

# LEVEL 3 COMMUNICATIONS INC

## FORM 8-K (Current report filing)

Filed 06/09/98 for the Period Ending 05/28/98

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)

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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 28, 1998

## LEVEL 3 COMMUNICATIONS, INC.

(Exact name of registrant as specified in its charter)

Delaware	0-15658	47-0210602
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification Number)

3555 Farnam Street  
Omaha, NE 68131  
(Address of principal executive offices and zip code)

Registrant's telephone number, including area code: (402) 536-3624

(Former name or former address, if changed from last report)

### ITEM 5. OTHER EVENTS

On May 28, 1998, the Board of Directors of Level 3 Communications, Inc. (the "Company") declared a dividend distribution of one Right for each outstanding share of common stock, par value \$.01 per share (the "Common Stock"), of the Company. The dividend is payable to stockholders of record at the close of business on June 10, 1998 (the "Record Date") and with respect to the Common Stock issued thereafter until the Distribution Date (defined below) and, in certain circumstances, with respect to the Common Stock issued after the Distribution Date. Except as set forth below, each Right, when it becomes exercisable, entitles the registered holder to purchase from the Company a unit consisting initially of one one-thousandth of a share (a "Unit") of Series A Junior Participating Preferred Stock, par value \$.01 per share (the "Preferred Stock"), of the Company, at a Purchase Price of \$490 per Unit, subject to adjustment (the "Purchase Price"). The description and terms of the Rights are set forth in a Rights Agreement (the "Rights Agreement"), dated as of May 29, 1998, between the Company and Norwest Bank Minnesota, N.A., as Rights Agent.

Initially, the Rights will be attached to all certificates representing shares of Common Stock then outstanding, and no separate certificates evidencing the Rights ("Rights Certificates") will be distributed. The Rights will separate from the Common Stock and a Distribution Date will occur upon the earlier of (i) ten (10) days (or such later date as the Board of Directors shall determine) following public disclosure that a person or group of affiliated or associated persons has become an "Acquiring Person" (as defined below), or (ii) ten (10) business days (or such later date as the Board shall determine) following the commencement of a tender offer or exchange offer that would result in a person or group becoming an "Acquiring Person". Except as set forth below, an "Acquiring Person" is a person or group of affiliated or associated persons who has acquired beneficial ownership of 15% or more of the outstanding shares of Common Stock. The term "Acquiring Person" excludes (i) the Company, (ii) any subsidiary of the Company, (iii) any employee benefit plan of the Company or any subsidiary of the Company, and (iv) any person or entity organized, appointed or established by the Company for or pursuant to the terms of any such plan.

Until the occurrence of the Distribution Date, (i) the Rights will be evidenced by the Common Stock certificates and will be transferred with and only with such Common Stock certificates, (ii) new Common Stock certificates issued after the Record Date will contain a notation incorporating the Rights Agreement by reference, and (iii) the surrender for transfer of any certificates for Common Stock outstanding will also constitute the transfer of the Rights associated with the Common Stock represented by such certificate. Pursuant to the Rights Agreement, the Company reserves the right to require prior to the occurrence of a Triggering Event (as defined below) that, upon any exercise of Rights, a number of Rights be exercised so that only whole shares of Preferred Stock will be issued.

As soon as practicable after the occurrence of the Distribution Date, Rights Certificates will be mailed to holders of record of the Common Stock as of the close of business on the Distribution Date and, thereafter, the separate Rights Certificates alone will represent the Rights.

Except in certain circumstances specified in the Rights Agreement or as otherwise determined by the Board of Directors, only shares of Common Stock issued prior to the Distribution Date will be issued with Rights.

The Rights are not exercisable until the occurrence of the Distribution Date and until the Rights no longer are redeemable. The Rights will expire at the close of business on June 10, 2008, unless extended or earlier redeemed by the Company as described below.

In the event that, at any time following the Distribution Date, a person becomes the beneficial owner of more than 15% of the then outstanding shares of Common Stock (except pursuant to an offer for all outstanding shares of Common Stock at a price and on terms determined to be fair to, and in the best interests of, the stockholders by at least a majority of the Continuing Directors (as defined below)), becomes an Acquiring Person, each holder of a Right will thereafter have the right to receive, upon exercise of the Right, Common Stock (or, in certain circumstances, cash, property or other securities of the Company) having a value equal to two times the exercise price of the Right. A "Continuing Director" is a member of the Board of Directors who is not an Acquiring Person, an affiliate or associate of an Acquiring Person or a representative or nominee of an Acquiring Person. Notwithstanding any of the foregoing, following the occurrence of the event set forth in this paragraph, all Rights that are, or (under certain circumstances specified in the Rights Agreement) were, beneficially owned by any Acquiring Person will be null and void and nontransferable and any holder of any such right (including any purported transferee or subsequent holder) will be unable to exercise or transfer any such right. For example, at an exercise price of \$490 per Right, each Right not owned by an Acquiring Person (or by certain related parties) following an event set forth in the preceding paragraph would entitle its holder to purchase \$980 worth of Common Stock (or other consideration, as noted above) for \$490. Assuming that the Common Stock had a per share value of \$70 at such time, the holder of each valid Right would be entitled to purchase fourteen (14) shares of Common Stock for \$490.

