

GRAY | ROBINSON  
ATTORNEYS AT LAW

SUITE 1850  
401 EAST LAS OLAS BLVD.  
FORT LAUDERDALE, FL 33301  
TEL 954-761-8111  
FAX 954-761-8112  
gray-robinson.com

CLERMONT  
FORT LAUDERDALE  
JACKSONVILLE  
KEY WEST  
LAKELAND  
MELBOURNE  
NAPLES  
ORLANDO  
TALLAHASSEE  
TAMPA

954-761-8111

GRESNICK@GRAY-ROBINSON.COM

October 17, 2006

**VIA ELECTRONIC MAIL**

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

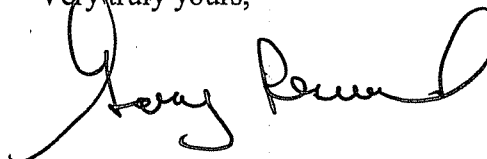
**Re: Complaint and Petition for Declaration Relief of Litestream Holdings,  
LLC against Bellsouth Telecommunications, Inc.**

Dear Ms. Bayó:

On behalf of Litestream Holdings, LLC, attached please find for filing an electronic copy of the Complaint and Petition for Declaration Relief of Litesream Holdings, LLC against Bellsouth Telecommunications, Inc.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Gary Resnick

cc: Mr. James Meza, III  
Mr. Patrick Wiggins

GIR:jc  
Enclosure

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

In the Matter of: )  
Complaint and Petition for Declaratory )  
Relief of Litestream Holdings, LLC. )  
Against BellSouth Telecommunications, Inc.)

Docket No. \_\_\_\_\_

Filed: October 17, 2006

**COMPLAINT AND PETITION FOR DECLARATORY RELIEF  
OF LITESTREAM HOLDINGS, LLC AGAINST  
BELLSOUTH TELECOMMUNICATIONS, INC.**

Litestream Holdings, LLC (“Litestream”), pursuant to Chapter 364, Florida Statutes, and Rules 25-22.036(2) and 28-106.201, Florida Administrative Code, files this Complaint and Petition for Declaratory Relief (“Complaint”) against BellSouth Telecommunications, Inc. (“BellSouth”). The basis for this Complaint is BellSouth’s threat to refuse to provide its telephone service to a new development if the developer enters into an 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 broadband services to the development. BellSouth’s practice is illegal pursuant to its carrier of last resort obligations under Florida law. Moreover, BellSouth’s threat to refuse to provide telephone service is unreasonably discriminatory, and therefore illegal pursuant to Florida law. BellSouth’s practice of threatening not to provide telephone service is also anticompetitive and interferes with the developer’s ability to select the broadband provider of its choice.

“Carrier of last resort” refers to the obligations of BellSouth, as the local exchange carrier, to provide basic local exchange telecommunications service

("Telephone Service") on reasonable terms to all customers within its service area requesting such service, pursuant to Section 364.025(1), Florida Statutes. BellSouth is blatantly ignoring its carrier of last resort obligations when it threatens to deny landline Telephone Service to the development's homes if the developer selects Litestream, or another broadband and/or cable services provider.

Furthermore, BellSouth's practice of threatening to refuse to provide its Telephone Service if the developer enters into such an agreement is anticompetitive because it forecloses choice and directly hampers the ability of broadband and video providers to compete. Through action on this Complaint, the Commission should ensure that BellSouth's threat does not prevent this developer from selecting the service provider of its choice. Under Florida law, BellSouth may not refuse to provide landline Telephone Service to a development simply because the developer prefers a provider other than BellSouth for broadband service and/or video service. Litestream, therefore, respectfully requests that the Commission require BellSouth to cease and desist immediately from threatening not to install its telecommunications infrastructure and not to offer landline Telephone Service to the development if the developer decides to enter into an exclusive marketing agreement, exclusive service agreement, or a bulk service agreement, for broadband services and/or cable services with Litestream.

#### **PARTIES**

1. The party filing this Complaint is Litestream, which is a limited liability company organized and formed under the laws of Florida. Litestream's main office is located at 500 Australian Avenue South, Suite 120, West Palm Beach, FL 33401.

