

LEVEL 3 COMMUNICATIONS INC

FORM 8-K (Current report filing)

Filed 12/31/08 for the Period Ending 12/31/08

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Telephone	7208881000
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Industry	Communications Services
Sector	Services
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**UNITED STATES
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): **December 31, 2008**

Level 3 Communications, Inc.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other
jurisdiction of incorporation)

0-15658
(Commission File
Number)

47-0210602
(IRS 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))
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Item 1.01 Entry into a Material Definitive Agreement.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

On December 31, 2008, Level 3 Communications, Inc. (the "Company") consummated the transactions contemplated by a Securities Purchase Agreement (the "Purchase Agreement") that it executed with certain investors on November 17, 2008, and amended on December 16, 2008 ("Amendment No. 1") and on December 24, 2008 ("Amendment No. 2"), in connection with the offering and sale of \$26,200,000 aggregate principal amount of its 15% Convertible Senior Notes due 2013 (the "Notes").

Since as of December 24, 2008 the Company had not yet accepted for payment any of its 6% Subordinated Notes due 2009 (the "2009 Notes") in the tender offer for those notes (the "2009 Tender Offer"), the commitment of Walter Scott, Jr. and his related accounts (investors under the Purchase Agreement) to purchase Notes was reduced in accordance with the terms of the Purchase Agreement from approximately \$37 million to approximately \$10.8 million. Pursuant to Amendment No. 2, the Company and the investors amended the Purchase Agreement to enable the Company to issue and sell to Mr. Scott and his related accounts \$26.2 million aggregate principal amount of additional Notes if the Company purchased any 2009 Notes pursuant to the 2009 Tender Offer. Because the Company has completed the 2009 Tender Offer, pursuant to Amendment No. 2, the Company has issued and sold to Mr. Scott and his related accounts \$26.2 million aggregate principal amount of additional Notes.

The Notes are senior unsecured obligations of the Company, ranking equal in right of payment with all the Company's existing and future unsubordinated indebtedness. The Notes will mature on January 15, 2013 and pay 15% annual cash interest. Interest on the Notes will be payable on January 15 and July 15 of each year, beginning on January 15, 2009.

The Notes are convertible by holders into shares of the Company's common stock, par value \$0.01 per share ("Common Stock"), at an initial conversion price of \$1.80 per share (which is equivalent to a conversion rate of 555.5556 shares of Common Stock per \$1,000 principal amount of the Notes), subject to adjustment upon certain events, at any time before the close of business on January 15, 2013. Holders may require the Company to repurchase all or any part of their Notes upon the occurrence of a designated event (change of control or a termination of trading) at a price equal to 100% of the principal amount of the Notes, plus accrued and unpaid interest to, but excluding, the repurchase date, if any. In addition, if a holder elects to convert its Notes in connection with certain changes in control, the Company will pay, to the extent described in the First Supplemental Indenture (as defined below) governing the Notes, a make-whole premium by increasing the number of shares deliverable upon conversion of such Notes.

If at any time following the date of initial issuance of the Notes and prior to the close of business on January 15, 2013 the closing sale price per share of the Common Stock exceeds 222.2% of the conversion price of the Notes then in effect for at least 20 trading days within any 30 consecutive trading day period, the Notes will automatically convert into shares of Common Stock, plus accrued and unpaid interest (if any) to, but excluding the automatic conversion date, which date will be designated by the Company following such automatic conversion event.

A copy of the Purchase Agreement, Amendment No. 1 and Amendment No. 2 were previously filed by the Company with the Securities and Exchange Commission as Exhibit 10.1 to its Current Report on Form 8-K filed on November 18, 2008, as Exhibit 10.1 to its Current Report on Form 8-K filed on December 16, 2008 and as Exhibit 10.1 to its Current Report on Form 8-K filed on December 24, 2008, respectively, and each is incorporated herein by reference.

The Company will use all of the net proceeds from the offering of the Notes, together with approximately \$89.9 million of the net proceeds from the Company's December 24, 2008 sale of its 15% Convertible Senior Notes due 2013, to fund its repurchase of its 2009 Notes, including accrued interest, tendered in its completed tender offer for such notes.

