

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

In the Matter of Application of)	
)	
EAGLEVIEW TECHNOLOGIES, INC.)	File No. 57875-CM-R-91
)	
For Renewal of License Multipoint Distribution)	
Service Station WDU502, Pensacola, Florida)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: April 3, 2003**Released: April 7, 2003**

By the Commission:

1. On April 18, 2002, EagleView Technologies, Inc. (EagleView) filed an application for review¹ of the March 21, 2002 decision of the Video Services Division of the former Mass Media Bureau (Division).² The Division's decision denied EagleView's petition for reconsideration of the dismissal³ of its March 28, 1991 renewal application for Multipoint Distribution Service (MDS) Station WDU502, Pensacola, Florida. For the reasons discussed below, we grant EagleView's application for review and reinstate the above-captioned renewal application.

2. *Background.* On March 28, 1991, EagleView filed the above-captioned renewal application for MDS Station WDU502.⁴ On July 12, 1995, the Division sent EagleView a letter (July 12, 1995 Letter) indicating that the renewal application for WDU502 was defective and requesting that EagleView respond to certain questions by August 14, 1995.⁵ On April 25, 1996, the Division sent a letter to EagleView dismissing the renewal application because EagleView failed to respond to the July 12, 1995 Letter.⁶ On May 22, 1996, EagleView requested reconsideration of the dismissal of its renewal application.⁷ In the Petition, EagleView contends that neither it nor its counsel received the July 12, 1995

¹ Application for Review (filed Apr. 18, 2002).

² Effective March 25, 2002, the Commission transferred regulatory functions for the Instructional Television Fixed Service and the Multipoint Distribution Service/Multichannel Multipoint Distribution Service from the Mass Media Bureau to the Wireless Telecommunications Bureau (Bureau). Radio Services Are Transferred From Mass Media Bureau to Wireless Telecommunications Bureau, *Public Notice*, 17 FCC Rcd 5077 (2002). Accordingly, the Bureau's Public Safety and Private Wireless Division assumed all regulatory duties associated with these services effective March 25, 2002. *Id.*

³ Letter from Sharon M. Bertelsen, Supervisory Attorney, MDS Section, Video Services Division, Mass Media Bureau, Federal Communications Commission to EagleView Technologies, Inc. (dated Mar. 21, 2002) (March 21, 2002 Letter).

⁴ FCC File No. 57875-CM-R-91 (filed Mar. 28, 1991).

⁵ Letter from Renee Alexander, Attorney, MDS Section, Video Services Division, Mass Media Bureau, Federal Communications Commission to EagleView Technologies, Inc (dated Apr. 25, 1996).

⁶ *Id.*

Letter.⁸ On March 21, 2002, the Division denied EagleView's Petition, but did not address EagleView's allegation that it did not receive the July 12, 1995 Letter.⁹ On April 18, 2002, EagleView filed an Application for Review reiterating its contention that neither it nor its counsel received the July 12, 1995 letter.¹⁰

3. As indicated above, the Division has stated in the record in this proceeding that it sent a letter to EagleView on July 12, 1995 requesting additional information concerning EagleView's March 28, 1991 renewal application. EagleView, on the other hand, maintains that neither it nor its attorney received the July 12, 1995 Letter. The Commission has stated that when there is an allegation that Commission correspondence was not received, "the question of receipt should be resolved on the basis of all the record evidence, including the regularity of mailing and delivery procedures and the inferences naturally drawn from those facts."¹¹ We emphasize that EagleView's statement, standing alone, would be insufficient to show that it did not receive the July 12, 1995 letter.¹² In this instance, however, a copy of the July 12, 1995 letter has not been located in the Commission's records, including but not limited to the Division's correspondence files and station file for Station WDU502. Based on these circumstances and relevant Commission precedent, we will accept EagleView's representation that it did not receive the July 12, 1995 letter.¹³ Consequently, we grant EagleView's application for review and reinstate EagleView's March 28, 1991 renewal application for Station WDU502 to pending status.

4. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), and Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, the Application for Review filed by EagleView Technologies, Inc. on April 18, 2002, IS GRANTED.

5. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), that EagleView's application for renewal of license for Station WDU502, File No. 57875-CM-R-91, IS REINSTATED AND IS REFERRED to the Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch for further processing consistent with this *Memorandum Opinion and Order*.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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⁷ EagleView Technologies, Inc., Petition for Reconsideration (filed May 22, 1996) (Petition).

⁸ *Id.* at 2.

⁹ March 21, 2002 letter.

¹⁰ Application for Review at 3.

¹¹ See Juan Galiano *et al.*, *Memorandum Opinion and Order*, 5 FCC Rcd 6442 ¶ 7 (1990).

¹² See Denver MDS Co., *Memorandum Opinion and Order*, 2 FCC Rcd 643 (1987).

¹³ In light of our acceptance of EagleView's representation, we find it unnecessary to address the merits of EagleView's allegations that the Division violated Section 1.12 of the Commission's Rules 47 C.F.R. § 1.12, in the context of this proceeding. Section 1.12 states that when an attorney has submitted a document on behalf of or has been otherwise designated by a person or entity concerning a matter pending before the Commission, any notice or written communication pertaining to that matter will be communicated to the attorney. See Application for Review at 2-3.