

entities.”⁴ Accordingly, Bosch requests that the Commission “revisit its decision not to consider ... unlicensed use” in the 123-140 GHz band and “authorize[] unlicensed operation in that range.”⁵ The Commission should reject Bosch’s Petition pursuant to Section 1.429(l)(3) of the Commission’s rules as the requested relief has already been fully considered and rejected by the Commission in the same proceeding.

Moreover, Bosch’s request, if granted, would exacerbate the imbalance of spectrum available for licensed and unlicensed use in bands above 95 GHz. In the *Spectrum Horizons Order*, the Commission already allowed unlicensed use of 21.2 gigahertz of spectrum above 95 GHz.⁶ Indeed, the Commission found this to be “sufficient” and “considerable.”⁷ Meanwhile, it has deferred action on *any* licensed use of the band in this rulemaking process.⁸ Permitting unlicensed use of an additional 17 gigahertz of spectrum—nearly doubling the amount of unlicensed spectrum authorized in the *Spectrum Horizons Order*—would further exacerbate this inequity, particularly since it would come at the cost of spectrum that was teed up for licensed use in the underlying *Notice of Proposed Rulemaking*.⁹ Finally, Bosch’s arguments about international harmonization are also unavailing. Global activities in spectrum above 95 GHz suggest that the Commission should focus on licensed use of this spectrum to help close the gap between the United States and other countries that have already authorized such licensed use.

⁴ Bosch Petition at 1-2.

⁵ *Id.* at 2, 13.

⁶ *Spectrum Horizons Order* ¶ 27.

⁷ *Id.* ¶ 29.

⁸ *See id.* ¶ 2.

⁹ *See Spectrum Horizons*, Notice of Proposed Rulemaking and Order, 33 FCC Rcd 2438, 2452 ¶ 28 (2018) (“*Spectrum Horizons NPRM*”).

II. BOSCH'S PETITION IS PROCEDURALLY DEFECTIVE AND SHOULD BE REJECTED.

Bosch's Petition is procedurally defective as it relies on arguments that have been fully considered and rejected by the Commission. In its comments, Bosch supported unlicensed use of the 116-122 GHz band in addition to the adjacent 122-123 GHz band, but also suggested that the Commission consider "the band 123-140 GHz for unlicensed use in order to facilitate international harmonization of product development."¹⁰ Bosch did not provide any other arguments or details in support of this request for the 123-140 GHz band. Accordingly, the *Spectrum Horizons Order* rejected Bosch's request, noting that "Bosch, the only commenter suggesting a specific band not addressed in the *Notice*, did not provide sufficient detail for the proper consideration of its proposal."¹¹

In declining to act on Bosch's proposal, the Commission noted that "at this time" it would not provide "additional frequency bands for unlicensed device operation above 95 GHz beyond the 21.2 gigahertz" designated by the *Spectrum Horizons Order*.¹² In support of this decision, the Commission noted that it took efforts to provide "a considerable amount of spectrum for unlicensed use in multiple bands that is sufficient to enable development of new unlicensed devices and applications" and that it may "reassess the spectrum allocations based on how uses of this spectrum develop and revisit this issue at a later date."¹³

Now, recognizing that it failed to provide adequate—in fact, *any*—detail for its proposal regarding the 123-140 GHz band, Bosch attempts to resuscitate that proposal by elaborating on

¹⁰ See Comments of Bosch, ET Docket No. 18-21, at 9 (filed May 2, 2018) ("Bosch Comments").

¹¹ *Spectrum Horizons Order* at n.70.

¹² *Id.* ¶ 29.

¹³ *Id.*

the same harmonization argument it made previously.¹⁴ The Commission’s rules bar such procedurally defective attempts. Section 1.429(1)(3) states that petitions for reconsideration may be dismissed or denied if they “rely upon arguments that have been fully considered and rejected by the Commission within the same proceeding.”¹⁵ In this instance, Bosch is attempting to reargue the same claim presented in its comments—that international harmonization necessitates the use of the 123-140 GHz band for unlicensed devices. This argument was already considered and rejected.¹⁶

Although Bosch’s Petition contains slightly more information than its comments, Sections 1.429(b) and 1.429(1)(2) of the Commission’s rules permit reliance on new facts or arguments only if they were unknown or occurred after the proceeding.¹⁷ Any facts or arguments asserted by Bosch in its Petition that attempt to buttress its insufficient prior request were well known and cannot be a basis for proper reconsideration.¹⁸ As such, the Commission should dismiss or deny Bosch’s Petition pursuant to Section 1.429 of the Commission’s rules.

