

**Matilda Sanders**

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**Sent:** Thursday, December 07, 2006 2:19 PM  
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**Subject:** Litestream Holdings, LLC's Motion to Amend Complaint & Amended Complaint  
**Attachments:** Motion to Amend Complaint & Amended Complaint.PDF



Motion to  
Amend Complaint &

Good Afternoon:

On behalf of Litestream Holdings, LLC, attached please find the following for electronic filing:

- \* Litestream Holdings, LLC's Motion to Amend Complaint and Opposition to Request to Dismiss; and
- \* Amended Complaint and Petition for Declaratory Relief of Litestream Holdings, LLC Against BellSouth Telecommunications, Inc.

If you have any questions, please do not hesitate to contact Gary Resnick or Frank Rullan. Their contact information is as follows:

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 OPC \_\_\_\_\_  
 RCA \_\_\_\_\_  
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 SEC   i    
 OTH   KLM/P  

Thank you,

Jennys Castillo  
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ORIGINAL

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. 060684-TP

Filed: December 7, 2006

**LITESTREAM HOLDINGS, LLC'S MOTION TO AMEND  
COMPLAINT AND OPPOSITION TO REQUEST TO DISMISS**

Litestream Holdings, LLC ("Litestream") files this Motion to Amend Complaint and Opposition to BellSouth Telecommunications, Inc.'s ("BellSouth") Request to Dismiss and prays and states as follows:

1. On October 17, 2006, Litestream filed a Complaint and Petition for Declaratory Relief ("Complaint") against BellSouth.

2. Litestream desires to amend the Complaint to clarify certain issues and to expand the relief requested. The relief section needs to be expanded to prevent any further and future similar anti-competitive and illegal acts by BellSouth towards other developments and developers in Litestream's service areas.

3. It appears that BellSouth has established a general policy in Florida that it will not commit to installing its communications infrastructure and to providing its carrier of last resort communications services to any new development that signs an exclusive service agreement, bulk service agreement or even exclusive marketing agreement for broadband and/or video services with any entity other than BellSouth. BellSouth follows this policy, even though such agreements, particularly exclusive marketing agreements, have no affect whatsoever on BellSouth's ability to install its facilities or to sell

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communications services, as defined under Section 364.025(6)(a)(3), Florida Statutes (hereinafter "Telephone Service"), to residents in such developments. Such BellSouth policy affects Litestream's operations not only in the particular development mentioned in the original complaint, Glen St. Johns, but in other developments that Litestream may propose to offer its broadband and/or cable services. Therefore, Litestream seeks to amend its Complaint to seek relief that would prevent BellSouth from future anticompetitive acts against Litestream.

4. Counsel has contacted counsel for BellSouth and informs the Commission that BellSouth has no objection to allowing Litestream to file the Amended Complaint.

5. Moreover, no party would be negatively impacted by the Commission granting Litestream's request for leave to amend the Complaint. Furthermore, there is currently no schedule in place to be impacted. To the contrary, allowing Litestream to amend the Complaint would prevent Litestream from filing a separate complaint for BellSouth's actions in other developments, and therefore would save the Commission's valuable time and resources.

6. Attached please find the Amended Complaint Litestream seeks to file.

7. On a separate matter, on November 17, 2006, BellSouth filed its Response to Litestream's Complaint ("Response"), which included a request to dismiss the Complaint ("Request to Dismiss"), arguing that the Complaint was moot because "BellSouth intends to provide telecommunications services to residents in" Glen St. Johns. See Response, at 1.

8. Litestream hereby opposes BellSouth's Request to Dismiss.

9. First, it must be incorporated into the record that on a conference call scheduled by the Commission's staff on November 27, 2006, with counsel for BellSouth and Litestream, counsel for BellSouth stated that BellSouth currently has plans to provide communications services to the particular development at issue in the Complaint, Glen St. Johns. However, when questioned by the Commission staff as to whether BellSouth would commit to provide such services if the Glen St. Johns developer entered into an agreement with Litestream, counsel for BellSouth stated that BellSouth does not know if it would provide Telephone Services in Glen St. Johns if the developer enters into an agreement with Litestream. Therefore, even with BellSouth's Response, neither the Commission, Litestream, nor most importantly, the developer know whether BellSouth will install its facilities and will provide its carrier of last resort communications services to residents of Glen St. Johns if the developer signs an agreement for cable and/or broadband services with Litestream.