The Notes were issued pursuant to an indenture dated as of December 24, 2008 (the "Base Indenture") between the Company and The Bank of New York Mellon, as Trustee (the "Trustee"), as supplemented by the First Supplemental Indenture, dated as of December 24, 2008 (the "First Supplemental Indenture") between the Company and the Trustee. A copy of each of the executed Base Indenture and First Supplemental Indenture were previously filed by the Company with the Securities and Exchange Commission as Exhibits 4.1 and 4.2, respectively, to its Current Report on Form 8-K filed on December 24, 2008, and each is incorporated herein by reference.

On December 31, 2008, the Company issued a press release announcing the completion of the transactions contemplated by the Purchase Agreement relating to the Notes. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

The offering was made pursuant to the Company's Registration Statement on Form S-3 (File No. 333-154976) filed on November 4, 2008 (the "Registration Statement"). Under the Registration Statement, the Company may offer its debt and equity securities from time to time in one or more offerings.

A legality opinion of Willkie Farr & Gallagher LLP with respect to the validity of the Notes and the shares of Common Stock issuable upon conversion of the Notes is attached hereto as Exhibit 5.1 and is incorporated herein by reference.

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

5.1 Opinion of Willkie Farr & Gallagher LLP.

4.1 Indenture, dated as of December 24, 2008, by and between the Company and The Bank of New York Mellon, as trustee (incorporated herein by reference to Exhibit 4.1 to Level 3 Communications, Inc.'s Current Report on Form 8-K filed on December 24, 2008).

4.2 First Supplemental Indenture, dated as of December 24, 2008, by and between the Company and The Bank of New York Mellon, as trustee (incorporated herein by reference to Exhibit 4.2 to Level 3 Communications, Inc.'s Current Report on Form 8-K filed on December 24, 2008).

10.1 Securities Purchase Agreement, dated as of November 17, 2008, among the Company and the Investors named therein (incorporated herein by reference to Exhibit 10.1 to Level 3 Communications, Inc.'s Current Report on Form 8-K filed on November 18, 2008).

- 10.2 Amendment No. 1 to Securities Purchase Agreement, dated as of December 16, 2008, by and among the Company and the investors party thereto (incorporated herein by reference to Exhibit 10.1 to Level 3 Communications, Inc.'s Current Report on Form 8-K filed on December 16, 2008).
- 10.3 Amendment No. 2 to Securities Purchase Agreement, dated as of December 24, 2008 (incorporated herein by reference to Exhibit 10.1 to Level 3 Communications, Inc.'s Current Report on Form 8-K filed on December 24, 2008).
- 99.1 Press Release, dated December 31, 2008, relating to the offering of the Notes.

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.

By: /s/ NEIL J. ECKSTEIN

Name: Neil J. Eckstein

Title: Senior Vice President

Date: December 31, 2008

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[Item 9.01 Financial Statements and Exhibits](#)

SIGNATURES

[Letterhead of Willkie Farr & Gallagher LLP]

December 31, 2008

Level 3 Communications, Inc.
1025 Eldorado Boulevard
Broomfield, Colorado 80021

Re: *Offering of 15% Convertible Senior Notes due 2013*

Ladies and Gentlemen:

We have acted as counsel for Level 3 Communications, Inc., a Delaware corporation (the "Company"), in connection with the issuance and sale by the Company of an aggregate of \$26,200,000 principal amount of the Company's 15% Convertible Senior Notes due 2013 (the "Notes") pursuant to that certain Securities Purchase Agreement, dated as of November 17, 2008, by and among the Company and the investors named therein, as amended on December 16, 2008 and on December 24, 2008 (as so amended, the "Securities Purchase Agreement"), and (ii) the issuance of such indeterminable number of shares of common stock, par value \$0.01 per share, of the Company (the "Common Stock"), as may be required for issuance upon conversion of the Notes (the "Conversion Shares"). The Notes are being issued under that certain Indenture, dated as of December 24, 2008, as supplemented by the First Supplemental Indenture, dated as of December 24, 2008 (as supplemented, the "Indenture"), between the Company and The Bank of New York Mellon, as trustee (the "Trustee"). The Notes are being offered pursuant to Rule 415 under the Securities Act of 1933, as amended (the "Securities Act"), and have been registered under the Company's Registration Statement on Form S-3 (File No. 333-154976) (the "Registration Statement").

