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U.S. DISTRICT COURT  
DISTRICT OF COLORADO

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JAMES H. MANSPEAKER  
CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

02-M-0581

Civil Action No.

BY \_\_\_\_\_ DEP. CLK

EQUAL EMPLOYMENT OPPORTUNITY	)
COMMISSION,	)
	)
Plaintiff,	)
	)
v.	)
	)
ECHOSTAR COMMUNICATIONS	)
CORPORATION,	)
	)
Defendant.	)

COMPLAINT and JURY TRIAL DEMAND

NATURE OF THE ACTION

This action arises under Title I of the Americans with Disabilities Act of 1990 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of disability and to provide appropriate relief to Dale Alton ("Alton"), who was adversely affected by such practices. As alleged with greater particularity below, the United States Equal Employment Opportunity Commission ("Plaintiff" or the "Commission") alleges that Defendant Echostar Communications Corporation ("Defendant") unlawfully failed and refused to accommodate Alton's disability and failed and refused to hire Alton because of his disability, blindness.

### JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 107(a) of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12117(a), which incorporates by reference Sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e-5(f)(1) and (3), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981A.
2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the District of Colorado.

### PARTIES

3. Plaintiff is the agency of the United States of America charged with the administration, interpretation and enforcement of Title I of the ADA and is expressly authorized to bring this action by Section 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).
4. At all relevant times, Defendant has continuously been a corporation doing business in the State of Colorado and City of Littleton and has continuously had at least 15 employees.
5. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce under Section 101(5) of the ADA, 42 U.S.C. § 12111(5), and Section 101(7) of the ADA, 42 U.S.C. § 12111(7), which incorporates by reference

Sections 701(g) and (h) of Title VII, 42 U.S.C. §§ 2000e(g) and (h).

6. At all relevant times, Defendant has been a covered entity under Section 101(2) of the ADA, 42 U.S.C. § 12111(2).

**General Allegations**

7. More than thirty days prior to the institution of this lawsuit, Alton filed a charge with the Commission alleging violations of Title I of the ADA by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.
8. Since at least February, 1999, Defendant has engaged in unlawful employment practices at its Littleton, Colorado facility, in violation of Section 102(a) of Title I of the ADA, 42 U.S.C. § 12112(a).
9. Alton is blind and substantially limited in the major life activity of seeing.
10. On or before February 15, 1999, Defendant advertised in the newspaper to fill Customer Service Representative positions.
11. On or about February 15, 1999, Alton attempted to apply for employment with Defendant as a Customer Service Representative.
12. In or about 1996, Alton had received a certificate for completing a six-month, full-time, customer service representative training course at the Colorado Center for the Blind, located in Denver, Colorado.
13. On or about February 15, 1999, Alton went to Defendant's Littleton facility and requested an application.

14. On that same date, Alton met with a Maria Pickett, an employee of Defendant's Human Resources Department.
15. Ms. Pickett informed Alton that Defendant was unable to meet the needs of the visually impaired.
16. Alton informed Pickett that there are numerous options and a variety of adaptive technologies and equipment that make the customer service position accessible to a visually impaired person.
17. Pickett told Alton that it would do no good for him to fill out an application.
18. Pickett told Alton that she would keep his resume on file until such time that Defendant obtained the necessary adaptive tools to accommodate him.
19. More than two months later, Alton had not heard from Defendant regarding its acquisition of tools to accommodate him.
20. On or about April 29, 1999, Alton filed a charge of discrimination with the Equal Employment Opportunity Commission.
21. On or about May 12, 1999, Defendant was notified of Alton's charge of discrimination.
22. Thereafter, Defendant invited Alton to apply for the Customer Service Representative position.
23. In or about May or June, 1999, Alton met with Defendant to take two employment tests and to fill out an application.
24. One test was a customer service skills test and the second test was a computer skills test.

25. Defendant administered the customer service skills test to Alton in Braille format.
26. Prior to the administration of the test, Alton advised Defendant's Human Resources Specialist that he does not have strong Braille skills and requested a reader to read the test to him instead.
27. Defendant refused to provide Alton with either a reader or a written version of the test, advising him that the Braille format was the accommodation it was providing him.
28. It took Alton several hours to complete the test because his Braille skills are not strong.
29. Defendant advised Alton that he had passed the test.
30. Defendant administered the second test, the computer skills test, without the adaptive software necessary for Alton to use the computer effectively.
31. Defendant advised Alton that he passed the computer skills test.
32. After completing both tests, Kris Powers, Defendant's Human Resources Manager, described to Alton the pay and benefits of the position.
33. At the same meeting that Kris Powers described the pay and benefits, Alton provided Powers with information regarding where to acquire the adaptive equipment necessary for him to begin work.
34. When Alton did not hear back from Defendant, he called to inquire about the status of his position.
35. Alton was told that he was not being hired because his skills reading Braille were too slow.

36. The effect of the practices complained of in paragraphs 8-35, above, has been to deprive Alton of equal employment opportunities and otherwise adversely affect his status as an applicant for employment because of his disability.

