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FILE

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October 2, 1992

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Public Protection Division
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Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 22
Washington, D.C. 20554

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OCT 5 1992

MAIL BRANCH

Re: CC Docket Room-7990

Dear Ms. Searcy:

Enclosed please find an original and five copies of a Petition to Supplement the Record in the above captioned matter filed on behalf of the States listed in the Petition and the Telecommunications Subcommittee of the Consumer Protection Committee, the National Association of Attorneys General.

As per the attached certificate of service, copies of this document are being served upon the parties of record in the above captioned docket.

Sincerely,

Daniel Clearfield
Daniel Clearfield
Executive Deputy Attorney General

DC/dmh/Searcy.Ltr

Attachment

cc: Parties of Record

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a Petition for Supplement the Record, by first-class mail, postage prepared, to the persons listed on the attached list.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Daniel Clearfield

Daniel Clearfield
Executive Deputy Attorney General
Office of Attorney General
14th Floor Strawberry Square
Harrisburg, PA 17120
(717) 787-9716

Date: October 2, 1992

FCC PAY PER CALL SERVICE LIST

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PILGRIM TELEPHONE, INC.
Walter Steimel, Jr.
Fish and Richardson
601 13th Street, N.W.,
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Washington, DC 20005

UNITED STATES TELEPHONE ASSOCIATION
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U.S. Telephone Association^o
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SPRINT COMMUNICATIONS COMPANY, INC.
Michael B. Fingerhut
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Francine J. Berry
295 North Maple Avenue
Room 3244J1
Basking Ridge, NJ 07920

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of :
: **PETITION FOR CLARIFICATION AND**
: **MODIFICATION OF PAY-PER-CALL** : **RM-7990**
: **RULES** :

RECEIVED
OCT 5 1992
MAIL BRANCH

PETITION TO SUPPLEMENT THE RECORD

The States of Connecticut, Tennessee, Pennsylvania, Wisconsin, Alabama, Arizona, Arkansas, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Dakota, Texas, Vermont, Virginia, Washington, Wyoming, and the Telecommunications Subcommittee of the Consumer Protection Committee, the National Association of Attorneys General (hereinafter "the States") hereby request that the attached Report be included in the Record of the above-captioned Petition for Rulemaking regarding the request by the States for clarification and modification of the Pay-Per-Call Rules of the Federal Communications Commission. In support of this Petition the States represent as follows:

1. By Public Notice released June 2, 1992, the FCC characterized as a Petition for Rulemaking and requested comments on the States' request that the FCC ban the use of 800 numbers for pay-per-call except in limited circumstances.

2. Comments were filed by a variety of parties on July 8, 1992, and Reply Comments were filed on July 28, 1992.

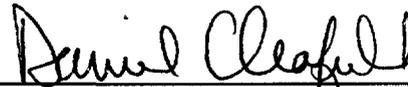
3. Certain of the submissions, and particularly the Reply Comments of various parties, raised questions about consumer attitudes concerning the toll-free nature of 800 number service, their understanding of interactive, pay-per-call services and the appropriateness of charging consumers for information services by the use of certain interactive techniques.

4. In order to gain insight into these questions and after the close of the Reply Comment period, the States of Pennsylvania, Connecticut and Tennessee commissioned a national, random survey of consumer attitudes on these subjects. The results of the poll conducted under the direction of Dr. Mark Cooper, are set forth in the attached Report. In summary, the survey found that:

- a) Consumers believe that 800 number calls are "free" -- 96% of those responding described an 800 number call as "free";
- b) Consumers are confused about 900 number calls and the way in which they are billed for them; and
- c) Consumers do not wish to be billed or charged for 800 number calls regardless of the method -- such as pressing "1" -- proposed by some commenters to signify acceptance of a charge for an 800 number call.

5. Because of the significant nature of the evidence presented in the survey, the States respectfully request that the attached report be added to the record in the above-captioned Petition for Rulemaking.

