

LEVEL 3 COMMUNICATIONS INC

FORM 8-K

(Current report filing)

Filed 02/26/07 for the Period Ending 02/26/07

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

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): February 23, 2007

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 8.01. Other Events

On February 23, 2007, Level 3 announced that, as part of its previously announced consent solicitation relating to Level 3 Financing, Inc.'s 12.25% Senior Notes due 2013 (the "12.25% Notes"), as of 5:00 p.m., New York City time, on February 23, 2007 (the "Requisite Consent Time"), Level 3 had received valid consents from the holders of substantially all of the outstanding 12.25% Notes (the "Requisite Consents") to amend the indenture relating to the 12.25% Notes to provide that, on a one-time basis at any time between February 23, 2007 and September 30, 2007, Level 3 may incur debt that is permitted based upon a multiple of cash flow available for fixed charges on a "pro forma" basis giving effect to any acquisition, merger or consolidation that was completed prior to February 1, 2007 (the "Amendment"). The Amendment provides for the calculation of the ability to incur this type of debt in a manner that is consistent with such calculation under the indentures of Level 3 Financing governing its 9.25% Senior Notes due 2013, Floating Rate Senior Notes due 2015 and 8.75% Senior Notes due 2017 other than with respect to the one-time nature of the adjustment and the limitation with respect to transactions that had been completed prior to February 1, 2007. As of the Requisite Consent Time, holders of 12.25% Notes representing approximately 99.8% of the aggregate principal amount of the outstanding 12.25% Notes had consented to the Amendment.

A press release relating to that announcement is attached hereto as Exhibit 99.1.

In connection with the consent solicitation and the Amendment, on February 23, 2007, Level 3 Financing, Inc. entered into a Supplemental Indenture supplementing the Indenture, dated as of March 14, 2006, among Level 3, as Guarantor, Level 3 Financing, Inc., as Issuer, and The Bank of New York, as Trustee, relating to the 12.25% Notes. The Supplemental Indenture was entered into among Level 3, Level 3 Financing, Inc., Level 3 Communications, LLC, Broadwing Financial Services, Inc. and The Bank of New York, as Trustee.

The Supplemental Indenture is filed as Exhibit 4.1 to this Current Report and is incorporated herein by reference as if set forth in full.

This report is not an offer to purchase, a solicitation of an offer to purchase, or a solicitation of an offer to sell securities with respect to the 12.25% Notes. The consent solicitation may only be made pursuant to the terms of the consent solicitation statement relating to the consent solicitation and the related letter of consent.

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

- 4.1 Supplemental Indenture, dated as of February 23, 2007, among Level 3 Financing, Inc., Level 3 Communications, Inc., Level 3 Communications, LLC, Broadwing Financial Services, Inc. and The Bank of New York, as Trustee, supplementing the Indenture dated as of March 14, 2006, among Level 3 Financing, Inc., as Issuer, Level 3 Communications, Inc., as Guarantor, and The Bank of New York as Trustee, relating to Level 3 Financing, Inc.'s 12.25% Senior Notes due 2013.
- 99.1 Press Release dated February 26, 2007, relating to the receipt of requisite consents in Level 3's consent solicitation relating to Level 3 Financing, Inc.'s 12.25% Senior Notes due 2013.

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

Neil J. Eckstein, Senior Vice President

Date: February 26, 2007

LEVEL 3 COMMUNICATIONS, INC.,

as Guarantor,

LEVEL 3 FINANCING, INC.

as Issuer,

and

THE BANK OF NEW YORK,

as Trustee

SUPPLEMENTAL INDENTURE

DATED AS OF FEBRUARY 23, 2007

12.25% Senior Notes due 2013

SUPPLEMENTAL INDENTURE (this “Supplemental Indenture”), dated as of February 23, 2007, by and among LEVEL 3 FINANCING, INC., a Delaware corporation (the “Company”), LEVEL 3 COMMUNICATIONS, INC., a Delaware corporation (“Parent”), LEVEL 3 COMMUNICATIONS, LLC, a Delaware limited liability company (“Level 3 LLC”), BROADWING FINANCIAL SERVICES, INC., a Delaware corporation (“Broadwing Financial” and, together with Parent and Level 3 LLC, the “Guarantors”), and THE BANK OF NEW YORK, a New York banking corporation (the “Trustee”), as Trustee under the Indenture (as hereinafter defined).

