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Red flags won't return

The FCC is going back to its pre-6/2 ownership rules, but RBR has learned that will not resume 'red-flagging' radio deals for market concentration. That issue was not addressed in the notice issued late Wednesday that the FCC was ending its second deal freeze of 2003 ([9/11 RBR Daily Epaper #178](#)).

During Bill Kennard's term as FCC Chairman, the Commission had begun what it called an 'informal' practice of flagging proposed radio combinations that were deemed to create high levels of radio revenue concentration - - a single owner with over 40% of revenues or two with over 70%. Despite complaints from broadcasters that the practice had no basis in law - - or the FCC's regulations, for that matter - - the flagging was continued under Chairman Michael Powell, with the Commissioners formally voting to use it as an interim measure until they passed new ownership rules. Flagging was discontinued after the 6/2 meeting where new ownership rules passed 3-2 and revenue concentration was not a factor in the new local radio ownership rules - - where the FCC tightened up on how many stations a single owner could have by switching from the contour overlap method of counting stations to the Arbitron market definition.

That all was put on hold, though, when a federal appeals court blocked the new ownership rules from taking effect, as scheduled, last week ([9/4 RBR Daily Epaper #173](#)). The FCC promptly froze deal processing, but announced Wednesday that it would resume processing under the old rules, pending the outcome of the court case.

But while, the old rules are back in effect, the court order didn't reinstitute red-flagging - - and neither is the FCC.

RBR observation:

As we understand it, because red-flagging was an interim measure and never part of the FCC's rules, it is not affected by the federal court's temporary restraining order against the new rules. Red-flagging was killed by the Commissioners on 6/2, so only a vote by the Commissioners could bring it back. That's a can of worms that few people at the FCC want to re-open. In fact, no one at the Commission even wants to make a formal comment on the matter.

In our view, red-flagging was unlikely to stand up to a court test - - but we'll never know because none of the red-flagged deals ever got to the point of a lawsuit. This was a bad idea that should be left in the past.

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