Respectfully submitted,



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Executive Deputy Attorney
General
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For: States of Connecticut,
Tennessee, Pennsylvania,
Wisconsin, Alabama, Arizona,
Arkansas, Florida, Idaho,
Illinois, Indiana, Iowa,
Kansas, Louisiana, Maine,
Maryland, Massachusetts,
Michigan, Minnesota, Missouri,
New Hampshire, New Jersey, New
Mexico, North Carolina, North
Dakota, Ohio, Oklahoma,
Oregon, Rhode Island, South
Dakota, Texas, Vermont,
Virginia, Washington, Wyoming,
and the Telecommunications
Subcommittee of the Consumer
Protection Committee, the
National Association of
Attorneys General

Dated: October 2, 1992

Citizens Research

MARK N. COOPER, PH.D.

802 LANARK WAY, SILVER SPRING, MARYLAND 20901 • (301) 681-3378

**SELLING INFORMATION SERVICES
DURING 800 AND 900 NUMBER CALLS:
THE NEED FOR GREATER CONSUMER
PROTECTION**

OCTOBER 2, 1992

Citizens Research

MARK N. COOPER, PH.D.

802 LANARK WAY, SILVER SPRING, MARYLAND 20901 • (301) 681-3378

SELLING INFORMATION SERVICES DURING 800 AND 900 NUMBER CALLS: THE NEED FOR GREATER CONSUMER PROTECTION

EXECUTIVE SUMMARY

A. BACKGROUND

A recent petition to the Federal Communications Commission by the members of the National Association of Attorneys General concluded that pay-per-call services offered during 800 number calls are a significant problem for consumers because they create confusion in the customer's mind about whether, how and when billing takes place and are an open invitation to misleading and deceptive practices by marketers.

Based on a national random sample survey of over 1,000 respondents and an extensive review of the consumer marketing literature, this report provides dramatic evidence supporting that conclusion and documents the need for increased consumer protection to prevent fraud and deception during such calls.

B. SURVEY RESULTS

Billing for traditional calls is quite well established in the public's mind, while new types of calls are misunderstood (see Table ES-1).

- o 96% of respondents to the survey say, correctly, that 800 number calls are "free" and 80% say that regular long distance calls are billed.
- o In contrast 50% say, incorrectly, that 900 number calls are "free."
- o 84% do not expect 800 number calls to involve billing for information services, even when the offer of information services is explicitly stated.

Respondents do not support the "just punch one" approach which is preferred by marketers for billing these services.

- o 35% percent said that service should not be offered in this manner at all and another 31% said willingness to be billed should be signaled by punching in a telephone or credit card number.

**TABLE ES-1:
SURVEY RESULTS**

KNOWLEDGE AND EXPECTATIONS ABOUT BILLING FOR CALLS

	(a) 800 CALLS	(a) 900 CALLS	(a) REGULAR LONG DIST.	(b) EXPECT TO BE BILLED FOR FOR INFO ON 800 CALLS
FREE	96%	50%	17%	84%
PAY	4	47	80	13
DON'T KNOW	0	3	3	3

PREFERENCES FOR BILLING FOR INTERACTIVE INFORMATION SERVICES (c)

JUST PUNCH "ONE"	23%
PUNCH IN THE TELEPHONE NUMBER	18
USE A CREDIT CARD	13
DO NOT OFFER SERVICES IN THIS WAY	35
DON'T KNOW	11

(a) Which of the following types of telephone calls do you expect to be charged for? (1) A regular long distance call; (2) A call to an 800 number; (3) A call to a 900 number; (4) A call to a neighbor; (5) None of these/Don't know

(b) Some businesses are now offering interactive information services where a caller can press a particular number and get information about particular subjects. Would you expect to be charged for information provided on an 800 number call?

c) Some interactive information services charge customers for the information that they provide. How do you think callers to these services should indicate that they are willing to pay for information? (1) Just punch in a "one" and have it put on the bill of the telephone from which the call was placed. (2) Punch in your telephone number and receive a bill from the telephone company or from the company providing the service. (3) Use a credit card, so that the cost appears on the credit card bill, not the telephone bill. (4) Services should not be offered in this way. (5) Not sure/Don't know.

SOURCE: National random sample public opinion survey of 1010 respondents conducted between August 13 and 16, 1992 for Citizens Research by Opinion Research Corporation.

- o Only 23% said that just punching "one" should be the way consumers signal their willingness to purchase.
- o Those who understand billing are more likely to say services should not be offered in this way and less likely to say "just punch one" than those who got the billing questions incorrect.

