F.C.C. Push to Regulate Broadband Is Expected

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WASHINGTON — The chairman of the Federal Communications Commission will try to regulate broadband Internet service despite a recent court ruling that the commission had limited powers to do so.

Two F.C.C. officials, who spoke on the condition of anonymity, said that Julius Genachowski, the F.C.C. chairman, will announce Thursday that the commission considers broadband service a sort of hybrid between an information service and a utility and that it has sufficient power to regulate Internet traffic under existing law.

The F.C.C. decision is likely to be seen as a victory for content companies like Amazon.com and Google, the owner of YouTube, which do not want Internet service providers to have the power to charge them for access to customers or for faster download speeds.

The phone and cable companies that provide Internet service have said they have no plans to do so, but that could change.

The F.C.C. has limited authority over information services but it has vast powers to regulate certain utilities. It contends that a mix of those powers can be applied to broadband service.

“The chairman will seek to restore the status quo as it existed prior to the court decision,” a senior F.C.C. official said, “to fulfill the previously stated agenda of extending broadband to all Americans, protecting consumers, ensuring fair competition, and preserving a free and open Internet.”

The F.C.C. officials asked not to be identified because they were not authorized to discuss the announcement publicly. Mr. Genachowski was not available for comment.
Last month, a federal appeals court ruled that the F.C.C. had exceeded its authority by
telling Comcast, the nation’s largest cable company, that it had to give Internet users
equal access to all online content providers, even if some of their content was clogging
Comcast’s network.

The decision raised the difficult question of whether there was sufficient support in
Congress for granting the agency new powers.

On Thursday, Mr. Genachowski is expected to assert that the agency, under its powers to
regulate phone service, is permitted to require broadband service providers to follow
certain transmission guidelines, including safeguarding privacy, not discriminating
against certain types of content providers, offering service to rural customers at the same
rate as urban customers and providing access to people with disabilities.

His decision would appear to have the backing of some important lawmakers.

On Wednesday Representative Henry A. Waxman and Senator John D. Rockefeller IV,
the chairmen of the House and Senate committees that oversee the F.C.C. wrote to him
saying, “it is essential for the commission to have oversight over these aspects of
broadband policy” and that they were prepared to consider legislation to provide it. The
F.C.C. apparently will not seek to enforce the vast authority it has over telephone
utilities in which it can regulate rates.

Consumer groups hailed the F.C.C.’s intentions after word of Mr. Genachowski’s planned
announcement leaked Wednesday.

Gigi B. Sohn, president and co-founder of Public Knowledge, which promotes open
Internet policies, called it “a welcome announcement” that would help protect consumers
and expand broadband access and adoption in the United States.

Even after the F.C.C. lays out its authority, there are still potential speed bumps in
carrying out its policy. The five-member commission must vote on the approach, which
will be put out for public comment and revision before final rules are set. The process
could take months and may be subject to legal challenges.

A spokeswoman for Comcast declined to comment. Though Comcast won its argument
in court that the F.C.C. lacked the authority to require it to give equal access to all
content providers, the company had already adopted a policy in which it would not block
some services or delay their speed of transmission.

The case, Comcast v. F.C.C., which was decided by the United States Court of Appeals for
the District of Columbia Circuit, involved a file-sharing service known as BitTorrent,
which users employ to exchange large files including video and music.

Even before the case was decided, Mr. Genachowski had said that if the court ruled
against the F.C.C., it would seek other legal authority to carry out consumer protections
over Internet service.

After the ruling, he asserted that the court had not disagreed with the agency’s desire to
keep a free and open Internet, but only with the narrow legal basis the F.C.C. had relied
on to justify it.
F.C.C. Is Expected to Make Push to Regulate Broadband - NYTimes.com

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