

LEVEL 3 COMMUNICATIONS INC

FORM 8-K (Current report filing)

Filed 05/17/06 for the Period Ending 05/15/06

Address	1025 ELDORADO BOULEVARD BLDG 2000 BROOMFIELD, CO 80021
Telephone	7208881000
CIK	0000794323
Symbol	LVLT
SIC Code	4813 - Telephone Communications, Except Radiotelephone
Industry	Communications Services
Sector	Services
Fiscal Year	12/31

LEVEL 3 COMMUNICATIONS INC

FORM 8-K

(Unscheduled Material Events)

Filed 5/17/2006 For Period Ending 5/15/2006

Address	1025 ELDORADO BOULEVARD BLDG 2000 BROOMFIELD, Colorado 80021
Telephone	720-888-1000
CIK	0000794323
Industry	Communications Services
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SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): May 15, 2006

Level 3 Communications, Inc.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

47-0210602
(I.R.S. Employer
Identification No.)

1025 Eldorado Blvd., Broomfield, Colorado
(Address of principal executive offices)

80021
(Zip code)

720-888-1000
(Registrant's telephone number including area code)

Not applicable
(Former name and former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01 Entry Into a Material Definitive Agreement

On May 15, 2006, at the 2006 Annual Meeting of Stockholders of Level 3 Communications, Inc. ("Level 3"), our stockholders approved an amendment to the Level 3 1995 Stock Plan (Amended and Restated April 1, 1998) to extend the term of that plan by five years. The 1995 Stock Plan will now expire on the fifteenth anniversary of the effective date of the plan or September 25, 2010. The 1995 Stock Plan as amended is attached to this Form 8-K as Exhibit 10.1 and incorporated herein by reference as if set forth in full.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

On May 15, 2006, at the Level 3 2006 Annual Meeting of Stockholders, our stockholders approved an amendment to the Level 3 Restated Certificate of Incorporation to increase the number of authorized shares of common stock, par value \$.01 per share that Level 3 is authorized to issue from 1.5 billion to 2.25 billion. In addition, at the Annual Meeting, the Level 3 stockholders approved an amendment to the Level 3 Restated Certificate of Incorporation to declassify the Level 3 Board of Directors. The descriptions of the provisions of the Certificate of Amendment are qualified in their entirety by reference to the copy of the Certificate of Amendment filed as Exhibit 3(i) to this Form 8-K, which is incorporated by reference as if set forth in full. In addition, the Level 3 Restated Certificate of Incorporation as in effect on May 15, 2006 prior to the filing of the Certificate of Amendment is filed as Exhibit 3(i) to this Form 8-K and incorporated by reference as if set forth in full.

On May 15, 2006, the Board of Directors of Level 3 amended and restated the Level 3 By-laws. These changes generally relate to:

- o referencing our new registered agent for service of process in the State of Delaware;
- o conforming changes necessitated by the staged elimination of the classified Board structure;
- o allowing Level 3 to pursue the elimination of paper stock certificates, which is an initiative that the SEC is advocating public companies implement;
- o including references to the written charters of the various Board of Directors committees and the ability of the committees to delegate authority to members of management; and
- o certain other conforming or clean-up changes.

The descriptions of the changes to the Level 3 By-laws are qualified in their entirety by reference to the copy of the Amended and Restated By-laws filed as Exhibit 3(ii) to this Form 8-K, which is incorporated by reference as if set forth in full.

Item 8.01 Other Events

See information reported under Item 5.03.

On May 15, 2006, Level 3 issued a press release announcing the results of the Level 3 2006 Annual Meeting of Stockholders. This press release is filed as exhibit 99.1 to this Current Report and is incorporated by reference as if set forth in full.

Item 9.01 Financial Statements and Exhibits

(a) Financial Statements of business acquired

None

(b) Pro forma financial information

None

(c) Shell company transactions

None

(d) Exhibits

3(i) Certificate of Amendment to the Level 3 Communications, Inc. Certificate of Incorporation and the Level 3 Communications, Inc. Restated Certificate of Incorporation.

3(ii) Amended and Restated By-laws of Level 3 Communications, Inc.

10.1 1995 Stock Plan (Amended and Restated April 1, 1998) as amended as of May 15, 2006.

99.1 Press release dated May 15, 2006, announcing the results of the Level 3 Communications, Inc. 2006 Annual Meeting of Stockholders.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Level 3 Communications, Inc.

May 17, 2006
Date

By: /s/ Neil J. Eckstein
Neil J. Eckstein, Senior Vice President

STATE OF DELAWARE
CERTIFICATE OF AMENDMENT
of
RESTATED CERTIFICATE OF INCORPORATION
of
LEVEL 3 COMMUNICATIONS, INC.

First: That the Board of Directors of Level 3 Communications, Inc., a Delaware corporation (the "Corporation"), at meetings of the Board of Directors of the Corporation, adopted resolutions setting forth certain proposed amendments to the Restated Certificate of Incorporation, declaring said amendments to be advisable and calling for the stockholders of the Corporation to consider said amendments at the next Annual Meeting of the Stockholders to be held on May 15, 2006. The resolutions setting forth the proposed amendments are as follows:

RESOLVED, that set forth below is the text of ARTICLE IV of the Restated Certificate of Incorporation of Level 3 Communications, Inc., filed with the Secretary of State of the State of Delaware on May 23, 2005, if the amendment of ARTICLE IV is approved:

"ARTICLE IV
AUTHORIZED CAPITAL STOCK

The total number of shares of capital stock which the Corporation shall have the authority to issue is 2,260,000,000 shares, consisting of 2,250,000,000 shares of Common Stock, par value \$.01 per share (the "Common Stock") and 10,000,000 shares of Preferred Stock, par value \$.01 per share ("Preferred Stock").

and be it further

RESOLVED, that set forth below is the text of ARTICLE VII paragraph B of the Restated Certificate of Incorporation of Level 3 Communications, Inc., filed with the Secretary of State of the State of Delaware on May 23, 2005, if the amendment of ARTICLE VII paragraph B is approved:

"B. At each annual meeting of the stockholders of the Corporation, the date of which shall be fixed by or pursuant to the By-Laws of the Corporation, the successors of the class of directors whose terms expire at that meeting shall be elected to hold office for a term of one (1) year and until such director's successor is elected and qualified or until such director's earlier resignation or removal; provided , however , that each director elected at the annual meetings of the Corporation held in 2004 and 2005 shall serve for the full three-year term to which such director was elected or until such director's earlier resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director."

Second: That thereafter, upon notice in accordance with Section 222 of the General Corporation Law of the State of Delaware, the Annual Meeting of the Stockholders was held on May 15, 2006 and, at that meeting, the necessary number of shares as required by statute were voted in favor of the amendments.

Third: That said amendments were duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

Fourth: That the capital of the Corporation shall not be reduced under or by reason of said amendments.

*BY: /s/ Thomas C. Stortz
NAME: Thomas C. Stortz
TITLE: Executive Vice President,
Chief Legal Officer and Secretary*

**RESTATED CERTIFICATE OF INCORPORATION
OF
LEVEL 3 COMMUNICATIONS, INC.**

Pursuant to Section 245
of the Delaware General Corporation Law

Level 3 Communications, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

1. The name of the Corporation is Level 3 Communications, Inc. The Corporation was originally incorporated under the name Peter Kiewit Sons', Inc.
2. The original Certificate of Incorporation of the Corporation was filed in the office of the Secretary of State of the State of Delaware on July 1, 1941 and a Restated Certificate of Incorporation of the Corporation was filed in such office on January 29, 1975, January 23, 1981, January 14, 1986, January 8, 1992 and March 31, 1998. The Restated Certificate of Incorporation was amended by a Certificate of Amendment filed with the Secretary of State of the State of Delaware on June 2, 1999.
3. This Restated Certificate of Incorporation, which was duly adopted pursuant to Sections 242 and 245 of the Delaware General Corporation Law, restates and integrates and further amends the provisions of the Restated Certificate of Incorporation of the Corporation.
4. The text of the Restated Certificate of Incorporation as heretofore amended or supplemented is hereby restated and further amended to read in its entirety as follows:

ARTICLE I

NAME

The name of the Corporation is: Level 3 Communications, Inc.

ARTICLE II

REGISTERED OFFICE AND REGISTERED AGENT

The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE III

PURPOSES

The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "DGCL").

ARTICLE IV

AUTHORIZED CAPITAL STOCK

The total number of shares of capital stock which the Corporation shall have the authority to issue is 1,510,000,000 shares, consisting of 1,500,000,000 shares of Common Stock, par value \$.01 per share (the "Common Stock") and 10,000,000 shares of Preferred Stock, par value \$.01 per share ("Preferred Stock").

ARTICLE V

COMMON STOCK

A. Dividends. After dividends payable on any Preferred Stock have been declared and set aside on such Preferred Stock having a preference over the Common Stock with respect to the payment of such dividends, the holders of Common Stock shall be entitled to receive, when and as declared, out of assets and funds legally available therefor, cash or non-cash dividends payable as and when the Board of Directors in its sole business judgment so declares. Any such dividend shall be payable ratably to all record holders of Common Stock as of the record date fixed by the Board of Directors in accordance with the By-laws of the Corporation for the payment thereof.