Litestream is a provider of cable television, cable modem broadband service, and other communications services including, but not limited to alarm monitoring services.

2. This Complaint is filed against BellSouth, a corporation organized and formed under the laws of the State of Georgia. BellSouth's main office is located at 675 West Peachtree, Atlanta, Georgia 30375. BellSouth is an incumbent local exchange carrier ("ILEC") in Florida and provides the majority of its services to customers located in its traditional service territory. A copy of this Complaint was sent via certified mail to BellSouth's representative at the following address:

Mr. James Meza, III  
Ms. Sharon R. Liebman  
Nancy H. Sims  
BellSouth Telecommunications, Inc.  
150 So. Monroe Street  
Suite 400  
Tallahassee, FL 32301

3. All pleadings, notices and other documents directed to Litestream related to this proceeding should be provided to:

Gary Resnick, Esq.  
gresnick@gray-robinson.com  
and  
Frank A. Rullan, Esq.  
frullan@gray-robinson.com

GrayRobinson, P.A.  
401 East Las Olas Blvd.  
Suite 1850  
Ft. Lauderdale, FL 33301  
Tel. (954) 761-8111  
Fax. (954) 761-8112

#### **JURISDICTION**

4. The Commission has jurisdiction over this Complaint pursuant to Chapters 120 and 364, Florida Statutes; and Chapters 25-22 and 28-106, Florida Administrative

Code. Specifically, the Commission has jurisdiction over the claims asserted in the Complaint consistent with its authority over carrier of last resort obligations pursuant to Sections 364.03, 364.025(1), and 364.01(4)(a), Florida Statutes, which provides for the Commission to “[p]rotect the public health, safety, and welfare by ensuring that basic local telecommunications services are available to all consumers in the state at reasonable and affordable prices;” Section 364.01, Florida Statutes, which gives the Commission authority to regulate telecommunications providers; Section 364.10(1), Florida Statutes, which prohibits a telecommunications company from subjecting any person or locality to any undue or unreasonable prejudice or disadvantage; and Section 364.3381(3), Florida Statutes, which gives the Commission jurisdiction over anticompetitive behavior.

**BACKGROUND REGARDING BELLSOUTH’S ACTIONS  
THAT CONSTITUTE THE VIOLATIONS**

5. D. R. Horton, Inc.-Jacksonville (“Developer”) is a foreign corporation registered in Florida that owns and is in the process of developing certain real property commonly known as “Glenns St. Johns” located in St. Johns County, Florida, consisting of approximately 495 single family residential homes (“Development”). The Developer desires to ensure that cable television services (“Cable Services”) and high speed Internet access services (hereinafter “Broadband Services”) are available to the residents purchasing the homes. The Developer and Litestream have been negotiating an agreement that would give Litestream the exclusive right to provide Cable Services and Broadband Services for a certain period of time to the Development’s homes on a “bulk” basis, whereby the residents would pay for such services through their homeowners’ dues. As an alternative, the Developer and Litestream have been considering an agreement that would provide Litestream with the exclusive right to provide Cable

Services on a "bulk" basis, and a preferred right to market its Broadband Services to the residents whereby the residents would decide whether to subscribe to Litestream's Broadband Services and those that so subscribed would pay Litestream directly. Either such agreement would allow the residents purchasing homes in the Development to obtain Cable Services at less than standard retail rates and would ensure access to Broadband Services. Litestream possesses a franchise from St. Johns County to construct and operate a cable system and to provide Cable Services in the Development. Litestream would not offer communications services, as defined in Section 364.025(6)(a)(3), Florida Statutes, to the Development. Rather, the Developer would need to obtain such services from BellSouth or another provider of such services. However, there are very few, if any, other viable choices for such communications services and the Developer has determined that it wants BellSouth's Telephone Service for this Development.

