

Please consider this document the official WestTel response to the ICTA publication of **Public Consultation A Policy for Deep Packet Inspection and Similar Technologies (Ref: CD 2009-4)** on queries (e) to (g) of Paragraph 25.

e. Do you consider that the use of DPI and similar technologies is permissible under the provisions of sections 73 and 75 of the Law? Please supply rationale.

The use of DPI and similar technologies is permissible under the provisions of sections 73 of the Law in that ICT service or ICT network providers may, subject to the rules and procedures established by section 72(4) of the Law (a) refuse to provide an ICT service or an ICT network to a subscriber; or (b) discontinue or interrupt the provision of such an ICT service or ICT network to a subscriber pursuant to an agreement with that subscriber provided of course that the grounds for doing so are reasonable and non-discriminatory.

It is open to the ICT service or ICT network providers to refuse to provide service or network to a subscriber and this would be permissible on the basis that if such subscriber would use the ICT service or ICT network to harass or annoy another or for any other illegal purpose, the ICT network or service provider must be entitled to satisfy itself that the subscriber has offended the provisions of the Law and in order to protect the integrity of its service or network the ICT service or Network provider should be entitled to inspect the contents of the unencrypted Internet traffic over its network or service.

When section 73 is read with section 75(3) (ii) & (iii) it is evident that the Law contemplated that ISP's would be afforded the ability to protect its network or service and as such would allow the ISP to use reasonable efforts to prevent illegal use of the network or service and to preserve the technical integrity of its network or service provided of course the actions taken against any such subscriber was non-discriminatory and in accordance with the subscription agreement between the subscriber and For the purposes of the Law it is our contention that sections 73 and 75 adequately,(particularly section 75(e) (i),(ii)&(iii) and (f)) cover DPI and similar technologies in that ISP or INP is permitted to intercept, monitor or interrupt any message that is being transmitted over its network or service for the (i) providing of billing, (ii) preventing the illegal use of the ICT network or ICT service and (iii) preservation of the technical integrity of an ICT network or ICT service.

It is often the case that subscribers will access sites that could expose the network to various computer viruses and spam and by examining packet flows at detailed levels the ISP's can improve network security and guarantee levels of service to different customer types. Network security is improved as system administrators can correlate particular packet exchanges with worm and virus like behavior and implement measures to automatically quarantine infected devices from the rest of the ISP's network.

For the sake of brevity paragraphs 14, 15 and 16 of the Public Consultation Package issued July 28th 2009 is adopted.

- f. **Given that DPI and similar technologies did not exist when the Law was originally approved by the Legislative Assembly, is there now a need to review the provisions of sections 73 and 75? If so please detail the changes you would recommend and provide rationale for these changes.**

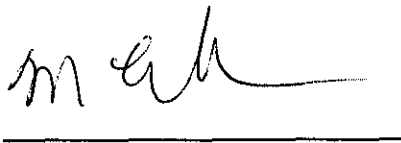
As stated above at paragraph e it is our contention that there is no need at this juncture to review sections 73 and 75 of the Law.

- g. **What, if any, measures should be put in place to ensure that DPI is used only for legal purposes?**

The Law and the Regulations currently provide the protections to ensure that DPI is used only for legal purposes. In addition the conditions on the Licenses in section 12 adequately cover Privacy and Confidentiality issues.

The ICTA would have to ensure that anyone not strictly adhering to the spirit and terms of the Law or those persons breaching the Law and Regulations are prosecuted in accordance with the powers granted to the ICTA under the Law.

Signed



Michael Edenholm

Chief Executive Officer

Date: 25 September 2009