Demographic factors raise further concerns about billing for services during 800 and 900 number calls.

- o Older, less educated, and lower income respondents are more likely to misunderstand billing and be confused about 900 number calls.

Among respondents who got all the 800 number billing questions correct and who are 35 years old or older or have incomes above \$15,000, 47% said services should not be offered on 800 number calls. In contrast, poor (income less than \$15,000) or young (age 18-24) respondents who got the billing questions wrong were much less likely to say the service should not be offered (12%). Among the former group, less than 18% said "just punch one," compared to 35% among the latter.

C. THE PROBLEM OF TELEPHONE BILLED INFORMATION TRANSACTIONS

The confusion about billing for 900 number calls and the expectation that 800 number calls are "free" combines with a number of characteristics of this unique purchase situation to dramatically increase the likelihood that consumers will be misled into incorrectly or inadvertently making purchases during 800 and 900 number calls.

- o A belief that the call is free and no purchase intention means that any warning is not likely to be heard, understood or heeded, because the warning is contrary to expectations.
- o Any warning that billing is about to occur takes place in audio format, the type of information most likely to be miscomprehended.
- o The consumer has little time to pause to consider the purchase and there is no tender of a bill to be examined, contemplated or agreed to.

The ability and willingness of consumers to challenge erroneous bills is limited.

- o Since no bill is tendered at the point-of-purchase and the "service" is holding time on a telephone call, there is little ability to subject it to post-purchase scrutiny.
- o Because the billing party is the telephone company and individual purchases are small, the consumer is less likely to challenge the bill.

The fact that the transaction takes place electronically, in private, compounds problems from the point of view of consumer protection. It is difficult for consumer protection agencies to view the commodity and virtually impossible for them to scrutinize transactions involving real consumers.

D. CONCLUSION

Electronic billing for information services during 800 and 900 number calls cannot be treated as a routine purchase. The "Just Punch One" billing approach preferred by marketers is particularly prone to error on the part of consumers and deception on the part of marketers. The public does not understand the billing situation well and is very likely to be misled about billing. A plurality does not even want any of this type of billing to go on and an overwhelming majority does not prefer this "just punch one" approach.

Marketers can easily deceive because of the nature of the transaction and the targeting of vulnerable market segments is likely due to strong demographic effects. Consumers are not likely to, nor do they have much chance of, correcting errors. Consumer protection agencies have great difficulty policing these private, electronic transactions. Steps to prevent abuses in telemarketing of information services on 800 and 900 number calls are urgently needed.

I . BACKGROUND AND OVERVIEW

A. THE CONCERNS ABOUT BILLED SERVICES DURING "800 NUMBER" CALLS

A recent petition to the Federal Communications Commission to establish rules for pay per call services offered during 800 number calls concluded that these calls present a significant problem for consumers.¹ The essence of the problem is the mixing of "free" calls with billed services. The result is both confusion in the customer's mind about whether, how and when billing takes place and an open invitation to misleading and deceptive practices among marketers.

In the past several months, the States have observed the proliferation of pay-per-call services which solicit calls by the use of "free" 800 inward WATS lines. In some cases, callers are directed to a separate 900 number; in others, callers are induced to continue these calls or to take some other step which results in the caller being billed for the call or the service provided on the call...

In the opinion of the States, certain of these 800 pay-per-call services are not complying with the requirements of the FCC Pay-Per-Call Order and, in some instances, are using deceptive and misleading tactics to induce callers to complete the call, resulting in a bill for the call. Upon receiving the bill for the call and "service" many customers remit the charges because they are confused about whether they in fact had agreed to incur the charge or are concerned

1. The States of Connecticut, et al., Petition for Clarification and Modification, In the Matter of Policies and Rules Concerning Interstate 900 Telecommunications Services, CC docket No. 91-65.

that non-payment might threaten the continued availability of their telephone service.¹

As a real world example of the problem, the petitioners cite law suits brought against a marketing firm in almost a dozen states.²

B. PURPOSE AND CONCLUSION OF THE REPORT

This report presents the results of a national random sample public opinion survey which asked a number of knowledge and opinion questions about billing for services on 800-number calls. The empirical analysis shows that telephone-billed, interactive information services for 800 number calls pose a major problem for consumers.