10. Even when confronted by the Commission staff, BellSouth seems intent on using its market power in Telephone Services to intimidate developers into not entering agreements with other providers for other services in violation of its carrier of last resort obligations and Florida's statutes prohibiting anticompetitive conduct. Rather, BellSouth uses its market power in Telephone Services and threatens to withhold such services to coerce developers into entering exclusive agreements with BellSouth for video and broadband services.

11. Developers realize that persons purchasing new homes want the option of obtaining Telephone Service from BellSouth, which as the incumbent local exchange carrier, is the most well known Telephone Service provider in its service territory. Thus,

unless BellSouth is directed to cease and desist this inappropriate strong-arm tactic and provide Telephone Service in accordance with Section 364.025(1), Florida Statutes, developers will find themselves in the difficult position of either contracting solely with BellSouth for a complete package of bundled services (i.e. voice, broadband, and video), as well as marketing rights or, if BellSouth makes good on its threat, foregoing service by BellSouth entirely. Either way, residents of new developments will have fewer options for services. Furthermore, developers will be prevented from negotiating deals with a full range of providers to obtain the most cost-effective and appropriate services for their communities. Most importantly to Litestream, BellSouth's tactics make it virtually impossible for it to compete fairly, since as Litestream has observed first hand, developers will not enter into agreements for cable and/or broadband services with another company, if it means that prospective residents will be unable to obtain BellSouth's Telephone Service. Long term, this will reduce competition generally and the deployment of broadband with greater bandwidth in Florida, since BellSouth will use its market power in Telephone Service to push its other products rather compete and invest in upgrading its products.

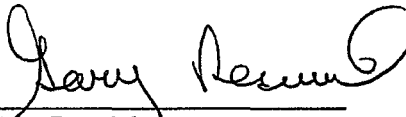
12. Secondly, pursuant to this motion, and as stated during the conference call of November 27, 2006, Litestream has requested leave to amend the Complaint to expand the relief requested. If the Commission grants leave to amend the Complaint, the Complaint would not be moot even if BellSouth guarantees that it will provide Telephone Service to Glen St. Johns if the developer enters an exclusive agreement for cable and/or broadband service with Litestream. Accordingly, the Complaint cannot be determined to be moot under any of BellSouth's arguments. The issue of whether BellSouth may,

under Florida law, threaten to refuse to install its communications facilities and to refuse to provide its Telephone Service if a developer enters into an agreement with Litestream for cable and/or broadband services is squarely drawn for the Commission's determination. In fact, counsel for BellSouth notified counsel for Litestream that it would like to try this matter to obtain a resolution of the issue.

**WHEREFORE,** Litestream respectfully requests that this Honorable Commission grants leave to amend the Complaint, that it accepts the attached Amended Complaint, and that it deny BellSouth's request to dismiss the Complaint.

Respectfully submitted this December 7, 2006.

By:



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(Florida Bar No. 54119)  
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(Florida Bar No. 150592)  
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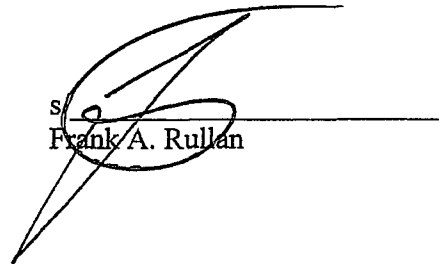
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Amended Complaint And Petition For Declaratory Relief Of Litestream Holdings, LLC Against Bellsouth Telecommunications, Inc. has been furnished by electronic mail and Federal Express this 7<sup>th</sup> day of December, 2006, to the following:

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Frank A. Rullan



**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

In the Matter of:	)	
Complaint and Petition for Declaratory	)	Docket No. 060684-TP
Relief of Litestream Holdings, LLC.	)	
Against BellSouth Telecommunications, Inc.)	)	Filed: December 7, 2006

**AMENDED 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 Amended 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/or 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 Litestream’s ability to compete fairly in new developments.

“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 threats and illegal requirements conveyed to developers do not prevent Litestream from being able to compete fairly as a potential Broadband and Cable Services provider in various developments in its service areas. 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 a 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. Litestream possess cable franchises from St. Johns County and St. Lucie County, Florida.

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:

James Meza, III  
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.  
Frank A. Rullan, Esq.  
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#### 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 Sections 364.01(4)(g) and 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 “Glen 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 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 ("Communications Services"), 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 Service often competes with cable modem Broadband Service, including the Broadband Service Litestream would offer in the Development.<sup>1</sup>

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<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.

