

Before the  
 Federal Communications Commission  
 Washington, D.C. 20554

In the Matter of	)	
	)	
<b>BASF SE</b>	)	File No. EB-10-IH-4121
	)	
<b>and</b>	)	Acct. No. 201232080010
	)	
<b>BASF CORPORATION</b>	)	FRN No. 0020448510
	)	
Licensee of Various Authorizations in the Wireless Radio Services	)	FRN No. 0019696137
	)	
	)	
	)	

**CONSENT DECREE**

1. The Enforcement Bureau of the Federal Communications Commission, BASF SE, and BASF Corporation, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether BASF SE and BASF Corporation violated Section 310(d) of the Communications Act of 1934, as amended,<sup>1</sup> and Section 1.948 of the Commission’s rules,<sup>2</sup> which require that Commission approval be obtained prior to assignment or transfer of control of wireless radio station licenses.

**I. DEFINITIONS**

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
  - (b) “Adopting Order” or “Order” means an order of the Bureau adopting the terms of this Consent Decree.
  - (c) “BASF Corporation” means BASF Corporation, and includes its predecessors-in-interest and successors-in-interest.
  - (d) “BASF SE” means BASF SE, and includes its predecessors-in-interest and successors-in-interest.
  - (e) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
  - (f) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
  - (g) “Companies” means BASF SE and BASF Corporation.

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<sup>1</sup> 47 U.S.C. § 310(d).

<sup>2</sup> 47 C.F.R. § 1.948.

- (h) “Compliance Officer” means the individual designated in paragraph 10 of this Consent Decree as the person responsible for administration of the Compliance Plan.
- (i) “Compliance Plan” means the program described in this Consent Decree at paragraph 10.
- (j) “Effective Date” means the date on which the Bureau, by delegated authority, releases the Adopting Order.
- (k) “Investigation” means the investigation initiated by the Bureau regarding whether the Companies engaged in substantial and *pro forma* assignments and transfers of control of certain licenses on multiple occasions without seeking or obtaining prior Commission consent, in violation of Section 310(d) of the Act and Section 1.948 of the Rules.
- (l) “Parties” means BASF SE, BASF Corporation, and the Bureau, each of which is a “Party.”
- (m) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (n) “WTB” means the Wireless Telecommunications Bureau of the Commission.

## II. BACKGROUND

3. Pursuant to Section 310(d) of the Act,<sup>3</sup> Commission licensees generally are prohibited from transferring or assigning FCC licenses without prior Commission approval. Furthermore, the Rules require wireless radio services licensees to apply for, and to obtain, Commission approval before transferring or assigning FCC licenses.<sup>4</sup>

4. The BASF Group is one of the world’s largest chemical companies. With six major “Verbund” or integrated complexes used in the production and marketing of chemicals and related products, close to 385 production sites, and over 100,000 employees, the BASF Group operates in more than 80 countries and serves customers and partners throughout the world. BASF SE is headquartered in Ludwigshafen, Germany and is the parent company of the BASF Group of companies.<sup>5</sup> BASF Corporation, which is headquartered in Florham Park, New Jersey, is an indirect wholly-owned subsidiary of BASF SE and is its largest affiliate.<sup>6</sup> BASF Corporation holds FCC private radio licenses, which are used in BASF Corporation’s operations based in the United States.

5. Between April 2010 and August 2011, the Companies voluntarily disclosed to WTB that a comprehensive audit of their FCC-licensed facilities revealed they had participated in corporate acquisitions, asset transfers, and other transactions involving assignments and transfers of control of their FCC private radio licenses without obtaining prior Commission consent.<sup>7</sup> WTB referred the matter to the

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<sup>3</sup> 47 U.S.C. § 310(d).

<sup>4</sup> 47 C.F.R. §1.948.

<sup>5</sup> See <http://www.basf.com/group/corporate/en/about-basf/index?mid=0> (accessed Nov. 22, 2011).

<sup>6</sup> See *id.*; see also FCC Forms 603, Applications for Assignment of Authorization and Transfer of Control, FCC File Nos. 0004756657 (filed June 8, 2011); 0004211222 (filed April 16, 2010).

<sup>7</sup> See FCC Forms 603, Applications for Assignment of Authorization and Transfer of Control, FCC File Nos. 0004808062 (filed Aug. 4, 2011); 0004718069 (filed May 12, 2011); 0004649905 (filed Mar. 28, 2011); 0004568239 (filed Feb. 4, 2011); 0004569039, 0004569115, 0004571235 (filed Feb. 3, 2011); 0004321942 (filed

Enforcement Bureau, which commenced an investigation. The Companies filed with WTB curative applications seeking Commission consent for the assignments and transfers of control of the subject licenses. These filings were completed in August 2011 and WTB has granted all such applications.

### III. TERMS OF AGREEMENT

6. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

7. **Jurisdiction.** The Companies agree that the Bureau has jurisdiction over them with respect to the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

8. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission order.

9. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, the Companies agree to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against the Companies concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against the Companies with respect to their basic qualifications, including character qualifications, to be a Commission licensee or hold Commission authorizations.

10. **Compliance Plan.** Within thirty (30) calendar days of the Effective Date, the Companies agree to implement a comprehensive Compliance Plan for purposes of ensuring their compliance with the Act, the Commission's Rules, and the Commission's orders. The Compliance Plan shall include, at a minimum, the following components:

- a. **Compliance Officer.** The Companies shall designate a Compliance Officer, as defined in paragraph 2 of this Consent Decree, within thirty (30) calendar days of the Effective Date. The Compliance Officer shall administer the Companies' Compliance Plan, supervise the Companies' compliance with the Act and the Commission's Rules and orders, and serve as the point of contact on behalf of the Companies for all FCC-related compliance matters.

