

Matilda Sanders

From: Woods, Vickie [Vickie.Woods2@bellsouth.com]
Sent: Wednesday, February 21, 2007 12:48 PM
To: Filings@psc.state.fl.us
Subject: 060684-TP AT&T Florida's Response to Litestream's Second Amended Complaint and Motion to Defer Hearing
Attachments: 060684-T.pdf; LEGAL-#668702-v1-060684-TP_Response_to_Litestream's_Second_Amended_Complaint.DOC

ORIGINAL

A. Vickie Woods
 Legal Secretary to James Meza III and Manuel A. Gurdian
 BellSouth Telecommunications, Inc.
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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. 11 pages total (includes letter, certificate of service and pleading) (.pdf)
 9 pages total (includes pleading) (word doc.)

E. BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Response to Litestream's Second Amended Complaint and Motion to Defer Hearing

.pdf word doc

<<060684-T.pdf>> <<LEGAL-#668702-v1-060684-TP_Response_to_Litestream's_Second_Amended_Complaint.DOC>>

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2/21/2007

Manuel A. Gurdian
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ORIGINAL

February 21, 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. d/b/a AT&T Florida's Response to Litestream's Second Amended Complaint and Motion to Defer Hearing, 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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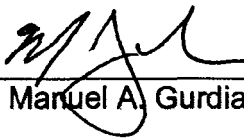
CERTIFICATE OF SERVICE
Docket No. 060684-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and Overnight Mail this 21st day of February, 2007 to the following:

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Commission
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Litestream Holdings, LLC
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West Palm Beach, FL 33401-6235
Phone: (561) 659-5400
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Manuel A. Gurdian

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Litestream Holdings, LLC) Docket No. 060684-TP
Against BellSouth Telecommunications, Inc.)
Filed: February 21, 2007

AT&T FLORIDA'S RESPONSE TO LITESTREAM'S
SECOND AMENDED COMPLAINT AND MOTION TO DEFER HEARING

BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida"), by and
through its undersigned counsel and pursuant to Rule 28-106.203, Florida
Administrative Code, hereby responds to the Second Amended Complaint and Motion
to Defer Hearing filed by Litestream Holdings, LLC ("Litestream"), and states as follows:

AFFIRMATIVE DEFENSES

Litestream asserts that the 'basis for [its] Complaint is AT&T Florida'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." Complaint
at 1. AT&T Florida has not threatened to refuse to provide its services in developments
where Litestream provides its cable broadband services. In fact, AT&T Florida intends
to provide telecommunications services to residents in the subdivision about which
Litestream seemingly complains, which is known as "Glen St. Johns."1 Consequently,
there is no issue in dispute and the Second Amended Complaint should be dismissed.

Litestream also lacks standing to bring its claims. To meet the standard for a
valid Petition under Rule 28-106.201(2), F.A.C., a petition must explain how the
petitioner's substantial interest will be affected by the agency determination. "Before

1 AT&T Florida's service plans are independent of and have not been influenced in any way by
Litestream's filing of this Complaint.

one can be considered to have a substantial interest in the outcome of the proceeding he must show 1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57 hearing, and 2) that this substantial injury is of a type or nature which the proceeding is designed to protect. The first aspect of the test deals with the degree of injury. The second deals with the nature of the injury.” *Agrico Chemical Co. v. Dept. of Environmental Reg.*, 406 So. 2d 478 (Fla. 2d DCA 1981).

Litestream cannot establish that it has standing to bring the claims asserted. First, Litestream cannot meet the “degree of injury prong” of *Agrico*. For instance, there is no allegation that AT&T Florida has refused to provide service to Litestream (or, for that matter, to any customer requesting service). Moreover, Litestream, as a alleged potential, future customer of AT&T Florida, has not alleged any facts to establish that Litestream is entitled to COLR services, which is limited to basic local exchange telecommunications service, within the Development. For example, Litestream has not alleged that it has requested basic local exchange telecommunications service within the Development from AT&T Florida; and Litestream has not alleged that AT&T Florida has refused to provide basic local exchange telecommunications service to Litestream within the Development. Indeed, AT&T Florida affirmatively asserts that Litestream has not requested basic local exchange telecommunications service from AT&T Florida within the Development.

Second, Litestream lacks standing because it has failed to adequately allege sufficient facts that its substantial interests as a broadband/video provider are within the “zone of interest” to be protected by Chapter 364, Florida Statutes. A competitive broadband/video provider cannot allege injury on behalf of a potential voice customer

and Litestream has not alleged facts that it represents the interests of the Developer or residents of the Development.

SPECIFIC ALLEGATIONS

Responding to the specific allegations in the Second Amended Complaint, AT&T Florida alleges and says that:

1. AT&T Florida admits the allegation in paragraph 1 on information and belief.
2. AT&T Florida 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:

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and

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² 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.

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

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

5. AT&T Florida 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." AT&T Florida 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. AT&T Florida admits on information and belief that Litestream has a cable franchise from St. Johns County. Except as specifically admitted, AT&T Florida denies the allegations in paragraph 5 of the Second Amended Complaint.

6. AT&T Florida 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. AT&T Florida admits that its DSL service sometimes competes with other services, including, but not limited to cable broadband service. Except as specifically admitted, AT&T Florida denies the allegations in paragraph 6 of the Second Amended Complaint.

