

**ORIGINAL****Timolyn Henry**

**From:** Woods, Vickie [Vickie.Woods2@bellsouth.com]  
**Sent:** Thursday, January 04, 2007 4:18 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** 060684-TP BellSouth's Response to Litestream's Amended Complaint  
**Importance:** High  
**Attachments:** 060684-T.pdf; LEGAL-#661485-v2-060684-TP\_BST\_Response\_to\_Litestream\_Amended\_Complaint\_and\_Opposition\_to\_Request\_to\_Dismiss.DOC

060684-TP

- A. Vickie Woods  
 Legal Secretary to James Meza III and Manuel A. Gurdian  
 BellSouth Telecommunications, Inc.  
 150 South Monroe Street  
 Suite 400  
 Tallahassee, Florida 32301  
 (305) 347-5560  
[vickie.woods2@bellsouth.com](mailto:vickie.woods2@bellsouth.com)
- B. Docket No.: 060684-TP Complaint and Petition for Declaratory Relief of Litestream Holdings, LLC against BellSouth Telecommunications, Inc.
- C. BellSouth Telecommunications, Inc.  
 on behalf of Manuel A. Gurdian.
- D. 10 pages total (.pdf) (includes letter, certificate of service and pleading)  
 8 pages word version
- E. BellSouth Telecommunications, Inc.'s Response to Litestream's Amended Complaint
- .pdf word
- <<060684-T.pdf>> <<LEGAL-#661485-v2-060684-TP\_BST\_Response\_to\_Litestream\_Amended\_Complaint\_and\_Opposition\_to\_Request\_to\_Dismiss.DOC>>

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 SGA \_\_\_\_\_  
 SEC 1 \_\_\_\_\_  
 OTH \_\_\_\_\_

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1/4/2007

ORIGINAL

Legal Department

Manuel A. Gurdian  
Attorney

BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(305) 347-5561

January 4, 2007

Mrs. Blanca S. Bayó  
Division of the Commission Clerk and  
Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

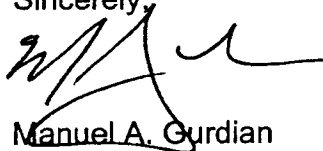
**Re: Docket No.: 060684-TP Complaint and Petition for Declaratory Relief  
of Litestream Holdings, LLC against BellSouth Telecommunications,  
Inc.**

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Response to Litestream's  
Amended Complaint, which we ask that you file in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of  
Service.

Sincerely,



Manuel A. Gurdian

Enclosure

cc: All Parties of Record  
Jerry D. Hendrix  
James Meza III  
E. Earl Edenfield, Jr.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK


**CERTIFICATE OF SERVICE**  
**Docket No. 060684-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via  
Electronic Mail and First Class U. S. Mail this 4th day of January, 2007 to the following:

Jason Fudge  
Staff Counsel  
Florida Public Service  
Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
[jfudge@psc.state.fl.us](mailto:jfudge@psc.state.fl.us)

Gray Robinson Law Firm  
Gary Resnick  
401 East Las Olas Blvd.  
Fort Lauderdale, FL 33301  
Phone: (957) 761-8111  
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[gresnick@gray-robinson.com](mailto:gresnick@gray-robinson.com)

Litestream Holdings, LLC  
500 South Australian Avenue  
Suite 120  
West Palm Beach, FL 33401-6235  
Phone: (561) 659-5400  
Fax: (561) 659-5671  
[sally@rhodesholdings.net](mailto:sally@rhodesholdings.net)

  
\_\_\_\_\_  
Manuel A. Gurdian

# ORIGINAL

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Litestream Holdings, LLC )  
Against BellSouth Telecommunications, Inc. )  
\_\_\_\_\_)

Docket No. 060684-TP

Filed: January 4, 2007

### **BELLSOUTH'S RESPONSE TO LITESTREAM'S AMENDED COMPLAINT**

BellSouth Telecommunications, Inc. ("BellSouth"), by and through its undersigned counsel and pursuant to Rule 28-106.203, Florida Administrative Code, hereby responds to the Amended Complaint filed by Litestream Holdings, LLC ("Litestream"), and states as follows:

#### **AFFIRMATIVE DEFENSES**

Litestream asserts that the "basis for [its] Complaint is BellSouth's threat to refuse to provide its telephone service to a new development if the developer enters into a agreement with Litestream to market Litestream's cable modem broadband services on an exclusive basis to residents or an agreement giving Litestream the exclusive right to provide cable television and/or broadband services to the development." BellSouth has not threatened to refuse to provide its services in developments where Litestream provides its cable broadband services. In fact, BellSouth intends to provide telecommunications services to residents in the subdivision about which Litestream seemingly complains, which is know as "Glen St. Johns."<sup>1</sup> Consequently, there is no issue in dispute and the Amended Complaint should be dismissed.