In connection with the foregoing, we have examined originals or copies, certified or otherwise identified to our satisfaction, of the restated certificate of incorporation and amended and restated by-laws of the Company, the Registration Statement, the final prospectus supplement dated November 17, 2008 relating to the offer of the Notes, the Securities Purchase Agreement, the Indenture, the certificate evidencing the Notes, the Officers' Certificate of the Company dated December 31, 2008 and delivered to the Trustee pursuant to Section 1.02 of the Indenture, the written order of the Company dated December 31, 2008 and delivered to the Trustee pursuant to Section 3.03 of the Indenture, and such other instruments, documents and certificates of public officials and certificates of officers of the Company as we have deemed relevant and necessary as a basis for the opinions hereinafter set forth. In all such examinations we have assumed the genuineness of all signatures on original or certified or otherwise identified documents and the conformity to original or certified or otherwise identified documents of all copies submitted to us as conformed or photostatic copies. As to questions of fact material to such opinions, we have relied without independent investigation upon representations set forth in the Securities Purchase Agreement, certificates of officers of the Company and certificates of public officials. We have assumed the accuracy of all factual matters contained therein and have made no independent investigation or other effort to confirm the accuracy of such factual matters.

On the basis of the foregoing and subject to the qualifications and limitations stated herein, we are of the opinion that:

- (i) The Company is validly existing under the laws of the State of Delaware.
 - (ii) The Notes have been duly authorized and, when executed and authenticated in accordance with the provisions of the Indenture and delivered to and paid for by the investors in accordance with the terms of the Securities Purchase Agreement, will constitute valid and legally binding obligations of the Company entitled to the benefits of the Indenture, subject, as to enforcement, to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general applicability relating to or affecting creditors' rights and to general equity principles; and
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- (iii) The Conversion Shares have been duly and validly authorized and reserved, and, when issued and delivered upon conversion of the Notes in accordance with the term of the Notes and the Indenture, will be validly issued, fully paid and nonassessable.

This opinion is being rendered solely in connection with the registration of the offering and sale of the Notes and the Conversion Shares pursuant to the registration requirements of the Securities Act. We hereby consent to the filing of this opinion as an exhibit to the Company's Current Report on Form 8-K, which is incorporated by reference into the Registration Statement. By giving our consent, we do not admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations issued or promulgated thereunder.

This opinion is limited to the laws of the State of New York and the Delaware General Corporation Law, which includes the statutory provisions, applicable provisions of the Delaware constitution and reported judicial decisions interpreting such provisions.

Very truly yours,

/s/ Willkie Farr & Gallagher LLP



1025 Eldorado Boulevard
Broomfield, Colorado 80021
www.Level3.com

NEWS RELEASE

Level 3 contacts:

Media: Skip Thurman
720-888-2292

Investors: Mark Stoutenberg
720-888-2518

**Level 3 Completes Offering of \$26.2 Million
of 15% Convertible Senior Notes due 2013**

BROOMFIELD, Colo., December 31, 2008— Level 3 Communications, Inc. (NASDAQ:LVL3) announced today that it has completed its previously announced offering of \$26.2 million aggregate principal amount of its 15% Convertible Senior Notes due 2013 (the "Notes").