6. BellSouth is the ILEC serving St. Johns County and specifically, is the carrier of last resort for the area of the Development. BellSouth also offers Direct Subscriber Line ("DSL") service to residents in the area. BellSouth's DSL Broadband Service often competes with cable modem Broadband Service, including the Broadband Service Litestream would offer in the Development.<sup>1</sup>

7. Upon information and belief, BellSouth's representatives have threatened the Developer that BellSouth will not install its telecommunications facilities and will not provide landline Telephone Service to the Development's residents if the Developer

---

<sup>1</sup> BellSouth may also be a competitor for video service. While BellSouth does not offer franchised Cable Services in the area, it apparently sells video services through a relationship with DirecTV, a direct broadcast satellite provider. Thus, BellSouth may seek to sell video services to this Development.

exercises its right to enter into an exclusive marketing agreement, an exclusive service agreement, or a bulk service agreement, for Broadband Services and/or Cable Services with Litestream, or any provider for that matter other than BellSouth. An “exclusive marketing agreement” refers to an agreement whereby the Developer agrees not to allow other providers to market their services using the Developer’s materials or facilities, including, for example, its sales center, and prohibits the Developer from marketing services of other providers. An “exclusive service agreement” refers to an agreement whereby the provider has the exclusive right to provide the service (to the extent authorized by applicable law<sup>2</sup>). A “bulk service agreement” refers to an agreement whereby the provider bills the Developer or homeowners’ association for certain services provided to residents, and residents pay for such services through their homeowners’ assessments. Upon information and belief, BellSouth’s senior representatives confirmed in meetings with the Developer its practice of refusing to provide Telephone Service if the Developer entered into such an agreement.<sup>3</sup> More recently, BellSouth confirmed its position generally of not installing its telecommunications facilities and not providing Telephone Service if a developer enters into an agreement with a Broadband competitor.<sup>4</sup>

---

<sup>2</sup> For example, under federal law, an exclusive cable services agreement cannot prohibit a resident from obtaining video service from direct broadcast satellite providers.

<sup>3</sup> The facts in this Complaint should not be confused with the facts *In re: Complaint of the Florida Competitive Carriers Association Against BellSouth Telecommunications, Inc. and Request for Expedited Relief*, Docket No. 020507-TL, which was ultimately dismissed by the Commission, Order No. PSC-06-0308 (April 20, 2006) (hereinafter “FCCA Action”). In the FCCA Action, the factual situation was the opposite. BellSouth refused to provide DSL service to consumers who selected an alternative voice service provider. In this case, BellSouth is refusing to provide its Telephone Service to consumers who select an alternative Broadband Services provider.

<sup>4</sup> See Comments of BellSouth Telecommunications, Inc. Regarding Proposed Rule 25-4.804, *In re: Carrier-of-Last Resort; Multitenant Business and Residential Property*, Docket No. 060554-TL (October 5, 2006). See also Joint Filing By Verizon Florida Inc., Embarq Florida, Inc and BellSouth Telecommunications, Inc. of Proposed rule 25-4.084 and Intermodal Competition Report, *In re: Carrier-of-Last-Resort; Multitenant Business and Residential Property*, Docket No. 060554-TL (October 5,

It appears that before BellSouth will undertake work to prepare this Development for installation of its telecommunications facilities, BellSouth will require the Developer to agree that the Developer has not entered into, and does not plan to enter into, an exclusive marketing agreement, an exclusive services agreement, or a "bulk" service agreement with another service provider for voice, Broadband Services, or video services.

8. The Developer was prepared to enter into an agreement with Litestream pertaining to Litestream's provision of Broadband Services and Cable Services in this Development. The agreement with Litestream would not prohibit BellSouth from installing its telecommunications facilities or providing its Telephone Service in the Development. However, as a result of BellSouth's threat to refuse to install its telecommunications facilities and to refuse to provide Telephone Service, the Developer is now hesitant to enter into an agreement with Litestream for Broadband Service. It should be recognized that BellSouth does not object to such contracts in general. Upon information and belief, BellSouth has proposed that the Developer enter into an agreement that would give BellSouth a preferred or exclusive right to market its DSL Broadband Services to the Development's residents and potentially the exclusive right to provide video services, most likely through DirecTV's service. Thus, BellSouth is using its unique position as the carrier of last resort for Telephone Service to create an unfair advantage for itself over Litestream for Broadband Services and video service.

