

LEVEL 3 COMMUNICATIONS INC

FORM SC TO-I

(Tender offer statement by Issuer)

Filed 11/17/08

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

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE TO

Tender Offer Statement Under Section 14(d)(1) or Section 13(e)(1)
of the Securities Exchange Act of 1934

LEVEL 3 COMMUNICATIONS, INC.

(Name of Subject Company (Issuer) and Filing Person (Offeror))

2.875% Convertible Senior Notes due 2010
6% Convertible Subordinated Notes due 2010
6% Convertible Subordinated Notes due 2009
(Title of Class of Securities)

52729NBA7
52729NAS9
52729NAG5
(CUSIP Number of Class of Securities)

Thomas C. Stortz
Executive Vice President and Chief Legal Officer
1025 Eldorado Boulevard
Broomfield, Colorado 80021
(720) 888-1000
(Name, address and telephone number of person authorized to receive notices
and communications on behalf of filing person)

Copy to:
David K. Boston
Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, New York 10019
(212) 728-8000

Calculation of Filing Fee

Transaction valuation ⁽¹⁾

\$837,705,820

Amount of filing fee ⁽²⁾

\$32,922

- (1) Calculated solely for purposes of determining the amount of the filing fee. The transaction valuation was calculated based on the purchase of (i) \$354,541,000 aggregate principal amount of the issuer's 2.875% Convertible Senior Notes due 2010 at the tender offer price of \$620.00 per \$1,000 principal amount of such notes, (ii) \$481,666,000 aggregate principal amount of the issuer's 6% Convertible Subordinated Notes due 2010 at the tender offer price of \$700.00 per \$1,000 principal amount of such notes and (iii) \$305,135,000 aggregate principal amount of the issuer's 6% Convertible Subordinated Notes due 2009 at the tender offer price of \$920.00 per \$1,000 principal amount of such notes.
- (2) The amount of the filing fee was calculated at a rate of \$39.30 per \$1,000,000 of transaction value.
- ☐ Check box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: Not applicable.

Filing Party: Not applicable.

Form or Registration No.: Not applicable.

Date Filed: Not applicable.

- ☐ Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

- ☐ third-party tender offer subject to Rule 14d-1.
- ☒ issuer tender offer subject to Rule 13e-4.
- ☐ going private transaction subject to Rule 13e-3.
- ☐ amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer: ☐

This Tender Offer Statement on Schedule TO (the "Schedule TO") relates to three separate offers (each, an "Offer" and collectively, the "Offers") by Level 3 Communications, Inc., a Delaware corporation ("Level 3" or the "Company"), to purchase for cash any and all of its (i) 2.875% Convertible Senior Notes due 2010, (ii) 6% Convertible Subordinated Notes due 2010 and (iii) 6% Convertible Subordinated Notes due 2009 (collectively, the "Notes") at the consideration per \$1,000 principal amount set forth next to the corresponding series of Notes in the table below. These Offers consist of three separate offers, one for each series of Notes.

The Company's obligation to accept for payment, and to pay for, any Notes validly tendered pursuant to an Offer is subject to (i) there being validly tendered and not validly withdrawn on or prior to the applicable Expiration Date at least such principal amount of Notes to satisfy the Minimum Tender Condition as set forth in the table below, (ii) the satisfaction of the General Conditions (as defined in the Offer to Purchase dated November 17, 2008 (the "Offer to Purchase")) described in the Offer to Purchase and (iii) the sale of at least \$373 million aggregate principal amount of the Company's 15% Convertible Senior Notes due 2013 (the "New Notes"), the proceeds of which, along with cash on hand, will be used to fund the purchase of Notes in the Offers. In addition, (a) the Offer to purchase the 6% Convertible Subordinated Notes due 2009 is conditioned on the acceptance for payment of the 2.875% Convertible Senior Notes due 2010 and the 6% Convertible Subordinated Notes due 2010 pursuant to the terms and conditions of such other applicable Offers, (b) the Offer to purchase the 6% Convertible Subordinated Notes due 2010 is conditioned on the acceptance for payment of the 2.875% Convertible Senior Notes due 2010 pursuant to the terms and conditions of such other applicable Offer and (c) the Offer to purchase the 2.875% Convertible Senior Notes due 2010 is conditioned on the acceptance for payment of the 6% Convertible Subordinated Notes due 2010 pursuant to the terms and conditions of such other applicable Offer.

The Company will not receive any proceeds from the offering of the New Notes if the Company does not accept for payment at least \$177,270,500 aggregate principal amount of its 2.875% Convertible Senior Notes due 2010 and at least \$240,833,000 aggregate principal amount of its 6% Convertible Subordinated Notes due 2010 in the respective Offers.

Title of Security and CUSIP Numbers	Outstanding Principal Amount	Minimum Tender	
		Condition	Consideration(1)
2.875% Convertible Senior Notes due 2010 52729NBA7	\$ 354,541,000	\$ 177,270,500	\$ 620.00
6% Convertible Subordinated Notes due 2010 52729NAS9	\$ 481,666,000	\$ 240,833,000	\$ 700.00
6% Convertible Subordinated Notes due 2009 52729NAG5	\$ 305,135,000	\$ 152,567,500	\$ 920.00

(1) Per \$1,000 principal amount of Notes.

Each Offer is being made upon the terms and subject to the conditions set forth in the Offer to Purchase and related Letter of Transmittal. Each Offer will expire at 12:00 midnight, New York City time, on December 15, 2008, unless extended for that Offer as described in the Offer to Purchase.

This Schedule TO is intended to satisfy the reporting requirements of Rule 13e-4(c)(2) under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

All of the information set forth in the Offer to Purchase is incorporated by reference herein in response to Items 1 through 11 in this Schedule TO except for those Items as to which information is specifically provided herein.

ITEM 3. IDENTITY AND BACKGROUND OF FILING PERSONS

(a) Level 3 is the filing person and the subject company with its principal executive offices located at 1025 Eldorado Boulevard, Broomfield, Colorado 80021. Level 3's telephone number is (720) 888-1000. Pursuant to General Instruction C to Schedule TO, the table below sets forth the executive officers, directors and controlling persons of Level 3:

<u>Name</u>	<u>Position</u>
Walter Scott Jr.	Chairman of the Board
Douglas C. Eby	Director
James O. Ellis, Jr.	Director
Richard R. Jaros	Director
Robert E. Julian	Director
Michael J. Mahoney	Director
Arun Netravali	Director
John T. Reed	Director
Michael B. Yanney	Director
Albert C. Yates	Director
James Q. Crowe	Chief Executive Officer, President and Director
Sunit S. Patel	Executive Vice President and Chief Financial Officer
Charles C. Miller, III	Executive Vice President and Vice Chairman
Thomas C. Stortz	Executive Vice President, Chief Legal Officer and Secretary
John Neil Hobbs	Executive Vice President
Eric Mortensen	Senior Vice President and Controller

The business address of each person set forth above is c/o Level 3 Communications, Inc., 1025 Eldorado Boulevard, Broomfield, Colorado 80021. The telephone number of each person set forth above is (720) 888-1000.

ITEM 4. TERMS OF THE TRANSACTION

(a) The information set forth in the Offer to Purchase in the sections entitled "Summary Term Sheet," "The Offers," "Procedures for Tendering and Withdrawing Notes," "Acceptance for Payment and Payment," "Conditions to the Offers," "Material Differences in the Rights of Holders of Notes as a Result of the Offers" and "Material U.S. Federal Income Tax Considerations" is incorporated herein by reference. Item 1004(a)(1)(xi) of Regulation M-A is not applicable.

(b) The information set forth in the Offer to Purchase in the section entitled "Miscellaneous" is incorporated herein by reference.

ITEM 5. PAST CONTRACTS, TRANSACTIONS, NEGOTIATIONS AND AGREEMENTS

(e) Other than as set forth below and in the Offer to Purchase, neither the Company nor, to the Company's knowledge, any person controlling the Company or, to the Company's knowledge, any of their respective directors, managers or executive officers, is a party to any agreement, arrangement or understanding with any other person with respect to any securities of the Company (including, but not limited to, any agreement, arrangement or understanding concerning the transfer or the voting of any such securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or the giving or withholding of proxies, consents or authorizations).