RECITALS

WHEREAS, the Company, Parent and the Trustee have as of March 14, 2006 entered into an Indenture, as supplemented by (i) a supplemental indenture, dated as of October 12, 2006, by and among the Company, Level 3 Communications, LLC (“Level 3 LLC”) and the Trustee, (ii) a supplemental indenture, dated as of October 12, 2006, by and among the Company, Parent, Level 3 LLC and the Trustee and (iii) a supplemental indenture, dated as of January 4, 2007, by and among the Company, Parent, Level 3 LLC, Broadwing Financial Services, Inc. and the Trustee (as supplemented, the “Indenture”), providing for the issuance by the Company from time to time of its 12.25% Senior Notes due 2013 (the “Notes”);

WHEREAS, Section 902 of the Indenture provides, among other things, that the Company, the Guarantors and the Trustee, with the consent of the Holders of not less than a majority in principal amount of the Notes, may enter into one or more supplemental indentures for the purpose of adding provisions to or changing or eliminating certain of the provisions of the Indenture;

WHEREAS, the Company has received the written consents of the Holders of a majority of the aggregate principal amount of the Notes to amend the Indenture as provided herein and enter into this Supplemental Indenture;

WHEREAS, the Company desires to enter into this Supplemental Indenture, and has duly authorized the execution and delivery of this Supplemental Indenture to modify the Indenture;

WHEREAS, concurrent with the execution hereof, the Company has delivered to the Trustee an Officers’ Certificate and has caused its counsel to deliver to the Trustee an Opinion of Counsel; and

WHEREAS, all conditions and requirements of the Indenture necessary to make this Supplemental Indenture a valid, binding and legal instrument in accordance with its terms have been performed and fulfilled by the parties hereto and the execution and delivery thereof have been in all respects duly authorized by the parties hereto.

NOW, THEREFORE:

For and in consideration of the mutual premises and agreements herein contained, the Company, the Guarantors and the Trustee covenant and agree, for the equal and proportionate benefit of all Holders of the Notes, as follows:

ARTICLE ONE

EFFECTIVENESS AND EFFECT

SECTION 1.1. EFFECTIVENESS AND EFFECT

This Supplemental Indenture shall take effect at the time of the execution hereof, and the amendments to the Indenture provided for in Article Two hereof shall have no force or effect prior to such time. Subject to the foregoing, the provisions set forth in this Supplemental Indenture shall be deemed to be, and shall be construed as part of, the Indenture. All references to the Indenture in the Indenture or in any other agreement, document or instrument delivered in connection therewith or pursuant thereto shall be deemed to refer to the Indenture as amended by this Supplemental Indenture. Except as amended hereby, the Indenture shall remain in full force and effect.

ARTICLE TWO

AMENDMENTS TO THE INDENTURE

SECTION 2.1. DEFINITIONS.

(a) Capitalized terms used in this Supplemental Indenture and not otherwise defined shall have the respective meanings assigned thereto in the Indenture.

(b) The following definition is hereby added to Section 101 of the Indenture in appropriate alphabetical position:

“ Pro Forma Consolidated Cash Flow Available for Fixed Charges ” for Parent and its Restricted Subsidiaries or the Issuer or any Issuer Restricted Subsidiary for any period means Consolidated Cash Flow Available for Fixed Charges of Parent and its Restricted Subsidiaries for such period, calculated in accordance with the definition thereof; provided, however, that if (A) since the beginning of the applicable period Parent or one of its Restricted Subsidiaries shall have made one or more Asset Dispositions or an Investment (by merger or otherwise) in any Restricted Subsidiary (or any Person which becomes a Restricted Subsidiary) or an acquisition, merger or consolidation of Property which constitutes all or substantially all of an operating unit of a business or a line of business that was completed prior to February 1, 2007, or (B) since the beginning of such period any Person (that subsequently became a Restricted Subsidiary or was merged with or into Parent or any Restricted Subsidiary since the beginning of such period) shall have made such an Asset Disposition, Investment, acquisition, merger or consolidation that was completed prior to February 1, 2007, then in each case Consolidated Cash Flow Available for Fixed Charges for such four full fiscal quarter period shall be calculated after giving pro forma effect to such Asset Dispositions, Investments, acquisitions, mergers or consolidations as if such Asset Dispositions, Investments, acquisitions, mergers or consolidations occurred on the first day of such period. For purposes of this definition, whenever “pro forma” effect is to be given to any Asset Disposition,

Investment, acquisition, merger or consolidation, the calculations shall be performed in accordance with Article 11 of Regulation S-X promulgated under the Securities Act, as interpreted in good faith by the chief financial officer of Parent, except that any such pro forma calculation may include operating expense reductions for such period attributable to the transaction to which pro forma effect is being given (including, without limitation, operating expense reductions attributable to execution or termination of any contract, reduction of costs related to administrative functions, the termination of any employees or the closing (or the approval by the Board of Directors of Parent of the closing) of any facility) that have been realized or for which all steps necessary for the realization of which have been taken or are reasonably expected to be taken within twelve months following such transaction; provided that such adjustments are set forth in an Officers' Certificate which states (i) the amount of such adjustment or adjustments and (ii) that such adjustment or adjustments are based on the reasonable good faith beliefs of the Officers executing such Officers' Certificate.