9. Finally, although BellSouth has requested the Commission to adopt a rule that would interpret Section 364.025(6)(d), Florida Statutes, as providing relief to its

---

2006)(proposing that factors the Commission should consider in a petition for relief from the carrier-of-last-resort obligation include "[w]hether the owner or developer has entered into an agreement with another provider of data services, video service or other substitute or similar service...." Proposed Rule 25-4.084(5)(b)).



carrier of last resort obligations if a developer enters into a “bulk” or preferred Broadband Services agreement with a company other than BellSouth, the Commission has not adopted such a rule, nor determined that it would be consistent with the Statute to do so.<sup>5</sup> Moreover, to the best of Litestream’s knowledge, BellSouth has not filed a request with the Commission to be relieved of its carrier of last resort obligations for this Development. Rather, BellSouth has merely ignored its carrier of last resort obligations without complying with the procedures mandated by Florida law.

10. The Developer has the authority under state and federal law to enter into an agreement with Litestream for Cable Services and Broadband Services to the Development. Litestream has the authority under its franchise with St. Johns County and applicable federal and state law to offer Cable Services and/or Broadband Services on an exclusive bulk basis to the Development or to have preferred marketing rights for its Broadband Services. There are many reasons why the Developer would prefer Litestream’s Broadband Services over BellSouth’s DSL Broadband Services, not the least of which is that Litestream offers much faster download speeds. Similarly, there are many reasons why the Developer would prefer Litestream’s franchised Cable Services over satellite service offered by BellSouth, which may require placing a satellite receiver on every home. BellSouth’s actions, thus, have harmed the Developer and ultimately the residents, and interfered with the Developer’s rights to contract with the Broadband Services and/or Cable Services provider of its choice. BellSouth’s actions have harmed Litestream by affecting Litestream’s substantial interest in being able to provide Broadband Services and/or Cable Services pursuant to an agreement with the Developer. The market to provide video and Broadband Services in new developments, such as the

---

<sup>5</sup> Id.

Development in the present case, is fairly competitive. Litestream will be unable to compete if, as a result of BellSouth's threat to withhold Telephone Service, the Developer is unwilling to enter into a Cable Services and/or Broadband Services agreement with Litestream.

### **STATUTES BELLSOUTH IS VIOLATING**

#### **I. BellSouth's Refusal to Provide Telephone Service to the Development Is a Breach of Its Obligations as the Carrier of Last Resort, in Violation of Chapter 364, Florida Statutes.**

11. The carrier of last resort obligation in Florida requires BellSouth to provide basic local telecommunications service to all persons within its service area requesting such service. See Final Order Determining Appropriate Interim Universal Service/Carrier of Last Resort Mechanism, Order No. PSC-95-1592-FOF-TP, *In Re: Determination of Funding for Universal Service and Carrier of Last Resort Responsibilities*, Docket No. 95-0696-TP; Sections 364.025(1), 364.03, Florida Statutes. See also Section 364.01(4)(a), Florida Statutes providing for the Commission to exercise its jurisdiction "by ensuring that basic local telecommunications are available to all consumers in the state at reasonable and affordable prices."

12. BellSouth, by refusing to provide Telephone Service to the Development if the Developer selects Litestream or another entity to provide Broadband Services and/or Cable Services, is flagrantly violating Florida law and breaching its statutory obligations as a carrier of last resort, in violation of Sections 364.03, 364.025(1), and 364.01(4)(a), Florida Statutes.

**II. BellSouth's Refusal to Provide Telephone Service to the Development If the Developer Enters Into An Exclusive Marketing, Service, or Bulk Agreement with Lifestream For Broadband Services and/or Cable Services Is An Unjust, Unreasonably Discriminatory and Anticompetitive Practice in Violation of Chapter 364, Florida Statutes.**

13. Florida law prohibits BellSouth from engaging in an unjust, unreasonably discriminatory and anticompetitive practice with respect to its provision of telecommunications services. Section 364.051(5)(a)(2), Florida Statutes provides that with respect to nonbasic services, an ILEC "shall not engage in any anticompetitive act or practice, nor unreasonably discriminate among similarly situated customers." In addition, Section 364.10(1), Florida Statutes provides that a "telecommunications company may not give any undue or unreasonable preference or advantage to any person or locality or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

14. Section 364.3381(3), Florida Statutes gives the Commission continuing oversight jurisdiction over anticompetitive behavior and provides that the Commission may investigate allegations of such behavior upon complaint.

