





Tackling Enforcement and Collection in Today's Tolling Environment

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Modern electronic toll roads offer the driving public a premium service: the option to pay a fee to drive on a highway with greatly reduced traffic congestion. Reduced congestion enables the toll-road patron to arrive at his or her destination more quickly while enjoying an improved driving experience.

Unfortunately, a necessary consequence of barrier-free, open road tolling (ORT) is toll evasion. With ORT now being implemented by toll roads throughout the United States, a portion of the driving public will attempt to use the roads without establishing a patron account. Instead, they'll test the system to determine just how far and how often they can ride for free.

To elude enforcement measures, evaders often use diversionary tactics such as obscuring their license plates or failing to notify their state department of motor vehicles of a change in their address. Other violators establish an account and allow it to fall to a negative balance while continuing to ride the toll road and ignoring violation notices. Most violators play a wait-and-see game, stalling to see how long it takes the toll agency to identify and locate them and, then, to what extent and at what cost the agency will pursue the amount owed.

The problem is significant. According to Donna Huerta, community affairs director for the North Texas Tollway Authority, as quoted in a November 15, 2006, CBS 11 News report: “Twenty-five thousand violations occur each day on NTTA toll roads, and, quite simply, it is stealing.”

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Diligent violation enforcement becomes even more important for toll roads that employ variable pricing or congestion pricing models. In general, it has been shown that free-flow traffic

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In response to the “stealing,” the tolling industry is becoming more focused on toll-violation enforcement and collection, as evidenced by a session devoted to this topic at the 2006 IBTTA Annual Meeting & Exhibition and the upcoming Violations Enforcement Summit sponsored by IBTTA on July 29–31, 2007, in Boston, Mass. In their efforts, it is incumbent upon toll-road operators to establish a comprehensive and effective toll-violation enforcement and collection program, one that will provide a credible deterrent to repeat offenders. Not only is an effective violation enforcement program good business, it is also an obligation to bondholders, who require a minimum debt coverage ratio, and to patrons, who

conditions can be maintained at traffic levels up to 1,700 vehicles per lane per hour. When traffic levels begin to exceed that threshold on a consistent basis, prices are raised to encourage drivers to choose periods before or after the peak. Lax violation enforcement that doesn’t pursue all categories of violators with equal intensity encourages additional traffic that may compromise the variable pricing scheme.

In focus groups conducted by the 91 Express Lanes in Orange County, Calif., patrons said they expected a toll agency to pursue all collection remedies to the fullest extent so that the lanes could be used exclusively by paying customers, free of violators. Indeed, toll-road operators must deliver on their

promise of providing dependable, less congested roads in order to attract and keep customers or risk losing them to the competition—free roadways.

The foundation of a comprehensive and effective toll-violation collection program lies in the formal business rules adopted by the toll agency. These rules must specifically detail all the enforcement measures the agency chooses to employ and mirror state and local laws so that potential legal challenges can be overcome early on. With well-defined collection processes and procedures in place, the agency should initiate violation deterrents in order to achieve maximum patronage and compliance with the law.

Violation Deterrents

Several deterrents are available to agencies seeking to curb toll violations.

Positive public relations. A persistent public relations program should be established to extol the virtues of electronic tolling and the ease of obtaining and maintaining an account. Also, the consequences of toll evasion should be clearly enumerated. Toll agencies should properly manage media coverage to publicize the problem of chronic violators when instituting new business rules or extraordinary collection measures such as the entry of civil judgments and judgment enforcement.

User-friendly account maintenance. Potential patrons should have

a variety of options for opening and maintaining an account, such as retail outlets, a user-friendly Web site, and an adequately staffed toll agency customer service center for in-person sign-up and payment replenishment.

Effective signage. Easy-to-read signage and road markings should direct motorists to the entry and exit points of toll roads and lane plazas, thereby eliminating any excuses for nonpatrons to enter toll roads. The signs should warn motorists of the consequences of toll violation well in advance of the toll-road entry point and be used to reinforce media coverage of new policies regarding toll evasion.



Highway patrols. Visible highway patrols stationed at strategic points will cause potential violators to think twice about entering the toll road without a patron account.

Violation Enforcement

Statistics show that violators constitute up to 8 percent of all toll-road traffic. Generally, this may include a 3-percent to 4-percent enforceable violation rate and a comparable unenforceable

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violation rate in which the license plate can't be read, the registered information isn't found at the DMV, or the registration address is invalid.

An effective enforcement program that will yield maximum violation collection rates comprises several key elements:

Patron/violator identification. Whether a tollway employs transponders or video tolling, the need to accurately identify license plates is paramount. Plate-reading errors cause patrons and violators to be misidentified, placing an unnecessary burden on the agency's customer service staff. The integrity of the entire collection process, especially when it escalates to the civil judgment stage, depends on proper

violator identification, specifically at the plate-reading and state DMV levels.