In the event that, at any time following the date on which there has been public disclosure that, or of facts indicating that, a person has become an Acquiring Person (the "Stock Acquisition Date"), (i) the Company is acquired in a merger or other business combination transaction in which the Company is not the surviving corporation (other than a merger which follows an offer described in the preceding paragraph), or (ii) 50% or more of the Company's assets or earning power is sold, mortgaged or transferred, each holder of a Right (except Rights which previously have been voided as set forth above) shall thereafter have the right to receive, upon exercise, common stock of the acquiring company having a value equal to two times the exercise price of the Right. There is an exception for a merger that is approved by the Continuing Directors at a price which is fair to, and otherwise in the best interests of, the stockholders and in which all stockholders of the Company receive equal consideration. The events set forth in this paragraph and in the preceding paragraph are referred to as the "Triggering Events."

The Purchase Price payable, and the number of Units of Preferred Stock or other securities or property issuable, upon exercise of the Rights are subject to adjustment from time to time to prevent dilution (i) in the event of a stock dividend on, or a subdivision, combination or reclassification of, the Preferred Stock, (ii) if holders of the Preferred Stock are granted certain rights or warrants to subscribe for Preferred Stock or convertible securities at less than the current market price of the Preferred Stock, or (iii) upon the distribution to holders of the Preferred Stock of evidences of indebtedness or assets (excluding regular quarterly cash dividends) or of subscription rights or warrants (other than those referred to above).

With certain exceptions, no adjustment in the Purchase Price will be required until cumulative adjustments amount to at least 1% of the Purchase Price. No fractional Units will be issued and, in lieu thereof, an adjustment in cash will be made based on the market price of the Preferred Stock on the last trading date prior to the date of exercise.

Because of the nature of the Preferred Stock's dividend, liquidation and voting rights, the value of the one one-thousandth interest in a share of Preferred Stock purchasable upon exercise of each Right should approximate the value of one share of Common Stock. Shares of Preferred Stock purchasable upon exercise of the Rights will not be redeemable. Each share of Preferred Stock will be entitled to a quarterly dividend payment of 1000 times the dividend declared per share of Common Stock. In the event of liquidation, each share of Preferred Stock will be entitled to an aggregate payment of 1000 times the aggregate payment made per share of Common Stock. Each share of Preferred Stock will have 1000 votes, voting together with the shares of Common Stock. These rights are protected by customary antidilution provisions.

At any time until ten days following the Stock Acquisition Date, the Company may redeem the Rights in whole, but not in part, at a price (the "Redemption Price") of \$.01 per Right (payable in cash, Common Stock or other consideration deemed appropriate by the Board of Directors) by resolution of the Board of Directors (provided that following a Stock Acquisition Date such resolution is approved by a majority of the Continuing Directors and only if the Continuing Directors constitute a majority of the directors then in office). The redemption of the Rights may be made effective at such time on such basis with such conditions as the Board of Directors in its sole discretion may establish. Immediately upon such action of the Board of Directors ordering redemption of the Rights, the Rights will terminate and the only right of the holders of Rights will be to receive the Redemption Price.

Until a Right is exercised, the holder thereof, as such, will have no rights as a stockholder of the Company, including, without limitation, the right to vote or to receive dividends. While the distribution of the Rights will not be taxable to stockholders or to the Company, stockholders may, depending upon the circumstances, recognize taxable income in the event that the Rights become exercisable for Common Stock (or other consideration) of the Company or for common stock of the acquiring company as set forth above.

Other than those provisions relating to the principal economic terms of the Rights, any of the provisions of the Rights Agreement may be amended by resolution of the Company's Board of Directors (provided that following a Stock Acquisition Date such resolution is approved by a majority of the Continuing Directors and only if the Continuing Directors constitute a majority of the directors then in office) prior to the Distribution Date. After the Distribution Date, the provisions of the Rights Agreement may be amended by resolution of the Company's Board

of Directors (provided that following a Stock Acquisition Date such resolution is approved by a majority of the Continuing Directors and only if the Continuing Directors constitute a majority of the directors then in office) in order to cure any ambiguity, to make changes which do not adversely affect the interests of holders of Rights (excluding the interests of any Acquiring Person or its affiliates or associates), or to shorten or lengthen any time period under the Rights Agreement; provided, however, that no amendment to adjust the time period governing redemption shall be made at such time as the Rights are not redeemable.

The Rights Agreement, which includes as Exhibit B the form of Rights Certificate, is filed as Exhibit 4.1 hereto. This summary description of the Rights is qualified in its entirety by reference to the Rights Agreement, which is incorporated herein by reference.

On May 29, 1998, Level 3 issued a press release relating to the adoption of the Rights Agreement. This press release is filed as Exhibit 99.1 to this Current Report and incorporated herein by reference as if set forth in full.