- o Consumers believe that 800 number calls are "free."
- o They are confused about the billing status of 900 number calls. Older, lower income and less educated respondents are more likely to give incorrect responses about which calls are "free" and which are billed.
- o They would prefer that billed services not be offered in this fashion.

Chapter II describes the survey results. Chapter III places these results in the context of the large literature on consumer purchases and deceptive marketing practices.

1. Ibid., pp. 2-3.

2. Ibid., pp. 3-4.

II . E M P I R I C A L A N A L Y S I S

In order to study the issue of 800 number pay-per call services, Citizens Research was commissioned to conduct a national, random sample public opinion poll. The telephone interviews were conducted by Opinion Research Corporation as part of its weekly Caravan. A sample of 1010 interviews was conducted beginning August 13, 1992 and ending August 16, 1992. Given the sample size, sampling tolerances are approximately \pm 3 percent.

A. PUBLIC PERCEPTION OF 800 AND 900 NUMBER CALLS

1. SUMMARY OF FINDINGS

Because the focus of this report is on the public's understanding of the nature of different types of calls and its expectation about billing, we asked several questions about whether specific calls were billed. We find that the respondents correctly state that 800 number calls are "free," but are confused about 900 number calls. Older, lower income and less well educated respondents are more likely to give incorrect responses.

2. SURVEY QUESTIONS

For purposes of comparison, we began the survey with a question that parallels a recent survey by Louis Harris.¹ Short

1. Louis Harris and Associates, Inc., Telephone-Based Fraud: A Survey of the American Public, N.D.

of an open ended question, it provides the respondent with the greatest latitude. For purposes of the analysis, we call this the "Harris" wording.¹

Which of the following best describes an 800 number?

A free long distance call

A call you pay for that is provided by a long distance telephone company. The cost depends on the time of day and the length and distance of the call.

A call you pay for which is provided by a private company. The company which provides the 800 number service decides how much the call costs.

Not sure/Don't know

For the 800 number call the first response is correct. For the 900 number call, the third is correct. However, while the second is incorrect for a 900 number call, it does show that the respondent understands that the call is a billed call. Note, however, that it attributes the billing authority to the telephone company. It also incorrectly states how charges are calculated.

Since the key characteristic of the call is whether or not it is billed, we posed that question again as a simple yes/no type of issue. For purposes of this analysis we call this the "Citizens" wording.

Which of the following types of telephone calls do you expect to be charged for?

1. In all cases, responses were rotated.

A regular long distance call

A call to an 800 number

A call to a 900 number

A call to a neighbor

None of these/Don't know

By including questions on other types of services, we can gauge how the public's expectations and understanding of specific types of calls fit in the overall comprehension of billing. We find that even when the idea of services during 800 number calls is introduced, respondents do not expect to be billed. Respondents also do not support the easy, "just punch one" approach to billing for such services.

3. SURVEY RESULTS

a. Overall Patterns

The responses to these questions show that the understanding of billing varies across types of calls. Traditional calls are quite well established in the public's mind, while new types of calls are misunderstood (See Table 1).

In the Harris wording of the 900 number question about two-thirds gave a correct answer. One-fifth said they did not know and three percent said it was a free call. One-ninth said it was a billed call, but thought the telephone company set the charges, which is incorrect.

For the Harris wording of the 800 number question, 71 percent correctly said it was free. One-ninth said they did not

TABLE 1:

KNOWLEDGE ABOUT BILLING FOR SPECIFIC TYPES OF CALLS

	"HARRIS WORDING"		"CITIZENS WORDING"		
	900	800	900	800	LONG DISTANCE
FREE	3	71	50	96	17
PAY TELCO	11	8	47	4	80
PAY COMPANY	65	9			
DON'T KNOW	21	11	3	0	3

"Harris wording -- Which of the following best describes an 800 number? 1) A free long distance call; 2) A call you pay for that is provided by a long distance telephone company. The cost depends on the time of day and the length and distance of the call; 3) A call you pay for which is provided by a private company. The company which provides the 800 number service decides how much the call costs; 4) Not sure/Don't know

"Citizens wording -- Which of the following types of telephone calls do you expect to be charged for? 1) A regular long distance call; 2) A call to an 800 number; 3) A call to a 900 number; 4) A call to a neighbor; 5) None of these/Don't know

know. A total of 17 percent said it was a billed call.

