

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 30 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: K. CLARK,

K. CLARK,

Petitioner,

v.

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF
CALIFORNIA,

Respondent,

TIME WARNER CABLE, a corporation,

Real Party in Interest.

No. 07-72899

D.C. No. CV-07-01797-VBF

MEMORANDUM*

On Petition for Writ of Mandamus to the
United States District Court for the
Central District of California

Submitted February 6, 2008**

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Pasadena, California

Before: KOZINSKI, Chief Judge, O'SCANNLAIN, and W. FLETCHER, Circuit Judges.

K. Clark petitions for a writ of mandamus arising from the district court's decision to dismiss her complaint against Time Warner Cable ("TWC") on the grounds that her claim against TWC under 47 U.S.C. § 258(a) warranted a referral to the Federal Communications Commission in the first instance.¹

Clark's mandamus petition seeks precisely the same relief as her appeal—a reversal of the district court's decision, and a remand that requires the district court to consider the merits of her § 258(a) claim. This court will not "engage in extraordinary review by mandamus . . . when it can exercise the same review by a contemporaneous ordinary appeal." *Calderon v. U.S. Dist. Court*, 137 F.3d 1420, 1421 (9th Cir. 1998) (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 8 n.6 (1983)).

Accordingly, Clark's petition for mandamus is

DENIED.

¹ In a concurrently filed opinion, we address Clark's direct appeal from the district court's decision. *See Clark v. Time Warner Cable*, No. 07-55794 (9th Cir. ___, __ 2008).