**FIRST CLAIM FOR RELIEF**

[Discriminatory Refusal to Hire, §102(a) and 102(b)(5)(B)]

37. Plaintiff realleges the foregoing paragraphs of this complaint.
38. Alton is disabled as defined in the ADA. 42 U.S.C. § 12102(2)(A).
39. Alton is able, with or without reasonable accommodation, to perform the essential functions of the Customer Service Representative position.
40. Defendant failed and refused to hire Alton because of his disability.
41. The effect of the practices complained of in paragraphs 8-40, above, has been to deprive Alton of equal employment opportunities and otherwise adversely affect his status as an applicant for employment because of his disability.
42. The unlawful employment practices complained of in paragraphs 8-40, above, were intentional.
43. The unlawful employment practices complained of herein were done with malice or with reckless indifference to the federally protected rights of Alton.

**SECOND CLAIM FOR RELIEF**

[Failure to Provide Reasonable Accommodation, §102(a) and §102(b)(5)(A)]

44. Plaintiff realleges the foregoing paragraphs of this complaint.

45. Providing a reader for Alton's customer service skills test is a reasonable accommodation under the ADA.
46. Acquisition of equipment, such as adaptive software, to enable Alton to perform the Customer Service Representative position is a reasonable accommodation.
47. It was possible for Defendant to reasonably accommodate Alton's disability during the application process for the Customer Service Representative position.
48. The effect of the practices complained of in paragraphs 44-47, above, has been to deprive Alton of equal employment opportunities and otherwise adversely affect his status as an applicant for employment because of his disability.
49. Defendant's failure and refusal to reasonably accommodate Alton is unlawful discrimination under the ADA.
50. The unlawful employment practices complained of herein were intentional.
51. The unlawful employment practices complained of herein were done with malice or with reckless indifference to the federally protected rights of Alton.

### **THIRD CLAIM FOR RELIEF**

[Failure to Select and Administer Tests Concerning Employment in the Most Effective Manner, §102(a) and §102(b)(7)]

52. Plaintiff realleges the foregoing paragraphs of this complaint.
53. By requiring Alton to take the customer service skills test in Braille format, Defendant failed to select and administer a test concerning employment in the most effective manner

to ensure that, when the test was administered to Alton, who has a disability that impairs his sensory skill of seeing, such test results accurately reflect his skills, aptitude, or whatever other factor such test purports to measure.

54. Instead, Defendant selected and administered a test that reflected Alton's impaired sensory skills.
55. By requiring Alton to take the computer skills test without use of adaptive software, Defendant failed to select and administer a test concerning employment in the most effective manner to ensure that, when the test was administered to Alton, who has a disability that impairs his sensory skill of seeing, such test results accurately reflect his skills, aptitude, or whatever other factor such test purports to measure.
56. Instead, Defendant selected and administered a test that reflected Alton's impaired sensory skills.
57. Defendant's failure to select and administer effective tests to Alton during his application process is unlawful discrimination under the ADA.
58. The effect of the practices complained of in paragraphs 52-57, above, has been to deprive Alton of equal employment opportunities and otherwise adversely affect his status as an applicant for employment because of his disability.
59. The unlawful employment practices complained of herein were intentional.
60. The unlawful employment practices complained of herein were done with malice or with reckless indifference to the federally protected rights of Alton.



### **PRAYER FOR RELIEF**

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, successors, assigns, and all persons in active concert or participation with it, from engaging in any employment practice which discriminates on the basis of disability, such as refusing to hire qualified individuals with disabilities.

B. Order Defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities for qualified individuals with disabilities, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant to make Alton whole, by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to rightful-place hiring of Alton or front pay in lieu of hiring.

D. Order Defendant to make Alton whole by providing compensation for past and future pecuniary losses, and other consequential damages resulting from the unlawful employment practices described in paragraphs 8-60, above.

E. Order Defendant to make Alton whole by providing compensation for past and future nonpecuniary losses resulting from the unlawful employment practices described in paragraphs 8-60, above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

F. Order Defendant to pay Alton punitive damages for its malicious and reckless conduct, as described in paragraphs 8-60, above, in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

H. Award the Commission its costs of this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

Dated this 21<sup>st</sup> day of March, 2002.

Respectfully submitted,

GWENDOLYN YOUNG REAMS  
Acting Deputy General Counsel  
U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
1801 L Street, N.W.  
Washington, D.C. 20507

JOSEPH H. MITCHELL  
Regional Attorney  
Denver District Office

NANCY A. WEEKS  
Supervisory Trial Attorney



MIA E. BITTERMAN  
Trial Attorney  
(303) 866-1374

RITA BYRNES KITTLE  
Trial Attorney  
(303) 866-1347

EEOC  
Denver District Office  
303 E. 17th Ave., Suite 510  
Denver, CO 80203

**PLEASE NOTE:**

For the purposes of service upon the EEOC,  
it is sufficient that pleadings, notices, and  
court documents be served upon the  
Trial Attorneys.