The Citizens wording gives a different result. Asked simply whether a call is billed, 96 percent said, correctly, that an 800 number call is free. In contrast, half the respondents said, incorrectly, that a 900 number was free. This question indicates that there is a good understanding of 800 number calls, but considerable confusion about 900 number calls.

Identification of the nature of regular long distance calls reinforces the suggestion that consumers have a better understanding of traditional calls. Four-fifths correctly identify regular long distance calls as billed.

b. Differences Between Demographic Groups

While demographic factors are not a central public policy concern in this paper, they are frequently examined in connection with studies of consumer knowledge and purchase patterns. It also turns out that demographic factors create rather strong interactions with the knowledge factors discussed above.

Table 2 shows that better educated respondents tend to get more responses correct. This is particularly the case for the 900 number question. About one-third of those with less than a high school education gave a correct response to this question. Over one half of those with some college or more gave a correct response.

We observe a similar pattern for income. Those with higher incomes tended to give more correct responses.

**TABLE 2:
DEMOGRAPHIC FACTORS AND KNOWLEDGE OF BILLING**

PERCENT OF RESPONDENTS GIVING CORRECT ANSWER

	"HARRIS	REGULAR	Citizens WORDING"	
	800	LONG DIST.	800	900
EDUCATION:				
LESS THAN 8TH GRADE	65	85	94	33
INCOMPLETE HIGH SCHOOL	71	75	98	34
HIGH SCHOOL GRADUATE	72	79	96	44
SOME COLLEGE	74	81	95	56
COLLEGE GRADUATE	69	81	96	53
POST GRAD WORK	75	82	97	61
PROFESSION SCHOOL	92	94	100	53
INCOME:				
UNDER \$10,000	71	73	94	47
\$10 TO \$15,000	68	80	91	35
\$15 TO \$20,000	83	71	98	33
\$20 TO \$25,000	80	77	90	45
\$25 TO \$30,000	78	85	94	44
\$30 TO \$35,000	68	81	98	51
\$35 TO \$40,000	81	84	98	47
\$40 TO \$50,000	72	82	97	51
\$50 TO \$75,000	68	80	100	55
\$75 TO \$100,000	65	71	99	56
\$100,000 OR MORE	79	74	98	74
AGE OF RESPONDENT:				
18 TO 20	76	70	99	62
21 TO 24	74	81	96	52
25 TO 29	78	74	93	49
30 TO 34	76	73	96	53
35 TO 39	80	83	99	49
40 TO 44	77	84	94	52
45 TO 49	71	81	99	38
50 TO 54	71	82	97	59
55 TO 59	69	80	98	42
60 TO 64	63	89	94	39
65 OR OLDER	61	84	96	37

In contrast, age has the opposite effect. Older respondents tended to have fewer correct responses for the 800 number and 900 number questions, but not the regular long distance question.

B. EXPECTATIONS AND PREFERENCES ABOUT BILLING FOR SERVICES

1. SUMMARY OF FINDINGS

Knowledge about whether or not certain types of calls are billed clearly supports the assertion that the public perceives 800-number calls as free and is confused about 900 number calls. The more precise question of billing for services rendered during such calls, as opposed to whether the call itself is billed, also was explored in the survey.

We find that respondents do not expect or want 800 number calls to involve billing for information services, even when the offer of information services is explicitly stated. Respondents also do not support the "just punch one" approach which is preferred by marketers for billing these services.

2. SURVEY QUESTIONS

Three questions dealing with billing expectations and behaviors were asked.

Some businesses are now offering interactive information services where a caller can press a particular number and get information about particular subjects. Would you expect to be charged for information provided on an 800 number call?

This question sharpens the issue by introducing a specific type of 800 number call which is not the traditional toll free

number.

A second question posed the specific purchase situation of concern in telephone-billed information service purchases.

Some interactive information services charge customers for the information that they provide. How do you think callers to these services should indicate that they are willing to pay for information?