B. Liquidation Rights. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation ("Liquidation"), the holders of Common Stock then outstanding shall be entitled to be paid ratably out of the assets and funds of the Corporation available for distribution to its stockholders, after and subject to the payment in full of all amounts required to be distributed to the holders of any Preferred Stock upon Liquidation, an amount equal to their share (including any declared but unpaid dividends on the Common Stock, subject to proportionate adjustment in the event of any stock dividend, stock split, stock distribution or combination with respect to such shares) of such assets and funds.

C. Voting.

1. Except as required by law, or as otherwise provided herein or in any amendment hereof, the entire voting power of the Corporation with respect to all matters other than the election of directors shall be vested in the holders of Common Stock voting together as a single

class. Except as required by law, or as otherwise provided herein or in any amendment hereof, the entire voting power of the Corporation with respect to the election of directors shall be vested in the holders of Common Stock voting together as a single class.

2. Each holder of Common Stock entitled to vote shall at every meeting of the stockholders of the Corporation be entitled to one vote for each share of Common Stock registered in his or her name on the record of stockholders.

ARTICLE VI

PREFERRED STOCK

The Preferred Stock may be issued from time to time as herein provided in one or more series. The designations, relative rights, preferences and limitations of the Preferred Stock, and particularly of the shares of each series thereof, may, to the extent permitted by law, be similar to or differ from those of any other series. The Board of Directors is hereby expressly granted authority, subject to the provisions of this Article VI, to fix, from time to time before issuance thereof, the number of shares in each series and all designations, relative rights, preferences and limitations of the shares in each such series, including, but without limiting the generality of the foregoing, the following:

A. the designation of the series and the number of shares to constitute each series;

B. the dividend rate on the shares of each series, conditions on which and times at which dividends are payable, whether dividends shall be cumulative, and the preference or relation (if any) with respect to such dividends (including preferences over dividends on the Common Stock or any other class or classes);

C. whether the series will be redeemable (at the option of the Corporation or the holders of such shares or both, or upon the happening of a specified event) and, if so, the redemption prices and the conditions and times upon which redemption may take place and whether for cash, property or rights, including securities of the Corporation or another corporation;

D the terms and amount of any sinking, retirement or purchase fund;

E. the conversion or exchange rights (at the option of the Corporation or the holders of such shares or both, or upon the happening of a specified event), if any, including the conversion or exchange price and other terms of conversion or exchange;

F. the voting rights, if any (other than any voting rights that the Preferred Stock may have as a matter of law);

G. any restrictions on the issue or reissue or sale of additional Preferred Stock;

H. the rights of the holders upon voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation (including preferences over the Common Stock or any other class or classes or series of stock); and

I. such other special rights and privileges, if any, for the benefit of the holders of Preferred Stock, as shall not be inconsistent with provisions of this Restated Certificate of Incorporation.

All shares of Preferred Stock of the same series shall be identical in all respects, except that shares of any one series issued at different times may differ as to dates, if any, from which dividends thereon may accumulate. All shares of Preferred Stock of all series shall be of equal rank and shall be identical in all respects except that any series may differ from any other series with respect to any one or more of the designations, relative rights, preferences and limitations described or referred to in subparagraphs A. to I. inclusive above.

ARTICLE VII

DIRECTORS

A. The Board of Directors shall consist of no fewer than six persons and no more than fifteen persons, and such number shall be fixed by, or in the manner provided in, the By-laws of the Corporation.

B. The Board of Directors shall be divided into three classes to be designated as Class I, Class II and Class III. The Board of Directors, by resolution, shall designate the class in which each of the directors then in office shall serve upon such classification. The terms of office of the classes of directors so designated by the Board of Directors shall expire at the times of the annual meetings of the stockholders as follows: Class III on the first annual meeting of stockholders following the time that this Sixth Restated Certificate of Incorporation is effective (the "Effective Time"), Class I on the second annual meeting following the Effective Time and Class II on the third annual meeting following the Effective Time, or thereafter in each case when their respective successors are elected and qualified. At each subsequent annual election, the directors chosen to succeed those whose terms are expiring shall be identified as being of the same class as the directors whom they succeed, and shall be elected for a term expiring at the time of the third succeeding annual meeting of stockholders, or thereafter in each case when their respective successors are elected and qualified. The number of directorships shall be apportioned among the classes so as to maintain the classes as nearly equal in number as possible.

C. A director may be removed from office only for cause and only by vote of at least a majority of the outstanding stock entitled to vote in an election of directors.

D. Any vacancy on the Board of Directors, however resulting, may be filled only by a majority of the directors then in office, even if less than a quorum, or by a sole remaining director. Any director elected to fill a vacancy shall hold office for a term that shall coincide with the term of the class to which such director shall have been elected.

ARTICLE VIII

STOCKHOLDERS' VOTE

Any action required or permitted to be taken at any annual or special meeting of stockholders may be taken only upon the vote of the stockholders at an annual or special meeting duly noticed and called, as provided in the By-laws of the Corporation, and may not be taken by a written consent of the stockholders.

ARTICLE IX

INDEMNIFICATION

The Corporation shall indemnify each person who is or was a director, officer or employee of the Corporation (including the heirs, executors, administrators or estate of such person) or is or was serving at the request of the Corporation as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise, to the fullest extent permitted under applicable law.

The indemnification provided by this Article IX shall not be deemed exclusive of any other rights to which any of those seeking indemnification or advancement of expenses may be entitled under any by-law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer or employee and shall inure to the benefit of the heirs, executors and administrators of such a person.

ARTICLE X

LIMITATION OF LIABILITY

A director of this Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit. If the DGCL is amended after approval by the stockholders of this Article X to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL as so amended.

Any repeal or modification of the foregoing paragraph by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE XI

SPECIAL MEETINGS

Special meetings of the stockholders of the Corporation for any purpose or purposes may be called at any time by the Board of Directors, the President, the Chief Executive Officer or the Chairman of the Board of Directors. Special meetings of the stockholders of the Corporation may not be called by any other person or persons.

ARTICLE XII

RATIFICATION BY STOCKHOLDERS

Any contract, transaction or act of the Corporation or of the directors, which shall be ratified by a majority of a quorum of the stockholders then entitled to vote at any annual meeting or at any special meeting called for such purpose, shall, so far as permitted by law and by this Certificate of Incorporation, be as valid and as binding as though ratified by every stockholder entitled to vote at such meeting.

ARTICLE XIII

AMENDMENTS OF CERTIFICATE

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Sixth Restated Certificate of Incorporation or in any amendment hereto by the affirmative vote of a majority of the outstanding stock entitled to vote thereon; provided, however, that the provisions of this Sixth Restated Certificate of Incorporation requiring for action by the stockholders a vote of at least sixty-six and two-thirds percent (66 2/3%) shall not be amended except by such vote; and provided further that this Article XIII shall not be amended except by the affirmative vote of at least sixty-six and two-thirds percent (66 2/3%) of the outstanding stock entitled to vote thereon.

ARTICLE XIV

CREDITORS

Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof on the application of any receiver or receivers appointed for this Corporation under the provisions of section 291 of Title 8 of the DGCL or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under the provisions of Section 279 of Title 8 of the DGCL, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

ARTICLE XV

BY-LAWS

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to adopt, repeal, alter, amend or rescind the By-laws of the Corporation. In addition, the By-laws of the Corporation may be adopted, repealed, altered, amended or rescinded by the affirmative vote of at least sixty-six and two-thirds percent (66 2/3%) of the outstanding stock entitled to vote thereon.

IN WITNESS WHEREOF, the Corporation has caused this Restated Certificate of Incorporation to be signed by Thomas C. Stortz, its Executive Vice President, this 23rd day of May, 2005.

By: /s/ Thomas C. Stortz
Title: Executive Vice President

**BY-LAWS
OF
LEVEL 3 COMMUNICATIONS, INC.**

**ARTICLE I.
OFFICES**

SECTION 1.1. REGISTERED OFFICE AND AGENT. The registered office of Level 3 Communications, Inc. (the "Corporation") is at 2711 Centerville Road Suite 400, Wilmington, New Castle County, Delaware, 19808. The registered agent at that address is Corporation Service Company.

SECTION 1.2. OTHER OFFICES. The Corporation may have other offices from time to time as the directors may designate or as the business may require.

**ARTICLE II.
STOCKHOLDERS**

SECTION 2.1. ANNUAL MEETINGS. The annual meeting of stockholders shall be held at such place, date, and time as is designated by the Board of Directors. At this meeting, directors shall be elected and any other proper business may be transacted.

SECTION 2.2. SPECIAL MEETINGS. Special meetings of the stockholders of the Corporation may be called for any purpose or purposes by the Chairman of the Board, the Chief Executive Officer, the President or by a majority of the directors. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice of the meeting.

SECTION 2.3. PLACE OF MEETINGS. Meetings of stockholders shall be held at such place, either within or without the State of Delaware, as shall be designated by those calling the meeting.

SECTION 2.4. NOTICES OF MEETINGS. A written notice shall be given to each stockholder entitled to vote at the meeting not less than 10 nor more than 60 days before each annual or special meeting. The notice shall state the place, date, and hour of the meeting. The notice of a special meeting shall state the purposes for which the meeting has been called. Written notices may be given by either personal delivery or mail. If mailed, notice is given when deposited in the United States mail, postage prepaid directed to the stockholder at his address as it appears on the records of the Corporation. No notice is required to be given to a stockholder to whom notices of two consecutive annual meetings (and any other written notice sent between those meetings) have been mailed addressed to that person at his address as shown on the corporate records and have been returned undeliverable.

