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**COMMENTS ON PROPOSED RULES AND REGULATIONS GOVERNING PROCEDURES INVOLVING THE NONPAYMENT OF TOLLS, TOLL EVASION AND PUBLIC INVOLVEMENT**

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The ACLU of Rhode Island appreciates the opportunity to submit testimony on these proposed regulations to establish procedures necessary to carry out the purposes of R.I.G.L 42-13.1, the law providing for the creation of a commercial truck tolling system. Our testimony focuses not on what is in the proposal, but on what is absent – any privacy standards and procedures that these regulations need to, and apparently were initially set to, contain.

The original title for the notice of these proposed rules and regulations included “Procedures Involving Privacy.” The Regulatory Analysis accompanying the proposed regulation also refers to “Procedures Involving Privacy.” Nevertheless, and much to our surprise and dismay, this topic is not addressed at all in either the proposed regulation or the analysis. This is a significant and troubling omission. Failure to include any privacy protections in these regulations will leave Rhode Islanders defenseless against potentially serious invasions of their privacy.

Privacy issues were of great concern to many legislators and advocates prior to the passage of the toll gantry law. Promises to enact separate legislation to address these issues never came to fruition. By default, this leaves it up to the Department of Transportation to ensure that the massive system of highway surveillance created by the toll process protects the privacy rights of Rhode Island motorists. We therefore believe that it is imperative that these regulations include some specific privacy standards before they are finalized and enacted and the toll gantries become operational. In fact, during the RFP process, DOT specifically indicated that there would be “a specific policy in place regarding the storage, use, and deleting of data and images captured by the tolls prior to toll commencement.” That policy, to the best of our knowledge, does not exist.

As best as we can understand from reviewing the RFP for this program, the toll system will use various technologies to detect and capture information from every motor vehicle going under the gantries, even though only certain vehicles will be assessed toll fees. This will include capturing all license plates on the highway, including front and overview images of vehicles. It will presumably include recording the date, time and GPS location of every vehicle on the road. While there is no reason for the data relating to non-commercial vehicles to be retained at all, it appears that, under the RFP, such information will be stored for certain periods of time, whether for auditing or other purposes.

A system of gantries across the state capturing all this information has the potential to track individual motorists both in real time and in retrospect. It gives various individuals opportunities to demand access to the data for just about any reason. To give just one example, we are aware that toll pass records elsewhere have been subpoenaed in divorce cases to determine a spouse’s whereabouts.

Without clear standards in place governing how such information will be stored and who will have access to the data, the public’s legitimate concerns about the impact of this system remain unaddressed. It is important to emphasize that we are not talking about one or two toll locations gathering data, but a networked system of 14 gantries across the state. In light of the serious impact on privacy this technology may have, it is critical that safeguards be adopted long before a single gantry is erected, not after the fact.

Back in February, the ACLU specifically asked the following question in response to the Department’s RFP:

 Once the image based tolls are put in place is there (or will there be) a specific policy regarding the storage, use, and deleting of data and images captured by the tolls? More specifically regarding the motor vehicles that will not be subject to the tolls. Will the data and images captured by the Image based tolls be shared with any other governmental, non-governmental, or private organizations aside from the RI Turnpike and Bridge Authority?

The agency’s response was:

 Yes, there will there be a specific policy in place regarding the storage, use, and deleting of data and images captured by the tolls prior to toll commencement. The policy will include (yet to be developed) image and data information sharing restrictions.

This proposed regulation, however, belies those reassurances, and is cause for great concern.

We understand that including new language and procedures into these proposed regulations might cause some concern with the intended implementation timeline. However, this is an issue that is too important to ignore. The ACLU therefore urges that these regulations be withdrawn, and that a revised set of rules that include provisions addressing basic privacy concerns be proposed in their place. We would be happy to work with the Department in crafting those rules.

We appreciate your attention to our views, and trust that you will give them your careful consideration. If the suggestions we have made are not adopted, we request that, pursuant to R.I.G.L. §42-35-2.6, you provide us with a statement of the reasons for not accepting these arguments. Thank you.

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