- b. Compliance Manual. Within sixty (60) calendar days of the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to the Companies' employees and others who perform the Companies' federal regulatory reporting and compliance-related tasks, all of whom shall follow the procedures detailed in the Compliance Manual. The Compliance Manual shall include at a minimum: (i) an overview of the Commission's requirements applicable to the Companies' operations, including the need for prior approval for wireless license transfers of control and assignments; (ii) a description of the regulatory requirements applicable to the accurate and timely reporting of information in FCC applications; and (iii) instructions regarding due diligence for FCC applications. The Compliance Manual shall be updated from time to time, as needed.
- c. Compliance Training Program. Within ninety (90) calendar days of the Effective Date and annually thereafter, the Companies shall implement and conduct a training program for the Companies' employees and others who perform duties for the Companies that trigger or may trigger compliance-related responsibilities. The Companies shall ensure that training and compliance materials are provided to new and reassigned employees who are responsible for fulfilling those obligations within the first thirty (30) calendar days of employment or reassignment.
- d. Review and Monitoring. The Companies shall review their Compliance Manual and Compliance Training Program at least annually to ensure they are maintained in a proper manner and continue to address the Companies' compliance with federal regulatory reporting obligations. The Companies shall update the Compliance Manual and Compliance Training Program in the event of changes and/or additions to the relevant Rules and related Commission orders.
- e. Compliance Reports. The Companies shall file a Compliance Report with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and upon expiration of this Compliance Plan, *i.e.* three (3) years after the Effective Date. Each Compliance Report shall include a compliance certificate from the Compliance Officer, as an agent of and on behalf of the Companies, stating that he or she has personal knowledge that the Companies: (i) have established operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree, Section 310(d) of the Act, and Section 1.948 of the Commission's Rules,<sup>8</sup> together with an accompanying statement explaining the basis for the Compliance Officer's certification; (ii) has been utilizing those procedures since commencement of the Compliance Plan or the previous Compliance Report was submitted, as applicable; and (iii) is not aware of any instances of non-compliance. The certification must comply with Section 1.16 of the Commission's Rules<sup>9</sup> and be subscribed to as true under penalty of perjury in substantially the form set forth therein. If the Compliance Officer cannot provide the requisite certification, he or she, as an agent of and on behalf of the Companies, shall provide the Commission with a detailed explanation of: (i) any instances of non-compliance with this Consent Decree, Section 310(d) of the Act, and Section 1.948 of the Commission's Rules<sup>10</sup>; and (ii) the steps that the Companies have taken or will take to remedy each instance of non-compliance and ensure future compliance, and the schedule

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<sup>8</sup> 47 U.S.C. § 310(d); 47 C.F.R. § 1.948.

<sup>9</sup> See 47 C.F.R. § 1.16.

<sup>10</sup> 47 U.S.C. § 310(d); 47 C.F.R. § 1.948.

on which proposed remedial actions will be taken. All Compliance Reports shall be submitted to the Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Gary Schonman at Gary.Schonman@fcc.gov, and to Margaret Dailey at Margaret.Dailey@fcc.gov.

- f. **Reporting Non-Compliance.** The Companies shall report any non-compliance with this Consent Decree, or Section 310(d) of the Act, Section 1.948 of the Rules, or related Commission orders to the Bureau within 30 calendar days of the discovery of non-compliance.
- g. **Termination Date of Compliance Plan.** The requirements relating to the Compliance Plan shall expire three (3) years after the Effective Date, unless stated otherwise.

11. **Voluntary Contribution.** BASF SE and BASF Corporation jointly agree that they will make a voluntary contribution to the United States Treasury in the total amount of \$85,000 (eighty-five thousand dollars) within thirty (30) days of the Effective Date. The payment shall be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment shall include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank Federal Reserve Bank of New York, and account number 27000001. The Companies will also send electronic mail notification to Margaret.Dailey@fcc.gov on the date said payment is made.

12. **Waivers.** The Companies waive any and all rights they may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order adopting the Consent Decree without change, addition, modification, or deletion. The Companies shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If any Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither the Companies, nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Companies shall waive any statutory right to a trial *de novo*. The Companies hereby agree to waive any claims they may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

13. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

14. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which the Companies do not expressly consent) that provision will be superseded by such Commission rule or order.

15. **Successors and Assigns.** The Companies agree that the provisions of this Consent Decree shall be binding on their successors, assigns, and transferees.

16. **Modifications.** This Consent Decree cannot be modified without the written consent of all Parties.

17. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute and shall not be construed as (1) an adjudication on the merits, or (2) a factual or legal finding or determination, or an admission by the Companies, regarding any compliance, or noncompliance with the requirements of the Act or the Rules and/or the Commission's orders.

18. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

19. **Counterparts.** This Consent Decree may be signed in counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

20. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

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P. Michele Ellison  
Chief  
Enforcement Bureau

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Date

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Joachim Scholz  
Senior Vice President  
BASF SE

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Date

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Dr. Georg Franzmann  
Vice President  
BASF SE

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Date

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Keith H. Ansbacher  
Assistant Secretary and  
Vice President and Associate General Counsel  
BASF Corporation

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Date