Litestream also lacks standing to bring its claims. There is no allegation that BellSouth has refused to provide service to Litestream (or, for that matter, to any customer requesting service).

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<sup>1</sup> BellSouth's service plans are independent of and have not been influenced in any way by Litestream's filing of this Complaint.

DOCUMENT NUMBER - DATE

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### SPECIFIC ALLEGATIONS

Responding to the specific allegations in the Amended Complaint, BellSouth alleges and says that:

1. BellSouth admits the allegation in paragraph 1 on information and belief.
2. BellSouth admits the allegation in paragraph 2 and further states that all pleadings, notices, and other documents in this docket should be provided to the following:

James Meza III  
General Counsel – FL<sup>2</sup>  
BellSouth Telecommunications, Inc.  
c/o Nancy Sims  
150 So. Monroe Street  
Suite 400  
Tallahassee, FL 32301  
305.347.5558  
305.577.4491 (fax)  
[james.meza@bellsouth.com](mailto:james.meza@bellsouth.com)

and

E. Earl Edenfield Jr.  
Chief Counsel Regulatory Litigation  
BellSouth Telecommunications, Inc.  
675 West Peachtree Street,  
Suite 4300  
Atlanta, GA 30375  
[kip.edenfield@bellsouth.com](mailto:kip.edenfield@bellsouth.com)  
404.335.0763

3. Paragraph 3 of Litestream's Amended Complaint does not set forth any allegations and, accordingly, no response is required. To the extent one is required, the allegations are denied.

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<sup>2</sup> The undersigned is licensed in Louisiana only, is certified by the Florida Bar as Authorized House Counsel (No. 464260) per Rule 17 of the Rules Regulating the Florida Bar, has been granted qualified representative status by the Commission for 2006 in Order No. PSC-06-0165A-FOF-OT, and has filed an Application for Qualified Representative Status for 2007 in Docket No. 070008-OT per Commission Order No. 07-0008-PCO-OT.

4. The statutes and rules cited by Litestream speak for themselves and do not require a response from BellSouth. However, because Litestream has no standing, BellSouth denies that the Commission has jurisdiction over the claims asserted in Litestream's Amended Complaint.

5. BellSouth admits that D.R. Horton, Inc.-Jacksonville is a corporation that is a subsidiary of D.R. Horton, a national developer, and that D.R. Horton is in the process of developing a large subdivision of single family homes in St. Johns County, Florida which is known as "Glen St. Johns." BellSouth has not been a party to the alleged negotiations between D.R. Horton and Litestream and, accordingly, is not in a position to confirm or deny Litestream's allegations regarding such negotiations. BellSouth admits on information and belief that Litestream has a cable franchise from St. Johns County. Except as specifically admitted, BellSouth denies the allegations in paragraph 5 of the Amended Complaint.

6. BellSouth admits that it is the incumbent local exchange provider in St. Johns County and also admits that it offers digital subscriber line or "DSL" service in the area and that BellSouth's DSL service sometimes competes with other services, including, but not limited to cable broadband service. Except as specifically admitted, BellSouth denies the allegations in paragraph 6 of the Amended Complaint.

7. BellSouth denies that its representatives have threatened D.R. Horton. BellSouth further denies that its senior representatives told D.R. Horton that BellSouth has a practice of refusing to provide services under certain circumstances. BellSouth admits that the definitions of various agreements alleged in paragraph 7 are accurate so far as those terms are generally used in the telecommunications industry. Except as

specifically admitted, BellSouth denies the allegations in paragraph 7 of the Amended Complaint.

8. BellSouth denies that it threatened D.R. Horton or that it has taken any action to create an unfair advantage for itself with respect to providing services in the Glen St. Johns subdivision. BellSouth has no knowledge or information sufficient to form a belief as to the accuracy of Litestream's allegations regarding its purported agreement with D.R. Horton or to D.R. Horton's decisions on whether to enter into a contractual relationship with Litestream and, accordingly, denies such allegations. BellSouth admits that it does not object to legal contracts generally. BellSouth further admits that BellSouth's marketing group discussed with D.R. Horton the possibility of entering into an agreement with D.R. Horton pursuant to which Horton would market BellSouth's services at Glen St. Johns and further states that BellSouth has not entered into any such agreement with D.R. Horton at this time. Except as specifically admitted, BellSouth denies the allegations in paragraph 8 of the Amended Complaint.