SECTION 2.5. WAIVER OF NOTICE. A written waiver, signed by a stockholder, whether before or after an annual or special meeting, shall be equivalent to the

giving of such notice. Attendance by a stockholder, without objection to the notice, whether in person or by proxy, at an annual or special meeting shall constitute waiver of notice of such meeting.

SECTION 2.6. VOTING LIST. At least ten days before each stockholders' meeting, the Secretary shall prepare a complete list of stockholders entitled to vote at such meeting. Arranged in alphabetical order, the list shall show the name, address, and number of shares of each stockholder entitled to vote. For at least 10 days before the meeting, the list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, at the principal business office of the Company located in Broomfield, Colorado. The list shall also be available at the meeting for inspection by any stockholder present.

SECTION 2.7. RECORD DATE. The Board of Directors may fix a record date to determine which stockholders are entitled to: (a) notice of a stockholders' meeting; (b) vote at a stockholders' meeting; (c) receive payment for a dividend; (d) receive a distribution or allotment of rights; (e) exercise any rights in respect of any change, conversion, or exchange of stock; or (f) notice for the purpose of any other lawful action. The record date shall not be less than 10 nor more than 60 days before any such action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

SECTION 2.8. PROXY. Each stockholder eligible to vote may authorize another person or persons to act for him by proxy. No proxy shall be valid after three years from its date, unless the proxy provides for a longer period.

SECTION 2.9. VOTING RIGHTS. Unless otherwise provided in the Corporation's Restated Certificate of Incorporation, each stockholder eligible to vote shall have one vote for each share of capital stock held by such stockholder.

SECTION 2.10. QUORUM AND REQUIRED VOTE. A majority of the shares entitled to vote, present in person or represented by proxy, shall constitute a quorum at a meeting of stockholders. Unless otherwise required by the Corporation's Restated Certificate of Incorporation or by statute, the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders. However, if less than a quorum but more than one-third of all shares eligible to vote is present at a scheduled meeting, a majority of the shares present may adjourn the scheduled meeting.

SECTION 2.11. ADJOURNED MEETINGS. No new notice is required if the time and place of the adjourned meeting is announced at the meeting at which the adjournment is taken and if the adjournment is for not more than 30 days. At an adjourned meeting, the stockholders may transact any business which might have been transacted at the original meeting.

SECTION 2.12. NO ACTION WITHOUT A MEETING. Any action required or permitted at a stockholders' meeting may be taken only upon the vote of the stockholders at an annual or special meeting duly noticed and called, and may not be taken by a written consent of the stockholders.

SECTION 2.13. CONDUCT OF MEETINGS.

(a) The Chief Executive Officer of the Corporation shall preside at each meeting of the stockholders. In the absence of the Chief Executive Officer, the meeting shall be chaired by an other officer of the Corporation in accordance with the following order: Chairman of the Board, Vice Chairman, President, any Executive Vice President, any Senior Vice President and any Vice President. In the absence of any of such officers, the meeting shall be chaired by a person chosen by a majority in interest of the stockholders present in person or represented by proxy and entitled to vote thereat, who shall act as chairman. The Secretary or in his or her absence an Assistant Secretary or a person whom the chairman of the meeting shall appoint shall act as secretary of the meeting and keep a record of the proceedings thereof.

(b) The Board of Directors shall be entitled to make such rules or regulations for the conduct of meeting of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of the chairman, are necessary, appropriate or convenient for the proper conduct of the meeting including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the Corporation and their duly authorized and constituted proxies, and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comment by participants and regulation of the opening and closing of the ballot. Unless, and to the extent, determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

SECTION 2.14. ADVANCE NOTIFICATION OF BUSINESS TO BE TRANSACTED AT STOCKHOLDER MEETINGS.

(a) No business may be transacted at an annual meeting of stockholders, other than business that is either (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof), (b) otherwise properly brought before the annual meeting by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (c) otherwise properly brought before the annual meeting by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this section and on the record date for the determination of stockholders entitled to vote at such annual meeting and (ii) who complies with the notice procedures set forth in this section.

(b) In addition to any other applicable requirements for business to be properly brought before an annual meeting by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary.

(c) To be timely, a stockholder's notice to the Secretary must be delivered to or mailed and received at the principal executive office of the Corporation not less than 60 days nor more than 90 days prior to the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting is called for a date that is not within 30 days before or after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth day following the day on which such notice of the date of the annual meeting was mailed or public disclosure of the date of the annual meeting was made, whichever first occurs.

(d) To be in proper written form, a stockholder's notice to the Secretary must set forth as to each matter such stockholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and record address of such stockholder, (iii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such stockholder, (iv) a description of all arrangements or understandings between such stockholder and any other person or persons (including their names and addresses) in connection with the proposal of such business by such stockholder and any material interest of such stockholder in such business and (v) a representation that such stockholder intends to appear in person or by proxy at the annual meeting to bring such business before the meeting.

(e) No business shall be conducted at the annual meeting of stockholders except business brought before the annual meeting in accordance with the procedures set forth in this section; provided, however, that, once business has been properly brought before the annual meeting in accordance with such procedures, nothing in this section shall be deemed to preclude discussion by any stockholder of any such business. If the chairman of an annual meeting determines that business was not properly brought before the annual meeting in accordance with the foregoing procedures, the chairman shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be transacted.

ARTICLE III. DIRECTORS

SECTION 3.1. GENERAL POWERS. The business and affairs of this Corporation shall be managed by its Board of Directors.

SECTION 3.2. NUMBER AND QUALIFICATIONS. The Board of Directors shall fix, by resolution from time to time, the number of directors which shall constitute the whole Board of Directors; provided, however, that such number shall be no fewer than six and no more than fifteen. Directors need not be stockholders.

SECTION 3.3. ELECTION AND TERM. Upon the original filing of the amendment to the Corporation's Restated Certificate of Incorporation that amends and restates

Article VII, Para. B to remove the classification of the Board of Directors, (the "Effective Time"), at each annual meeting of the stockholders of the Corporation subsequent to the Effective Time, the date of which shall be fixed by or pursuant to these By-laws, the successors of the class of directors whose terms expire at that meeting shall be elected to hold office for a term of one

(1) year and until such director's successor is elected and qualified or until such director's earlier resignation or removal; provided, however, that each director elected at the annual meetings of the Corporation held in 2004 and 2005 shall serve for the full three-year term to which such director was elected or until such director's earlier resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

SECTION 3.4. VACANCIES. Vacancies, however resulting, and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. Any director elected to fill such a vacancy or newly created directorship shall hold office until the next annual meeting of stockholders of the Corporation.

SECTION 3.5. REMOVAL. Subject to any rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, any director, or the entire Board of Directors, may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the outstanding stock entitled to vote thereon.

SECTION 3.6. ANNUAL MEETINGS. The Board of Directors may provide by resolution for the time and place of annual meetings of the Board of Directors, without notice other than such resolution.

SECTION 3.7. REGULAR MEETINGS. The Board of Directors may provide by resolution for the time and place of regular meetings of the Board of Directors, without notice other than such resolution.

SECTION 3.8. SPECIAL MEETINGS. Special meetings of the Board of Directors shall be called by the Chairman of the Board, the Chief Executive Officer, the President or by a majority of the directors. The person(s) calling the meeting may fix the specific time and place of the meeting.

SECTION 3.9. NOTICE OF MEETING. Notice of any special meeting of the Board of Directors shall be given to each director at his business or residence in writing or by telegram or by telephone communication or by facsimile transmission or by e-mail transmission. If mailed, such notice shall be deemed adequately delivered when deposited in the United States mails so addressed, with postage thereon prepaid, at least five days before such meeting. If by telegram, such notice shall be deemed adequately delivered when the telegram is delivered to the telegraph company at least twenty-four hours before such meeting. If by telephone or by e-mail transmission, the notice shall be given at least twelve hours prior to the time set for the meeting. If by facsimile transmission, the notice shall be deemed adequately delivered if transmitted at least twenty-four hours before such meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the

notice of such meeting, except for amendments to these By-laws as provided under Article IX hereof. A meeting of the Board of Directors may be held at any time without notice if all the directors are present or if those not present waive notice of the meeting in writing, either before or after such meeting.

SECTION 3.10. WAIVER OF NOTICE. A written waiver, signed by the director, whether before or after the meeting of the Board of Directors, shall be equivalent to the giving of such notice. Attendance by a director, without objection to the notice, at a meeting of the Board of Directors shall constitute waiver of notice of such meeting.

SECTION 3.11. TELEPHONE PARTICIPATION. Directors may participate in a meeting of the Board of Directors by means of conference telephone or similar communications equipment if all persons participating in the meeting can hear each other. Participation in a meeting of this kind shall constitute presence in person at the meeting.

SECTION 3.12. QUORUM AND VOTING. A majority of the whole Board of Directors shall constitute a quorum for the transaction of business. The vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless the vote of a greater number is required by statute, the Corporation's Restated Certificate of Incorporation, or these By-laws.

SECTION 3.13. ACTION WITHOUT A MEETING. Any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action taken, is signed by all directors.

SECTION 3.14. COMPENSATION. By resolution of the Board of Directors, a director may be paid a fixed sum, and any expenses, for an annual retainer or for attendance at a meeting of the Board of Directors as set forth in such resolution. No such payment shall preclude a director from receiving compensation for serving the Corporation in any other capacity.