**ITEM 7. FINANCIAL STATEMENTS AND EXHIBITS**

(a) Financial Statements of business acquired

None.

(b) Pro forma financial information

None.

(c) Exhibits

4.1 Rights Agreement, dated as of May 29, 1998, between Level 3 Communications, Inc. and Norwest Bank Minnesota, N.A., as Rights Agent, which includes the Form of Certificate of Designation, Preferences and Rights of Series A Junior Participating Preferred Stock of Level 3 Communications, Inc., as Exhibit A, the Form of Rights Certificate, as Exhibit B and the Summary of Rights to Purchase Preferred Stock, as Exhibit C. (Incorporated by reference to Exhibit 1 to the Registrant's Registration Statement on Form 8-A filed with respect to the Rights to Purchase Series A Junior Participating Preferred Stock, par value \$.01 per share).

99.1 Press Release, dated May 29, 1998 related to the adoption of the Rights Agreement.

**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 hereunto duly authorized.

/s/    NEIL J. ECKSTEIN  
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Vice President

June 9, 1998

**PRESS RELEASE**

Contacts:

News Media: Josh Howell Investors: Julie Stangl 402/943-1309 402/943-1310

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**LEVEL 3 COMMUNICATIONS, INC. ADOPTS STOCKHOLDER RIGHTS PLAN**

OMAHA, NEBRASKA, May 29, 1998 - Level 3 Communications, Inc. (Nasdaq:LVT) announced today that its Board of Directors has adopted a Stockholder Rights Plan in which preferred stock purchase rights will be distributed as a dividend at the rate of one Right for each share of the Company's Common Stock held as of the close of business on June 10, 1998. The Rights will expire on June 10, 2008.

The Rights are intended to enable all of the Company's stockholders to realize the long-term value of their investment in the Company. The Rights will not prevent a takeover, but should encourage anyone seeking to acquire the Company to negotiate with the Board prior to attempting a takeover.

In a letter being sent to stockholders, James Q. Crowe, president and chief executive officer of Level 3 Communications, Inc., said the Rights Plan is intended to protect the interests of the Company's stockholders in the event the Company is confronted with coercive or unfair takeover tactics. He noted that such tactics include "offers that do not treat all stockholders equally, the acquisition in the open market or otherwise of shares constituting control without offering fair value to all stockholders, or other coercive or unfair takeover tactics that could impair the Board's ability to represent stockholders' interests fully."

Crowe stressed, however, that the Rights Plan "is not intended to prevent an acquisition of the Company on terms that your Board considers favorable and fair to, and in the best interests of, all stockholders, and will not do so. The Rights Plan is designed to deal with the serious problem of unilateral actions by hostile acquirers which are calculated to deprive the Company's Board of Directors and its stockholders of their ability to determine the destiny of the Company."

Each Right will entitle stockholders, in certain circumstances, to buy one one-thousandth of a newly issued share of Series A Junior Participating Preferred Stock of the Company at an exercise price of \$490. The Rights generally will be exercisable and transferable apart from the Common Stock only if a person or group acquires beneficial ownership of 15 percent or more of the Common Stock or commences a tender or exchange offer upon consummation of which such person or group would beneficially own 15 percent or more of the Common Stock.

If any person becomes the beneficial owner of 15 percent or more of the Company's Common Stock other than pursuant to an offer for all shares which is fair to and otherwise in the best interests of the Company and its stockholders, then each Right not owned by a 15 percent or more shareholder or certain related parties will entitle its holder to purchase, at the Right's then-current exercise price, shares of Common Stock (or, in certain circumstances as determined by the Board, cash, other property, or other securities) having a value of twice the Right's exercise price. In addition, if, after any person has become a 15 percent or more stockholder, the Company is involved in a merger or other business combination transaction with another person in which its Common Stock is changed or converted, or sells 50 percent or more of its assets or earning power to another person, each Right will entitle its holder to purchase, at the Right's then-current exercise price, shares of common stock of such other person having a value of twice the Right's exercise price.

The Company will generally be entitled to redeem the Rights at \$.01 per Right at any time until the tenth day following public disclosure that a person or group has become the beneficial owner of 15 percent or more of the Company's Common Stock.

Details of the Stockholder Rights Plan are outlined in a summary of the Rights Plan, which will be mailed to stockholders.

**About Level 3 Communications**

Level 3 is a communications and information services company building an advanced Internet Protocol (IP) technology based network across the U.S. that is expected to be completed in phases by 2001. To provide service in the interim, Level 3 has signed an agreement to lease capacity on a national network over which it will be able to offer advanced IP-based services in selected cities beginning in the third quarter of 1998. Level 3 will be the first company to combine both local and long distance IP technology based networks connecting customers end-to-end across the U.S. The company will focus primarily on the business market using its network to provide a full range of communications services -- including local, long distance and data transmission as well as other enhanced services and Internet access services. Plans also call for the company to expand internationally. Level 3's common stock is traded on the Nasdaq National Market under the symbol LVT. Its World Wide Web address is [www.L3.com](http://www.L3.com).