SECTION 2.2. AMENDMENT TO SECTION 1010. Section 1010(b)(ii) of the Indenture is hereby amended and restated in its entirety to read as follows:

“(ii) Debt under Credit Facilities in an aggregate principal amount outstanding or available (together with the sum of (A) the amount of any outstanding Debt Incurred pursuant to clause (ii) of paragraph (b) of Section 1011, plus (B) the amount of all refinancing Debt outstanding or available pursuant to clause (vi) of paragraph (b) of Section 1011 in respect of Debt previously Incurred pursuant to clause (ii) of paragraph (b) of Section 1011, plus (C) the amount of all refinancing Debt outstanding or available pursuant to clause (viii) below in respect of Debt previously Incurred pursuant to this clause (ii)) at any one time not to exceed the greater of (x) \$750,000,000 and (y) 1.5 times Consolidated Cash Flow Available for Fixed Charges of Parent and its Restricted Subsidiaries for the four full fiscal quarters next preceding the Incurrence of such Debt for which consolidated financial statements are available, which amount shall be permanently reduced by the amount of Net Available Proceeds used to repay Debt under the Credit Facilities or any refinancing Debt in respect of the Credit Facilities Incurred pursuant to clause (vi) of paragraph (b) of Section 1011 or clause (viii) below), and not reinvested in Telecommunications/IS Assets or used to purchase Securities or repay other Debt, pursuant to and as permitted by Section 1016, provided, however, that on a one-time basis designated by Parent at any time between February 23, 2007 and September 30, 2007, the reference to “Consolidated Cash Flow Available For Fixed Charges” in this clause (ii) shall be replaced with “Pro Forma Consolidated Cash Flow Available For Fixed Charges,” and any such indebtedness incurred pursuant to the calculation of Pro Forma Consolidated Cash Flow Available For Fixed Charges may also be refinanced;”

SECTION 2.3. AMENDMENT TO SECTION 1011. Section 1011(b)(ii) of the Indenture is hereby amended and restated in its entirety to read as follows:

“(ii) Debt of the Issuer or any Issuer Restricted Subsidiary under Credit Facilities in an aggregate principal amount outstanding or available (together with the sum of (A) the amount of any outstanding Debt Incurred pursuant to clause (ii) of paragraph (b) of

Section 1010, plus (B) the amount of all refinancing Debt outstanding or available pursuant to clause (viii) of paragraph (b) of Section 1010, plus (C) the amount of all refinancing Debt outstanding or available pursuant to clause (vi) below in respect of Debt previously Incurred pursuant to this clause (ii)) at any one time not to exceed the greater of (x) \$750,000,000 and (y) 1.5 times Consolidated Cash Flow Available for Fixed Charges of Parent and its Restricted Subsidiaries for the four full fiscal quarters next preceding the Incurrence of such Debt for which consolidated financial statements are available, which amount shall be permanently reduced by the amount of Net Available Proceeds used to repay Debt under the Credit Facilities (or any refinancing Debt in respect of the Credit Facilities Incurred pursuant to clause (viii) of paragraph (b) of Section 1010 or clause (vi) below), and not reinvested in Telecommunications/IS Assets or used to purchase Securities or repay other Debt, pursuant to and as permitted by Section 1016, provided, however, that on a one-time basis designated by Parent at any time between February 23, 2007 and September 30, 2007, the reference to "Consolidated Cash Flow Available For Fixed Charges" in this clause (ii) shall be replaced with "Pro Forma Consolidated Cash Flow Available For Fixed Charges," and any such indebtedness incurred pursuant to the calculation of Pro Forma Consolidated Cash Flow Available For Fixed Charges may also be refinanced;"

ARTICLE THREE

MISCELLANEOUS

SECTION 3.1. BENEFITS OF THIS SUPPLEMENTAL INDENTURE. Nothing contained in this Supplemental Indenture shall or shall be construed to confer upon any person other than a Holder of the Notes, the Company, the Guarantors and the Trustee any right or interest to avail itself or himself, as the case may be, of any benefit under any provision of the Indenture or the Supplemental Indenture.

