

STATEMENT OF ELIZABETH H. DOLE, SECRETARY OF TRANSPORTATION, BEFORE
THE SUBCOMMITTEE ON AVIATION OF THE HOUSE PUBLIC WORKS COMMITTEE,
CONCERNING CAB SUNSET, February 29, 1984

CHAIRMAN MINETA AND MEMBERS OF THE SUBCOMMITTEE:

I am pleased to be here today to present the Department of Transportation's plan for carrying out Civil Aeronautics Board sunset and for administering CAB's functions after sunset.

Before describing our plans for sunset, I would like to emphasize what an important undertaking I believe this is. The Airline Deregulation Act that Congress enacted in 1978 was a milestone that signified the end of forty years of federal regulation -- and the beginning of a new era of airline independence and competition.

In the past six years, we have seen what a sound foundation the ADA laid for deregulation. Despite sweeping changes in federal economic oversight -- and the recent stress of an economic recession and the PATCO strike -- we have a highly competitive and fundamentally healthy industry. Consumers have many more airlines, more service, and a wide variety of fares to choose among.

As the changes evolved during this six-year period, there were a number of proposals to change and "improve" the Airline Deregulation Act. With the most minor exception, Congress wisely chose to stay with the legislation as enacted. I believe that is still the wisest course.

The Act's provisions for the future of CAB's regulatory functions are both adequate and correct. Most functions will transfer to other agencies under explicit provisions of the ADA. In our view the remaining functions which warrant continued federal oversight can be assumed by DOT and the Federal Trade Commission under existing authority.

It will come as no surprise to this Committee that our reluctance to propose or endorse legislation to clarify the ADA stems from a concern that any clarifying legislation could become the magnet for diverse amendments by special interests that could confuse or interfere with orderly sunset of the CAB. If, however, this Committee concludes that legislation is necessary to clarify some aspects of the transfer of functions as set forth in the ADA, I would not be unalterably opposed, so long as the language is limited to the perceived areas of ambiguity and simply affirms and clarifies the existing jurisdictional arrangement for sunset.

Let me summarize now the basic features of the CAB Sunset Plan that the Department issued two weeks ago:

- (a) CAB's international aviation authority, the Essential Air Service Program, and employee protection determinations will transfer to DOT on January 1, 1985, as explicitly provided for in the Act.

- (b) Also on January 1, 1985, CAB's antitrust functions will transfer

to the Department of Justice, and CAB's domestic airmail rate authority will transfer to the US Postal Service, as explicitly provided for in the Act.

- (c) Other CAB functions -- domestic airline economic fitness certification, information and assistance to consumers, and airline data collection -- were not provided for by the Act, but DOT has ample authority under other legislation to assure continued airline fitness for safety purposes, to provide information and assistance to consumers, and to collect aviation data.

- (d) CAB's domestic consumer protection authority will not transfer to DOT, but we believe that the Federal Trade Commission under its own authority would be able to regulate air carriers involved in domestic transportation in all cases currently regulated by the CAB under its Section 411 authority, such as unfair advertising, baggage liability, bonding and escrow for charter operations, and the current rulemaking on computer reservation systems.

I am sure that you want to know about each of these functions in more detail, so let me discuss each of them in turn.

INTERNATIONAL AVIATION

CAB's international aviation functions will be incorporated into the Office of the Assistant Secretary for Policy and International Affairs, with legal support to be provided by the Office of the General Counsel. Both of these DOT Offices already have many years of experience in working with the CAB and the Department of State on international aviation matters, so I expect that this organizational arrangement will work quite well.

A great deal of concern has been expressed about how DOT will handle international route awards and whether the awards will be subjected to improper influence.

The process at DOT will retain most of the steps and safeguards that are now used at the CAB. In particular, contested carrier selection cases will continue to be heard in formal on-the-record proceedings before administrative law judges. The recommendations of the ALJ's, which currently go directly to the Board for a final decision, would under our plan be submitted to an experienced senior career official in DOT's Office of Policy and International Affairs, such as the current Deputy Assistant Secretary in the Policy Office. That career official would make the final decision.

