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TOLLING AND CIVIL LIBERTIES

Recent proposals for financing highway construction have typically included tolls as one component. The ACLU takes no position on whether tolls should be used, nor on the appropriate rates. We do, however, firmly believe that any toll system must comport with basic civil liberties principles, including the right to privacy and equal protection. Electronic tolling threatens both of these.

- Each toll paid electronically generates a record. Those combined records provide a considerable amount of information about a driver, including work, family, recreational, and social patterns. They could even reveal political leanings (heading towards a rally) or medical issues (frequent travel to medical facilities).
- Transponders may allow third parties to track drivers. The transponder's number may be read by any reader, and combined with the driver's identity in a variety of ways. This could then be used to assemble information about those who frequent a particular area or facility (e.g., shopping malls) for marketing purposes.
- All-electronic tolling poses unreasonable burdens on some members of society—those unable or unwilling to obtain a transponder and fund an ongoing toll account, including those without credit and debit cards. It is also likely to generate considerable confusion for infrequent drivers, including visitors and tourists.

SPECIFIC LEGISLATIVE RECOMMENDATIONS

1) Mandate lane(s) accommodating cash payment with no record kept of vehicle identity

This is the only way to ensure privacy in travel information, and also eliminates the unreasonable burdens placed on segments of society.

2) Mandate short retention periods for identifiable toll records

Each toll record should be destroyed as soon as final payment for the toll has been processed. In no case should this require retention for more than a few months.

3) Implement legal prohibitions on secondary use of toll/travel records

The purpose of tolling records is simply to facilitate toll payment, and that is the only use that should be made of the records. The best way to encourage people to adopt electronic toll payment methods is to guarantee that records of those payments will not be used for other purposes, period.

4) Implement legal safeguards against third parties reading transponders

Reading transponders should be restricted to toll payment, just as reading RFID in enhanced driver's licenses is restricted to border crossing purposes by Chapter 9A.58 RCW.

5) Direct DOT to allow anonymous cash payments for transponders

DOT currently requires all transponders to be registered to a single vehicle. This defeats both anonymity in travel and use of transponders in multiple vehicles, including car-share programs.