SECTION 3.15. NOMINATION OF DIRECTORS.

(a) Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation. Nominations of persons for election to the Board of Directors may be made at any annual meeting of stockholders, or at any special meeting of stockholders called for the purpose of electing directors, (a) by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (b) by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this section and on the record date for the determination of stockholders entitled to vote at such meeting and (ii) who complies with the notice procedures set forth in this section.

(b) In addition to any other applicable requirements, for a nomination to be made by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation.

(c) To be timely, a stockholder's notice to the Secretary must be delivered to or mailed and received at the principal executive office of the Corporation (a) in the case of an

annual meeting, not less than 60 days nor more than 90 days prior to the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting is called for a date that is not within 30 days before or after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth day following the day on which such notice of the date of the annual meeting was mailed or public disclosure of the date of the annual meeting was made, whichever first occurs and (b) in the case of a special meeting of stockholders called for the purpose of electing directors, not later than the close of business on the tenth day following the day on which notice of the date of the special meeting was mailed or public disclosure of the date of the special meeting was made, whichever first occurs.

(d) To be in proper written form, a stockholder's notice to the Secretary must set forth (a) as to each person whom the stockholder proposes to nominate for election as a director (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person, (iii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by the person and (iv) any other information relating to the person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitation of proxies for election of directors pursuant to Section 14 of the Securities Exchange Act of 1934 (the "Exchange Act"), and the rules and regulations promulgated thereunder, and (b) as to the stockholder giving the notice (i) the name and record address of such stockholder, (ii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such stockholder, (iii) a description of all arrangements or understandings between such stockholder and each proposed nominee and any other person or persons (including their names and addresses) pursuant to which the nominations(s) are to be made by such stockholder, (iv) a representation that such stockholder intends to appear in person or by proxy at the meeting to nominate the persons named in its notice and (v) any other information relating to such stockholder that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitation of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder. Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected.

(e) No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this section. If the chairman of the meeting determines that a nomination was not made in accordance with the foregoing procedures, the chairman shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded.

ARTICLE IV. BOARD COMMITTEES

SECTION 4.1. FORMATION OF COMMITTEES. The Board of Directors by resolution may create committees, each consisting of one or more directors, which committees shall hold office for such time and have such powers and perform such duties as may from time to time be assigned to them by the Board of Directors. Four committees have previously been

formed: the executive committee, the compensation committee, the audit committee and the nominating and governance committee.

SECTION 4.2. EXECUTIVE COMMITTEE. The executive committee shall have all the powers of the Board of Directors in the management of the normal and ordinary business and affairs of the Corporation at all times when the Board of Directors is not in session. The executive committee shall have the following specific powers to:

- (a) review and approve business plans of subsidiaries and make recommendations concerning such plans to the appropriate subsidiary board of directors; and
- (b) delegate authority to one or more persons to act on behalf of the Corporation or its subsidiaries, whether pursuant to a power of attorney or otherwise, and to establish policies regarding such delegations of authority.

SECTION 4.3. COMPENSATION COMMITTEE. The compensation committee shall have the duties to recommend to the Board of Directors: (a) the base salary or wage ranges of all employees; (b) the amounts and forms of compensation, including fringe benefits and bonuses, as well as stock options and incentive compensation rights that apply or may apply to employees; (c) the adoption and implementation of any new or modified forms of compensation; (d) the suspension, elimination or restriction of any presently existing forms of compensation; and (e) plans concerning the orderly succession of officers and key management personnel. In addition, the compensation committee shall have the duties outlined in its written charter as in effect from time to time and as approved by the Board of Directors and may delegate authority to one or more persons to act on its behalf, whether pursuant to a power of attorney or otherwise, and in a manner consistent with the Corporation's establish policies regarding such delegations of authority.

SECTION 4.4. AUDIT COMMITTEE. None of the members of the audit committee shall be directly involved in the supervision or management of the financial affairs of this Corporation or any of its subsidiaries.

- (a) The books, records, and accounts of the Corporation may be audited periodically by independent public accountants. In connection with the audit process, the audit committee shall have the duties outlined in its written charter as in effect from time to time and as approved by the Board of Directors.
- (b) The audit committee shall meet periodically with the staff responsible for the Corporation's financial and accounting matters to review and discuss the scope of internal accounting procedures and controls then in effect and the extent to which any recommendations made by the independent public accountants or any internal auditors have been implemented.
- (c) The audit committee shall direct and supervise any investigation into any matter brought to its attention within the scope of its duties which it believes is necessary. The audit committee may retain outside consultants in connection with any such investigation.
- (d) The audit committee shall monitor business practices of the Corporation as set forth in the written policies of the Corporation, such as compliance with antitrust policies and

other policies, as directed by the Board of Directors.

(e) The audit committee may delegate authority to one or more persons to act on its behalf, whether pursuant to a power of attorney or otherwise, and in a manner consistent with the Corporation's establish policies regarding such delegations of authority.

SECTION 4.5 NOMINATING AND GOVERNANCE COMMITTEE. The nominating and governance committee shall have the duties to: (a) consider and make recommendations to the Board of Directors concerning the appropriate size, functions and policies of the Board of Directors; (b) recommend to the Board of Directors the size and functions of the various committees of the Board of Directors; (c) recommend to the Board of Directors corporate governance principles for the Company. In addition, the nominating and governance committee shall have the duties outlined in its written charter as in effect from time to time and as approved by the Board of Directors and may delegate authority to one or more persons to act on its behalf, whether pursuant to a power of attorney or otherwise, and in a manner consistent with the Corporation's establish policies regarding such delegations of authority.

SECTION 4.6 LIMITATIONS ON POWERS. Limitations on the powers of committees of the Board of Directors shall be governed by Section 141(c)(2) of the Delaware General Corporation Law. In addition, no committee shall act contrary to a fundamental policy or method of conducting the business of the Corporation. No committee shall have the specific powers conferred upon any other committee by these By-laws.

SECTION 4.7 GENERAL. Any committee member may be removed by the Board of Directors at any time without cause. The Board of Directors may designate a chairman of a committee. The following provisions of the By-laws, which are applicable to the Board of Directors, shall also govern each Board of Directors committee: Section 3.4 (vacancies), Section 3.10 (waiver of notice), Section 3.11 (telephone participation), Section 3.12 (quorum and voting), and Section 3.13 (action without a meeting). Each committee may adopt its own rules of procedure and such rules may govern the call, time, place, and notice of meetings. Each committee may keep appropriate minutes of such proceedings and shall report all significant actions at regular meetings of the Board of Directors.

ARTICLE V. OFFICERS

SECTION 5.1. NUMBER. The officers of the Corporation shall include a President and a Secretary. The Board of Directors may elect additional officers and appoint agents as it determines necessary. Any two or more offices may be held by the same person, except the offices of President and Secretary. The Board of Directors in its discretion may also elect one or more Chairman of the Board and one or more Vice Chairman.

SECTION 5.2. ELECTION AND QUALIFICATION. The President and Secretary shall be elected at the annual meeting of the Board of Directors. Other officers may be elected by the Board of Directors from time to time. The Chairman of the Board, if any, shall be

a director of the Corporation, and should he cease to be a director, he shall IPSO FACTO cease to be such officer.

SECTION 5.3. TERM. Each officer shall hold office until his successor is elected and qualified or until his earlier resignation or removal. Any officer may resign at any time upon written notice to the Corporation.

SECTION 5.4. REMOVAL. Any officer elected by the Board of Directors may be removed by a majority of the members of the whole Board of Directors whenever, in their judgment, the best interest of the Corporation would be served thereby. No elected officer shall have any contractual rights against the Corporation for compensation by virtue of such election beyond the date of the election of his successor, his death, his resignation or his removal, whichever event shall first occur, except as otherwise provided in an employment contract or under an employee deferred compensation plan.

SECTION 5.5. VACANCY. Any vacancy in any office from any cause may be filled for the unexpired portion of the term by the Board of Directors.

SECTION 5.6. CHAIRMAN OF THE BOARD. The Chairman of the Board shall be a director and shall preside at all meetings of the Board of Directors at which he shall be present, and shall have such power and perform such duties as may from time to time be assigned to him by the Board of Directors.

SECTION 5.7. VICE CHAIRMAN OF THE BOARD. Any Vice Chairman of the Board shall be a director or shall have been a director holding the title of Vice Chairman. If any Vice Chairman of the Board is at the applicable time a director, he shall preside at all meetings of the Board of Directors at which a Chairman shall not be present, and shall have such power and perform such duties as may from time to time be assigned to him by the Board of Directors.

SECTION 5.8. CHIEF EXECUTIVE OFFICER. The Chief Executive Officer shall, when present, preside at all meetings of the stockholders, and, in the absence of the Chairman of the Board and any Vice Chairman of the Board, or upon motion of the Board of Directors, at meetings of the Board of Directors. He shall have power to call special meetings of the stockholders, of the Board of Directors or of the Executive Committee at any time. He shall be the chief executive officer of the Corporation, and shall have the general direction of the business, affairs and property of the Corporation, and of its several officers and shall have and exercise all such powers and discharge such duties as usually pertain thereto.