Just punch in a "one" and have it put on the bill of the telephone from which the call was placed.

Punch in your telephone number and receive a bill from the telephone company or from the company providing the service.

Use a credit card, so that the cost appears on the credit card bill, not the telephone bill.

Services should not be offered in this way.

Not sure/Don't know.

Finally, a set of questions was included which dealt with purchases over the phone. A question asked whether a credit card had been used to purchase goods, services or information.

Have you ever purchased any of the following items over the phone by giving out your credit care number...

A product

A service

Information

None of these/Don't know

3. SURVEY RESULTS

a. Overall Patterns

The expectation of billing for information services during 800 number calls corroborates the public's understanding of 800 number calls as free. Approximately 84 percent of the respondents said they would not expect to be billed for the provision of specific information, even if they were involved in obtaining interactive information service calls. Only 13 percent said they would expect to be billed.

The public is not supportive of telephone-billed information service, as Table 3 shows. Over one-third of the respondents (35 percent) to the question about how callers should indicate their willingness to pay said that service should not be offered in this manner. This was the most prevalent response. A little over one-sixth said punching in a telephone number, and a little over one-eighth said using the credit card, was the preferred method. One-in nine respondents were not sure or did not respond. Less than one quarter (23 percent) said that just punching in a "one" should signal willingness to purchase.

Thus, concerns raised about the method being used to bill for information services are well founded. Consumers do not expect to be billed for such calls and they do not want services offered in this way. Overwhelmingly, they do not prefer the easy, "just punch one" approach to billing.

Crosstabulation of several questions underscores this observation.

TABLE 3:

PREFERENCES FOR BILLING FOR INTERACTIVE INFORMATION SERVICES

	ALL RESPONDENTS	THOSE WHO EXPECT NOT TO BE CHARGED FOR 800 CALL INFORMATION	THOSE WHO THINK 800 NUMBERS ARE NOT CHARGED	THOSE WHO ARE UNCERTAIN ABOUT CHARGE FOR 800 CALL INFORMATION	THOSE WHO ARE 800 NUMBER CHARGES	THOSE WHO EXPECT TO BE CHARGED FOR 800 CALL INFORMATION	800 NUMBERS ARE CHARGED
JUST PUNCH "ONE"	23	22	23	15	14	33	34
PUNCH IN THE TELEPHONE NUMBER	10	17	17	3	10	29	30
USE A CREDIT CARD	13	13	14	10	0	13	6
DO NOT OFFER SERVICE	35	36	36	22	13	15	10
DON'T KNOW	11	8	10	50	63	10	0
(N)	1000	(836)	(932)	(34)	(26)	(130)	(39)

Some interactive information services charge customers for the information that they provide. How do you think callers to these services should indicate that they are willing to pay for information?

- 1) Just punch in a "one" and have it put on the bill of the telephone from which the call was placed.
- 2) Punch in your telephone number and receive a bill from the telephone company or from the company providing the service.
- 3) Use a credit card, so that the cost appears on the credit card bill, not the telephone bill.
- 4) Services should not be offered in this way.
- 5) Not sure/Don't know.

Those who expect not to be charged for 800 number calls or who correctly state that 800 number calls are not generally billed, are more likely to say services should not be offered in this way than those who gave incorrect responses (36 percent compared to 10-15 percent). They are less likely to say just punch one -- (22-23 percent compared to 33-34 percent).

Those who express uncertainty about how 800 number calls are billed expressed strong uncertainty about selling information services -- over one-half gave this response. Very few in this category gave the "just punch one" response.

Almost 40 percent of respondents said that they had purchased a product over the telephone using their credit card; 9 percent report purchasing a service; and 2 percent report purchasing information. Overall 44 percent said that they had purchased at least one of these three categories of items. In comparison, the recent Harris poll found that 64 percent of the respondents had possessed a national credit card at some time. Thus, a telephone purchase appears to be common for those who have credit cards.

Those who have experience with credit card, product purchases over the telephone are somewhat more likely to give correct answers to the knowledge questions, as Table 4 shows. They do not exhibit any difference in their preferences about how such transactions should be conducted. Those who purchased information gave a wrong response to the question about billing for long distance calls.