Level 3 has entered into the following agreements in connection with the Notes:

- (1) Amended and Restated Indenture, dated as of July 8, 2003, by and between Level 3 Communications, Inc. and The Bank of New York, as trustee, relating to Level 3 Communications, Inc.'s Senior Debt Securities.
- (2) Form of Indenture, dated as of September 20, 1999, by and between Level 3 Communications, Inc. and The Bank of New York Mellon, as successor to IBJ Whitehall Bank & Trust Company, as Trustee, relating to Level 3 Communications, Inc.'s Subordinated Debt Securities.
- (3) First Supplemental Indenture, dated as of July 8, 2003, by and between Level 3 Communications, Inc. and The Bank of New York Mellon, as successor to IBJ Whitehall Bank & Trust Company, as Trustee, relating to Level 3 Communications, Inc.'s 2.875% Convertible Senior Notes due 2010.
- (4) Second Supplemental Indenture, dated as of February 29, 2000, by and between Level 3 Communications, Inc. and The Bank of New York Mellon, as Trustee, relating to Level 3 Communications, Inc.'s 6% Convertible Subordinated Notes due 2010.
- (5) First Supplemental Indenture, dated as of September 20, 1999, by and between Level 3 Communications, Inc. and The Bank of New York Mellon, as successor to IBJ Whitehall Bank & Trust Company, as Trustee, relating to Level 3 Communications, Inc.'s 6% Convertible Subordinated Notes due 2009.
- (6) Securities Purchase Agreement, dated as of November 17, 2008, by and among Level 3 Communications, Inc. and the investors named therein, relating to Level 3 Communications, Inc.'s 15% Convertible Senior Notes due 2013.

ITEM 6. PURPOSES OF THE TRANSACTION AND PLANS OR PROPOSALS

(a) Purposes. The information set forth in the Offer to Purchase in the section entitled "The Offers—Purpose of the Transaction" is incorporated herein by reference.

(b) Use of Securities Acquired. The information set forth in the Offer to Purchase in the section entitled "Acceptance for Payment and Payment" is incorporated herein by reference.

(c) Plans. Other than as set forth in the Offer to Purchase, the Company does not, and, to the Company's knowledge, any person controlling the Company or, to the Company's knowledge, any of their respective directors, managers or executive officers do not, currently have any plans or proposals that relate to or would result in (i) an extraordinary transaction, such as a merger, reorganization or liquidation, involving the Company or any or all of its subsidiaries; (ii) a purchase, sale or transfer of a material amount of assets of the Company or any of its subsidiaries; (iii) any material change in the present dividend rate or policy, or indebtedness or capitalization of the Company; (iv) any change in the present Board of Directors or management of the Company, including, but not limited to, any plans or proposals to change the number or the term of directors or to fill any existing vacancies on the Board of Directors or to change any material term of the employment contract of any executive officer; (v) any other material change in the Company's corporate structure or business; (vi) a class of equity security of the Company being delisted from a national securities exchange; (vii) a class of equity security of the Company becoming eligible for termination of registration pursuant to Section 12(g)(4) of the Exchange Act; (viii) the suspension of the Company's obligation to file reports pursuant to Section 15(d) of the Exchange Act; (ix) the acquisition by any person of additional securities of the Company or the disposition of securities of the Company; or (x) any change in the Company's Certificate of Incorporation or By-Laws or other actions that could impede the acquisition of control of the Company.

ITEM 10. FINANCIAL STATEMENTS

Not applicable.

ITEM 11. ADDITIONAL INFORMATION

Not applicable.

ITEM 12. EXHIBITS.

Exhibits filed as a part of this Schedule TO are listed below. Exhibits incorporated by reference are indicated in parentheses.

Exhibit Number	Description
(a)(1)(i)	Offer to Purchase dated November 17, 2008.
(a)(1)(ii)	Form of Letter of Transmittal (including Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9).
(a)(5)(i)	Press Release dated November 17, 2008.
(b)(1)	Form of First Supplemental Indenture relating to Level 3 Communications, Inc.'s 15% Convertible Senior Notes due 2013.
(b)(2)	Securities Purchase Agreement, dated as of November 17, 2008, by and among Level 3 Communications, Inc. and the investors named therein, relating to Level 3 Communications, Inc.'s 15% Convertible Senior Notes due 2013.
(d)(1)	Amended and Restated Indenture, dated as of July 8, 2003, by and between Level 3 Communications, Inc. and The Bank of New York Mellon, as trustee, relating to Level 3 Communications, Inc.'s Senior Debt Securities (incorporated herein by reference to Exhibit 4.1 to Level 3 Communications, Inc.'s Form 8-K filed on July 9, 2003).
(d)(2)	Form of Subordinated Indenture (incorporated herein by reference to Exhibit 4.2 to Amendment 1 to Level 3 Communications, Inc.'s Registration Statement on Form S-3 filed on February 3, 1999).
(d)(3)	First Supplemental Indenture, dated as of July 8, 2003, by and between Level 3 Communications, Inc. and The Bank of New York Mellon, as successor to IBJ Whitehall Bank & Trust Company, as Trustee, relating to Level 3 Communications, Inc.'s 2.875% Convertible Senior Notes due 2010 (incorporated herein by reference to Exhibit 4.2 to Level 3 Communications, Inc.'s Current Report on Form 8-K filed on July 9, 2003).
(d)(4)	Second Supplemental Indenture, dated as of February 29, 2000, by and between Level 3 Communications, Inc. and The Bank of New York Mellon, as Trustee, relating to Level 3 Communications, Inc.'s 6% Convertible Subordinated Notes due 2010 (incorporated herein by reference to Exhibit 4.1 to Level 3 Communications, Inc.'s Current Report on Form 8-K filed on February 29, 2000).
(d)(5)	First Supplemental Indenture, dated as of September 20, 1999, by and between Level 3 Communications, Inc. and The Bank of New York Mellon, as successor to IBJ Whitehall Bank & Trust Company, as Trustee, relating to Level 3 Communications, Inc.'s 6% Convertible Subordinated Notes due 2009 (incorporated herein by reference to Exhibit 4.1 to Level 3 Communications, Inc.'s Current Report on Form 8-K filed on September 20, 1999).
(g)	Not applicable.
(h)	Not applicable.

ITEM 13. INFORMATION REQUIRED BY SCHEDULE 13E-3.

Not applicable.

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: November 17, 2008

LEVEL 3 COMMUNICATIONS, INC.

By: /s/ THOMAS C. STORTZ

Name: Thomas C. Stortz

Title: *Executive Vice President,
Chief Legal Officer and Secretary*

EXHIBIT INDEX

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(g)	Not applicable.
(h)	Not applicable.

QuickLinks

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OFFER TO PURCHASE

Level 3 Communications, Inc.

Offers to Purchase for Cash the Outstanding Convertible Notes Listed Below

EACH OFFER (AS DEFINED BELOW) WILL EXPIRE AT 12:00 MIDNIGHT, NEW YORK CITY TIME, ON DECEMBER 15, 2008, UNLESS EXTENDED FOR THAT OFFER AS DESCRIBED HEREIN (SUCH TIME AND DATE, AS THE SAME MAY BE EXTENDED WITH RESPECT TO THAT OFFER, THE " *EXPIRATION DATE* "). **HOLDERS MUST VALIDLY TENDER THEIR NOTES (AS DEFINED BELOW) ON OR PRIOR TO THE APPLICABLE EXPIRATION DATE TO BE ELIGIBLE TO RECEIVE THE CONSIDERATION (AS DEFINED BELOW).** TENDERS OF NOTES MAY BE WITHDRAWN PRIOR TO THE APPLICABLE EXPIRATION DATE, BUT NOT THEREAFTER.

Level 3 Communications, Inc. (" *Level 3* " or the " *Company* ") hereby offers, upon the terms and subject to the conditions set forth in this Offer to Purchase (this " *Offer to Purchase* ") and the accompanying Letter of Transmittal (the " *Letter of Transmittal* "), to purchase for cash any and all of the outstanding convertible notes of Level 3 listed in the table below (collectively, the " *Notes* ") at the consideration per \$1,000 principal amount set forth next to the corresponding series of Notes in the table below (the " *Consideration* "). These offers consist of three separate offers, one for each series of Notes listed below (each, an " *Offer* " and collectively, the " *Offers* ").