15. Finally, Section 364.507, Florida Statutes, sets forth a policy supporting the promotion, expansion and deployment of Broadband Services and encourages competition for such advanced telecommunications services.

16. Accordingly, it is the Commission's role to ensure that BellSouth does not engage in unreasonably discriminatory, anticompetitive behavior in its provision of Telephone Service.

17. By refusing to sell Telephone Service to the residents of this Development if the Developer enters into an agreement with Lifestream to provide Cable Services

and/or Broadband Service or gives Litestream a preferred right to markets its Broadband Services, BellSouth is: (1) engaging in unjust and unreasonable practices; (2) discriminating against and prejudicing the Developer and ultimately the residents for entering into an agreement with Litestream; (3) conferring unjust and unreasonable preferences on other consumers and developers who do not enter into such agreements with providers other than BellSouth; and (4) engaging in anticompetitive behavior with respect to Litestream.

18. Accordingly, the Commission should find that BellSouth's refusal to provide Telephone Service to residents of the Development if the Developer enters into an exclusive marketing agreement, exclusive service agreement, or a bulk service agreement, for Broadband Services and/or Cable Services with Litestream is unjust, unreasonably discriminatory, prejudicial, and anticompetitive in violation of Sections 364.051(5); 364.10, 364.01(4), Florida Statutes.

**COUNT ONE**  
**VIOLATION OF CARRIER OF LAST RESORT OBLIGATIONS**

19. Litestream incorporates paragraphs 1-18 of this Complaint as if fully set forth herein.

20. Litestream requests the Commission to declare that:

(a) As the ILEC, BellSouth's practice of threatening to deny Telephone Service to the Development is illegal pursuant to its carrier of last resort obligations;

(b) As the ILEC, BellSouth's practice of threatening to deny Telephone Service to the Development violates Chapter 364, Florida Statutes;

(c) BellSouth is obligated to provide Telephone Service to the Development, upon request, regardless of whether the Developer executes an exclusive marketing agreement, exclusive service agreement, or a bulk service agreement, for Broadband Services and/or Cable Services with Litestream;

(d) BellSouth has acted illegally by threatening the Developer that it will not install telecommunications facilities and will not provide its Telephone Service to the Development if the Developer executes an exclusive marketing agreement, exclusive service agreement, or a bulk service agreement, for Broadband Services and/or Cable Services with Litestream;

(e) BellSouth must cease and desist from asserting to the Developer that it will not provide Telephone Service to the Development if the Developer executes an exclusive marketing agreement, exclusive service agreement, or a bulk service agreement, for Broadband Services and/or Cable Services with Litestream.

**COUNT TWO  
UNJUST, UNREASONABLY DISCRIMINATORY AND  
ANTICOMPETITIVE PRACTICES**

21. Litestream incorporates paragraphs 1-20 of this Complaint as if fully set forth herein.

22. Litestream respectfully requests the Commission to declare that:

(a) BellSouth's refusal to provide its Telephone Service to the Development if the Developer enters into an exclusive marketing agreement, exclusive service agreement, or a bulk service agreement, for Broadband Services and/or Cable Services with Litestream is unjust, unreasonably discriminatory, prejudicial and anticompetitive in violation of Chapter 364, Florida Statutes;

(b) BellSouth must cease and desist from asserting to the Developer that it will not provide Telephone Service to the Development if the Developer enters into an exclusive marketing agreement, exclusive service agreement, or a bulk service agreement, for Broadband Services and/or Cable Services with Litestream and should order BellSouth to offer its Telephone Service to the Development, upon the Developer's request, regardless of whether the Developer enters into such an agreement.

