

DELEGATION AND CABLE DISTRIBUTION SYSTEMS:
A NEGATIVE ASSESSMENT

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Discussion Paper No. 11

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ISSN 0706-1242

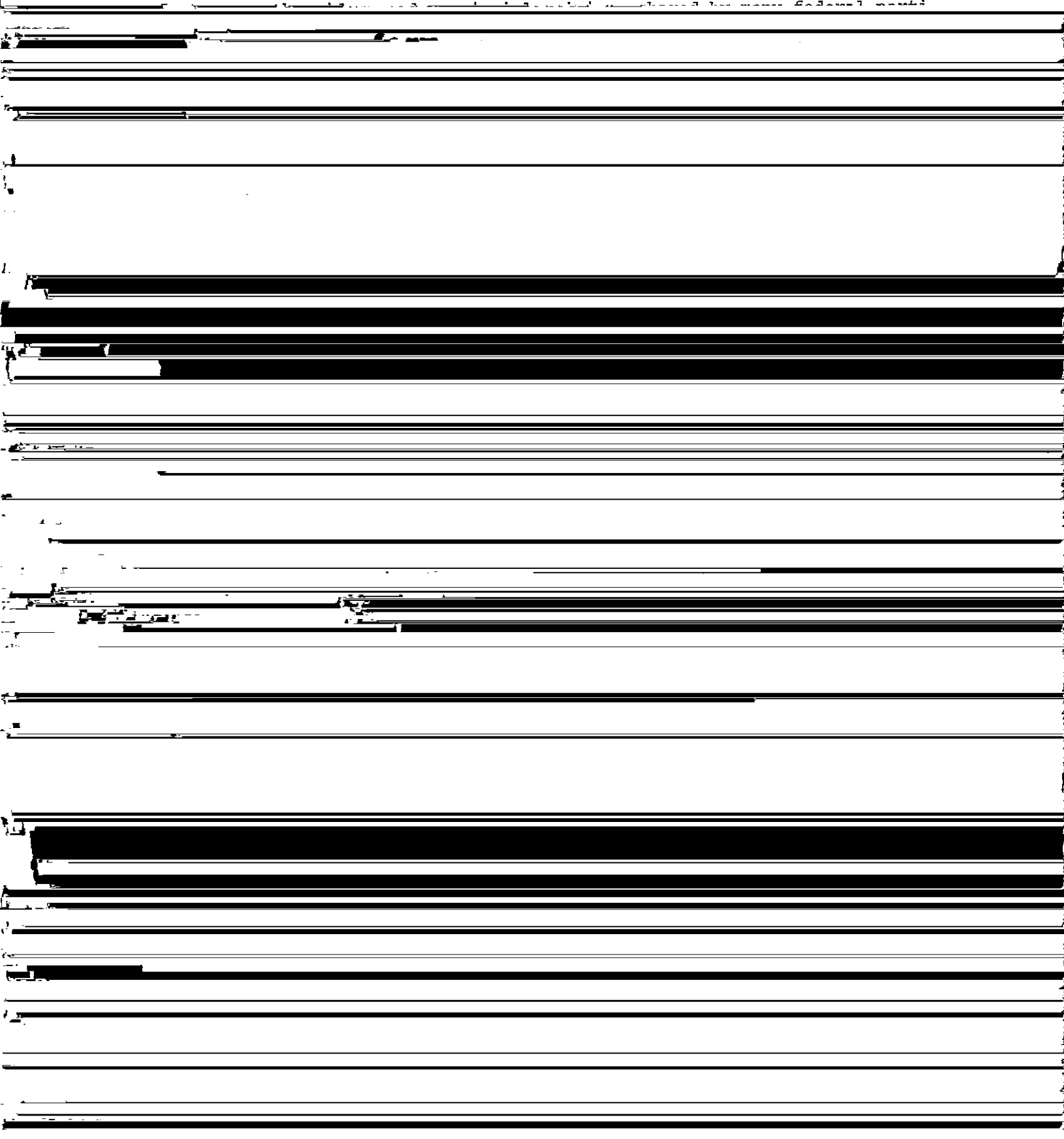
Preface

One of the most contentious of the issues concerning the division

Technological change has reached a fast and furious pace and is rapidly becoming faster. Most of society's institutions, on the other hand, can only change slowly, and in most cases avert their eyes from the frightening onrush of science.¹

In the last decade of constitutional reform, the government and institutions

government possessed no effective means, other than amending the relevant statute, to implement intergovernmental agreements. Associated with this



In advancing a case against delegation, my perspective on cable emphasizes the future. It is commonplace to assert that we are in the first stages of embarking on a fundamental transformation of our economy and society into what has been labelled an "information-based society". In such a society, telecommunications policies and systems will undoubtedly play the crucial role transportation policies and systems played in an earlier era. Only recently have we begun to appreciate and enjoy the technological advances that will provide for greatly enhanced transmission capacities, and, most importantly, transmission choices. But such advances will not be without mixed blessings. One commentator has noted "revolutionary changes in information technology, involving computers and telecommunications, will cause upheavals at the level of markets, institutions, laws and politics."⁷ Those upheavals, he suggested, will involve two basic sets of issues:

- 1) those relating to the arrangements of the information infrastructure itself, e.g. common carrier policy, competition of the related tele-

The industry's proposed definition states that

"cable television undertaking" means a telecommunication

It must be understood that at some time in the past

[REDACTED]

The provincial response to such criticisms should also be studied in

undertakings" which are adjuncts to the television system into integral components of a telecommunications sector with significant inter-regional, national and even international dimensions.

Neither the provincial governments' demands for delegation nor the

Canada to enact a law to resolve the specific conflict and such law shall prevail."³⁴

In general, the recognition by the governments of the relationship between cable distribution systems and the free flow of information and the need to build adequate safeguards into any delegation scheme is to be applauded. Unfortunately, one must be somewhat less enthusiastic about the specifics of the proposals for such safeguards. The federal proposal is unsatisfactory because it is far too mechanistic. It would prevent the creation of provincial barriers by not giving provinces jurisdiction over systems that go beyond a province's boundaries. But while we are beginning to see the creation of trans-provincial cable concerns, e.g. Canadian Cablesystems, the provinces could easily frustrate any similar further developments, if they were delegated jurisdiction, by refusing to allow

Footnotes

Englewood Cliffs: Prentice-Hall, 1977, p. 347.

2. Public Service Board v. Dionne, 1978, 2 R.C.S. 191.

17. Canada Consulting Group Inc., World-Scale Competitive Positioning in Canada's Cable Industry, February 20, 1980, p. 1-7.

30. See, for example, Robert L. Stanfield, "The Present State of the Legislative Process in Canada: Myths and Realities" and Donald V.