SECTION 5.9. PRESIDENT. The President shall be the chief operating officer of the Corporation and shall have and exercise all such powers and discharge such duties as usually pertain to the office of President. In the absence of the Chief Executive Officer, the Chairman of the Board and any Vice Chairman, the President, when present, will preside at all meetings of the stockholders, and, if he is a director, in the absence of the Chairman of the Board, any Vice Chairman of the Board and the Chief Executive Officer, at meetings of the Board of Directors. He shall have power to call special meetings of the stockholders, of the Board of Directors or of the Executive Committee at any time.

SECTION 5.10. VICE-PRESIDENTS. The Vice-Presidents, if any, or any of them, shall, subject to the direction of the Board of Directors, at the request of the Chief Executive Officer of the President or in his absence, or in case of his inability to perform his duties from any cause, perform the duties of the President, and, when so acting, shall have all the powers of, and be subject to all restrictions upon, the President. The Vice-Presidents shall also perform such other duties as may be assigned to them by the Board of Directors, and the Board of Directors may determine the order of priority among them. For purposes of these By-laws, Vice-Presidents shall include any officer with the title Vice-President along with any suffix, including, without limitation Executive, Group or Senior.

SECTION 5.11. SECRETARY. The Secretary shall perform such duties as are incident to the office of Secretary, or as may from time to time be assigned to him by the Board of Directors, or as are prescribed by these By-laws.

SECTION 5.12.. TREASURER. The Treasurer shall perform such duties and have powers as are usually incident to the office of Treasurer or which may be assigned to him by the Board of Directors.

SECTION 5.13. COMPENSATION. The compensation of all officers shall be fixed by the Board of Directors. An officer who is also a director may be compensated in both capacities.

SECTION 5.14. BONDING. Any officer, agent or employee of the Corporation, if so required by the Board of Directors, shall be bonded for the faithful performance of his duties, with such penalties, conditions and security as the Board of Directors may require.

ARTICLE VI. STOCK

SECTION 6.1. STOCK CERTIFICATES. Shares of the Corporation's stock may be certificated or uncertificated, as provided under Delaware law. All certificates of stock of the Corporation shall be numbered and shall be entered in the books of the Corporation as they are issued. They shall exhibit the holder's name and number of shares and shall be signed by the Chairman or a Vice Chairman or the President or a Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary. Any or all of the signatures on the certificate may be a facsimile.

SECTION 6.2. TRANSFER OF STOCK. Transfers of stock shall be made on the books of the Corporation only by the record holder of such stock, or by attorney lawfully constituted in writing, and, in the case of stock represented by a certificate, upon surrender of the certificate. However, the requirements of any applicable stock transfer restriction agreement must also be satisfied.

SECTION 6.3. LOST CERTIFICATES. The Corporation shall issue a new stock certificate in place of a certificate previously issued, if the holder: (a) claims by affidavit that the certificate has been lost, destroyed, or stolen; and (b) gives the Corporation a bond or other indemnity as the directors determine appropriate.

SECTION 6.4. REGISTERED STOCKHOLDERS. The person in whose name shares are registered in the Corporation's stock ledger shall be deemed by the Corporation to be the owner of those shares for all purposes. The Corporation shall not be required to recognize any equitable or other claim or interest in such shares by any other person, whether or not it has actual or other notice of such claim.

ARTICLE VII. MISCELLANEOUS

SECTION 7.1. SEAL. The corporate seal shall contain the name of the Corporation as well as the words "Corporate Seal" and "Delaware".

SECTION 7.2. FISCAL YEAR. The fiscal year of the Corporation shall be determined by resolution of the Board of Directors.

SECTION 7.3. CONTRACTS, ETC. The directors shall determine by resolution which persons shall be empowered to sign contracts, bids, proposals, certificates and other instruments of the Corporation. Such authority may be general or confined to specific instances.

SECTION 7.4. CHECKS, ETC. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

SECTION 7.5. DIVIDENDS. Dividends upon the capital stock of the Corporation, subject to the provisions of the Corporation's Restated Certificate of Incorporation, may be declared by the Board of Directors or a committee of the Board of Directors at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property or in shares of the capital stock.

SECTION 7.6. RESERVES. Before payment of any dividend there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, determine proper as a reserve fund to meet contingencies, or for repairing or maintaining any property of the Corporation or for such other purpose as the directors shall think conducive to the interest of the Corporation, and the directors may abolish any such reserve in the manner in which it was created.

SECTION 7.7. VOTING STOCK OF OTHER CORPORATIONS. Except as otherwise ordered by the Board of Directors, the Chairman of the Board or the Chief Executive Officer or the President or any Vice President shall have full power on behalf of the Corporation to attend and to act and to vote at any meeting of the stockholders of any other corporation of which the Corporation is a stockholder and to execute a proxy to any other person to represent the Corporation at any such meeting.

ARTICLE VIII. INDEMNIFICATION

SECTION 8.1. NON-DERIVATIVE SUITS. The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending

or complete action, suit or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Corporation), by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonable believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe his conduct was unlawful.

SECTION 8.2. DERIVATIVE SUITS. The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

SECTION 8.3. EXTENT OF INDEMNIFICATION. To the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 8.1 or 8.2 above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

SECTION 8.4. APPROVAL OF INDEMNIFICATION. Any indemnification under Section 8.1 or 8.2 above (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Section 8.1 or 8.2 above. Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, (2) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion or (3) by the affirmative vote of the holders of 51% of the outstanding shares of Common Stock of the Corporation.

SECTION 8.5. ADVANCES. Expenses (including attorneys' fees) incurred in defending a civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount, if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article VIII.

SECTION 8.6. NON-EXCLUSIVITY. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall not be deemed exclusive of any other rights to which any person seeking indemnification may be entitled under any By-law, agreement, vote of stockholders or disinterested director or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

SECTION 8.7. INSURANCE. The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Section 8.7 or under the provisions of any applicable law or regulation.

ARTICLE IX. AMENDMENTS

SECTION 9.1. These By-laws may be repealed, altered, amended or rescinded and new by-laws may be adopted by the majority vote of the Board of Directors or by the affirmative vote of sixty-six and two-thirds percent (66-2/3%) of the outstanding stock entitled to vote thereon.

Dated: May 15, 2006

**LEVEL 3 COMMUNICATIONS, INC.
1995 STOCK PLAN**

ARTICLE I.

NAME AND PURPOSE

1.1. Name. The name of the Plan is the Level 3 Communications, Inc. 1995 Stock Plan (Amended and Restated as of April 1, 1998).

1.2. Purpose. The purpose of the Plan is to increase the value of Shares and the profitability of the Company and its subsidiaries (i) by enabling the Company to attract, retain, motivate and reward certain Employees and (ii) by aligning the interests of those Employees with the interests of the Company and the holders of Shares.

ARTICLE II.

DEFINITIONS

2.1. "Affiliate" means any corporation, partnership, or other entity with respect to which the Company owns, directly or indirectly, fifty percent or more of the issued and outstanding capital stock or other equity interests (measured in terms of total dollar value if the corporation, partnership or other entity has outstanding more than one class of capital stock or other equity interests).

2.2. "Agreement" means any written agreement, document or instrument that evidences a grant of an Award to a Participant and the terms, conditions and provisions of, and restrictions upon, the Award.

2.3. "Award" means any grant pursuant to the Plan of Incentive Stock Options, Nonqualified Stock Options, Restricted Shares, bargain Shares, bonuses of Shares, performance shares, Stock Appreciation Rights or other stock benefit or stock-based benefit granted to a Participant under this Plan.

2.4. "Board" means the Board of Directors of the Company.

2.5. "Certificate" means the certificate of incorporation of the Company, as amended from time to time.

2.6. "Change in Control" means the occurrence of any of the following events:

(i) The acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) (a "Person") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 30% or more (on a fully diluted basis) of either (i) the then outstanding shares of common stock of the Company, taking into account as outstanding for this purpose such common stock issuable upon the exercise of options or warrants, the conversion of convertible stock or debt, and the exercise of any similar right to

acquire such common stock (the "Outstanding Company Common Stock") or (ii) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Outstanding Company Voting Securities"); provided, however, that for purposes of this subsection (i), the following acquisitions shall not constitute a Change in Control: (a) any acquisition by the Company or any "affiliate", within the meaning of 17 C.F.R. Section 230.405 (an "Affiliate"), of the Company, (b) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or an Affiliate of the Company, or (c) any acquisition by any Person pursuant to a transaction which complies with clauses (a), (b) and (c) of subsection (iii) of this Section 2.6.; or

(ii) Individuals who, as of April 1, 1998, constitute the Board (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to April 1, 1998 whose election, or nomination for election by the Company's shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a person or entity other than the Board; or

(iii) Consummation of a reorganization, merger or consolidation or sale or other disposition of all or substantially all of the assets of the Company (a "Business Combination"), unless, following such Business Combination, (a) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 60% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, of the corporation resulting from such Business Combination (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination, of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be, and (b) no Person (excluding any employee benefit plan (or related trust) sponsored or maintained by the Company or an Affiliate of the Company, or such corporation resulting from such Business Combination or any Affiliate of such corporation) beneficially owns, directly or indirectly, 50% or more (on a fully diluted basis) of, respectively, the then outstanding shares of common stock of the corporation resulting from such Business Combination, taking into account as outstanding for this purpose such common stock issuable upon the exercise of options or warrants, the conversion of convertible stock or debt, and the exercise of any similar right to acquire such common stock, or the combined voting power of the then outstanding voting securities of such corporation except to the extent that such ownership existed prior to the Business Combination and (c) at least a majority of the members of the board of directors of the corporation resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination; or (iv) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company.