Violation enforcement system.

The violation enforcement system (VES) must be programmed to comply with state DMV registration processing rules and state laws governing toll evasion. For example, in California, when a vehicle is sold, the license plate remains on the vehicle, with the new owner responsible for all violations as of the date of sale. This is often complicated when the new owner fails to promptly register the vehicle, thus creating a window of uncertain liability. The VES must be cognizant of ownership dates and be able to split plates and violations among multiple responsible parties when they are identified. This "split plate" logic is also required in the case of rental and leased vehicles where state law provides a set time for the rental and leasing companies to transfer the liability by providing the name and address of the responsible party. The VES should also be able to file unpaid violations with state enforcement programs such as state debt offset and DMV registration and license suspension.

Timely and effective notification.

State law typically allows the toll agency to mail offenders the first violation notification no later than 14 to 30 days from the date of the violation. Prompter notification upon the first violation,

within three days, would permit errors and account issues to be quickly rectified while alerting the first-time offender that he or she is being tracked by an effective enforcement system and that establishing an account is the best alternative. Notices should clearly outline all the collection steps the agency will take to obtain payment and include an affidavit of nonliability. Subsequent toll-evasion notices should be sent within five days of the due date of the prior notice to keep the debt and obligation to pay foremost in the debtor's mind.

Highway patrols. Highway patrols should be enlisted on a regularly scheduled basis to make in-person stops of flagrant violators for issuance of a citation to appear in court.

Additional collection options. It is truly amazing how many notices are ignored and how many people will attempt to elude the various state-sponsored enforcement programs. As a result, toll agencies are increasingly employing professional collection agencies with specialized expertise and proprietary systems to pursue delinquent violators. Violations are assigned to collection agencies 90 to 120 days after issuance and notification by the toll agency. At this point, the collection emphasis shifts to the more legalistic methods available for toll-violation enforcement. These procedures, typically, are set forth in various laws and statutes. The most effective are state laws

dealing specifically with toll evasion. Laws, regulations, and rules enacted on a local level are more easily attacked and more difficult to implement.

Case Example: California

California's toll-violation laws offer an instructive model for effective enforcement. Unlike states where unpaid violations must be forwarded to county courts, where they often get lost in the morass of uncollected criminal penalties, California's toll agencies retain collection control of toll violations. California employs several other noteworthy policies, as well:

Statutory structure. California has adopted a statewide statutory structure that it has incorporated into the state's vehicle code. It is applicable to all toll-road violations throughout the state and preempts local cities, counties, and other agencies from adopting contrary rules.

California's statutory structure closely parallels the state's parking-ticket enforcement procedures insofar as it allows for informal investigations, contests of liability, prepayment of fines and penalties prior to an administrative hearing, judicial review of the results of such a hearing, entry of a civil judgment when no contest is made, and enforcement of a money judgment as a penalty. The toll-evasion violation statutes also set the amount of the penalties statewide.

Deterrence of chronic and repetitive violators on electronically monitored toll roads where manned law enforcement is typically unavailable is the focus of the California statutory scheme. When a toll violation occurs, usually a photographic image of the vehicle license plate is captured. The vehicle license number leads to the discovery of the registered owner of the vehicle and a notice of toll violation is sent to the owner within 21 days at the address on file with the DMV. An additional notice follows for failure to respond to or pay the notice of toll violation. Each violation starts a new round of notices, and fines and penalties escalate with the number of outstanding violations.

Escalating penalties. California's toll-violation penalties start at \$100 for the first violation in a year and escalate to \$250 for the second violation within the year and \$500 for the third and each subsequent violation in the year. Toll-evasion notices clearly alert the violator to this escalating structure. While the state's toll agencies may elect to establish a lower maximum penalty, it is obvious that a persistent, chronic, and abusive violator can run up quite a bill. By employing a collection process that escalates penalties to the state maximum, the toll agency and its collection agent are afforded the greatest flexibility to offer reduced settlements, when necessary, in the interest of resolving a great number

of violations at a cost-effective rate.

Contesting a notice. Each notice contains information describing how the notified party may request an investigation by the processing agency. For example, the individual may contend that the vehicle isn't registered to him, that she sold the car and filed a certificate of sale with the DMV, that the car was stolen and was reported to the police, and so on. If an investigation is requested, an impartial investigator must consider all the facts and notify the registered owner of the outcome. In the real world, repeat and chronic violators don't request investigations of each offense. Those who do usually have some claim to legitimacy and begin negotiations and cease future violations.

California violator notices also include information outlining how to declare the vehicle a rental or a lease and provide the name of the responsible party. The process is then redirected against the lessee or renter. (Leasing or rental agencies that receive toll-evasion notices have 30 days to provide the name of the lessee/renter or else the agency becomes liable.)