The Company's obligation to accept for payment, and to pay for, any Notes validly tendered pursuant to an Offer is subject to (i) there being validly tendered and not validly withdrawn on or prior to the applicable Expiration Date at least such principal amount of Notes as set forth in the table below (such minimum principal amount for such Offer, the " *Minimum Tender Condition* "), (ii) the satisfaction of the General Conditions (as defined herein) described in this Offer to Purchase and (iii) the sale of at least \$373 million aggregate principal amount of the Company's 15% Convertible Senior Notes due 2013 (the " *New Notes* "), the proceeds of which, along with cash on hand, will be used to fund the purchase of Notes in the Offers. In addition, (a) the Offer to purchase the 6% Convertible Subordinated Notes due 2009 is conditioned on the acceptance for payment of the 2.875% Convertible Senior Notes due 2010 and the 6% Convertible Subordinated Notes due 2010 pursuant to the terms and conditions of such other applicable Offers, (b) the Offer to purchase the 6% Convertible Subordinated Notes due 2010 is conditioned on the acceptance for payment of the 2.875% Convertible Senior Notes due 2010 pursuant to the terms and conditions of such other applicable Offer and (c) the Offer to purchase the 2.875% Convertible Senior Notes due 2010 is conditioned on the acceptance for payment of the 6% Convertible Subordinated Notes due 2010 pursuant to the terms and conditions of such other applicable Offer. See "Conditions to the Offers."

The Company will not receive any proceeds from the offering of the New Notes if the Company does not accept for payment at least \$177,270,500 aggregate principal amount of its 2.875% Convertible Senior Notes due 2010 and at least \$240,833,000 aggregate principal amount of its 6% Convertible Subordinated Notes due 2010 in the respective Offers for such Notes.

Title of Security and CUSIP Numbers	Outstanding Principal Amount	Minimum Tender Condition	Consideration(1)
2.875% Convertible Senior Notes due 2010 52729NBA7	\$ 354,541,000	\$ 177,270,500	\$ 620.00
6% Convertible Subordinated Notes due 2010 52729NAS9	\$ 481,666,000	\$ 240,833,000	\$ 700.00
6% Convertible Subordinated Notes due 2009 52729NAG5	\$ 305,135,000	\$ 152,567,500	\$ 920.00

(1) Per \$1,000 principal amount of Notes.

If a Holder (as defined below) validly tenders its Notes on or prior to the applicable Expiration Date and the Company accepts such Notes for payment, subject to the terms and conditions of the applicable Offer, the Company will also pay to such Holder all accrued and unpaid interest on such Notes up to but not including, the Payment Date (as defined herein) (" *Accrued Interest* "). No tenders will be valid if submitted after the applicable Expiration Date.

Any holder of record of Notes (each, a " *Holder* ," and collectively, " *Holders* ") or beneficial owner of Notes desiring to tender all or any portion of such Holder's Notes must comply with the procedures for tendering Notes set forth herein in "Procedures for Tendering and Withdrawing Notes" and in the Letter of Transmittal.

Any questions or requests for assistance concerning the Offers may be directed to Citigroup Global Markets Inc. or Merrill Lynch, Pierce, Fenner & Smith Incorporated (together, the "*Dealer Managers* ") or Global Bondholder Services Corporation (the "*Information Agent* ") at the addresses and telephone numbers set forth on the back cover of this Offer to Purchase. Requests for additional copies of this Offer to Purchase, the Letter of Transmittal or any other related documents may be directed to the Information Agent at the address and telephone numbers set forth on the back cover of this Offer to Purchase. Beneficial owners should contact their broker, dealer, commercial bank, trust company or other nominee for assistance concerning the Offers. Global Bondholder Services Corporation is acting as depositary (the "*Depositary* ") in connection with the Offers.

NONE OF THE COMPANY, THE DEALER MANAGERS, THE INFORMATION AGENT OR THE DEPOSITARY MAKES ANY RECOMMENDATION IN CONNECTION WITH THE OFFERS.

THESE OFFERS HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "COMMISSION"), NOR HAS THE COMMISSION PASSED UPON THE FAIRNESS OR MERITS OF THESE OFFERS OR UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED IN THIS OFFER TO PURCHASE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The Dealer Managers for the Offers are:

Citi

Merrill Lynch & Co.

November 17, 2008

IMPORTANT

Upon the terms and subject to the satisfaction or waiver of all conditions set forth herein and in the Letter of Transmittal, the Company will notify the Depositary, promptly after the applicable Expiration Date, of which Notes tendered are accepted for payment pursuant to each Offer. If a Holder validly tenders its Notes on or prior to the applicable Expiration Date and does not validly withdraw its Notes on or prior to the applicable Expiration Date and the Company accepts such Notes for payment, subject to the terms and conditions of the applicable Offer, the Company will pay such Holder the Consideration and Accrued Interest for such Notes on the Payment Date.

Payment of the Notes will be made by the deposit of immediately available funds by the Company with the Depositary promptly after the applicable Expiration Date (the date of payment with respect to an Offer being referred to herein as the "*Payment Date*"). The Depositary will act as agent for the tendering Holders for the purpose of receiving payments from the Company and transmitting such payments to such Holders. See "Acceptance for Payment and Payment."

The Company expressly reserves the right, in its sole discretion, subject to applicable law, to (i) terminate an Offer prior to its Expiration Date and not accept for payment any Notes not theretofore accepted for payment, (ii) waive any and all of the conditions of any Offer prior to the date of acceptance for payment of Notes in that Offer, (iii) extend an Expiration Date or (iv) amend the terms of any Offer. Any extension, termination or amendment will be followed as promptly as practicable by a public announcement thereof, such announcement in the case of an extension to be issued no later than 9:00 a.m., New York City time, on the next business day after the last previously scheduled or announced Expiration Date. The foregoing rights are in addition to the Company's right to delay acceptance for payment Notes tendered pursuant to an Offer or the payment for Notes accepted for payment in order to comply in whole or in part with any applicable law, subject to Rules 13e-4 and 14e-1 under the Securities Exchange Act of 1934, as amended (the "*Exchange Act*"), which require that an offeror pay the consideration offered or return the securities deposited by or on behalf of the holders thereof promptly after the termination or withdrawal of a tender offer.

In the event that an Offer is terminated, validly withdrawn or otherwise not consummated prior to the applicable Expiration Date, the Consideration applicable to such series of Notes will not be paid or become payable to Holders who have validly tendered their Notes in connection with such Offer. In any such event, the Notes previously tendered pursuant to such Offer will be promptly returned to the tendering Holders.

From time to time after the tenth business day following the applicable Expiration Date or other date of termination of an Offer, the Company or its affiliates may acquire any Notes that are not tendered pursuant to such Offer through open market purchases, privately negotiated transactions, tender offers, exchange offers, redemptions or otherwise, upon such terms and at such prices as the Company may determine, which may be more or less than the price to be paid pursuant to the Offers and could be for cash or other consideration. There can be no assurance as to which, if any, of these alternatives or combinations thereof the Company or its affiliates will choose to pursue in the future.

NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATIONS OTHER THAN THOSE CONTAINED IN THIS OFFER TO PURCHASE AND RELATED DOCUMENTS AND, IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATIONS MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED. THE DELIVERY OF THIS OFFER TO PURCHASE SHALL NOT, UNDER ANY CIRCUMSTANCES, CREATE ANY IMPLICATION THAT THE INFORMATION CONTAINED OR INCORPORATED BY REFERENCE HEREIN IS CURRENT AS OF ANY TIME SUBSEQUENT TO THE DATE OF SUCH INFORMATION. THE COMPANY DISCLAIMS ANY OBLIGATION TO UPDATE OR REVISE ANY OF THE INFORMATION CONTAINED OR INCORPORATED BY REFERENCE HEREIN.

THIS OFFER TO PURCHASE DOES NOT CONSTITUTE AN OFFER TO PURCHASE IN ANY JURISDICTION IN WHICH, OR TO OR FROM ANY PERSON TO OR FROM WHOM, IT IS UNLAWFUL TO MAKE SUCH OFFER UNDER APPLICABLE SECURITIES OR "BLUE SKY" LAWS.

