

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, ,) **PLAINTIFF'S OPPOSITION TO**
12 L.M. Communications II Of South Carolina) **DEFENDANT'S MOTION FOR AN**
13 Inc., A Kentucky Corporation,) **ENLARGEMENT OF TIME FOR**
14 Defendants) **RESPONSE TO**
15) **SUMMARY JUDGMENT AND MOTION**
) **FOR IMMEDIATE SUMMARY**
) **JUDGMENT**

16 This case was filed May 3, 2004. The motion for summary judgment was filed six
17 months later on November 3, 2004 after numerous delays contained in the record.

18 Although Defendants have had ample time under the rules to respond to the
19 motion for summary judgment filed by Plaintiff, Defendants have now moved to obtain
20 an additional thirty days past December 6 (thirty six days past the date of filing of
21 summary judgment) in order to complete their response to the motion. Plaintiff opposes
22 the motion for enlargement because the motion for enlargement of time is based upon
23 documents filed after the motion for summary judgment; no good cause exists for the
24 length of extension requested; because the extension would disrupt remaining pre-trial
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1 preparations and Defendants have not provided a proposed amended schedule for the
2 balance of this case.

3 Furthermore, Defendants have filed their motion for enlargement based upon a set
4 of interrogatories (See Attachment A), list of discoveries (See Attachment B) (questions
5 which are already answered in the exhibit record or are privileged information) and
6 demand for deposition (See Attachment C) that were filed (11/4/2004) after the motion
7 for summary judgment was filed with the court (11/3/2004) and after the motion for
8 summary judgment was served upon Defendants (11/1/2004).

9 Furthermore, Defendant's have claimed to have received the motion for summary
10 judgment on November 8, 2004 (one week after service). By signed certificate of service
11 Plaintiff served Defendants on November 1, 2004 via U.S. mail. Pacer listed and
12 displayed the motion for summary judgment and its memorandum on November 4th,
13 2004, the date of the discovery documents filed by the Defendants.

14 Furthermore, Defendants have claimed in their certificate of service to have
15 served the November 11, 2004 dated motion for extension of time via 'Fedex' on
16 November 11 when the actual mailing was via United States Postal Service mail dated
17 November 12th, 2004, arriving Monday November 15th, 2004. (See attachment D).

18 Furthermore, Defendants have claimed to have scheduled a deposition of the
19 Plaintiff for December 6th, 2004. Such claim was filed after the motion for summary
20 judgment and is therefore too late to be active and does itself violate Fed R. Civil P. 30
21 (d)(2) in that Defendants have demanded 'will continue from day to day until completed'.
22 "Unless otherwise authorized by the court or stipulated by the parties, a deposition is
23 limited to one day of seven hours." No stipulation has been made by the Plaintiff.

24 Plaintiff does stipulate that the filing of documents after the motion for summary
25 judgment; there having been ample time within the period of discovery to have filed such

1 documents; the subsequent motion for enlargement based upon such late filing of
2 documents is for the purposes of delay and does hereby move the court for an order of
3 immediate summary judgment on Plaintiff's behalf and does hereby further support the
4 motion for summary judgment: pursuant to Fed. R. Civ. P. 56(e) (...an adverse party may
5 not rest upon the mere allegations or denials of the adverse party's pleading, but the
6 adverse party's response, by affidavits or as otherwise provided in this rule, must set forth
7 specific facts showing that there is a genuine issue for trial. If the adverse party does not
8 so respond, summary judgment, if appropriate, shall be entered against the adverse party).

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10 Dated this 15th day of November, 2004

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