7. Upon information and belief, BellSouth's representatives have threatened the Developer that BellSouth will not install its telecommunications facilities and will not provide Telephone Service to the Development's residents if the Developer 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 ("Agreements") 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 possibly refusing to provide Telephone Service if the Developer entered into such an agreement.<sup>3</sup> More recently, BellSouth confirmed its position generally of requiring that developers commit, or actually certify

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<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 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.

in writing, that they have not entered and will not enter into an Agreement with another provider for Cable and/or Broadband Service before it will agree to install its telecommunications facilities and to provide Telephone Service.<sup>4</sup> In addition, on November 27, 2006, in a conference call with the Commission staff, BellSouth's counsel stated that while BellSouth presently intends to install its facilities and to provide Telephone Service to this Development, BellSouth would not commit to install facilities and to provide Telephone Service if the Developer enters into an agreement with Litestream. 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 Litestream or any other provider for voice, Broadband, 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 in any way prohibit BellSouth from installing its telecommunications facilities or from 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

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<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, 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)).

remains hesitant to enter into an agreement with Lifestream 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 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 Lifestream 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 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 Lifestream'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 Lifestream for Cable Services and Broadband Services to the Development. Lifestream has the authority under its franchise with St. Johns County and applicable federal and state law to offer Cable Services on an exclusive bulk basis to the Development and to have preferred marketing rights for its Broadband Services. There are many reasons why the Developer would prefer Lifestream's Broadband Services over

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<sup>5</sup> Id.



BellSouth's DSL 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 video service offered by BellSouth, which may require placing a satellite receiver on every home. 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 Development in the present case, is fairly competitive. However, Litestream will be unable to compete on fair terms if, as a result of BellSouth's threat to withhold Telephone Service, developers are unwilling to enter into a Cable Services and/or Broadband Services agreement with Litestream.

11. Moreover, it appears that BellSouth has established a general policy in Florida that it will not commit to construct its facilities and to provide its Telephone Services in any new development that enters any of the Agreements with a BellSouth competitor. In addition, it is believed that BellSouth requires developers to certify that they have not entered into such Agreements, or to agree that if they do enter into such an Agreement, they will pay BellSouth certain costs for installing its facilities. BellSouth's policy and actions affects Litestream's operations not only in the Development but in other new developments within Litestream's service areas where it may propose to offer its Broadband and/or Cable Services under such Agreements.

12. Even when questioned by the Commission staff, BellSouth seems intent on using its market power in Telephone Services to intimidate developers into not entering agreements with other providers for Cable and/or Broadband Services in

violation of its carrier of last resort obligations and Florida's statutes prohibiting anticompetitive conduct. Rather, BellSouth uses its market power in Telephone Services and threatens to withhold such service to coerce developers into entering exclusive agreements with BellSouth for video and broadband services.

13. Developers realize that persons purchasing new homes want the option of obtaining BellSouth's Telephone Service, which as the incumbent local exchange carrier, is the most well known Telephone Service provider in its service territory. Thus, unless BellSouth is directed to cease and desist this inappropriate strong-arm tactic and provide Telephone Service in accordance with Section 364.025(1), Florida Statutes, developers will remain hesitant to enter Agreements for Cable and/or Broadband Services with Lifestream or will be forced to contract solely with BellSouth for a complete package of bundled services (i.e. Telephone, DSL, and video), as well as marketing rights, even though BellSouth's video and DSL products may be less desirable than those offered by Lifestream. Either way, residents of new developments will have fewer options for services. Furthermore, developers will be prevented from negotiating agreements with a full range of providers to obtain the most cost-effective and appropriate services for their communities. Most importantly to Lifestream, BellSouth's tactics make it virtually impossible for it to compete fairly, since as Lifestream has observed first hand, developers will not enter into agreements for Cable and/or Broadband Services with another company if it means that homeowners will be unable to obtain BellSouth's Telephone Service. Long term, this will reduce competition generally and slow the deployment of broadband with greater bandwidth in Florida, since BellSouth will use its

market power in Telephone Service to push its other products rather than compete on fair terms and invest in upgrading its products.

### STATUTES BELLSOUTH IS VIOLATING

**I. BellSouth's Refusal to Provide Telephone Service to a Development if the Developer Enters into an Exclusive Marketing, Exclusive Service, or Bulk Service Agreement with Litestream for Broadband Services and/or Cable Services is a Breach of its Obligations as the Carrier of Last Resort, in Violation of Chapter 364, Florida Statutes.**

14. 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."