THIS OFFER TO PURCHASE AND THE ACCOMPANYING LETTER OF TRANSMITTAL CONTAIN IMPORTANT INFORMATION WHICH SHOULD BE READ BEFORE ANY DECISION IS MADE WITH RESPECT TO THE OFFERS.

Any Holder who desires to tender Notes and who holds physical certificates evidencing such Notes must complete and sign the accompanying Letter of Transmittal (or a manually signed facsimile thereof) in accordance with the instructions therein, have the signature thereon guaranteed (if required by Instruction 3 of the Letter of Transmittal) and deliver such manually signed Letter of Transmittal (or a manually signed facsimile thereof), together with certificates evidencing such Notes being tendered and any other required documents to the Depository, at its address set forth on the back cover of this Offer to Purchase on or prior to the applicable Expiration Date. Only registered Holders are entitled to tender Notes.

A beneficial owner of the Notes that are held of record by a broker, dealer, commercial bank, trust company or other nominee must instruct such broker, dealer, commercial bank, trust company or other nominee to tender the Notes on the beneficial owner's behalf. The Depository Trust Company ("DTC") has authorized DTC participants that hold Notes on behalf of beneficial owners of Notes through DTC to tender their Notes as if they were Holders. The Depository and DTC have confirmed that the Offers are eligible for DTC's Automated Tender Offer Program ("ATOP"). Accordingly, to effect such a tender of Notes, DTC participants must tender their Notes to DTC through ATOP and follow the procedures set forth in "Procedures for Tendering and Withdrawing Notes—Notes Held Through DTC." Holders desiring to tender their Notes on the applicable Expiration Date should be aware that such Holders must allow sufficient time for completion of the ATOP procedures during normal business hours of DTC on such date.

Tendering Holders will not be obligated to pay brokerage fees or commissions or the fees and expenses of the Dealer Managers, the Information Agent or the Depository. See "Dealer Managers; Information Agent; Depository."

There are no guaranteed delivery provisions provided for by the Company in connection with the Offers under the terms of this Offer to Purchase or any other related documents. Holders must tender their Notes in accordance with the procedures set forth herein and in the Letter of Transmittal.

AVAILABLE INFORMATION

Level 3 files annual, quarterly and current reports and other information with the Securities and Exchange Commission (the "*Commission*"). You may read and copy any materials that Level 3 files with the Commission at the Commission's public reference room at 100 F Street, N.E., Washington, D.C. You can request copies of these documents by writing to the Commission and paying a fee for the copying cost. Please call the Commission at 1-800-SEC-0330 for more information about the operation of the public reference rooms. Level 3's Commission filings are also available at the Commission's Internet Web site at <http://www.sec.gov>. Level 3's Commission filings can also be read at NASDAQ Operations in Washington, D.C.

The Company has filed with the Commission a Tender Offer Statement on Schedule TO (the "*Schedule TO*"), pursuant to Section 13(e) of the Exchange Act and Rule 13e-4 promulgated thereunder, furnishing certain information with respect to the Offers. The Schedule TO, together with any exhibits or amendments thereto, may be examined and copies may be obtained at the same places and in the same manner as set forth above.

INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The Company hereby incorporates by reference into this Offer to Purchase the following documents of Level 3 filed with the Commission (together with any other documents that may be incorporated herein by reference as provided herein, the "*Incorporated Documents*"):

- Annual Report on Form 10-K for the fiscal year ended December 31, 2007;
- Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2008, June 30, 2008 and September 30, 2008;
- Current Reports on Form 8-K and 8-K/A filed on March 11, 2008, March 19, 2008, March 26, 2008, May 23, 2008, June 6, 2008, October 15, 2008 and October 15, 2008 (however, Level 3 does not incorporate by reference the information under Item 7.01, Regulation FD Disclosure); and
- Proxy Statement filed on April 4, 2008 for the 2008 Annual Meeting of Stockholders.

Any statement contained in an Incorporated Document shall be deemed to be modified or superseded for the purpose of this Offer to Purchase to the extent that a statement contained herein modifies or supersedes such statement. Any such statement or statements so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Offer to Purchase. All information appearing in this Offer to Purchase is qualified in its entirety by the information and financial statements (including notes thereto) appearing in the Incorporated Documents, except to the extent set forth in the immediately preceding sentence. Statements contained in this Offer to Purchase as to the contents of any contract or other document referred to in this Offer to Purchase do not purport to be complete and, where reference is made to the particular provisions of such contract or other document, such provisions are qualified in all respects by reference to all of the provisions of such contract or other document.

In addition, this Offer to Purchase constitutes a part of the Schedule TO filed by the Company with the Commission on November 17, 2008 pursuant to Section 13(e) of the Exchange Act and Rule 13e-4 promulgated thereunder. The Schedule TO and all exhibits thereto are incorporated by reference into this Offer to Purchase. The Company will, to the extent required by applicable laws and regulations, file an amendment to the Schedule TO to incorporate by reference future periodic filings Level 3 makes with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act.

The Company will provide without charge to each person to whom this Offer to Purchase is delivered, upon written or oral request, copies of any or all documents and reports described above and incorporated by reference into this Offer to Purchase (other than exhibits to such documents, unless such documents are specifically incorporated by reference). Written or telephone requests for such copies should be directed to the Information Agent at the address and telephone numbers set forth on the back cover of this Offer to Purchase.

INFORMATION REGARDING FORWARD LOOKING STATEMENTS

Certain statements in this Offer to Purchase and the Incorporated Documents constitute "forward-looking statements," and information that is based on the beliefs of Level 3's management as well as assumptions made by and information currently available to Level 3. When Level 3 uses the words "anticipate", "believe", "plan", "estimate" and "expect" and similar expressions in this Offer to Purchase, as they relate to Level 3 or its management, Level 3 is intending to identify forward-looking statements. These statements reflect Level 3's current views with respect to future events and are subject to certain risks, uncertainties and assumptions.

Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, Level 3's actual results may vary materially depending on a variety of factors discussed in its filings with the Commission. These forward-looking statements include, among others, statements concerning:

- Level 3's communications business, its advantages and its strategy for continuing to pursue its business;
- anticipated development and launch of new services in Level 3's business;
- anticipated dates on which Level 3 will begin providing certain services or reach specific milestones in the development and implementation of its business strategy;
- growth of the communications industry;
- expectations as to Level 3's future revenue, margins, expenses, cash flows and capital requirements; and
- other statements of expectations, beliefs, future plans and strategies, anticipated developments and other matters that are not historical facts.

These forward-looking statements are subject to risks and uncertainties, including financial, regulatory, environmental, industry growth and trend projections, that could cause actual events or results 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 failure to:

- integrate strategic acquisitions;
- increase the volume of traffic on Level 3's network;
- defend Level 3's intellectual property and proprietary rights;
- successfully complete commercial testing of new technology and information systems to support new services;
- develop new services that meet customer demands and generate acceptable margins;
- attract and retain qualified management and other personnel; and
- meet all of the terms and conditions of Level 3's debt obligations.

Please also refer to the section entitled "Risk Factors" in Level 3's Annual Report on Form 10-K for the fiscal year ended December 31, 2007 and its Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2008, June 30, 2008 and September 30, 2008 for further information on these and other risks affecting the Company.

Except as required by applicable law and regulations, Level 3 undertakes no obligation to publicly update any forward-looking statements, whether as a result of new information, future events or otherwise. Further disclosures that Level 3 makes on related subjects in Level 3's additional filings with the Commission should be consulted.

CERTAIN INFORMATION CONCERNING THE COMPANY

The Notes are outstanding debt obligations of Level 3 Communications, Inc. Level 3 Communications, Inc. was incorporated in Delaware in 1941, and is a holding company. The Company's principal executive offices are located at 1025 Eldorado Boulevard, Broomfield, Colorado 80021; telephone (720) 888-1000. The Company maintains a website at <http://www.level3.com>. The information on such website is not incorporated into, or otherwise to be regarded as part of, this Offer to Purchase.

Level 3, through its operating subsidiaries, engages primarily in the communications business. Level 3 is a facilities based provider (that is, a provider that owns or leases a substantial portion of the plant, property and equipment necessary to provide its services) of a broad range of integrated communications services. Level 3 has created, generally by constructing its own assets, but also through a combination of purchasing and leasing other companies and facilities, its communications network. Level 3's network is an advanced, international, facilities based communications network. Level 3 designed its network to provide communications services, which employ and take advantage of rapidly improving underlying optical, Internet Protocol, computing and storage technologies.