Notwithstanding the foregoing provisions of Section 2.5 hereof, a "Change in Control" will not be deemed to have occurred as a result of the consummation of the Separation Transaction, or as a result of any event or transaction occurring prior to the consummation of the Separation Transaction.

In addition, the Committee may, by a written determination prior to the consummation of an event or transaction, determine that such event or transaction does not constitute a Change in Control, provided that the Committee reasonably concludes that such event or transaction (i) is not likely to result in a significant change to the identities of the persons functioning as senior management of the Company, either immediately in the foreseeable future (it being understood that the Committee need not conclude that no changes in senior management are likely to occur), and (ii) is not likely to result in control of the Board (or a significant portion of the Board's functions) being transferred to a single Person other than an Affiliate of the Company or any employee benefit plan (or related trust) sponsored or maintained by the Company or an Affiliate of the Company, either immediately or in the foreseeable future.

2.7. "Class D Conversion Price" has the meaning ascribed to it in the Certificate prior to April 1, 1998.

2.8. "Class D Per Share Price" has the meaning ascribed to it in the Certificate prior to April 1, 1998.

2.9. "Class D Stock" means the Class D Diversified Group Convertible Exchangeable Common Stock, par value \$0.0625, issued by the Company, prior to the redesignation of Class D Stock as Stock as of April 1, 1998.

2.10. "Code" means the Internal Revenue Code of 1986, as amended, and the regulations promulgated under the Code.

2.11. "Committee" means the Board or a committee or committees of the Board appointed by the Board to administer this Plan.

2.12. "Company" means Level 3 Communications, Inc., a Delaware corporation.

2.13. "Effective Date" means September 25, 1995.

2.14. "Employee" means any person who, with respect to the Company, is considered an "employee," as such term is defined in Rule A.1.(a) to Form S-8 issued by the Securities and Exchange Commission (as such Rule may be renumbered from time to time) and who (a) is employed on a full-time basis by the Company or an Affiliate, (b) is a member of the Board of Directors of the Company or any Affiliate, or (c) provides services to the Company or any Affiliate in a capacity as other than an employee or a director, in each case at the time of the grant of the related Award.

2.15. "Exchange Act" means the Securities Exchange Act of 1934.

2.16. "Fair Market Value" means: (a) prior to April 1, 1998, with respect to Class D Stock, (i) the Class D Per Share Price, or (ii) the fair market value of Class D Stock determined by such other reasonable method of valuation adopted by the Committee; and

(b) on and after April 1, 1998, with respect to Stock, (i) the closing price per share of Stock on the national securities exchange on which Stock is principally traded, on the next preceding date on which there was a sale of Stock on such exchange, or (ii) if the Stock is not listed or admitted to trading on any such exchange, the last sale price of a share of Stock as reported by the National Association of Securities Dealers Inc. Automated Quotation ("NASDAQ") system on the next preceding date on which such bid and asked prices were reported, or (iii) if the Stock is not then listed on any securities exchange or prices therefor are not then quoted in the NASDAQ system, the value determined by the Committee in good faith.

2.17. "Fiscal Year" means the taxable year of the Company for federal income tax purposes, including the taxable year in which the Plan is adopted.

2.18. "Incentive Stock Option" means any Option that is intended, at the time it is granted, to be an incentive stock option within the meaning of Section 422 of the Code.

2.19. "Nonqualified Stock Option" means any Option that is not an Incentive Stock Option.

2.20. "Outperform Stock Option" means a Stock-based Award having terms and conditions reflected in an "Outperform Stock Option Award Agreement" entered into between the Company and a Participant.

2.21. "Option" means any option to purchase Shares that is granted pursuant to Section 6.1.

2.22. "Participant" means any Employee who is granted an Award pursuant to this Plan.

2.23. "Plan" means the Level 3 Communications, Inc. 1995 Stock Plan (Amended and Restated as of April 1, 1998), as it may be further amended from time to time.

2.24. "Publicly Traded" has the meaning ascribed to it in the Certificate prior to March 31, 1998.

2.25. "Representative" means a member of the Committee acting on behalf of the Committee, or an Employee appointed by the Committee to exercise some or all of the authority of the Committee.

2.26. "Restricted Shares" means any Shares that are granted pursuant to Section 7.1 subject to restrictions on transfer, to forfeiture under certain circumstances and to such other restrictions as the Committee deems appropriate (including restrictions on the exercise of voting rights or the right to receive dividends, or a requirement to reinvest dividends).

2.27. "Rule 16b-3" means Rule 16b-3 promulgated under the Exchange Act, as it may be amended from time to time, or any successor rule in effect from time to time.

2.28. "Separation Transaction" means the March 31, 1998 transaction effecting the separation of the construction business from the other businesses of the Company, as described in the Company's Registration Statement on Form S-4 (Registration No. 333-34627).

2.29. "Share" means, prior to 5:00 p.m. CST, March 31, 1998, a share of Class D Stock and, on and after that time, a share of Stock.

2.30. "Stock" means common stock of the Company, par value \$0.01 per share, subsequent to the redesignation of Class D Stock as such common stock as of 5:00 p.m. CST, March 31, 1998.

2.31. "Stock Appreciation Right" means an Award pursuant to which a Participant shall be paid the increase in value of one or more Shares from the date of grant of such Award until the date of exercise of such Award, in cash or Shares, and subject to such terms and conditions as the Committee deems appropriate and as may be reflected in an Award Agreement (including the number of Shares subject to such Stock Appreciation Right, the date or dates on which the Stock Appreciation Right becomes exercisable or exercised, either wholly or in part, and the expiration date of the Stock Appreciation Right).

2.32. "Term" means the term of this Plan, as set forth in Section 11.2.

ARTICLE III.

ELIGIBILITY AND PARTICIPATION

3.1. Eligibility. Every Employee is eligible to become a Participant. A person who is not an Employee is not eligible to become a Participant.

3.2. Participation. The Committee will select Employees to participate in the Plan from time to time, in its sole discretion. An Employee cannot become a Participant unless such person is selected by the Committee to participate in the Plan. In selecting such persons to participate in the Plan, the Committee may consider the past, present and expected future performance of the individual, the effort of the individual, the length of service of the individual, the level of responsibility of the individual and such other factors as the Committee deems appropriate.

ARTICLE IV.

AWARDS

4.1. Types of Awards. The Committee will determine the Awards to be granted to each Participant. The Committee may grant Awards in any one or any combination of (a) Incentive Stock Options; (b) Nonqualified Stock Options; (c) Restricted Shares; (d) Outperform Stock Options; (e) bargain purchases of Shares; (f) bonuses of Shares; (g) the grant of Shares based on performance or the satisfaction of other conditions; (h) Stock Appreciation Rights; or (i) any other form of stock benefit or stock-related benefit.

4.2. Terms and Conditions of Awards. The Committee will determine all terms, conditions and provisions of, and restrictions upon, any grant of Awards. Without limiting the Committee's authority, the Committee may: (a) make the grant of Awards conditional upon an election by a

Participant to defer payment of a portion of his salary; (b) give a Participant a combination of Awards or a choice between two Awards; (c) grant Awards in the alternative so that acceptance of or exercise of one Award cancels the right of a Participant to another; (d) grant Awards subject to any condition that the Committee deems appropriate; (e) provide that grants of Awards in Shares or Share equivalents will include dividend or dividend equivalent payments or dividend credit rights; and (f) provide any vesting schedule for Awards as the Committee deems appropriate. The Committee may waive any term, condition, provision or restriction, in its sole discretion.

4.3. Agreements. Each grant of an Award to a Participant will be evidenced by an Agreement executed by the Participant and a Representative (on behalf of the Company and the Committee). Subject to the terms and conditions of this Plan, the Committee, in its sole and absolute discretion, will determine the form and content of all Agreements. Agreements with respect to a specific type of Award need not be identical.

4.4. Modification or Termination of Awards. The Committee, in its sole discretion, may modify, cancel or terminate any Award at any time if a Participant is not in compliance with this Plan, the related Agreement or any rules adopted by the Committee.

4.5. Optional Deferral. The Committee may defer the right to receive any Award, or the proceeds of the exercise of any Award, at the request of a Participant, for such period and upon such terms as the Committee determines. Any such deferral may, at the discretion of the Committee, involve crediting of interest on deferrals denominated in cash and crediting of dividend equivalents on deferrals denominated in Shares.

4.6. Code Section 162(m). The Committee, in its sole discretion, may require that one or more Agreements provide that, in the event that Section 162(m) of the Code or any similar provision would operate to disallow a deduction by the Company for all or part of any Award, a Participant's receipt of the portion of such Award that would not be deductible by the Company will be deferred until the next succeeding year or years in which such portion may be paid without causing the Participant's remuneration for such year to exceed the limit set forth in Section 162(m) of the Code. Any such deferred amounts denominated in cash shall have earnings credited thereon at a market rate of interest, as reasonably determined by the Committee, and any such deferred amounts denominated in Shares shall have dividend equivalents credited thereon, and earnings subsequently credited on such dividend equivalents at a market rate of interest, as reasonably determined by the Committee.

4.7. Code Section 280G. The Committee, in its sole discretion, may (but need not) provide in any Award Agreement for the payment of additional amounts in respect of the Award in order to make a Participant whole for some or all of the excise taxes imposed on a Participant pursuant to Section 4999 of the Code in the event that the grant, exercise, vesting or payment of such Award is deemed to be an "excess parachute payment" for purposes of Section 280G of the Code. The terms and conditions of such additional payments shall be as determined by the Committee and reflected in the Award Agreement.

