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Pittsburgh Post-Gazette
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Philadelphia Inquirer
Brady says Kane was 'asleep at the switch'
(see editorials in the ***Inquirer*** and ***Pittsburgh Post-Gazette***)

In the past week, I've **written a bit** about how broadband industry execs are telling Washington one thing about strict net neutrality while **suggesting something else** to Wall Street. The companies are telling investors that they'll keep making their networks better, just like always — even if federal regulators adopt aggressive Internet rules. But that's not what regulators are hearing from the companies, who are telling them that those same rules would depress investment in the network and hurt consumers.

Which message should we believe? It's an interesting discrepancy, one that raises questions about what the carriers truly believe. Some Switch readers are skeptical that we should interpret anything significant from the executives' remarks. But there are some good arguments for giving the investor messaging the benefit of the doubt. A few readers have argued that top company execs such as Verizon's chief financial officer amount to little more than "corporate bean counters" with little knowledge of what actually goes into running a network or managing regulatory affairs.

Others point out that executives have every incentive to downplay business risks when talking to investors — the last thing you want to do is scare those folks off. If the chief executives of Comcast and Time Warner Cable said the wrong thing at the wrong time, Wall Street might bolt. And that would be bad.

What these arguments amount to is the idea that high-level corporate officials can't be expected to know or accurately describe their firms' true state of affairs. If that's the case, then the U.S. economy has a much bigger problem on its hands than the question of net neutrality and its impact on investment. It's certainly plausible that some companies might leave the chief financial officer in the dark about policy and regulation. Maybe at these companies the CFO gets looped into decision-making only after everyone else has settled on a course of action. On the face of it, this seems like a weird way of running a business — especially if you regularly send that person to discuss such issues with investors.

But you don't have to take my word for it. On Wednesday, I asked Robert Quinn, AT&T's vice president of federal regulatory issues, to describe how familiar his company's CFO was with the regulatory process. "Our CFO is

very in tune with what's going on in the regulatory world — I'll tell you that," Quinn said. Quinn quickly added that he couldn't speak for what goes on at other companies and that he didn't necessarily have expectations about CFO responsibilities. But here we have a senior policy official for a major telecom company saying that the CFO has an authoritative grasp of what goes on in Washington. That should bolster investor confidence in whatever AT&T's CFO might say on regulatory affairs.

The best explanation for the industry's seemingly divergent messages is that we're discussing two different constituencies. Like many negotiations, much of Washington lobbying involves staking out the most aggressive position you can on an issue because you know you're leaving benefits on the table if you start out from a more moderate position. So it makes sense that the industry would seek to highlight a nightmare investment scenario in front of policymakers while telling actual investors something different. Let's set aside the CFO issue for a minute. The other companies that said Obama's net neutrality plan should not scare investors sent their chief executives to chat with shareholders. Even if you assume these firms' CFOs were cut off from discussions about regulation, you'd expect the CEOs — the people steering the ship — to know what they were talking about.

In fact, in talking to investors, companies are bound by law to make truthful representations. Speaking dishonestly risks running afoul of the Securities Exchange Act, which bans "any untrue statement of a material fact" or deceit by omission. Violating what's known as **SEC rule 10b-5** could incur stiff penalties. To be clear, I'm not aware of any company that has expressly told the FCC that it would curtail its own investments; most have just spoken generally about the threat that strong net neutrality rules poses to the industry's future investment in network upgrades. But that, combined with the fact that companies must tell the truth to investors about their plans, combined with the fact that policy negotiations tend to encourage extreme rhetorical positions, suggests we can broadly believe what broadband companies are telling Wall Street about how they'd react to aggressive FCC oversight. – ***Washington Post***

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