Additional information about the Company's business can be found in its periodic filings with the SEC, including its Annual Report on Form 10-K, its Quarterly Reports on Form 10-Q and its Current Reports on Form 8-K. See "Available Information" and "Incorporation of Certain Documents by Reference."

Recent Developments

On November 17, 2008, the Company entered into a Securities Purchase Agreement with certain investors in connection with the sale of up to \$400 million aggregate principal amount of the New Notes at a price of 100% of the principal amount of the New Notes. The aggregate net proceeds of the offering are expected to be approximately \$399 million. If the Company does not accept for payment any of its 2009 Subordinated Notes (as defined herein) pursuant to the terms and conditions of such Offer, the obligation of one group of affiliated investors to purchase New Notes pursuant to the Securities Purchase Agreement will be reduced and thus the aggregate principal amount of New Notes offered would be \$373.8 million and the aggregate net proceeds to the Company would be approximately \$372.8 million. The Company will use the net proceeds from the sale of the New Notes and cash on hand to fund the purchase of Notes in the Offers. The issuance of the New Notes is subject to conditions, including the acceptance for payment by the Company of at least \$177,270,500 aggregate principal amount of the 2010 Senior Notes (as defined herein) and at least \$240,833,000 aggregate principal amount of the 2010 Subordinated Notes (as defined herein) in the Offers for such notes, as well as other customary closing conditions.

The New Notes are convertible into shares of common stock of the Company at the option of the holder at any time prior to the maturity of such New Notes at an initial conversion price of \$1.80 per share, subject to adjustment in certain events. The New Notes are not redeemable by the Company prior to the maturity of such New Notes on January 15, 2013. If at any time prior to the close of business on January 15, 2013 the closing per share sale price of the Company's common stock exceeds 222.2% of the conversion price then in effect for at least 20 trading days within any 30 consecutive trading day period, the New Notes will automatically convert into shares of the Company's 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. Further, if a Holder elects to convert the New Notes in connection with certain changes in control of the Company, the Company will pay a make-whole premium by increasing the number of shares deliverable upon conversion of such New Notes in connection with such change in control transaction. Holders of the New Notes have the right, subject to certain exceptions and conditions, to require the Company to repurchase all or any part of the New Notes upon the occurrence of a designated event (change in

control of the Company or a termination of trading) at a repurchase price equal to 100% of the principal amount of the New Notes, plus accrued and unpaid interest thereon, if any, up to but excluding the repurchase date. Certain investors who have agreed to purchase an aggregate \$360,124,000 principal amount of the New Notes will deposit the purchase price thereof into escrow on December 8, 2008 or such later date as determined by the Company. The purchase price for these notes will be released to the Company from escrow upon the closing of the sale of the New Notes. This summary of the Securities Purchase Agreement and the terms of the New Notes is qualified in its entirety by the terms of the Securities Purchase Agreement and the Indenture governing the New Notes, each filed as exhibits to the Schedule TO and incorporated herein by reference in their entirety.

As of September 30, 2008, after giving pro forma effect to (i) the offering of the New Notes (assuming that \$400 million aggregate principal amount of New Notes is sold), (ii) the exchange of approximately \$108,201,000 aggregate principal amount of the Company's indebtedness for shares of its common stock as described under "Miscellaneous—Recent Securities Transactions" and (iii) the purchase of approximately \$1,141,342,000 aggregate principal amount of the Company's indebtedness pursuant to the Offers, assuming 100% of the outstanding principal amount of each series of Notes is purchased in each Offer for an aggregate purchase price of approximately \$837,705,820 with the net proceeds of the offering of the New Notes and cash on hand:

- the Company would have had an aggregate of approximately \$5.801 billion of indebtedness, excluding intercompany liabilities, of which approximately \$1.4 billion constituted secured indebtedness consisting of its guarantee of its wholly-owned subsidiary's senior secured credit facility, approximately \$2.809 billion consisted of its guarantee of its wholly-owned subsidiary's senior unsecured debt and none of which constituted subordinated indebtedness; and
- the Company's subsidiaries would have had an aggregate of approximately \$5.509 billion of outstanding indebtedness and other balance sheet liabilities (excluding deferred revenue and intercompany liabilities).

As of September 30, 2008, after giving pro forma effect to (i) the offering of the New Notes (assuming that \$400 million aggregate principal amount of New Notes is sold), (ii) the exchange of approximately \$108,201,000 aggregate principal amount of the Company's indebtedness for shares of its common stock as described under "Miscellaneous—Recent Securities Transactions" and (iii) the purchase of approximately \$570,671,000 aggregate principal amount of the Company's indebtedness pursuant to the Offers, assuming 50% of the outstanding principal amount of each series of Notes is purchased in each Offer, for an aggregate purchase price of approximately \$418,852,910 with the net proceeds of the offering of the New Notes and cash on hand:

- the Company would have had an aggregate of approximately \$6.371 billion of indebtedness, excluding intercompany liabilities, of which approximately \$1.4 billion constituted secured indebtedness consisting of its guarantee of its wholly-owned subsidiary's senior secured credit facility, approximately \$2.809 billion consisted of its guarantee of its wholly-owned subsidiary's senior unsecured debt and approximately \$393.4 million constituted subordinated indebtedness; and
- the Company's subsidiaries would have had an aggregate of approximately \$5.509 billion of outstanding indebtedness and other balance sheet liabilities (excluding deferred revenue and intercompany liabilities).

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SUMMARY TERM SHEET

The following summary is qualified in its entirety by reference to, and should be read in connection with, the information appearing elsewhere or incorporated by reference in this Offer to Purchase. Each of the capitalized terms used in this Summary and not defined herein has the meaning set forth elsewhere in this Offer to Purchase.

The Company	Level 3 Communications, Inc., a corporation organized under the laws of the State of Delaware.
The Notes	2.875% Convertible Senior Notes due 2010 (the "2010 Senior Notes") 6% Convertible Subordinated Notes due 2010 (the "2010 Subordinated Notes") 6% Convertible Subordinated Notes due 2009 (the "2009 Notes")
The Offers	In each Offer, the Company is offering to purchase for cash, upon the terms and subject to the conditions described herein and in the Letter of Transmittal, any and all of the Notes of the applicable series validly tendered and not validly withdrawn on or prior to the applicable Expiration Date at the consideration per \$1,000 principal amount set forth next to such series of Notes in the table on the front cover of this Offer to Purchase. The Offers consist of three separate Offers, one for each series of Notes. See "The Offers."
Purpose of the Offers; Source and Amount of Funds	The purpose of the Offers is to repurchase Notes in order to reduce the amount of the Company's outstanding indebtedness with maturities in 2009 and 2010. The Company will fund purchases pursuant to the Offers from the proceeds of the sale of the New Notes and from cash on hand. See "The Offers—Purpose of the Transaction and "The Offers—Source and Amount of Funds or Other Consideration."
Consideration; Interest	The Consideration offered per \$1,000 principal amount of Notes of a given series is the price set forth next to that series of Notes under the heading "Consideration" in the following table:

<u>Title of Security</u>	<u>Consideration</u>
2.875% Convertible Senior Notes due 2010	\$ 620.00
6% Convertible Subordinated Notes due 2010	\$ 700.00
6% Convertible Subordinated Notes due 2009	\$ 920.00

	If a Holder validly tenders its Notes on or prior to the applicable Expiration Date and does not validly withdraw its Notes on or prior to the applicable Expiration Date and the Company accepts such Notes for payment, subject to the terms and conditions of the applicable Offer, the Company will pay such Holder the Consideration and Accrued Interest for such Notes on the Payment Date.
Payment Date	The Payment Date for each Offer is expected to be one business day after the applicable Expiration Date of such Offer, or promptly thereafter.
Expiration Date	Each Offer will expire at 12:00 midnight, New York City time, on December 15, 2008, unless extended with respect to that Offer by the Company.