Our plan also provides that the Secretary or the Assistant Secretary for Policy may review final decisions, but only on a discretionary basis and in a carefully limited way. The only actions we could take during this review would be to affirm the decision or remand it for further consideration -- and that would take place on the public record.

At every step in this process, the legal safeguards of the Administrative Procedure Act will apply -- including on-the-record decisionmaking, separation of functions, and prohibitions against ex parte contacts. Finally, the integrity of the process will be protected by the availability of judicial review.

I am confident that this process will provide more than enough assurance that carrier selections will receive the fullest and fairest possible consideration at DOT.

THE ESSENTIAL AIR SERVICE PROGRAM

I recognize the high value attached to the Essential Air Service program by Congress and the communities that receive subsidized service. We applaud the CAB's success in administering this program so that there is a fair balance between assuring adequate small community air service and holding down the subsidy costs borne by the federal taxpayer. It is a program, therefore, that we have every intention of transferring smoothly to DOT, without interruption or disruptive change.

For these reasons, our plan is to transfer the EAS program intact to DOT. Because of the program's sensitivity and its operational nature, it will not be incorporated into one of the existing elements of OST. It will be established as a new and separate office in the Office of the Secretary. We do not intend to change the basic procedures that have been developed and used in the EAS office at CAB. Also,

we expect that most decisions will be made within the EAS Office without a need for further review. However, I intend to delegate to the Assistant Secretary for Policy and International Affairs the right to review EAS decisions in order to ensure that there is full and adequate consideration in cases where problems arise.

EMPLOYEE PROTECTION

After sunset, DOT will assume responsibility for determining whether certain airline employee job losses are due primarily to the ADA, thereby making them eligible for federal compensation. While CAB has initiated formal hearings to make the first set of these determinations, it is likely that they will not reach the final decision stage before the responsibility has transferred to DOT.

Under our Plan, we will continue the formal hearing process for the proceedings already underway at CAB. Once the Administrative Law Judge has made a recommended finding, our decision process will parallel the process to be used for international carrier selections. That is, the ALJ's recommendation will be referred to the senior civil servant in the Office of the Assistant Secretary for Policy and International Affairs for a decision. After his decision, either the Assistant Secretary for Policy or the Secretary of Transportation will have the opportunity to review the decision and, if necessary, remand it for further consideration based upon a written, on-the-record statement of the need for reconsideration.

ANTITRUST

The ADA provides that CAB's antitrust authority will transfer to the Department of Justice. While there is some opinion that this responsibility should transfer to DOT instead, I must emphasize our belief that Justice is the right place for antitrust decisions. It is consistent with that Department's overall responsibility for antitrust policy. It is true that the ADA requires an assessment of transportation benefits for antitrust decisions, and DOT will continue its present policy of participating in cases which involve transportation policy considerations, as contemplated by the Act.

We have already been working with Justice to be responsive to two antitrust matters of concern to the airlines. First, we have agreed that we will avoid duplication of authority in international tariffs and rates. Justice will review and act upon the organic agreements of IATA, leaving consideration of fare and related matters to the Department of Transportation, as Congress clearly intended. Second, in the domestic arena, Justice will consider granting limited antitrust immunity to prevent treble damage recoveries where the conduct has been or is likely to be the object of vexatious antitrust litigation.

I believe that as a result of the agreements that have been reached in these two areas, the airlines and others are becoming more comfortable with DOJ exercise of the antitrust function.

FITNESS

Currently, U.S. airlines must meet two types of fitness requirements in order to operate in the U.S.:

- (a) They must meet the strenuous safety standards of the FAA in order to receive safety fitness certification, under Section 604 of the FAAct.

- (b) They must meet the financial and managerial fitness standards of the CAB in order to receive economic fitness certification under Sections 401 and 419 of the FAAct.

After sunset, all fitness authority that has any bearing upon safety will continue to be administered by the FAA. FAA will continue to require airlines to meet the highest standards of safety.