15. BellSouth, by refusing to provide Telephone Service to a new development if the developer selects Litestream or other BellSouth competitor to provide non-Communications Services like Broadband 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 a Development if the Developer Enters into an Exclusive Marketing, Exclusive Service, or Bulk Service Agreement with Litestream for Broadband and/or Cable Services is an Unjust, Unreasonably Discriminatory and Anticompetitive Practice in Violation of Chapter 364, Florida Statutes.**

16. Florida law prohibits BellSouth from engaging in an unjust, unreasonably discriminatory and anticompetitive practice with respect to its provision of telecommunications services. See Section 364.01(4)(g). 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.”

17. 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.

18. 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.

19. 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.

20. By refusing to sell Telephone Service to the residents of a development if the developer enters into an agreement with Litestream 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 selecting 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.

21. Accordingly, the Commission should find that BellSouth's refusal to provide Telephone Service to residents of a 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 365.01(4)(g), 364.10, and 364.01(4), Florida Statutes.

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

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

23. Litestream requests the Commission to declare that:

(a) BellSouth must install its facilities and 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 non-Communications Services (Broadband Services and/or Cable Services) with Litestream;

(b) BellSouth acts illegally when it threatens or states to a developer that it will not install communications 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;

(c) BellSouth acts illegally when it requires a developer to commit in writing that they have not and will not enter into an exclusive marketing agreement, exclusive service agreement or bulk service agreement with Litestream for Cable Services or Broadband Services before BellSouth will agree to install its facilities and to provide Communications Services to the development;

(d) BellSouth must cease and desist from asserting to developers 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 non-Communications Services (Broadband Services and/or Cable Services) with Litestream.

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

24. Litestream incorporates paragraphs 1-23 of this Complaint as if fully set forth herein.

25. Litestream respectfully requests the Commission to declare that:

(a) BellSouth's refusal to provide its Telephone Service to the Development, or to similarly situated developments, 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 non-Communications Services (Broadband Services and/or Cable Services) with Litestream,

26. Litestream further requests that the Commission orders BellSouth to offer its Telephone Service to the Development, upon the Developer's request, even if the Developer enters into any of the Agreements with Litestream.

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

27. 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 non-Communications Services (Broadband Services and/or Cable Services) with Litestream.

28. 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, or a similarly situated developer, enters into any of the Agreements with Litestream constitutes a violation of Florida law.

#### **RELIEF REQUESTED**

29. 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 has a duty, pursuant to Chapter 364, Florida Statutes, to provide Telephone Service to the Development, or to a similarly situated development, 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, a BellSouth competitor that will not provide Communications Services to such development;

(d) Declare that BellSouth's practice of threatening to refuse or refusing to provide Telephone Service to the Development, or a similarly situated 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, a BellSouth competitor that will not provide Communications Services to such development, is unjust, unreasonably discriminatory, prejudicial and anticompetitive in violation of Chapter 364, Florida Statutes;

(e) Require BellSouth to cease and desist from imposing any requirement for certifications on developers pertaining to services other than "Communications Services" before it will proceed to install its facilities and to provide its Telephone Service in such developments in Florida.

(f) Order BellSouth to agree to install its telecommunications facilities and to offer its Telephone Service to the Development, upon the Developer's request,

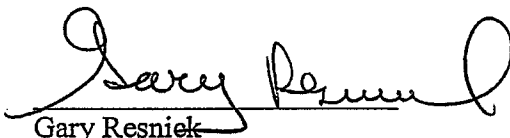


even if the Developer enters into an exclusive marketing agreement, exclusive service agreement, or a bulk service agreement, for Broadband Services and/or Cable Services with Litestream;

(g) Order BellSouth to cease and desist from threatening the Developer, or any other similarly situated developer, that it will not install its telecommunications infrastructure and not offer Telephone Service if the developer enters into an exclusive marketing agreement, exclusive service agreement, or a bulk service agreement, for non-Communications Services (Broadband Services and/or Cable Services) with Litestream; and

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

Respectfully submitted this December 7, 2006.

By: 

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Amended Complaint And Petition For Declaratory Relief Of Litestream Holdings, LLC Against Bellsouth Telecommunications, Inc. has been furnished by electronic mail and Federal Express this 7<sup>th</sup> day of December, 2006, to the following:

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s/   
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