Withdrawal Rights	Tendered Notes may be withdrawn at any time prior to the applicable Expiration Date, but not thereafter. See "Procedures for Tendering and Withdrawing Notes—Withdrawal Rights."
Conditions to the Offers	<p>Notwithstanding any other provision of an Offer, the Company's obligation to accept for payment, and pay for, any Notes validly tendered and not validly withdrawn pursuant to an Offer is conditioned on:</p> <ul style="list-style-type: none"> (i) there being validly tendered and not validly withdrawn on or prior to the applicable Expiration Date an aggregate principal amount of Notes satisfying the Minimum Tender Condition set forth in the table on the front cover of this Offer to Purchase for that series of Notes, (ii) the satisfaction of the General Conditions and (iii) the sale of at least \$373 million aggregate principal amount of the New Notes, the proceeds of which, along with cash on hand, will be used to fund the purchase of Notes in the Offers. <p>In addition:</p> <ul style="list-style-type: none"> (a) the Offer to purchase the 2009 Notes is conditioned on the acceptance for payment of the 2010 Senior Notes and the 2010 Subordinated Notes pursuant to the terms and conditions of such other applicable Offers, (b) the Offer to purchase the 2010 Subordinated Notes is conditioned on the acceptance for payment of the 2010 Senior Notes pursuant to the terms and conditions of such other applicable Offer and (c) the Offer to purchase the 2010 Senior Notes is conditioned on the acceptance for payment of the 2010 Subordinated Notes pursuant to the terms and conditions of such other applicable Offer. <p>See "Conditions to the Offers."</p> <p>The Company expressly reserves the right, in its sole discretion, subject to applicable law, to (i) terminate an Offer prior to its Expiration Date and not accept for payment any Notes not theretofore accepted for payment, (ii) waive any and all of the conditions of any Offer prior to the date of acceptance for payment of Notes in that Offer, (iii) extend an Expiration Date or</p>

Procedures for
Tendering and
Withdrawing
Notes

(iv) amend the terms of any Offer.

Any Holder who desires to tender Notes pursuant to an Offer and who holds physical certificates evidencing such Notes must complete and sign the related Letter of Transmittal (or a manually signed facsimile thereof) in accordance with the instructions set forth therein, have the signature thereon guaranteed if required by Instruction 3 of the Letter of Transmittal, and deliver such manually signed Letter of Transmittal (or such manually signed facsimile), together with the certificates evidencing the Notes being tendered and any other required documents to the Depositary on or prior to the applicable Expiration Date. Any beneficial owner who desires to tender Notes and who holds Notes in book-entry form should request such owner's broker, dealer, commercial bank, trust company or other nominee to effect the transaction for such beneficial owner. See "Procedures for Tendering and Withdrawing Notes—Notes Held by Record Holders."

Holders of Notes who are tendering by book-entry transfer to the Depositary's account at DTC must execute the tender through ATOP. DTC Participants (as defined herein) that are accepting an Offer must transmit their acceptance to DTC, which will verify the acceptance and execute a book-entry delivery to the Depositary's account at DTC. DTC will then send an Agent's Message (as defined herein) to the Depositary for its acceptance. Delivery of the Agent's Message by DTC will satisfy the terms of the Offers as to the tender of Notes. See "Procedures for Tendering and Withdrawing Notes—Notes Held Through DTC."

Untendered
and/or
Unpurchased
Notes
Acceptance for
Payment and
Payment

Notes not tendered and/or accepted for payment pursuant to an Offer will remain outstanding. Although the Company has no obligation to do so, the Company may effect a satisfaction and discharge of each indenture governing each series of Notes or otherwise purchase the untendered Notes in any lawful manner available to the Company.

Upon the terms and subject to the conditions set forth herein and in the Letter of Transmittal, the Company will accept for payment on the applicable Expiration Date any and all outstanding Notes of the applicable series validly tendered and not validly withdrawn on or prior to the applicable Expiration Date. If a Holder validly tenders its Notes on or prior to the applicable Expiration Date and does not validly withdraw its Notes on or prior to the applicable Expiration Date and the Company accepts such Notes for payment, subject to the terms and conditions of the applicable Offer, the Company will pay such Holder the Consideration and Accrued Interest for such Notes on the Payment Date. Payments for the Notes accepted for payment will be made on the Payment Date by the deposit of immediately available funds by the Company with the Depositary. The Depositary will act as agent for the tendering Holders for the purpose of receiving payments from the Company and transmitting such payments to such Holders. Any Notes validly tendered and accepted for payment pursuant to the Offers will be cancelled. See "Acceptance for Payment and Payment."

Material U.S.
Federal
Income Tax
Consequences
Dealer
Managers
Depositary
Information
Agent

For a discussion of material U.S. federal income tax consequences relating to the Offers, see "Material U.S. Federal Income Tax Consequences."

Citigroup Global Markets Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated.

Global Bondholder Services Corporation.

Global Bondholder Services Corporation.

THE OFFERS

Introduction

In each Offer, the Company hereby offers, upon the terms and subject to the conditions set forth in this Offer to Purchase and the Letter of Transmittal, to purchase for cash any and all of the Notes of the applicable series that are validly tendered and not validly withdrawn on or prior to the applicable Expiration Date at the Consideration per \$1,000 principal amount of Notes set forth next to such series of Notes in the table on the front cover of this Offer to Purchase. The Offers consist of three separate Offers, one for each series of Notes. The Company's obligation to accept for payment, and pay for, any Notes validly tendered and not validly withdrawn pursuant to an Offer is conditioned on (i) there being validly tendered and not validly withdrawn on or prior to the applicable Expiration Date an aggregate principal amount of Notes satisfying the Minimum Tender Condition set forth in the table on the front cover of this Offer to Purchase for that series of Notes, (ii) the satisfaction of the General Conditions and (iii) the sale of at least \$373 million aggregate principal amount of the New Notes, the proceeds of which, along with cash on hand, will be used to fund the purchase of Notes in the Offers. In addition, (a) the Offer to purchase the 2009 Notes is conditioned on the acceptance for payment of the 2010 Senior Notes and the 2010 Subordinated Notes pursuant to the terms and conditions of such other applicable Offers, (b) the Offer to purchase the 2010 Subordinated Notes is conditioned on the acceptance for payment of the 2010 Senior Notes pursuant to the terms and conditions of such other applicable Offer and (c) the Offer to purchase the 2010 Senior Notes is conditioned on the acceptance for payment of the 2010 Subordinated Notes pursuant to the terms and conditions of such other applicable Offer.

The Company will not receive any proceeds from the offering of the New Notes if the Company does not accept for payment at least \$177,270,500 aggregate principal amount of its 2010 Senior Notes and at least \$240,833,000 aggregate principal amount of its 2010 Subordinated Notes in the respective Offers for such Notes.

Upon the terms and subject to the satisfaction or waiver of all conditions set forth herein and in the Letter of Transmittal, the Company will accept for payment on the applicable Expiration Date any and all Notes of the applicable series validly tendered and not validly withdrawn on or prior to the applicable Expiration Date. If a Holder validly tenders its Notes on or prior to the applicable Expiration Date and does not validly withdraw its Notes on or prior to the applicable Expiration Date and the Company accepts such Notes for payment, subject to the terms and conditions of the applicable Offer, the Company will pay such Holder the Consideration and Accrued Interest for such Notes on the Payment Date.

The term "*Expiration Date*" with respect to an Offer shall mean 12:00 midnight, New York City time, on December 15, 2008, unless and until the Company shall, in its sole discretion, have extended this period with respect to that Offer, in which event the term "*Expiration Date*" shall mean the new time and date as determined by the Company. In the case of an extension of the Expiration Date, public announcement of that extension will be made not later than 9:00 a.m., New York City time, on the next business day after the last previously scheduled or announced Expiration Date.

Notes accepted for payment pursuant to an Offer will be accepted only in principal amounts of \$1,000 or an integral multiple thereof.

The Consideration for the Notes accepted on the applicable Expiration Date shall be paid on the Payment Date, which is expected to be one business day after the applicable Expiration Date of such Offer, or promptly thereafter. Such payments will be made by the deposit of immediately available funds by the Company with the Depositary. The Depositary will act as agent for the tendering Holders for the purpose of receiving payments from the Company and transmitting such payments to such Holders. See "Acceptance for Payment and Payment."