7. AT&T Florida denies that its representatives have threatened D.R. Horton. AT&T Florida further denies that its senior representatives told D.R. Horton that AT&T

Florida has a practice of refusing to provide services under certain circumstances. AT&T Florida 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. AT&T Florida also admits that it discussed with D.R. Horton an arrangement pursuant to which D.R. Horton would agree to market AT&T Florida's services. Except as specifically admitted, AT&T Florida denies the allegations in paragraph 7 of the Second Amended Complaint.

8. AT&T Florida 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. AT&T Florida 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. AT&T Florida admits that it does not object to legal contracts generally. AT&T Florida further admits that AT&T Florida'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 AT&T Florida's services at Glen St. Johns. AT&T Florida does not have information sufficient to form a belief as to the truth of the allegations regarding Litestream's alleged agreement with D.R. Horton or to those regarding Litestream's intent to order services from AT&T Florida and, accordingly, denies those allegations. AT&T Florida denies that Litestream has requested basic local exchange telecommunications service from AT&T Florida within the Development. Except as specifically admitted, AT&T Florida denies the allegations in paragraph 8 of the Second Amended Complaint.

9. AT&T Florida denies the allegations of paragraph 9, including the general allegation that it has ignored its carrier of last resort obligations. Indeed, AT&T Florida intends to provide services to residents within the subdivision that apparently is the subject of Litestream's Second 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. AT&T Florida denies the remaining allegations in paragraph 10 of the Second Amended Complaint.

11. AT&T Florida admits that it sometimes enters into agreements pursuant to which developers agree to reimburse AT&T Florida 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 AT&T Florida to recoup the costs of its facilities. Except as specifically admitted, AT&T Florida denies the allegations in paragraph 11 of the Second Amended Complaint.

12. AT&T admits that its representative sent the letter attached to the Second Amended Complaint as Exhibit 1 to Pride Home. The terms of the letter speak for themselves. AT&T Florida has no knowledge regarding Litestream's alleged negotiations with Pride Home and, accordingly, denies those allegations. AT&T Florida denies that it has engaged in anticompetitive conduct or that it has harmed Litestream.

13. AT&T Florida denies the allegations in paragraph 13.

14. AT&T Florida is in no position to know what Developers allegedly "realize," and thus cannot respond to that allegation in paragraph 14 of the Second Amended Complaint. AT&T Florida denies the remaining allegations in paragraph 14.

15. For the reasons set forth above, AT&T Florida denies that Lifestream has standing to file its Second Amended Complaint.

16. AT&T Florida denies the allegations in paragraph 16 and specifically that it has harmed Lifestream.

17. The carrier of last resort requirements are set forth in the Florida Statutes. Allegations regarding the same are legal conclusions to which no response is required. To the extent Lifestream alleges that AT&T Florida violated the cited law, the allegations are denied.

18. AT&T Florida denies the allegations in paragraph 18 and specifically denies that it has violated Florida law.

19. The allegations in paragraph 19 purport to quote certain Florida Statutes. No response to those allegations is required. The statutes speak for themselves. AT&T Florida denies that it has violated the cited (or any other) statutes, and denies that it has acted unlawfully.

20. The allegations in paragraph 20 purport to state conclusions of law and, accordingly, no response is required. To the extent Lifestream alleges that AT&T Florida violated the cited statutes, the allegations are denied.

21. The allegations in paragraph 21 purport to state conclusions of law and, accordingly, no response is required. To the extent Lifestream alleges that AT&T Florida violated the cited statute, the allegations are denied. AT&T Florida further states that Section 364.507, entitled "Education Facilities Infrastructure Improvement", is not applicable to the instant dispute.

22. AT&T Florida denies the allegations of paragraph 22, except to admit that the Commission has jurisdiction over AT&T Florida in certain areas.

23. AT&T Florida denies the allegations in paragraph 23 of the Second Amended Complaint.

24. AT&T Florida denies the allegations in paragraph 24 of the Second Amended Complaint.

COUNT ONE

25. AT&T Florida incorporates its responses to paragraphs 1-25 of the Second Amended Complaint.

26. AT&T Florida denies the allegations in each and every subpart of paragraph 26 and asserts that the Commission should deny the relief requested therein.

COUNT TWO

27. AT&T Florida incorporates its responses to paragraphs 1-26 of the Second Amended Complaint.

28. AT&T Florida denies the allegations in each and every subpart of paragraph 28 and asserts that the Commission should deny the relief requested therein.

29. The Commission should deny the relief requested in paragraph 29 of the Second Amended Complaint.

MATERIAL FACTS IN DISPUTE

30. AT&T Florida denies that it has threatened D.R. Horton and, as evidenced by AT&T Florida's denial of the factual allegations asserted by Litestream, further denies that there are no material facts in dispute.

31. AT&T Florida denies the allegations in paragraph 31 of the Second Amended Complaint.

RELIEF REQUESTED

32. AT&T Florida respectfully requests that the Commission deny the relief requested by Lifestream. The Commission should dismiss the Second Amended Complaint.

33. AT&T Florida denies each and every allegation in the Second Amended Complaint not expressly admitted herein, and demands strict proof thereof.

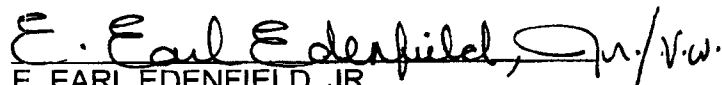
WHEREFORE, AT&T Florida respectfully requests the Commission to enter an Order in AT&T Florida's favor, deny Lifestream the relief sought, and grant AT&T Florida such other relief as the Commission deems just and proper.

Respectfully submitted this 21st day of February, 2007.

AT&T FLORIDA



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