

Matilda Sanders

From: Barclay, Lynn [Lynn.Barclay@BellSouth.com]
Sent: Friday, November 17, 2006 1:14 PM
To: Filings@psc.state.fl.us
Cc: Woods, Vickie; Randa, Johna A; Nancy Sims; Holland, Robyn P; Bixler, Micheale; Slaughter, Brenda; Shore, Andrew; Meza, James
Subject: 060684-TP BellSouth's Response to Litestream Holdings, LLC's Complaint and Petition
Attachments: 060684-TP BST's Response to Litestream's Complaint.pdf

ORIGINAL

- A. Lynn Barclay
 Legal Secretary
 BellSouth Telecommunications, Inc.
 150 South Monroe Street
 Suite 400
 Tallahassee, Florida 32301
 (404) 335-0788
lynn.barclay@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 Andrew D. Shore
- D. 8 pages total (includes letter, certificate of service and pleading)
- E. BellSouth Telecommunications, Inc.'s Response to Litestream Holdings, LLC's Complaint and Petition for Declaratory Relief.

CMP 1
 COM
 CTR
 ECR
 GCL 1
 OPC
 RCA 1
 SCR
 SGA
 SEC 1
 OTH

<<060684-TP BST's Response to Litestream's Complaint.pdf>>

Lynn Barclay
 Legal Department
 675 West Peachtree Street
 Suite 4300
 Atlanta, GA 30375
 404 335-0788

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential, proprietary, and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from all computers. GA622

DOCUMENT NUMBER-DATE

10556 NOV 17 06

FPSC-COMMISSION CLERK

11/17/2006

ANDREW D. SHORE
Senior Attorney

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404) 335-0765

ORIGINAL

November 17, 2006

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's Response to Litestream Holdings, LLC's Complaint and Petition, 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,


Andrew D. Shore

Enclosure

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

DOCUMENT NUMBER-DATE

10556 NOV 17 06

FPSC-COMMISSION CLERK

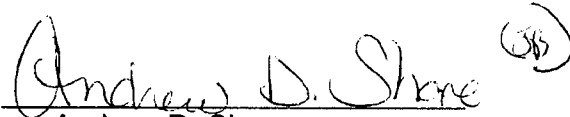
CERTIFICATE OF SERVICE
Docket No. 060684-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and First Class U. S. Mail this 17th day of November, 2006 to the following:

Patrick Wiggins
Dale Buys
Jason Fudge
Staff Counsels
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
pwiggins@psc.state.fl.us
jfudge@psc.state.fl.us

Gray Robinson Law Firm
Gary Resnick
401 East Las Olas Blvd.
Fort Lauderdale, FL 33301
Phone: (957) 761-8111
Fax: 761-8112
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


Andrew D. Shore

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 060684-TP

Filed: November 17, 2006

BELLSOUTH'S RESPONSE TO LITESTREAM HOLDINGS' 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 complaint filed by Litestream Holdings, LLC ("Litestream"), and states as follows:

AFFIRMATIVE DEFENSE (Complaint is Moot)

Litestream asserts that the "basis for [its] Complaint is BellSouth's threat to refuse to provide its telephone service to a new development" known as Glens St. Johns. BellSouth intends to provide telecommunications services to residents in this subdivision.¹ Consequently, there is no issue in dispute and the complaint should be dismissed.

Litestream made no inquiry of BellSouth as to BellSouth's service plans regarding the development in question prior to filing the complaint. Litestream did, however, through counsel, tell BellSouth after Litestream filed the complaint that since the basis for the complaint was BellSouth's supposed threat not to provide service at Glens St. Johns, that Litestream would dismiss the complaint if BellSouth would be providing service at the development. As stated above, BellSouth intends to provide service at this subdivision, and it so advised Litestream prior to filing this Response. Even if the allegations in the complaint were true, which they are not, Litestream's

¹ BellSouth's service plans are independent of and have not been influenced in any way by Litestream's filing of this baseless complaint.

stated basis for its complaint is non-existent. Consequently, the Commission should dismiss the complaint.

Litestream also lacks the appropriate standing under the COLR statute to bring a claim for relief under said statute and, given BellSouth's intention to serve the Glen St. John's property, such a claim would be moot.

SPECIFIC ALLEGATIONS

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

PARTIES

1. BellSouth admits the allegation in paragraph 1 on information and belief.
2. BellSouth admits the allegation in paragraph 2.
3. Paragraph 3 of Litestream's complaint does not set forth any allegations and, accordingly, no response is required.

JURISDICTION

4. BellSouth denies that the Commission has jurisdiction over the claims asserted in Litestream's complaint.

BACKGROUND

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 "Glens 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 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 to some customers 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 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 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 Glens St. Johns subdivision. BellSouth has no knowledge or information sufficient to form a belief as to the accuracy of Lifestream'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 Lifestream 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 Glens St. Johns and further states that BellSouth has not entered into any such agreement with D.R. Horton. Except as specifically admitted,

BellSouth denies the allegations in paragraph 8 of the complaint admitted, Bellsouth denies the allegations in paragraph 8.

9. BellSouth admits that the Commission has not adopted any rules nor has it issued any decisions as of yet interpreting Section 364.025(6)(d), Florida Statutes. BellSouth further admits that it has not requested that the Commission relieve BellSouth of BellSouth's carrier of last resort obligations with respect to Glen St. Johns. BellSouth denies that it has ignored its carrier of last resort obligations. Indeed, BellSouth intends to provide services to residents within the subdivision.

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 complaint.

11. 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.

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

13. The allegations in paragraph 13 purport to quote certain Florida Statutes. No response to those allegations is required. The statutes speak for themselves.

14. The allegations in paragraph 14 purport to state conclusions of law and, accordingly, no response is required.

15. The allegations in paragraph 15 purport to state conclusions of law and, accordingly, no response is required. BellSouth agrees that the Florida Legislature has stated a policy promoting broadband deployment.

16. BellSouth denies that it is the Commission's role to police BellSouth. BellSouth admits that the Commission has jurisdiction over BellSouth in certain areas.

17. BellSouth denies the allegations in paragraph 17 of the complaint.

18. BellSouth denies the allegations in paragraph 18 of the complaint.

COUNT ONE

19. BellSouth incorporates its responses to paragraphs 1-18 of the complaint.

20. BellSouth denies the allegations in each and every subpart of paragraph 20 and asserts that the Commission should deny the relief requested therein.

COUNT TWO

21. BellSouth incorporates its responses to paragraphs 1-18 of the complaint.

22. BellSouth denies the allegations in each and every subpart of paragraph 22 and asserts that the Commission should deny the relief requested therein.

MATERIAL FACTS IN DISPUTE

23. BellSouth denies that it has threatened D.R. Horton and further denies that there are no material facts in dispute.

24. BellSouth denies the allegations in paragraph 24 of the complaint.

RELIEF REQUESTED

25. BellSouth respectfully requests that the Commission deny the relief requested by Litestream. The Commission should dismiss the complaint.

26. BellSouth denies each and every allegation in the 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 17th day of November, 2006.

BELLSOUTH TELECOMMUNICATIONS, INC.

James Meza III (JB)

JAMES MEZA III
MANUEL A. GURDIAN
c/o Nancy H. Sims
150 South Monroe Street, Suite 400
Tallahassee, FL 32301
(305) 347-5558

Andrew D. Shore (JR)

E. EDWIN EDENFIELD, JR.
ANDREW D. SHORE
Suite 4300, BellSouth Center
675 W. Peachtree Street, NE
Atlanta, GA 30375
(404) 335-0765

#657883