Testimony of

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Before the

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

Regarding

RISING DIESEL FUEL COSTS IN THE TRUCKING INDUSTRY

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Submitted by

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Good morning Chairman Defazio, Ranking Member Duncan and distinguished members of the Subcommittee. Thank you for inviting me to testify on matters extremely important to our nation's small business trucking professionals.

My name is Todd Spencer. I have been involved with the trucking industry for more than 30 years, first as a truck driver and an owner-operator; and then as a representative for small-business trucking professionals. I am currently the Executive Vice President of the Owner-Operator Independent Drivers Association (OOIDA).

OOIDA is a not-for-profit corporation established in 1973, with its principal place of business in Grain Valley, Missouri. OOIDA is the national trade association representing the interests of independent owner-operators and professional drivers on all issues that affect small-business truckers. The more than 162,000 members of OOIDA are small-business men and women in all 50 states who collectively own and operate more than 260,000 individual heavy-duty trucks. Owner-operators' trucks represent nearly half of the total number of Class 7 and 8 trucks operated in the United States.

The Association actively promotes the views of small business truckers through its interaction with state and federal regulatory agencies, legislatures, the courts, other trade associations and private entities to advance an equitable business environment and safe working conditions for commercial drivers.

The rising cost of fuel is causing harm to the trucking industry as we know it. Across this nation, small business truckers are experiencing unprecedented operating cost increases and are being forced to make tough decisions in the name of saving their businesses and providing for their families. Unfortunately, the climbing diesel prices have already painted many truckers into a corner and for them it is too late. Small businesses comprise the vast majority of the trucking industry in the United States. Approximately 96% of U.S. motor carriers have fleets of 20 or fewer trucks and 87% operate just 6 or fewer trucks.

Without the services small business truckers provide, the price of goods will dramatically rise and arguably send this economy into a tailspin. That is precisely what happened in 2000 prior to the recession, when more than 250,000 trucks were repossessed and it very well could happen again.

In a recently introduced report, longtime trucking analyst Donald Broughton of Avondale Partners, LLC estimated that 935 American trucking companies went out of business in the first quarter of 2008. The report estimated that those businesses operated approximately 42,000 trucks and accounted for roughly 2.1 percent of the nation's over-the-road, heavy-duty truck capacity. While this data is shocking, it is not the complete picture. Broughton's data is not representative of the industry as a whole because it only counts trucking companies with five or more trucks.

Therefore, the thousands of owner-operators and smaller fleet carriers who also failed in the same time period have not been accounted for. But at OOIDA, we hear the stories everyday of the drivers who have recently lost their businesses and the overwhelming majority cite the inability to recoup increased fuel costs as the major contributor to their failures.

ProMiles, a leading provider of professional truck routing, mileage, IFTA fuel tax reporting, and fuel management software tracks the average retail fuel prices Monday through Friday from more than 9,600 truck stops. This past Friday, ProMiles calculated the national average retail price of diesel at an astonishing $4.21/gallon. The AAA also monitors daily fuel prices, and arrived at a more gruesome figure, calculating the national average for diesel at $4.25 – equaling a historic high that was set the day before. That is more than $1.30 more per gallon that truckers are paying for diesel than last year at this time.

To put this into perspective as to how fuel prices impact the trucking industry, each time the price of fuel increases by 5 cents per gallon a trucker's annual costs increase by roughly $1,000. In just the past month, the average price of diesel has climbed by more than 20 cents per gallon – that equates to $4,000 in one month alone. This is an enormous burden on the small business trucker whose average annual income is around $38,000. With strong demand, tight supplies and the rising cost of crude oil, the Department of Energy predicts that diesel prices will continue to rise. The urgency for action to help truckers survive grows with every additional cent they must pay at the fuel pump.

In order to offset possible fuel increases, the trucking industry has long used fuel surcharges as a mechanism to help transportation providers weather rough pricing storms. In fact, the very first surcharges were implemented in 1974 by the Interstate Commission at the explicit direction of the US Congress after recognizing that the existing mechanisms would not allow small business truckers to offset their increased costs and recognizing the market on its own would not adjust to keep this vital transportation segment in business. Due to the structure of the trucking industry, small business truckers are often constrained from adjusting their freight hauling rates or realizing the full benefit of fuel surcharges paid by shippers or the entities whose freight they are transporting.

Without the ability to recoup higher fuel costs, tens of thousands of small business truckers are finding it economically infeasible to continue their business operations. The corresponding loss in freight hauling capacity has already caused American manufacturers, retailers and farmers to struggle to find enough trucks or affordable rates to transport their products.