#### **MATERIAL FACTS IN DISPUTE**

23. Litestream does not believe that there are any material facts in dispute. The only material fact relevant to the Commission's determination is that BellSouth has threatened the Developer that it will not install its telecommunications facilities in the Development and will not offer its Telephone Service to the Development's residents if the Developer enters into an exclusive marketing agreement, exclusive service agreement, or a bulk service agreement, for Broadband Services and/or Cable Services with Litestream.

24. The ultimate issue for the Commission to resolve is whether BellSouth's action in threatening not to install its telecommunications facilities and not to provide Telephone Service if the Developer enters into such an agreement with Litestream constitutes a violation of Florida law.

#### **RELIEF REQUESTED**

25. Litestream respectfully requests that the Commission:

(a) Set this matter for a hearing, pursuant to Section 120.57(2), Florida Statutes, based upon briefs and oral arguments, as it appears that there are no material facts in dispute;

(b) In the alternative, should the Commission believe that material facts are in dispute, require that this matter be set for a Section 120.57(1), Florida Statute, formal proceeding;

(c) Declare that, as the ILEC and the carrier of last resort, BellSouth's practice of threatening to deny Telephone Service to the Development if the Developer enters into an exclusive marketing agreement, exclusive service agreement, or a bulk service agreement, for Broadband Services and/or Cable Services with Lifestream is illegal pursuant to Chapter 364, Florida Statutes;

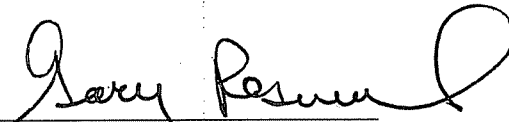
(d) Declare that BellSouth's practice of refusing to provide Telephone Service to the Development if the Developer enters into an exclusive marketing agreement, exclusive service agreement, or a bulk service agreement, for Broadband Services and/or cable services with Lifestream is unjust, unreasonably discriminatory, prejudicial and anticompetitive in violation of Chapter 364, Florida Statutes;

(e) Order BellSouth to agree to install its telecommunications facilities and to offer its Telephone Service to the Development, upon the Developer's request, regardless of whether the Developer enters into an exclusive marketing agreement, exclusive service agreement, or a bulk service agreement, for Broadband Services and/or Cable Services with Lifestream;

(f) Order BellSouth to cease and desist from threatening the Developer that it will not provide Telephone Service to the Development if the Developer enters into an exclusive marketing agreement, exclusive service agreement, or a bulk service agreement, for Broadband Services and/or Cable Services with Lifestream; and

(h) Order such other relief as the Commission may deem appropriate  
in this matter.

Respectfully submitted this 17 day of October, 2006.

By: s/   
Gary Resnick  
(Florida Bar No. 54119)  
Frank A. Rullan  
(Florida Bar No. 150592)  
GrayRobinson, P.A.  
401 East Las Olas Blvd.  
Suite 1850  
Fort Lauderdale, FL 33301  
Tel. (954) 761-8111  
Fax. (954) 761-8112

Attorneys for Litestream Holdings, LLC

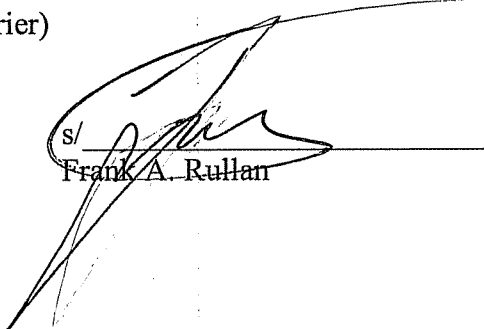


## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Complaint And Petition For Declaratory Relief Of Lifestream Holdings, LLC Against Bellsouth Telecommunications, Inc. has been furnished by Certified U.S. Mail this 17th day of October, 2006, to the following:

Mr. James Meza, III  
Ms. Sharon R. Liebman  
Ms. Nancy H. Sims  
BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Suite 400  
Tallahassee, Florida 32301-1556  
(Additional copy sent via overnight courier)

Mr. Patrick Wiggins, Supervising Attorney  
Florida Public Service Commission  
Office of the General Counsel  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850  
(Additional copy sent via overnight courier)

  
s/  
Frank A. Rullan