Economic fitness certification will change after sunset, however. This change will fulfill the ADA objective of deregulating the airlines and relying as much as possible upon the marketplace, rather than the federal government, to determine whether and how an airline can do business. The particular change in economic fitness certification that will occur at sunset is that carriers providing domestic service (other than commuter carriers specified in Section 419 of the FAAct) will no longer be subjected to a financial and managerial fitness review. These airlines will therefore be able to commence operations once they receive safety certification from the FAA.

For international air service and for Section 419 commuter air carriers, the CAB authority to certify airlines' economic fitness will transfer to DOT, along with the relevant programs. We will exercise the international fitness authority with an eye to preventing economically unfit carriers from compromising U.S. interests in international air service, where entry is often limited by existing bilateral agreements. In our exercise of the Section 419 commuter fitness authority, we will assure that essential air service to small communities will not be compromised by economically unfit carriers. In all other respects, we intend to minimize the government role in economic fitness certification, consistent with the deregulatory spirit of the ADA.

DATA COLLECTION

The ADA also did not provide for the transfer of CAB's data collection authority under Sections 407 and 415 of the FAA Act, except that authority for international and EAS data collection will be transferred to DOT. The CAB's data collection authority for non-EAS domestic air service expires upon sunset.

DOT has ample authority under other statutes, however, to collect whatever airline data we believe is necessary. We have been working with CAB for over a year to determine what data should be collected in the future. Significant strides have been made to eliminate unnecessary data collection and ensure that valuable data will continue to be collected after sunset.

CONSUMER PROTECTION

From my past experience -- with the FTC, with the White House Office of Consumer Affairs, and as assistant to the President for public liaison -- I have gained a keen appreciation for the importance of consumer protection. Our sunset plan contains several features that will ensure a continuing high level of responsiveness to consumer needs by the airline industry.

First, all CAB's consumer authority related to international aviation will transfer to DOT upon the sunset of the CAB. Second, for domestic air service, we believe that the authority to prevent unfair and deceptive trade practices by airlines will revert to the Federal Trade Commission. Third, we will establish a new Office of Consumer Affairs in DOT to receive and respond to airline consumer complaints and questions. Moreover, this new Office will be staffed to respond to all telephone and mail complaints regardless of whether the origin of the complaint is a domestic flight or an international flight. It is anticipated that the majority of inquiries can be handled routinely. To the extent, however, that a complaint raises significant issues of fact or law, the complaint will be directed to the appropriate enforcement office, whether in the DOT or the FTC.

DOT will act in concert with the FTC in exercising this consumer authority. We will assure that regulations and enforcement practices will be consistent for the different types of air service under our respective jurisdictions.

The question has been raised to us, "What happens to authority to issue smoking regulations for airlines?" Since the ADA does not provide for the transfer of the Section 404 "safe and adequate" authority upon which domestic smoking regulations are based, this authority will expire at the end of 1984.

I do not believe, however, that the absence of federal smoking regulations will be a problem. The majority of airline passengers regularly state a preference to be seated in a non-smoking area of the aircraft cabin and I am confident that the airlines will continue to honor this preference by maintaining separate areas for smokers and nonsmokers.

PERSONNEL AND STAFFING

I understand that the subcommittee also desires to consider personnel and staffing matters in this hearing. Our analysis of staffing needs after sunset is not yet completed. DOT is involved in ongoing discussions with the CAB regarding the staffing issue. We will continue to work to define our legitimate staffing needs. Our projections may benefit from a staffing study which OMB has requested from the CAB. In the meantime, we believe it would be premature to discuss the number of staff who will transfer.

CONCLUSION

In closing, I would like to make clear my position on the need for new legislation. Our legal analysis concludes that new legislation is not necessary because, under the ADA, all functions that are consistent with the deregulatory objectives of the Act can continue to be performed. If, however, this Committee wishes to enact legislation to clarify the transfer of functions, I am willing to consider such legislation on the merits. It is vitally important that any new legislation not alter the jurisdictional arrangements that are provided by the ADA.

I would be pleased to respond to your questions and comments.