

ATTACHMENT

Description of Transactions

BASF Corporation (“BASF”) requests authority to transfer control of various private business radio licenses to BASF. The licenses at issue were originally held by companies that BASF had acquired in separate transactions and which thereafter operated as subsidiaries of BASF. On April 1, 2010, BASF undertook an internal reorganization by which all or substantially all of the assets of these subsidiaries were distributed or sold to BASF. In connection with that reorganization, these BASF subsidiaries assigned their private business radio licenses to BASF. Applications related to those *pro forma* assignments were filed on March 31; the applications were consented to on March 31 and April 7, 2010.¹

In the course of preparing for that internal reorganization and the associated *pro forma* assignments of licenses, and while concurrently preparing a response to an Enforcement Bureau inquiry on a separate licensing matter (File No. EB-10-SE-003), BASF discovered that to a large extent, Commission consent to the original transfers of control of these licenses had not been sought or obtained. In addition, BASF determined that prior to the April 1, 2010 reorganization, some of these licenses had been involved in one or more *pro forma* assignments generally related to the initial transfers of control, and that Commission consent to these intervening *pro forma* assignments similarly was neither sought nor obtained (to the extent it was required). On the advice of Commission staff, BASF proceeded to timely seek Commission consent to the *pro forma* assignments associated with the April 1, 2010 reorganization and stated its intent to submit past-due applications for the prior transfers of control as soon as possible.²

BASF regrets its prior oversights. In the interest of remedying those omissions, BASF now seeks Commission authority for the following substantial transfers of control:

(1) Engelhard Corporation: Through a tender offer on May 29, 2006, BASF’s parent company, BASF SE, purchased substantially all of the shares of Engelhard Corporation (“Engelhard”). Through a series of steps, BASF SE transferred the shares of Engelhard under the BASF umbrella and converted Engelhard to BASF Catalysts LLC on August 1, 2006. BASF Catalysts LLC is wholly owned by BASF Catalysts Holding, LLC, which in turn is wholly owned by BASF. Engelhard and BASF Catalysts LLC assigned their private business radio

¹ Consents to the *pro forma* assignment of all but two of the licenses at issue were obtained on March 31, prior to the April 1 date on which the assignments occurred. Also on March 31, special temporary authority was granted to assign the remaining two licenses (with call signs WPCQ992 and WPLX621); final consents to those two assignments were obtained on April 7.

² BASF has not yet submitted consummation notices in connection with the April 1 *pro forma* assignments, but it intends to do so following Commission action on the instant transfer-of-control applications and within the applicable time period. Accordingly, BASF has identified the original licensee as the licensee in the Form 603 for purposes of these transfer-of-control applications.

licenses to BASF on April 1, 2010 (file numbers 0004193710 (Engelhard Corporation), 0004193039 (Engelhard-CLAL LP), and 0004193363 (BASF Catalysts LLC)).

(2) Ciba Corporation: On April 9, 2009, BASF SE purchased substantially all of the shares of CIBA AG through a tender offer. On July 1, 2009, Ciba International AG, a wholly owned subsidiary of CIBA AG and the sole shareholder of Ciba Corporation, sold all of the shares of Ciba Corporation to BASF for cash. On April 1, 2010, Ciba Corporation assigned its private business radio licenses (held in its former name of Ciba Specialty Chemical Corporation) to BASF (file number 0004193649).

(3) Degussa Construction Chemicals, Inc.: On July 1, 2006, BASF SE purchased all of the shares of Degussa Construction Chemicals Inc. from Degussa Corporation. On July 3, 2006, BASF SE converted Degussa Construction Chemicals Inc. to BASF Construction Chemicals LLC and transferred its membership interest to BASF. On April 1, 2010, BASF Construction Chemicals LLC assigned its private business radio license (held in the name of Degussa Construction Operations Inc.) to BASF (file number 0004193224).

(4) Micro Flo Company, LLC: On June 12, 1998, BASF purchased the shares of Micro Flo Company. On June 25, 2001, Micro Flo Company was converted to a limited liability company called Micro Flo Company, LLC. On March 31, 2006, BASF sold substantially all of Micro Flo Company, LLC's assets, excluding the Sparks, Georgia site, to a third party. The remaining BASF entity then changed its name to BASF Sparks LLC. On April 1, 2010, BASF Sparks LLC assigned its private business radio license (held in the name of Micro Flo Company) to BASF (file number 0004193017).

As a result of BASF's discovery of its prior noncompliance, BASF has begun to design and implement revised procedures intended to ensure its ongoing compliance with the Commission's licensing requirements, including procedures that will ensure the timely submission of applications for required Commission approvals for the transfer of control or the assignment (*pro forma* or otherwise) of licenses under its control.

Request for Waivers

To facilitate the Commission's approval of these transfers of control, BASF respectfully requests two waivers.

First, BASF requests a waiver of Section 1.948(c) of the Commission's rules, which requires prior authorization for the transfer of control of private business radio licenses. 47 C.F.R. § 1.948(c). Because it is seeking this waiver, BASF cannot make the certification required of transferors and transferees on the Form 603 that control of the licenses will not be transferred until the Commission has given its consent.

Second, BASF seeks a waiver of Section 1.917(a) of the Commission's rules, which requires that an officer, director, or duly authorized employee sign the application on behalf of the transferor. 47 C.F.R. § 1.917(a). Because the original transferors no longer legally exist, and because BASF is unaware of any director, officer, or authorized employee of those companies who can sign on behalf of the original transferors, BASF requests that the Commission accept the signature of an authorized officer of BASF, as the transferee, as adequate documentation to

allow the transfers of control to BASF to proceed. *See, e.g., Applications for Consent to Assignment of Private Land Mobile Radio Authorizations from Lotus Development Corp. and Sequent Computer Systems, Inc. to IBM Research and Development, Inc. International Business Machines Corp.*, Order, 16 FCC Rcd 5209 (2001). BASF thus does not make any of the transferor certifications contained in the Form 603 on behalf of the original transferors. (In addition, for similar reasons and for purposes of these transfer-of-control applications, BASF has identified the “transferor” on the Form 603 as the original licensee, given that the relevant information for the original transferors generally is not available.)

This application meets the requirements for a waiver, as set forth in Section 1.925 of the Commission’s rules. 47 C.F.R. § 1.925(b)(3). The licenses at issue are used to support internal communications and critical safety and emergency operations at BASF’s chemical manufacturing plants throughout the country. Granting this application will serve the public interest by allowing BASF to continue to use the licensed radios in its business operations. Further, given that these operations have been integrated with BASF’s broader operations for many years, it would not be feasible to reverse the transfers of control.

With respect to the certification requirement, there is no feasible way to provide an officer, director, or other authorized employee to sign on behalf of the original transferors, given that these transactions generally occurred several years ago, the original transferors no longer exist, and there are no employees or officers who can make these certifications on behalf of the original transferors. Accordingly, BASF has no reasonable alternative but to seek a waiver.

Statement About Alien Ownership

BASF Corporation is an indirect, wholly owned subsidiary of BASF SE, a European Company, whose shares are publicly traded and widely held. To the extent BASF Corporation may thus be deemed to be foreign owned for purposes of items 98 and 99(a) on the Form 603, it is not required to obtain a foreign ownership ruling pursuant to Section 310(b)(4) of the Communications Act in this case because the licenses are private mobile radio licenses that are not covered by that section.