SECTION 3.2. GOVERNING LAW. **THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK BUT WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.**

SECTION 3.3. COUNTERPARTS. This Supplemental Indenture may be executed in any number of counterparts, including via facsimile, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

SECTION 3.4. SEVERABILITY. In the event that any provision in this Supplemental Indenture shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 3.5. HEADINGS. The article and section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 3.6. TRUSTEE NOT RESPONSIBLE FOR RECITALS. The recitals contained herein shall be taken as the statements of the Issuer and the Guarantors, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Supplemental Indenture, except that the Trustee represents that it is duly authorized to execute and deliver this Supplemental Indenture.

SECTION 3.7. SUCCESSORS AND ASSIGNS. Any covenants and agreements in this Supplemental Indenture by the Company, the Guarantors and the Trustee shall bind their successors and assigns, whether so expressed or not.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed by their respective officers hereunto duly authorized, all as of the day and year first above written.

LEVEL 3 FINANCING, INC.

By: /s/ Sunit S. Patel
Name: Sunit S. Patel
Title: Group Vice President

LEVEL 3 COMMUNICATIONS, INC.

By: /s/ Robin E. Grey
Name: Robin E. Grey
Title: Senior Vice President

LEVEL 3 COMMUNICATIONS, LLC

By: /s/ Neil J. Eckstein
Name: Neil J. Eckstein
Title: Senior Vice President

BROADWING FINANCIAL SERVICES, INC.

By: /s/ Neil J. Eckstein
Name: Neil J. Eckstein
Title: Senior Vice President

THE BANK OF NEW YORK, as Trustee

By: /s/ Stacey B. Poindexter
Name: Stacey B. Poindexter
Title: Assistant Vice President



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

NEWS RELEASE

Level 3 contacts:

Media: Josh Howell
720-888-2517

Chris Hardman
720-888-2292

Investors: Robin Grey
720-888-2518

Valerie Finberg
720-888-2501

Level 3 Announces Receipt of Requisite Consents in Consent Solicitation

BROOMFIELD, Colo., February 26, 2007 — Level 3 Communications, Inc. (NASDAQ: LVL3) announced today that, as part of its previously announced consent solicitation relating to Level 3 Financing, Inc.'s 12.25% Senior Notes due 2013 (the "12.25% Notes"), as of 5:00 p.m., New York City time, on February 23, 2007 (the "Requisite Consent Time"), Level 3 had received valid consents from the holders of substantially all of the outstanding 12.25% Notes (the "Requisite Consents") to amend the indenture relating to the 12.25% Notes to provide that, on a one-time basis at any time between the date the indenture is amended and September 30, 2007, Level 3 may incur debt that is permitted based upon a multiple of cash flow available for fixed charges on a "pro forma" basis giving effect to any acquisition, merger or consolidation that was completed prior to February 1, 2007 (the "Amendment"). The Amendment provides for the calculation of the ability to incur this type of debt in a manner that is consistent with such calculation under the indentures of Level 3 Financing governing its 9.25% Senior Notes due 2013, Floating Rate Senior Notes due 2015 and 8.75% Senior Notes due 2017 other than with respect to the one-time nature of the adjustment and the limitation with respect to transactions that had been completed prior to February 1, 2007. As of the Requisite Consent Time, holders of 12.25% Notes representing approximately 99.8% of the aggregate principal amount of the outstanding 12.25% Notes had consented to the Amendment.

In connection with the consent solicitation and the Amendment, on February 23, 2007, Level 3 Financing, Inc. entered into a Supplemental Indenture supplementing the Indenture, dated as of March 14, 2006, among Level 3, as Guarantor, Level 3 Financing,

Inc., as Issuer, and The Bank of New York, as Trustee, relating to the 12.25% Notes. The Supplemental Indenture was entered into among Level 3, Level 3 Financing, Inc., Level 3 Communications, LLC, Broadwing Financial Services, Inc. and The Bank of New York, as Trustee.

About Level 3 Communications

Level 3 Communications, Inc (Nasdaq: LVL3), an international communications 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.

The Level 3 logo is a registered service mark of Level 3 Communications, Inc. in the United States and/or other countries. Level 3 services are provided by a wholly owned subsidiary of Level 3 Communications, Inc.

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: integrate strategic acquisitions; increase the volume of traffic on our network; defend our 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; stabilize or reduce the rate of price compression on certain of our communications services; attract and retain qualified management and other personnel; and meet all of the terms and conditions of our 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.