Tenders of Notes pursuant to an Offer may be validly withdrawn at any time prior to the applicable Expiration Date by following the procedures described herein. If Holders validly withdraw previously tendered Notes, such Holders will not receive the Consideration applicable to such series of Notes, unless such Notes are validly retendered prior to the applicable Expiration Date (in which case such Holders will be entitled to receive the Consideration).

Expiration Date; Extension; Amendment; Termination

The Expiration Date for each Offer is 12:00 midnight, New York City time, on December 15, 2008, unless extended with respect to that Offer, in which case the Expiration Date with respect to such Offer will be such date to which the Expiration Date is extended. The Company may extend the Expiration Date with respect to any Offer for any purpose, including, without limitation, to permit the satisfaction or waiver of all conditions to such Offer. In order to extend the Expiration Date as to an Offer, the Company will notify DTC, and will make a public announcement prior to 9:00 a.m., New York City time, on the next business day after the previously scheduled Expiration Date. Such announcement will state that the Company is extending such Offer for a specified period or on a daily basis. Without limiting the manner in which the Company may choose to make a public announcement of any extension of an Offer, the Company will not, unless required by law, have any obligation to publish, advertise or otherwise communicate any such public announcement, other than issuing a timely press release.

The Company's obligation to accept for payment, and pay for, any Notes validly tendered and not validly withdrawn pursuant to an Offer is conditioned on (i) there being validly tendered and not validly withdrawn on or prior to the applicable Expiration Date an aggregate principal amount of Notes satisfying the Minimum Tender Condition set forth in the table on the front cover of this Offer to Purchase for that series of Notes, (ii) the satisfaction of the General Conditions and (iii) the sale of at least \$373 million aggregate principal amount of the New Notes, the proceeds of which, along with cash on hand, will be used to fund the purchase of Notes in the Offers. In addition, (a) the Offer to purchase the 2009 Notes is conditioned on the acceptance for payment of the 2010 Senior Notes and the 2010 Subordinated Notes pursuant to the terms and conditions of such other applicable Offers, (b) the Offer to purchase the 2010 Subordinated Notes is conditioned on the acceptance for payment of the 2010 Senior Notes pursuant to the terms and conditions of such other applicable Offer and (c) the Offer to purchase the 2010 Senior Notes is conditioned on the acceptance for payment of the 2010 Subordinated Notes pursuant to the terms and conditions of such other applicable Offer. See "Conditions to the Offers."

The Company expressly reserves the right, in its sole discretion, subject to applicable law, to (i) terminate an Offer prior to its Expiration Date and not accept for payment any Notes not theretofore accepted for payment, ii) waive any and all of the conditions of any Offer prior to the date of acceptance for payment of Notes in that Offer, (iii) extend an Expiration Date or (iv) amend the terms of any Offer. Any termination or amendment will be followed as promptly as practicable by a public announcement thereof. Without limiting the manner in which the Company may choose to make such announcement, the Company shall not, unless required by law, have any obligation to publish, advertise or otherwise communicate any such announcement other than by issuing a press release.

If the Company extends an Offer, or if the Company is delayed in its acceptance for payment of, or payment for, Notes or is unable to accept for payment or to pay for such Notes pursuant to an Offer for any reason, then, upon extension of such Offer without prejudice to the Company's rights under such Offer, the Depositary may retain tendered Notes on behalf of the Company. However, the ability of the Company to delay the payment for Notes that the Company has accepted for payment is limited by Rules 13e-4 and 14e-1(c) under the Exchange Act, which require that an offeror pay the consideration offered or return the securities deposited by or on behalf of Holders promptly after the termination or withdrawal of a tender offer.

If the Company makes a material change in the terms of an Offer or the information concerning an Offer, the Company will disseminate additional offering materials and extend such Offer to the extent required by law, including Rule 13e-4 under the Exchange Act.

Purpose of the Transaction

The purpose of the Offers is to repurchase Notes in order to reduce the amount of the Company's outstanding indebtedness with maturities in 2009 and 2010.

Source and Amount of Funds or Other Consideration

The Company expects that approximately \$837,705,820 will be required to purchase the Notes pursuant to the Offers, assuming all Notes are validly tendered and accepted for payment by the Company. The Company will fund purchases pursuant to the Offers from the proceeds of the sale of the New Notes and from cash on hand.

On November 17, 2008, the Company entered into a Securities Purchase Agreement with certain investors in connection with the sale of up to \$400 million aggregate principal amount of the New Notes at a price of 100% of the principal amount of the New Notes. The aggregate net proceeds of the offering are expected to be approximately \$399 million. If the Company does not accept for payment any of its 2009 Subordinated Notes pursuant to the terms and conditions of such Offer, the obligation of one group of affiliated investors to purchase New Notes pursuant to the Securities Purchase Agreement will be reduced and thus the aggregate principal amount of New Notes offered would be \$373.8 million and the aggregate net proceeds to the Company would be approximately \$372.8 million. The Company will use the net proceeds from the sale of the New Notes and cash on hand to fund the purchase of Notes in the Offers. The issuance of the New Notes is subject to conditions, including the acceptance for payment by the Company of at least \$177,270,500 aggregate principal amount of the 2010 Senior Notes and at least \$240,833,000 aggregate principal amount of the 2010 Subordinated Notes in the Offers for such Notes, as well as other customary closing conditions.

The New Notes are convertible into shares of common stock of the Company at the option of the holder at any time prior to the maturity of such New Notes at an initial conversion price of \$1.80 per share, subject to adjustment in certain events. The New Notes are not redeemable by the Company prior to the maturity of such New Notes on January 15, 2013. If at any time prior to the close of business on January 15, 2013 the closing per share sale price of the Company's common stock exceeds 222.2% of the conversion price then in effect for at least 20 trading days within any 30 consecutive trading day period, the New Notes will automatically convert into shares of the Company's 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. Further, if a Holder elects to convert the New Notes in connection with certain changes in control of the Company, the Company will pay a make-whole premium by increasing the number of shares deliverable upon conversion of such New Notes in connection with such change in control transaction. Holders of the New Notes have the right, subject to certain exceptions and conditions, to require the Company to repurchase all or any part of the New Notes upon the occurrence of a designated event (change in control of the Company or a termination of trading) at a repurchase price equal to 100% of the principal amount of the New Notes, plus accrued and unpaid interest thereon, if any, up to but excluding the repurchase date. Certain investors who have agreed to purchase an aggregate \$360,124,000 principal amount of the New Notes will deposit the purchase price thereof into escrow on December 8, 2008 or such later date as determined by the Company. The purchase price for these notes will be released to the Company from escrow upon the closing of the sale of the New Notes. This summary of the Securities Purchase Agreement and the terms of the New Notes is qualified in its entirety by the terms of the Securities Purchase Agreement and the Indenture governing the New Notes, each filed as exhibits to the Schedule TO and incorporated herein by reference in their entirety.

As of September 30, 2008, after giving pro forma effect to (i) the offering of the New Notes (assuming that \$400 million aggregate principal amount of New Notes is sold), (ii) the exchange of approximately \$108,201,000 aggregate principal amount of the Company's indebtedness for shares of its common stock as described under "Miscellaneous—Recent Securities Transactions" and (iii) the purchase of approximately \$1,141,342,000 aggregate principal amount of the Company's indebtedness pursuant to the Offers, assuming 100% of the outstanding principal amount of each series of Notes is purchased in each Offer, for an aggregate purchase price of approximately \$837,705,820 with the net proceeds of the offering of the New Notes and cash on hand:

- the Company would have had an aggregate of approximately \$5.801 billion of indebtedness, excluding intercompany liabilities, of which approximately \$1.4 billion constituted secured indebtedness consisting of its guarantee of its wholly-owned subsidiary's senior secured credit facility, approximately \$2.809 billion consisted of its guarantee of its wholly-owned subsidiary's senior unsecured debt and none of which constituted subordinated indebtedness; and
- the Company's subsidiaries would have had an aggregate of approximately \$5.509 billion of outstanding indebtedness and other balance sheet liabilities (excluding deferred revenue and intercompany liabilities).

