cycle for companies that fall below investment grade, lessening CenturyTel's exposure to the risk of default on payment without requiring a security deposit at the highest level of noninvestment grade.

We now address the other issues that may arise in a future proceeding. **Issue 2:** We find that it is appropriate to require an additional security deposit where an IXC's billing increases by 10 percent or more, in cases where the IXC has already posted a deposit. If the billings increase, the risk to the LEC increases. We also believe that CenturyTel's tariff should contain provisions for refunding a percentage of a posted security deposit if a carrier's billings fall by 10 percent or more.

Issue 3: We believe the proposed alternatives to a security deposit are appropriate. We agree with Verizon and Staff that a surety bond is unwieldy. **Issue 4; Issue 6.** As Staff revised them, we find the proposed tariff's provisions for refunding or crediting the deposit adequate.

Issue 5: We agree with Verizon's proposal that customers should be responsible for choosing a new IXC in the event CenturyTel has to terminate service to an IXC. If a customer does not make a timely election of a new presubscribed IXC, the customer can use the dial around option. This avoids any possible conflict with slamming rules and is administratively simple for all concerned.

Issue 7: The appropriate interest rate on security deposits is that set out in OAR 860-021-0210. **Issue 8:** We agree that netting of amounts owed is permissible if the underlying contracts between carriers permit it.

Issue 9; Issue 10: We do not find a sufficient nexus between the level of risk represented by the highest noninvestment grade of corporate debt rating and CenturyTel's proposed security deposit trigger, as discussed above. We find that there is a real risk of default by IXCs.

Issue 11: We have discussed this issue above. **Issue 12:** This issue was not developed in the docket. **Issue 13:** We agree with all parties that CenturyTel's tariff must be applied in a nondiscriminatory way and that the "shall" language is preferable to the originally proposed "may."

Issue 14: We agree with the parties that criteria should be the same for small and large IXCs. **Issue 15:** We find that state and federal security deposit requirements should be as consistent as possible, although this is a matter of convenience, not legal necessity. In any future proceeding on a security deposit tariff, CenturyTel should demonstrate whether it can block interstate and intrastate calls separately or demonstrate how it would handle a defaulting IXC's interstate calls if it cannot block calls separately.

Issue 16: The impact on IXCs of a tariff like CenturyTel's was well developed in this record. **Issue 17:** This barrier to entry issue was not developed but on the record before us appears to have no merit.

ORDER

IT IS ORDERED that the tariff proposed by CenturyTel, Advice No. 237, is permanently suspended.

Made, entered, and effective ______________________________.

______________________________	______________________________
Roy Hemmingway Chairman	**Lee Beyer** Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.