BIAC COMMENTS ON THE OECD BACKGROUND NOTE "ACCESS PRICING: THEORY AND APPLICATION TO TELECOMMUNICATIONS"

October 15, 2001

BIAC appreciates the opportunity to provide views on policy issues addressed in the background note "Access Pricing: Theory and Application to Telecommunications," for discussion at the October 15, 2001 OECD WP2 roundtable meeting on this issue.

1. Competition versus Regulation in the Telecommunications Market:

The cornerstone of government policy should be the promotion of competition. In the context of basic telecommunications, a pro-competitive regulatory framework consistent with the WTO Reference paper is essential where full and fair competition does not exist. However, once full and fair competition emerges governments should transition toward the application of general competition law rather than ex ante regulation.

2. Local Loop Unbundling and Leased Lines:

As indicated at the roundtable on electronic commerce held in May 2001, BIAC takes the position that all regulations on access to the local loop by basic telecoms providers comply with the international obligations as set forth in the WTO reference paper. Accordingly, interconnection to the local loop should be provided:

- Under non-discriminatory terms, conditions (including technical standards and specifications) and at rates, and of a quality no less favourable than, those provided for its own like services or for like services of its affiliates;

- In a timely fashion, on terms and conditions (including technical standards and specifications and service level agreements) and cost oriented rates that are transparent, reasonable, economically feasible, and are sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and,
3. Access by Value-Added Service Providers, including ISPs:

The Annex on Telecommunications of the General Agreement on Trade and Services requires WTO members who have made market access and national treatment commitments for VANs and ISPs to provide these service providers reasonable and non-discriminatory access to the public telecommunication network (PTN). BIAC supports increased efforts to monitor and enforce commitments made by WTO members under the Telecom Annex.

One example of unreasonable and discriminatory practices that BIAC members experience that limits competition and impedes the growth of data and Internet services is addressed in the background document. It is the situation where a provider of PTN may offer interconnection services at flat-rate wholesale prices to its affiliated ISP, which enables that ISP to offer flat-rate retail pricing to its Internet customers. In the instance that the incumbent PTN only offers this pricing arrangement to its own affiliate then there is in doing so a discriminatory action vis-à-vis unaffiliated ISPs. In contrast, the same provider of PTN may offer interconnection services to unaffiliated ISPs only at a metered-rate (per minute) wholesale pricing. This is important in practice because the unaffiliated ISP then faces the difficult choice of either not offering flat-rate retail prices for its ISP services and losing customers, or offering flat-rate retail prices and bearing the risk that the per minute call origination fees charged by the PTN will exceed the revenue from flat-rate prices charged to Internet customers.

4. Fixed to Mobile Relationship:

The principle that should apply to any converging market is that regulation should be kept to a minimum and be limited to establishing full competition, ensuring full and fair access to essential facilities, and allocating scarce resources efficiently.