In the unlikely event that an investigation is requested and the results are adverse to the registered owner or responsible party, that individual may invoke his right to a full evidentiary administrative hearing. Effectively, that means that the agency that owns the toll road must provide

a hearing officer and a location for an administrative hearing. This is similar to an arbitration in which a hearing officer hears testimony and receives evidence but the technical rules applicable to actual trials don't apply. The hearing officer must be impartial and must render his or her opinion based



on the facts and the law. Generally, these are informal proceedings (usually held in an agency conference room or similar location), though the violator may be represented by an attorney (as may the toll-road agency). This right to a hearing is granted only after the alleged violator posts or deposits the full amount of the tolls, penalties, and fines that would be due if the claim were found to be valid. This “bail type” requirement is not meant to deter hearings but to prevent dilatory tactics.

The reality is that almost no one requests either the investigation or the administrative hearing. As a business and operational practice, the collection

of tolls and penalties should probably be viewed on an enterprise basis, with individual cases being relatively expendable. Hence, the governmental entities involved should weigh the costs and benefits of pursuing all violators. This means that if one or two cases slip through, are dropped, or are otherwise not economical to pursue, no great loss is incurred. Keeping toll violators off the road is the ultimate goal. Effective deterrence, whether through fines or administrative processes, should be seen as a success.

Court judgments. In California, the registered vehicle owner or responsible party is sent a Notice of Intent to Enter Judgment. This notice advises the violator that unless all tolls and penalties are paid in full within 30 days, a Request for Entry of Judgment will be filed with the court. At this point, many violators recognize the seriousness of their situation and begin the process of paying all or a negotiated amount of the outstanding tolls and penalties. The authors have seen many cases of chronic violators with penalty amounts exceeding \$100,000 who take notice only when the judgment stage is reached.

If the violator fails to make adequate arrangements for payment, settlement, or compromise, the Request for Entry of Judgment is filed with the court. At this point, the court enters a civil judgment against the responsible party. The judgment has the same force and effect of

any other judgment, including liens on real and personal property, wage garnishments, and credit impact. Post-judgment remedies are pursued by counsel.

California's statutory scheme doesn't provide for a right to trial or other contested hearing. No notice of the filing of the Request for Entry of Judgment is required. The failure to exhaust the administrative remedies available overcomes the right to trial. The violator learns that judgment has been entered after the fact. Now facing judgment enforcement, many laggard violators finally take notice and enter the negotiation process.

Implementing a Collection Program

Assuming there are legitimate statutory schemes in place in the jurisdiction of concern, an effective toll-violation collection program can be implemented. This program must be multidisciplinary, entailing cooperation between the toll agency, its processing agency's executive staff, the IT staff, the customer service staff, and the political liaison staff. Outside consultants—such as the verification, information retrieval, and reporting contractors; a collection agency fully experienced in violation collections; and an experienced specialty collection lawyer—are the backbone of a successful collection process that will yield maximum compliance with the law and revenue recovery.

The toll-evasion penalty collection process shouldn't be seen as a liability. While no toll agency wants to view the pursuit of violators as a profit center, it is clear from experience that the effort can easily be much more than self-sustaining, as is the case with the 91 Express Lanes, whose collection and judgment enforcement program is returning \$3.50 for each dollar of assigned toll fee that is identified as a violation. Overall, the 91 Express Lanes achieves a toll-fee collection rate of 105.9 percent.

Public relations is a concern that those implementing a toll-collecting program should consider. Violators can

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Refund, lottery, and registration restraints. Also available in California for toll-road violations are state tax refund and lottery winning intercepts and vehicle registration holds. An intercept puts a hold on state income tax refunds and redirects that money to the toll-processing agency. A registration hold allows, under certain circumstances, the DMV to refuse to renew the registration of a vehicle that has been the subject of a toll-road violation process.

All in all, the collection of unpaid tolls and resulting penalties is part and parcel of the operation of an efficient, effective, and modern tollway. The collection process shouldn't be viewed as an inconvenience but rather as an essential part of toll-road management.

tell sad tales that sometimes pull at the heartstrings. Common excuses include, "I'm only the registered owner because I co-signed for my son. He broke the law, not me." Another remark that generates sympathy commonly involves divorce: "Our marriage broke up and my ex-husband never reregistered my car in his name." Perhaps the most difficult situation involves the death of the registered owner and the potential for collections from the estate. Regardless, the public's interest must be protected. The toll-road agency charges motorists for the use of the road and thus has a vested interest

in assuring those motorists that others aren't using the road for free or clogging traffic without paying.

All in all, the collection of unpaid tolls and resulting penalties is part and parcel of the operation of an efficient, effective, and modern tollway. The collection process shouldn't be viewed as an inconvenience but rather as an essential part of toll-road management. Because of the multitude of issues involved in the successful collection of toll-evasion penalties, appropriate studies and consultation with experts should be an essential element of every toll-road operator's agenda.

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