ARTICLE V.

SHARES SUBJECT TO PLAN

5.1. **Aggregate Limitation.** The Committee may not grant Awards under this Plan with respect to more than 200,000,000 Shares during the Term.

5.2. **Individual Limitations.** The Committee may not grant Options or Stock Appreciation Rights under this Plan to any Participant during any calendar year with respect to more than 3,000,000 Shares.

5.3. **Unused Shares.** If any Award expires or terminates, or if any Award is surrendered, canceled or forfeited without having been fully exercised, the Committee may again grant Awards with respect to the unused Shares allocable to the expired, terminated, surrendered, canceled or forfeited Award.

ARTICLE VI.

OPTIONS

6.1. **Grant.** The Committee may grant Options to any Employee. The Committee will determine the terms, conditions and provisions of, and the restrictions on, any Options, including the number of shares subject to such Options, the date or dates on which the Options become exercisable, either wholly or in part, and the expiration date of the Options. A Participant to whom an Option is granted will not be deemed the holder of any Shares subject to the Option until the Shares are fully paid, and issued and delivered to him following exercise of the Option.

6.2. **Incentive Stock Options.** Incentive Stock Options must include such terms and conditions as determined by the Committee to be reasonably necessary to cause the Options to qualify as incentive stock options under Section 422 of the Code.

6.3. **Exchange.** The Committee may grant Options to a Participant holding unexercised outstanding Options, or unexercised outstanding Options granted under another stock plan of the Company, on the condition that the Participant surrenders for cancellation some or all of those unexercised outstanding options.

6.4. **Substitution.** The Committee may grant Options from time to time in substitution for similar rights held by employees of other entities who become Employees as a result of a merger or consolidation of the other entity with the Company or an Affiliate, the acquisition by the Company or an Affiliate of the assets of the other entity, or the acquisition by the Company or an Affiliate of an equity interest in another entity.

6.5. **Exercise Price.** The Committee may grant Options pursuant to this Plan, other than Incentive Stock Options, with a per share exercise price that is less than the Fair Market Value of one Share, as of the date of the grant.

6.6. Vesting. Options granted pursuant to this Plan will vest and become exercisable as determined by the Committee in its sole discretion and as reflected in an Award Agreement.

ARTICLE VII.

RESTRICTED SHARES

7.1. Grant. The Committee may grant Restricted Shares to any Participant. The Committee may make grants of Restricted Shares at such cost, or at no cost, as determined by the Committee in its sole discretion.

7.2. Beneficial Ownership. Except as set forth in an Agreement relating to Restricted Shares, each Participant who is awarded Restricted Shares will have the entire beneficial ownership of, and all rights and privileges of a stockholder with respect to, the Restricted Shares awarded to him. Notwithstanding the above, Restricted Shares may not be sold, transferred, pledged or otherwise encumbered during the restricted period set by the Committee.

ARTICLE VIII.

OTHER AWARDS

8.1. Grants. The Committee may grant any other stock or stock- related awards to a Participant under this Plan that the Committee deems appropriate, including, but not limited to, Stock Appreciation Rights, Outperform Stock Options, bargain purchases of Shares, bonuses of Shares and the grant of Shares based on performance or upon the satisfaction of other conditions.

ARTICLE IX

CHANGES IN CAPITAL STRUCTURE AND CHANGE IN CONTROL

9.1 Changes in Capital Structure. Awards granted under the Plan and any agreements evidencing such Awards, the maximum number of Shares subject to all Awards and the maximum number of shares with respect to which any one person may be granted Options, Outperform Stock Options or Stock Appreciation Rights or other stock or stock related awards during the Term shall be subject to adjustment or substitution, as determined by the Committee in its sole discretion, as to the number, price or kind of a Share or other consideration subject to such Awards or as otherwise determined by the Committee to be equitable (i) in the event of changes in the outstanding Shares or in the capital structure of the Company by reason of stock dividends, stock splits, reverse stock splits, recapitalizations, reorganizations, mergers, consolidations, combinations, exchanges, or other relevant changes in capitalization occurring after the date of grant of any such Award, or (ii) in the event of any change in applicable laws or any change in circumstances which results in or would result in any substantial dilution or enlargement of the rights granted to, or available for, Participants in the Plan, or which otherwise warrants equitable adjustment because it interferes with the intended operation of the Plan. In addition, in the event of any such adjustments or substitution, the aggregate number of Shares available under the Plan shall be appropriately adjusted by the Committee, whose determination shall be conclusive. Any adjustment in Incentive Stock Options under this Section 9.1 shall be made only to the extent not constituting a "modification" within the

meaning of Section 424(h)(3) of the Code, and any adjustments under this Section 9.1 shall be made in a manner which does not adversely affect the exemption provided pursuant to Rule 16b-3 under the Exchange Act. Further, with respect to Awards intended to qualify as "performance-based compensation" under Section 162(m) of the Code, such adjustments or substitutions shall be made only to the extent that the Committee determines that such adjustments or substitutions may be made without a loss of deductibility for Awards under Section 162(m) of the Code, unless the Committee specifically determines otherwise. The Company shall give each Participant notice of an adjustment hereunder and, upon notice, such adjustment shall be conclusive and binding for all purposes.

Notwithstanding the above, in the event of any of the following that does not constitute a Change in Control:

- A. The Company is merged or consolidated with another corporation or entity and, in connection therewith, consideration is received by stockholders of the Company in a form other than stock or other equity interests of the surviving entity;
- B. All or substantially all of the assets of the Company are acquired by another Person;
- C. The reorganization or liquidation of the Company; or
- D. The Company shall enter into a written agreement to undergo an event described in clauses A, B or C above,

then the Committee may, in its discretion and upon at least 10 days advance notice to the affected persons, cancel any outstanding Awards and pay to the holders thereof, in cash or stock, or any combination thereof, the value of such Awards based upon the price per Share received or to be received by other stockholders of the Company in the event. The terms of this Section 9.1 may be varied by the Committee in any particular Award Agreement.

9.2 Effect of Change in Control. Except to the extent reflected in a particular Award Agreement:

- (a) The Committee, in its sole discretion, may (but need not) provide in any Award Agreement that, in the event of a Change in Control, notwithstanding any vesting schedule otherwise effective with respect to the Award, (i) in the case of Options or Stock Appreciation Rights, the Award shall become immediately exercisable with respect to 100 percent of the Shares subject thereto, (ii) in the case of Restricted Shares, any restrictions shall expire immediately with respect to 100 percent of such Restricted Shares and (iii) in the case of any other Award, any other vesting or restricted period to which such Award is subject shall expire as to 100 percent of such Award.
- (b) In addition, in the event of a Change in Control, the Committee may in its discretion and upon at least 10 days' advance notice to the affected persons, cancel any outstanding Awards and pay to the holders thereof, in cash or stock, or any combination thereof, the value of such Awards based upon the price per share received or to be received by other shareholders of the Company in the event.

9.3 Binding Upon Successors. The obligations of the Company under this Plan shall be binding upon any successor corporation or organization resulting from the merger, consolidation or other reorganization of the Company, or upon any successor corporation or organization succeeding to substantially all of the assets and business of the Company. Subject to the actions which the Committee may take with respect to Awards in accordance with Sections 9.1 and 9.2, the Company agrees that it will make appropriate provisions for the preservation of Participants' rights under the Plan in any agreement or plan which it may enter into or adopt to effect any such merger, consolidation, reorganization or transfer of assets.

ARTICLE X.

ADMINISTRATION

10.1. Administration. The Committee will administer this Plan. The Board may appoint a separate committee or committees to administer portions of the Plan applicable to persons subject to Rule 16b-3, Section 162(m) of the Code or other similar provisions of law. The Committee may act either through majority vote of the Committee at a meeting for which a quorum is present, or through the written consent of a majority of the members of the Committee in lieu of a meeting. The Committee will maintain such books, accounts and records relating to the Plan and to Committee proceedings as it considers appropriate. The Committee may designate Employees to assist the Committee in the administration of the Plan and to act as Representatives of the Committee, and in that capacity to exercise any or all of the authority of the Committee under this Plan, and may grant authority to those Employees to execute any and all agreements contemplated by this Plan and any other documents reasonably required to implement this Plan. The Committee may employ agents, attorneys, accountants or other third parties for such purposes as the Committee considers appropriate.

10.2. Discretion and Authority. Subject to the express limitations set forth in this Plan, the Committee, in its sole and absolute discretion, may take any and all actions necessary, advisable or appropriate to implement the Plan and may make any and all determinations deemed appropriate for the administration of the Plan, including actions and determinations with respect to (a) the Participants in the Plan, (b) adequacy of consideration received by the Company in exchange for Awards granted under the Plan, (c) the types and amounts of Awards to be granted to Participants or to any particular Participant, (d) the terms, conditions and provisions of, and restrictions on, all Awards, (e) amounts payable, if any, by a Participant in connection with the grant, award or receipt of any Award, (f) restrictions on transfer of any Award by a Participant, and (g) the circumstances under which any Award may expire, terminate or be surrendered, canceled or forfeited.