9. BellSouth denies the allegations of paragraph 9, including the general allegation that it has ignored its carrier of last resort obligations. Indeed, BellSouth intends to provide services to residents within the subdivision that apparently is the subject of Litestream's Amended Complaint.

10. D.R. Horton's authority to enter into contracts with Litestream and Litestream's authority to offer services are legal conclusions and no response to such allegations is required. BellSouth denies the remaining allegations in paragraph 10 of the Amended Complaint.

11. BellSouth admits that it sometimes enters into agreements pursuant to which developers agree to reimburse BellSouth for the costs of facilities in the event

that the developer enters into agreements with other service providers that would make it difficult, if not impossible, for BellSouth to recoup the costs of its facilities. Except as specifically admitted, BellSouth denies the allegations in paragraph 11 of the Amended Complaint.

12. BellSouth denies the allegations in paragraph 12 and specifically denies that it has violated Florida law, including the referenced statutes.

13. BellSouth is in no position to know what Developers allegedly "realize," and thus cannot respond to that allegation in paragraph 13 of the Amended Complaint. BellSouth denies the remaining allegations in paragraph 13.

14. BellSouth's carrier of last resort requirements, as well as the exceptions thereto, are set forth in the Florida Statutes. Allegations regarding the same are legal conclusions to which no response is required. To the extent Litestream alleges that BellSouth violated the cited law, the allegations are denied.

15. BellSouth denies the allegations in paragraph 15 and specifically denies that it has violated Florida law, including the referenced statutes.

16. The allegations in paragraph 16 purport to quote certain Florida Statutes. No response to those allegations is required. The statutes speak for themselves. To the extent Litestream alleges that BellSouth violated the cited statutes, the allegations are denied.

17. The allegations in paragraph 17 purport to state conclusions of law and, accordingly, no response is required. To the extent Litestream alleges that BellSouth violated the cited statutes, the allegations are denied.



18. The allegations in paragraph 18 purport to state conclusions of law and, accordingly, no response is required. To the extent Lifestream alleges that BellSouth violated the cited statute, the allegations are denied. BellSouth further states that Section 364.507, entitled "Education Facilities Infrastructure Improvement", is not applicable to the instant dispute.

19. BellSouth denies the allegations of paragraph 19, except to admit that the Commission has jurisdiction over BellSouth in certain areas.

20. BellSouth denies the allegations in paragraph 20 of the Amended Complaint.

21. BellSouth denies the allegations in paragraph 21 of the Amended Complaint.

#### COUNT ONE

22. BellSouth incorporates its responses to paragraphs 1-21 of the Amended Complaint.

23. BellSouth denies the allegations in each and every subpart of paragraph 23 and asserts that the Commission should deny the relief requested therein.

#### COUNT TWO

24. BellSouth incorporates its responses to paragraphs 1-23 of the Amended Complaint.

25. BellSouth denies the allegations in each and every subpart of paragraph 25 and asserts that the Commission should deny the relief requested therein.

26. The Commission should deny the relief requested in paragraph 26 of the Amended Complaint.

### MATERIAL FACTS IN DISPUTE

27. BellSouth denies that it has threatened D.R. Horton and, as evidenced by BellSouth's denial of the factual allegations asserted by Litestream, further denies that there are no material facts in dispute.

28. BellSouth denies the allegations in paragraph 28 of the Amended Complaint.

### RELIEF REQUESTED

29. BellSouth respectfully requests that the Commission deny the relief requested by Litestream. The Commission should dismiss the Amended Complaint.

30. BellSouth denies each and every allegation in the Amended Complaint not expressly admitted herein, and demands strict proof thereof.

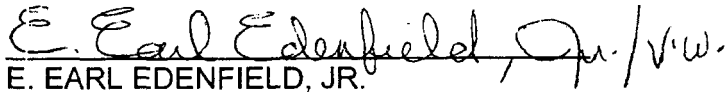
WHEREFORE, BellSouth respectfully requests the Commission to enter an Order in BellSouth's favor, deny Litestream the relief sought, and grant BellSouth such other relief as the Commission deems just and proper.

Respectfully submitted this 4th day of January, 2007.

BELLSOUTH TELECOMMUNICATIONS, INC.



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