

1 Lee Kent Hempfling, Pro Se  
11329 E. Caballero St.  
2 Mesa, AZ 85207  
3 480-332-1535

4 **IN THE UNITED STATES DISTRICT COURT**  
5 **FOR THE DISTRICT OF SOUTH CAROLINA**

7 Lee Kent Hempfling, ) Case No.: **2:04-01373-23BG**  
8 Plaintiff, )  
9 vs. )  
10 L.M. Communications Of South Carolina )  
11 Inc., A Kentucky Corporation, , )  
12 L.M. Communications II Of South Carolina )  
13 Inc., A Kentucky Corporation, )  
14 Defendants )

**MEMORANDUM IN FURTHER  
SUPPORT OF OBJECTION TO  
MOTION FOR ENLARGEMENT  
OF TIME FOR RESPONSE TO  
SUMMARY JUDGMENT AND NOTICE  
OF APPEAL**

16 Defendants have moved the Court for an enlargement of time to file response to  
17 Plaintiff's summary judgment motion.. Fed R. Civ. P. 62(a) provides "no execution shall  
18 issue upon a judgment nor shall proceedings be taken for its enforcement until the  
19 expiration of 10 days after its entry."

20 The Pro se Plaintiff does hereby respectfully request the Court to reverse the  
21 order granting (document 37) enlargement of time to respond to summary judgment for  
22 Defendants as the court has erred in granting the motion for enlargement of time to  
23 respond to summary judgment for the following reasons: and as continued objection to  
24 the motion to enlarge time to respond to summary judgment:

1           The court acted upon a motion to enlarge time before the expiration of time for  
2 Plaintiff to raise an objection: local rule 7.06: Response to Motions; "If no memorandum  
3 in opposition is filed within fifteen (15) days of the date of service, the Court will decide  
4 the matter on the record and such oral argument as the movant may be permitted to offer,  
5 if any."

6           Pursuant to local rule 6.01 (4) Defendants have not, in their motion to enlarge  
7 time to respond to summary judgment, stated "whether the extension requested would  
8 affect other deadlines".

9           With the deadline to complete all discoveries currently set at December 10, 2004,  
10 granting of the extension to January 6, 2005 for Defendants to complete discovery before  
11 responding to summary judgment does not provide equal treatment to the Plaintiff.

12           With the deadline to file all motions currently set at January 13, 2005, granting of  
13 the extension to January 6, 2005 does not provide adequate time for an order regarding  
14 summary judgment and the ability to file any additional motions before the cutoff date for  
15 motions.

16           Defendants did not attach to their motion for enlargement of time: local rule 6.01  
17 (4), "A proposed amended scheduling order in the form used by the assigned judge,  
18 including all deadlines not then expired..."

19           Furthermore, pursuant to local rule 6.01 (4) "Motions for extension of time for  
20 completion of discovery will be granted only in unusual cases and upon a showing that  
21 the parties have diligently pursued discovery during the originally specified period."  
22 Defendants faced the discovery cutoff date of November 30, 2004 since September 1,  
23 2004 and had not pursued discovery. Defendants faced the discovery cutoff date of  
24 December 10, 2004 since October 13, 2004 and had not pursued discovery. Defendants  
25

1 had not attempted any discovery prior to November 4, 2004 and after Plaintiff's Motion  
2 for Summary Judgment was served and filed.

3 Defendants have not shown such extension of time to be an unusual case as their  
4 motion (paragraph 1, document 35) states, "This Motion is made on the ground that  
5 preparing a response to Plaintiff's 30 page, 149 paragraph Motion is anticipated to be  
6 much simpler with the benefit of the Plaintiff's testimony...", and; "The time requested  
7 allows for time for a court reporter to generate a transcript..." Preparing a response to  
8 summary judgment is not an unusual case. Generating a transcript is not an unusual case  
9 in a discovery period.

10 Defendants served and filed discovery after Plaintiff's summary judgment was  
11 available on Pacer, a day after it was filed with this court. Not until then did Defendants  
12 attempt discovery through the referenced discovery documents by overnight via FedEx.  
13 (Contained as attachments in document 38 and referenced herein as if attached hereto, A  
14 through D).

15 Furthermore, pursuant to local rule 12.01: "One extension in writing may be  
16 granted by a party to respond to an original or amended pleading in which a claim is  
17 asserted, provided the extension does not exceed the lesser of twenty (20) days or the  
18 number of days within which the response was originally due."

19 According to local rules 7.06 and 12.01, a 15 day extension is the only extension  
20 permitted in response to a motion to enlarge time. The court's order granting the motion  
21 to enlarge time moved the response to summary judgment from November 16, 2004 to  
22 January 6, 2005: a total of 51 days.

23 Plaintiff does hereby reserve the right to appeal the order (document 37) based on  
24 the above facts.

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Furthermore, Defendants Notice of Deposition to Plaintiff (Document 38 Attachment C, referenced herein as if attached hereto) and all other discovery documents from Defendants plainly includes L.M. Communications Inc., as Defendant when that company was dismissed from this case in hearing on August 31, 2004. L.M. Communications Inc., does not have the right to depose or discover anything in this case.

Furthermore, Defendants have claimed in their motion to enlarge time to have served Plaintiff on November 11, 2004 via FedEx. Defendants' own 'Pitney Bowes' postage stamp shows the service to be on November 12, 2004 and service to be by US Mail, not Federal Express (Document 38 Attachment D referenced herein as if attached hereto).

Dated this 20th day of November, 2004

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**PROOF OF SERVICE**

The undersigned hereby certifies that he deposited in the United States Mail at Apache Junction, Arizona a true and correct copy of the foregoing in an envelope with a minimum of First Class postage fully prepaid and plainly addressed to:

Greg Horton  
Buist Moore Smythe and McGee  
PO Box 999  
Charleston, SC 29402

On this 20th day of November, 2004.

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Lee Kent Hempfling, Pro Se