10.3. Payment. Upon the exercise of an Option or in the case of any other Award that requires a payment by a Participant to the Company, the amount due the Company may be paid (a) in cash; (b) by the surrender of all or part of an Award (including the Award being exercised); (c) by the tender to the Company of Shares acquired by the Participant on the open market or owned by the Participant for at least six months and registered in his or her name having a Fair Market Value equal to the amount due to the Company; (d) by delivering to the Committee a copy of irrevocable instructions to a stockbroker to deliver promptly to the Company an amount of sale or loan proceeds sufficient to pay the exercise price, in the case of an Option; (e) in other

property, rights and credits deemed acceptable by the Committee, including the Participant's promissory note; or (f) by any combination of the payment methods specified in (a) through (e). Notwithstanding the foregoing, any method of payment other than in cash may be used only with the consent of the Committee or if and to the extent so provided in the related Agreement. The proceeds of the sales of Shares purchased pursuant to an Option and any payment to the Company for other Awards will be added to the general funds of the Company or to the reacquired Shares held by the Company, as the case may be, and used for the corporate purposes of the Company as the Board determines.

10.4. Rules. The Committee may make, amend and rescind such rules and regulations and establish, modify or repeal such procedures as it deems appropriate for the administration of the Plan. The Committee may make special rules or regulations that apply only to persons covered by Rule 16b-3, Section 162(m) of the Code or other provisions of law.

10.5. Interpretation. In the event of a disagreement as to the interpretation of the Plan, any rule, regulation or procedure under the Plan, or as to any right or obligation arising from or related to the Plan (including but not limited to under an Agreement), the interpretation of the Committee will be final and binding.

10.6. Legal Requirements. The Committee will cause the Plan, and any grants or awards of Awards, to comply with all applicable laws.

ARTICLE XI.

AMENDMENT AND TERMINATION

11.1. Amendment. The Committee may amend the Plan from time to time as it deems appropriate. The Committee, however, may not amend any provision of Article V, Section 6.2 or this Article XI without the approval of the Board. No amendment to this Plan may deprive a Participant of any Award or rights with respect to an Award without the Participant's consent.

11.2. Term. The Plan will terminate on the fifteenth anniversary of the Effective Date (September 25, 2010). The Board, however, may terminate the Plan at any time. Neither amendment nor termination of the Plan will deprive Participants of their rights with respect to outstanding Awards.

ARTICLE XII.

MISCELLANEOUS

12.1. Continuation of Employment. Neither this Plan nor any Award granted under this Plan confers upon any Employee any right to continue in the service of the Company or any Affiliate or limits the right of the Company to terminate an Employee's service at will at any time.

12.2. Discretionary Acceleration of Vesting. The Committee may accelerate the vesting, exercisability or payment of any Award at any time and for any reason as it determines in its sole discretion (including but not limited to retirement of a Participant).

12.3. **Unfunded Plan.** This Plan is intended to constitute an "unfunded" plan for incentive and deferred compensation. With respect to any payments or deliveries of Shares not yet made to a Participant by the Company, nothing contained in this Plan will give any Participant rights that are greater than those of a general creditor of the Company. The Committee may authorize the creation of trusts or other arrangements to meet the obligations to deliver Shares or payments under the Plan.

12.4. **Designation of Beneficiary.** A Participant may file with the Committee a written designation of a beneficiary or beneficiaries (subject to such limitations as to the classes and numbers of beneficiaries and contingent beneficiaries as the Committee may from time to time prescribe) to exercise, in the event of the death of the Participant, an Option, Outperform Stock Option or Stock Appreciation Right, or to receive, in such event, any Awards. The Committee reserves the right to review and approve beneficiary designations. A Participant may from time to time revoke or change any such designation of beneficiary and any designation of beneficiary under the Plan will be controlling over any other disposition, testimony or otherwise; provided, however, that if the Committee will be in doubt as to the right of any such beneficiary to exercise any Option, Outperform Stock Option or Stock Appreciation Right, or to receive any Award, the Committee may determine to recognize only the legal representative of the recipient.

12.5. **Nontransferability.** Unless otherwise determined by the Committee or specified in an Agreement, (a) no Award granted under this Plan may be transferred or assigned by the Participant to whom it is granted other than by beneficiary designation, will, or pursuant to the laws of descent and distribution, and (b) an Award granted under this Plan may be exercised, during the Participant's lifetime, only by the Participant or by the Participant's guardian or legal representative.

12.6. **Rule 16b-3.** With respect to Participants subject to Section 16 of the Exchange Act, transactions under this Plan are intended to comply with all applicable provisions of Rule 16b-3 or its successors under the Exchange Act, and the provisions of the Plan shall be construed accordingly.

12.7. **No Effect on Other Awards.** The receipt of Awards under the Plan shall have no effect on any benefits to which a Participant may be entitled from his or her employer, under another plan or otherwise, or preclude a Participant from receiving any such benefits.

12.8. **Withholding.** If the Company is required to withhold any taxes in connection with an Award, and a Participant is obligated to pay to the Company any or all of the amount required to be withheld, the Committee may permit the Participant to satisfy the withholding obligation, in whole or in part, either

(a) by having the Company withhold from any Shares to be issued upon the receipt of an Award with a Fair Market Value sufficient to satisfy the withholding amount due, or (b) by delivering to the Company sufficient Shares to satisfy the withholding amount due. In the absence of such Committee permission, the withholding obligation shall be satisfied by the payment of cash or its equivalent by the Participant to the Company. The Company shall have no obligation to deliver to a Participant Shares or other consideration in respect of an Award until arrangements satisfactory to the Committee have been made to satisfy any required withholding obligation of the Company.

12.9. Effective Date. This Plan is originally effective as of September 25, 1995, and has been amended and restated by the Board effective as of October 22, 1997, further amended and restated effective as of November 10, 1997 and further amended and restated effective as of April 1, 1998, July 24, 2002 and May 18, 2004. This Plan was further amended on May 15, 2006.

12.10. Liability. No member of the Board or the Committee, or any officer or employee of the Company or its subsidiaries, will be personally liable for any action, omission or determination made in good faith or upon the advice of counsel in connection with the Plan or any Award granted or awarded under the Plan.

12.11. Governing Law. The law of the state of Delaware will govern issues related to the validity and issuance of Shares. All other terms, conditions and provisions of, and restrictions upon, this Plan, and Awards granted hereunder, will be construed and administered in accordance with the law of the state in which the Company's principal executive offices are located.

12.12. Conflict. Unless specifically stated otherwise in an Agreement, if a term, condition or provision of, or restriction upon, the Plan conflicts with the term, condition or provision of, or restriction upon, any Agreement, the term of the Plan will control.

May 15, 2006

NEWS RELEASE

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Level 3 Holds 2006 Annual Meeting of Stockholders

BROOMFIELD, Colo., May 15, 2006 -- Level 3 Communications, Inc. (Nasdaq: LVLT) held its 2006 Annual Meeting of Stockholders today in Broomfield, Colorado.

At the meeting, the company's stockholders:

- o Approved increasing the number of authorized shares of Level 3's common stock from 1.5 billion to 2.25 billion;
- o Granted the Board of Directors discretionary authority to amend the company's restated certificate of incorporation to implement a reverse stock split at one of four possible ratios: 1-for-5, 1-for-10, 1-for-15, and 1-for-20.
- o Extended the term of Level 3's 1995 Stock Plan by five years to September 25, 2010;
- o Approved an amendment to Level 3 restated certificate of incorporation to declassify the Board of Directors; and
- o Re-elected Arun Netravali, John T. Reed and Michael B. Yanney as directors of the company. As a result of the approved proposal to declassify the board, each director will serve a one-year term until the 2007 Annual Meeting of Stockholders.

Detailed descriptions of the proposals approved at today's meeting are available in Level 3's proxy statement and related additional solicitation materials, which are available on the company's Web site at www.Level3.com.

About Level 3 Communications

Level 3 (Nasdaq: LVL3), an international communications and information services company, operates one of the largest Internet backbones in the world. Through its customers, Level 3 is the primary provider of Internet connectivity for millions of broadband subscribers. The company provides a comprehensive suite of services over its broadband fiber optic network including Internet Protocol (IP) services, broadband transport and infrastructure services, colocation services, voice services and voice over IP services. These services provide building blocks that enable Level 3's customers to meet their growing demands for advanced communications solutions. The company's Web address is www.Level3.com.

Level 3 offers information services through its subsidiary, Software Spectrum, and fiber-optic and satellite video delivery and advertising distribution solutions through its subsidiary, Vyvx. For additional information, visit their respective Web sites at www.softwarespectrum.com and www.vyvx.com.

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Forward-Looking Statement

Some of the statements made by Level 3 in this press release are forward-looking in nature. Actual results may differ materially from those projected in forward-looking statements. Level 3 believes that its primary risk factors include, but are not limited to: increasing the volume of traffic on Level 3's network; developing new products and services that meet customer demands and generate acceptable margins; successfully completing commercial testing of new technology and information systems to support new products and services, including voice transmission services; stabilizing or reducing the rate of price compression on certain of our communications services; integrating strategic acquisitions; attracting and retaining qualified management and other personnel; ability to meet all of the terms and conditions of our debt obligations; overcoming Software Spectrum's reliance on financial incentives, volume discounts and marketing funds from software publishers; and reducing downward pressure of Software Spectrum's margins as a result of the use of volume licensing and maintenance agreements. Additional information concerning these and other important factors can be found within Level 3's filings with the Securities and Exchange Commission. Statements in this release should be evaluated in light of these important factors.