Since as of December 24, 2008 Level 3 had not yet accepted for payment any of its 6% Convertible Subordinated Notes due 2009 in the tender offer for those notes, the commitment of Walter Scott, Jr. and his related accounts to purchase 15% Convertible Senior Notes due 2013 was reduced in accordance with the terms of the Securities Purchase Agreement relating to the Notes from approximately \$37 million to approximately \$10.8 million. Pursuant to Amendment No. 2 to the Securities Purchase Agreement, Level 3 and the investors amended the Securities Purchase Agreement to enable Level 3 to issue and sell to Mr. Scott and his related accounts \$26.2 million aggregate principal amount of additional 15% Convertible Senior Notes due 2013 if Level 3 purchased any of its 6% Convertible Subordinated Notes due 2009 pursuant to the tender offer for such notes. Because Level 3 has completed such tender offer, pursuant to the amendment to the Securities Purchase Agreement, Level 3 has issued and sold the Notes to Mr. Scott and his related accounts.

The Notes will mature in 2013 and pay 15% annual cash interest. The Notes are convertible by holders into shares of the Level 3 common stock at an initial conversion price of \$1.80 per share, subject to adjustment upon certain events, at any time before the close of business on January 15, 2013. The Notes rank pari passu with all of the company's senior unsecured indebtedness.

Level 3 also announced today the completion of its tender offer to purchase for cash any and all of its outstanding 6% Convertible Subordinated Notes due 2009. The aggregate purchase price for such notes is approximately \$116.1 million, including accrued and unpaid interest on those notes through December 30, 2008.

Level 3 will use all of the net proceeds from the offering of the Notes, together with approximately \$89.9 million of the net proceeds from Level 3's December 24, 2008 sale of its 15% Convertible Senior Notes due 2013, to fund its repurchase of the 6% Convertible Subordinated Notes due 2009 including accrued interest tendered in the completed tender offer. The remaining net proceeds will be used to potentially repurchase, redeem or refinance existing indebtedness from time to time, for acquisitions, to enhance liquidity and for general corporate purposes. The company's incremental expenses incurred in connection with the offering of the Notes were nominal.

Citi and Merrill Lynch & Co. acted as financial advisors to the company in connection with the structuring of the Notes. Willkie Farr & Gallagher LLP acted as outside legal counsel to the company.

A shelf registration statement relating to the Notes being offered has been declared effective by the Securities and Exchange Commission. Offers and sales of the Notes were made by the related prospectus and prospectus supplement.

About Level 3 Communications

Level 3 Communications, Inc. (NASDAQ: LVL3) is a leading international provider of fiber-based communications services. Enterprise, content, wholesale and government customers rely on Level 3 to deliver services with an industry-leading combination of scalability and quality, over an end-to-end fiber network. Level 3 offers a portfolio of metro and long-haul services over an end-to-end fiber network, including transport, data, internet, content delivery and voice. For more information, visit <http://www.Level3.com>.

Level 3 Communications, Level 3, the red 3D brackets and the Level 3 Communications logo are registered service marks of Level 3 Communications, LLC and/or its affiliates in the United States and/or other countries. Level 3 services are provided by wholly owned subsidiaries of Level 3 Communications, Inc. Any other service, product or company names recited herein are trademarks or service marks of their respective owners.

Forward-Looking Statement

Some of the statements made in this press release are forward looking in nature. These statements are based on management's current expectations or beliefs. These forward looking statements are not a guarantee of performance and are subject to a number of uncertainties and other factors, many of which are outside Level 3's control, which could cause actual events to differ materially from those expressed or implied by the statements. The most important factors that could prevent Level 3 from achieving its stated goals include, but are not limited to Level 3's ability to: successfully integrate acquisitions; increase the volume of traffic on the network; defend intellectual property and proprietary rights; develop new products and services that meet customer demands and generate acceptable margins; successfully complete commercial testing of new technology and information systems to support new products and services; attract and retain qualified management and other personnel; and meet all of the terms and conditions of debt obligations. 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 press release should be evaluated in light of these important factors. Level 3 is under no obligation to, and expressly disclaims any such obligation to, update or alter its forward-looking statements, whether as a result of new information, future events, or otherwise.

[Level 3 Completes Offering of \\$26.2 Million of 15% Convertible Senior Notes due 2013](#)