Fuel surcharges are the only mechanism that has proven to give the trucking industry relief during times of high fuel prices over the last 30 years. It is the same mechanism that has been used in the last several years in other industries including: airlines, railroads, steamship lines, hotels, and even D.C. taxicabs who may suffer from the burdens of high fuel costs.

Throughout the history of the trucking industry, the only viable marketplace solution to erratic fuel prices has been the application of a surcharge. It is a tool used by all of the large carriers because it is established as the primary means by which trucking companies are able to vary their pricing to respond to increased fuel costs. With diesel prices consistently rising, shippers are paying more now in fuel surcharges to get their freight moved than ever before.

But, due to the nature of the trucking industry and the lack of regulatory oversight, middlemen often hold all the cards and are able to exploit shippers as well as truckers.

For a wide variety of reasons, owner operators seldom deal directly with shippers. Most of their freight comes to them through brokers (third party logistics companies) if they are true independent operations or through a larger trucking company if they are leased as independent contractors. Mid-size trucking firms often have contracts with shippers for 'front hauls', but depend entirely on brokers for 'back hauls'. Small and midsize trucking operations make up the vast majority of the industry. As opposed to large corporations, they are the ones getting particularly hard hit by fuel prices.

It is common practice for motor carriers and especially brokers to push shippers for higher fuel surcharges, but only pass along a portion of those surcharges to the truckers who are actually hauling the freight and paying the fuel bill. This is often done by charging the shipper in one way (per mile freight rate + surcharge) then withholding information or misrepresenting transactional information and compensating truckers in another manner for example providing one flat rate, which is usually much lower.

Most shippers may not realize that motor carriers and freight brokers often pass just a fraction, if any, of their surcharges through to the truckers who open their wallets at the pump and therefore have paid these costs willingly without knowing that brokers can abuse and unjustly profit from the current deficiencies of the marketplace during times of high fuel prices.

Truckers must have loads set to run constantly so that their truck won't be idle. They must keep the truck moving - even at a loss sometimes - in order to maintain sufficient cash flow to make their truck payments and try to support their families. Truckers cannot leave the business when they have an outstanding $80,000 truck loan. They must keep trying to make it. Brokers understand this position of truckers, can keep track of what rates truckers are willing to accept, and use this information to their full advantage. If they know that their load is going to bring the trucker back to his home area, they often offer even less.

Certain segments of the U.S. transportation industry are facing hard times, yet brokers appear to be thriving. Just last week the Journal of Commerce published an article entitled, "Third party logistics thrive despite U.S. Ills". The article cites a report by market analyst Armstrong & Associates and says that despite the ongoing freight recession in the United States, revenues of U.S. third-party logistics service providers grew to $122 billion in 2007.

C.H. Robinson is one of the largest players in that arena and probably the largest brokerage firm that small business truckers must deal with. C.H. Robinson posted double-digit first quarter gains in gross revenues and profits and net income. They also use the practice of charging shippers in one fashion with base rates and surcharges, but only offering loads to truckers in so-called "all inclusive" rates in part so that they may profit from fuel surcharges though they do not reimburse truckers for fuel costs.

A couple of years ago FMCSA received quite a bit of criticism from Members of Congress in regards to its oversight of household goods movers and brokers as well as its enforcement of regulations governing the household goods segment of the trucking industry. Those problems pale in comparison to the agency's lacking oversight of general property brokers and freight forwarders.

Every day at our headquarters in Missouri we hear horror stories from small business truckers about unscrupulous brokers with FMCSA authority who collect money from shippers, but never pay the truckers who actually transport the loads. Often when the truckers try to collect the money due to them, they find the broker has closed up shop and moved on. FMCSA seldom responds to complaints about such brokers and never takes any action against them.

Fraudulent brokers such as I described apparently encounter little difficulty when applying for a new operating authority from FMCSA. With the change of the company name and a change of address, they get their new authority and start bilking truckers all over again.

The cost of fuel and the affect it has on our society is a topic of daily newspaper headlines in our home state of Missouri and throughout the nation. Small business truckers are also continuing to experience difficulties as they contend with adjusting to a recovering economy. If we do not find ways to help them soon, small business truckers will continue to lose their businesses or refuse to drive unprofitably. I have no doubt that we will see greater disruptions in the movement of our nation's commerce and our economy.

Small businesses are truly the backbone of our nation's ground transportation system. They are responsible for the vast majority of our freight hauling capacity. Their economic health is necessary if a stable trucking industry is to be available, in good times and bad, to move freight across the country.

Thank you again Chairman DeFazio and Congressman Duncan for the opportunity to testify before the Subcommittee. I look forward to the dialogue, and will be happy to answer any questions that you may have.