III. THE COMMISSION ALREADY ALLOCATED SIGNIFICANT AMOUNTS OF SPECTRUM FOR UNLICENSED USE.

Even if Bosch’s Petition was not procedurally defective, the Commission should deny the requested relief because unlicensed devices have already been allotted substantial spectrum above 95 GHz. In the *Spectrum Horizons Order*, the Commission made available 21.2 gigahertz

¹⁴ See Bosch Petition at 11.

¹⁵ 47 C.F.R. § 1.429(1)(3).

¹⁶ See *Spectrum Horizons Order* at n.70, citing Bosch Comments at 9-10.

¹⁷ See 47 C.F.R. §§ 1.429(b), 1.429(1)(2).

¹⁸ See Bosch Petition at 9-12 (arguing that the Commission should allocate the 123-140 GHz band for unlicensed use in order to facilitate the international harmonization of product development, particularly given that there is little evidence of incompatibility between unlicensed short-range devices in the 123-140 GHz band and any incumbent operators in this frequency range).

of the Spectrum Horizons bands for unlicensed use, including the 116-123 GHz band, the 174.8-182 GHz band, the 185-190 GHz band, and the 244-246 GHz band, while simultaneously delaying action on identifying *any* spectrum for licensed services.¹⁹ It is thus no surprise that the Commission concluded it had provided a “considerable amount of spectrum for unlicensed use in multiple bands that is sufficient to enable development of new unlicensed devices and applications.”²⁰ The Commission elected to be cautious in allocating any additional spectrum for unlicensed or licensed use, reasoning that “the bands above 95 GHz are largely uncharted territory”²¹ and “time and experience under the new unlicensed rules and experimental rules ... [would] provide ... valuable perspective”²² for future policymaking. In short, the Commission affirmed that it would not provide additional frequency bands for unlicensed device operation “at this time.”²³

Despite the Commission’s unequivocal language, Bosch filed the instant Petition, seeking to nearly double the amount of spectrum made available for unlicensed use in the *Spectrum Horizons Order*. Any such action would increase the inequity between unlicensed and licensed allocations in the high-band frequencies.²⁴ Indeed, while the Commission deferred action on *any* licensed use in this rulemaking process, the *Notice of Proposed Rulemaking* explored rules that would allocate the 130-134 GHz band for licensed fixed point-to-point operations based on the

¹⁹ See *Spectrum Horizons Order* ¶ 27.

²⁰ *Id.* ¶ 29.

²¹ *Id.* ¶ 33.

²² *Id.* ¶ 2.

²³ *Id.* ¶ 29.

²⁴ Unlicensed users already have access to nearly six times more spectrum than licensed users in the high-band frequencies. Grant of Bosch’s Petition would increase that number to nearly ten times more spectrum: 52.2 gigahertz for unlicensed use versus 5.5 gigahertz for licensed use.

rules currently in place for the 70/80/90 GHz bands.²⁵ Grant of Bosch's Petition would foreclose yet another opportunity for licensed users in the high-band frequencies.

Indeed, arguments in favor of international harmonization undercut Bosch's Petition. The 141-148.5 GHz, 151.5-164 GHz, and 167-174.8 GHz bands are already allocated for licensed fixed services globally—yet, none of these bands are currently available in the United States for licensed use.²⁶ Thus, far from arguing for more unlicensed spectrum, international activities demonstrate that the Commission's focus should now be on making more licensed spectrum available in high-band frequencies to close the gap between the United States and other countries that have already authorized licensed use.

Therefore, although CTIA continues to support use of the bands above 95 GHz for both licensed and unlicensed operations, the Commission should reject calls to allocate still more spectrum between 95 GHz and 3 THz for unlicensed use. Rather, the Commission should, consistent with the *Spectrum Horizons Order*, continue to focus on developing rules that would permit licensed use of spectrum in this band.

IV. CONCLUSION.

For the foregoing reasons, the Commission should dismiss or deny Bosch's Petition for Partial Reconsideration of the *Spectrum Horizons Order*.

²⁵ See *Spectrum Horizons NPRM* ¶¶ 28-31.

²⁶ See, e.g., European Communications Office, ECC Work Programme Database, https://eccwp.cept.org/WL_Detail.aspx?wiid=537 (last visited Aug. 15, 2019).

Respectfully submitted,

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August 15, 2019

CERTIFICATE OF SERVICE

I, Rachel Sher, do hereby certify that on this 15th day of August, 2019, I caused a copy of the foregoing Opposition to be served via electronic courtesy copy and first-class U.S. mail, postage prepaid, on the following:

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