

STATEMENT OF
KENNETH G. CAPLAN
DEPUTY ASSISTANT GENERAL COUNSEL
OFFICE OF AVIATION ENFORCEMENT AND PROCEEDINGS
OFFICE OF THE GENERAL COUNSEL
DEPARTMENT OF TRANSPORTATION
BEFORE THE
HOUSE SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT
REGARDING GALAXY AIRLINES AND CONTINUING FITNESS
JUNE 10, 1986

Mr. Chairman and Members of the Subcommittee:

My name is Kenneth G. Caplan and I am Deputy Assistant General Counsel of the Office of Aviation Enforcement and Proceedings. I am pleased to appear before you today to discuss Galaxy Airlines and my office's role in the Department's continuing fitness program.

Before I discuss our role in the continuing fitness program, I would like to point out that I transferred to DOT from the Civil Aeronautics Board on sunset of the Board. Prior to that time I was Associate General Counsel, Enforcement Division, and had no direct responsibility or involvement in the Board's fitness or continuing fitness program or the certification of Galaxy Airlines. Consequently, I am unable to speak about these matters in any detail or with any direct knowledge.

The Department is responsible under the Federal Aviation Act for issuing licenses ("certificates of public convenience and necessity") to applicants seeking authority to operate in air transportation as air carriers. As part of the licensing process the Department must determine whether an applicant is fit to perform the transportation it proposes. The three-part test the Department uses requires the applicant to establish that it (1) has the managerial skills and technical ability to perform the proposed operations; (2) has a reasonable operating proposal and the finances to operate without undue risk to the public; and (3) will comply with the Federal Aviation Act and with appropriate Federal and State agency regulations.

The fitness requirement is a continuing one under section 401(r) of the Act. Thus, a carrier may have its fitness re-evaluated for a number of reasons, for example, where the Department receives information casting doubt on the carrier's continuing fitness.

In a situation where information is received about a carrier that has a bearing on its fitness, OST staff from the Special Authorities Division in the Office of Aviation Operations within the Policy Office or personnel in my office within the Office of the General Counsel informally contact the carrier to ascertain the facts of the situation. Frequently, the carrier is asked to submit written data or documents for staff review. Once all the necessary information is received, it is reviewed to determine whether there is a need for further action. If staff concludes that further action is necessary, the procedural options available here are the same as those available in initial fitness proceedings.

The procedures available include, but are not limited to, a "show cause" proceeding that would permit a prompt revocation of the carrier's authority or an oral evidentiary hearing before an Administrative Law Judge. In either case, the Assistant Secretary for Policy and International Affairs would have the responsibility to determine which procedure to follow based on the staff's recommendations.

A show cause procedure would only be employed if the information before the Department clearly established a prima facie case that the carrier no longer remained fit in any one of the three fitness areas and any question of fact appeared to be clear-cut. For example, if a carrier no longer has an aircraft to operate, has surrendered its FAA Part 121 operating certificate and has ceased all operations, a show cause proceeding may be in order. If a show cause order is issued, the carrier is given a specific period of time to respond to the order. If an answer is received, it is reviewed by staff who prepare recommendations for the Assistant Secretary on how to proceed. Staff could recommend either adopting a final order disposing of the answer and finding the carrier unfit, or setting the case for oral evidentiary hearing because the answer raises questions as to material issues of fact which can only be resolved through an oral evidentiary hearing.

If an oral evidentiary hearing is employed, the matter is assigned to an Administrative Law Judge who sets a procedural schedule. This covers the filing of various exhibits or other supporting documents by the parties and establishes the dates for a prehearing conference and the hearing. The

staffs of the Special Authorities Division and the Office of Aviation Enforcement and Proceedings participate jointly as Public Counsel. At the hearing, witnesses are presented by the parties, who are subject to cross examination by counsel, as well as by the Judge. After the hearing, briefs are filed in which the parties present their positions on the applicant's continuing fitness. After reviewing the briefs, the Judge issues a recommended decision on whether the applicant should continue to be found fit. Once the Judge's decision has been issued, the record developed in the proceeding is reviewed by the Office of Environmental, Civil Rights, and General Law within the Office of the General Counsel. That office then prepares recommendations for final disposition of the proceeding for review by the Assistant Secretary for Policy and International Affairs. The Assistant Secretary may agree or disagree with the staff recommendations. Those recommendations may or may not be consistent with the Judge's recommended decision. If the Assistant Secretary disagrees with his staff recommendations, he may require additional analyses to be conducted or changes in the recommendations. Once the Assistant Secretary is satisfied that the matter has been properly resolved, a final order is issued.

Specifically with regard to Galaxy Airlines on April 7, 1986, the Department issued an order instituting a continuing fitness investigation of Galaxy Airlines because serious questions had come to its attention concerning whether Galaxy continues to meet the fitness requirements of the Federal Aviation Act. Galaxy has been given until June 23, 1986, to answer a series of very detailed questions posed in the order. After evaluating the information submitted by Galaxy, the Department will determine, as I

described before, what further action to take to resolve the issue of Galaxy's continuing fitness. As I am part of the staff that will eventually recommend to the Assistant Secretary for Policy and International Affairs whether to initiate a show cause or oral evidentiary hearing with respect to Galaxy's fitness and would supervise the prosecution of the oral evidentiary hearing if one were held, I cannot discuss the merits of the proceeding with you at this time.

This completes my formal statement. I would be pleased to respond to any questions you may have at this time.