As of September 30, 2008, after giving pro forma effect to (i) the offering of the New Notes (assuming that \$400 million aggregate principal amount of New Notes is sold), (ii) the exchange of approximately \$108,201,000 aggregate principal amount of the Company's indebtedness for shares of its common stock as described under "Miscellaneous—Recent Securities Transactions" and (iii) the purchase of approximately \$570,671,000 aggregate principal amount of the Company's indebtedness pursuant to the Offers, assuming 50% of the outstanding principal amount of each series of Notes is purchased in each Offer, for an aggregate purchase price of approximately \$418,852,910 with the net proceeds of the offering of the New Notes and cash on hand:

- the Company would have had an aggregate of approximately \$6.371 billion of indebtedness, excluding intercompany liabilities, of which approximately \$1.4 billion constituted secured indebtedness consisting of its guarantee of its wholly-owned subsidiary's senior secured credit facility, approximately \$2.809 billion consisted of its guarantee of its wholly-owned subsidiary's senior unsecured debt and approximately \$393.4 million constituted subordinated indebtedness; and
- the Company's subsidiaries would have had an aggregate of approximately \$5.509 billion of outstanding indebtedness and other balance sheet liabilities (excluding deferred revenue and intercompany liabilities).

PROCEDURES FOR TENDERING AND WITHDRAWING NOTES

The tender of Notes pursuant to an Offer and in accordance with the procedures described below will constitute a valid tender of Notes. If a Holder validly tenders its Notes on or prior to the applicable Expiration Date and does not validly withdraw its Notes on or prior to the applicable Expiration Date and the Company accepts such Notes for payment, subject to the terms and conditions of the applicable Offer, the Company will pay such Holder the Consideration and Accrued Interest for such Notes on the Payment Date. Any Notes tendered and validly withdrawn on or prior to the applicable Expiration Date will be deemed not to have been validly tendered.

Tendering Notes. The tender of Notes pursuant to any of the procedures set forth in this Offer to Purchase and in the Letter of Transmittal will constitute a binding agreement between the tendering Holder and the Company upon the terms and subject to the conditions of the Offers. The valid tender of Notes will constitute the agreement of the Holder to deliver good and marketable title to all tendered Notes, free and clear of all liens, charges, claims, encumbrances, interests and restrictions of any kind.

UNLESS THE NOTES BEING TENDERED ARE DEPOSITED BY THE HOLDER WITH THE DEPOSITARY ON OR PRIOR TO THE APPLICABLE EXPIRATION DATE (ACCOMPANIED BY A PROPERLY COMPLETED AND DULY EXECUTED LETTER OF TRANSMITTAL), THE COMPANY MAY, AT ITS OPTION, REJECT SUCH TENDER. PAYMENT FOR NOTES WILL BE MADE ONLY AGAINST DEPOSIT OF VALIDLY TENDERED NOTES AND DELIVERY OF ALL OTHER REQUIRED DOCUMENTS.

Only registered Holders of Notes are authorized to tender their Notes pursuant to an Offer. Accordingly, to properly tender Notes or cause Notes to be tendered, the following procedures must be followed:

Notes Held Through DTC. Each beneficial owner of Notes held through a participant (a " *DTC Participant* ") of DTC (i.e., a custodian bank, depositary, broker, trust company or other nominee) must instruct such DTC Participant to cause its Notes to be tendered to be delivered in accordance with the procedures set forth in this Offer to Purchase. Holders desiring to tender their Notes on the applicable Expiration Date should be aware that such Holders must allow sufficient time for completion of the ATOP procedures during normal business hours of DTC on such date.

The Depositary and DTC have confirmed that the Offers are eligible for ATOP. Pursuant to an authorization given by DTC to the DTC Participants, each DTC Participant that holds Notes through DTC must transmit its acceptance through ATOP, and DTC will then edit and verify the acceptance, execute a book-entry delivery to the Depositary's account at DTC and send an Agent's Message (as defined below) to the Depositary for its acceptance. The Depositary will (promptly after the date of this Offer to Purchase) establish accounts at DTC for purposes of the Offers with respect to Notes held through DTC, and any financial institution that is a DTC Participant may make book-entry delivery of Notes into the Depositary's account through ATOP. However, although delivery of the Notes may be effected through book-entry transfer into the Depositary's account through ATOP, an Agent's Message in connection with such book-entry transfer and any other required documents must be, in any case, transmitted to and received by the Depositary at its address set forth on the back cover of this Offer to Purchase prior to the applicable Expiration Date. Delivery of documents to DTC does not constitute delivery to the Depositary. The confirmation of a book-entry transfer into the Depositary's account at DTC as described above is referred to herein as a " *Book-Entry Confirmation* ."

The term " *Agent's Message* " means a message transmitted by DTC to, and received by, the Depositary and forming a part of the Book-Entry Confirmation, which states that DTC has received an express acknowledgment from each DTC Participant tendering through ATOP that such DTC

Participant has received a Letter of Transmittal and agrees to be bound by the terms of the Letter of Transmittal and that the Company may enforce such agreement against such DTC Participant.

All Notes currently held through DTC have been issued in the form of global notes registered in the name of Cede & Co., DTC's nominee (the " *Global Notes* "). At or as of the close of business on the second business day after the applicable Expiration Date, the aggregate principal amount of the Global Notes will be reduced to represent the aggregate principal amount of the Notes, if any, held through DTC and not tendered pursuant to an Offer.

Notes Held by Record Holders. Each record Holder must complete and sign the Letter of Transmittal, and deliver such Letter of Transmittal and any other documents required by the Letter of Transmittal, together with certificate(s) representing all tendered Notes, to the Depositary at its address set forth on the back cover of this Offer to Purchase on or prior to the applicable Expiration Date.

All signatures on the Letter of Transmittal must be guaranteed by a recognized participant in the Securities Transfer Agents Medallion Program, the NYSE Medallion Signature Program or the Stock Exchange Medallion Program (each, an " *Eligible Institution* "); *provided* , *however* , that signatures on the Letter of Transmittal need not be guaranteed if such Notes are tendered for the account of an Eligible Institution. See Instruction 3 of the Letter of Transmittal. If a Letter of Transmittal or any Note is signed by a trustee, executor, administrator, guardian, attorney-in-fact, agent, officer of a corporation or other person acting in a fiduciary or representative capacity, such person must so indicate when signing, and proper evidence satisfactory to the Company of the authority of such person so to act must be submitted.

Lost or Missing Certificates. If a record Holder desires to tender Notes pursuant to an Offer, but the certificates representing such Notes have been mutilated, lost, stolen or destroyed, such Holder should contact the Depositary for further instructions at the address or telephone number set forth herein. See Instruction 9 of the Letter of Transmittal.

Backup U.S. Federal Income Tax Withholding. Under the "backup withholding" provisions of U.S. federal income tax law, unless a tendering Holder, or such Holder's assignee (in either case, the " *Payee* "), satisfies the conditions described in Instruction 5 of the Letter of Transmittal or is otherwise exempt, the aggregate Consideration and Accrued Interest may be subject to backup withholding tax at a rate of 28%. To prevent backup withholding, each U.S. Holder (as defined below) should complete and sign the Substitute Form W-9 provided in the Letter of Transmittal. Each Non-U.S. Holder (as defined below) must submit the appropriate completed IRS Form W-8 (generally Form W-8BEN for a Non-U.S. beneficial owner) to avoid backup withholding. See Instruction 5 of the Letter of Transmittal.

Effect of Letter of Transmittal. Subject to, and effective upon, the acceptance for payment of, and payment for, the Notes tendered thereby, by executing and delivering a Letter of Transmittal a tendering Holder of Notes (i) irrevocably sells, assigns and transfers to, or upon the order of, the Company, all right, title and interest in and to all the Notes tendered thereby, (ii) waives any and all rights with respect to such Notes (including, without limitation, any existing or past defaults and their consequences in respect of such Notes and the respective indentures under which such Notes were issued), (iii) releases and discharges the Company from any and all claims such Holder may have now, or may have in the future arising out of, or related to, such Notes, including, without limitation, any claims that such Holder is entitled to receive additional principal or interest payments with respect to such Notes, to convert the Notes into cash or cash and shares of common stock, to participate in any redemption or defeasance of such Notes or be entitled to any of the benefits under the respective indentures under which the Notes were issued and (iv) irrevocably constitutes and appoints the Depositary as the true and lawful agent and attorney-in-fact of such Holder with respect to any such tendered Notes, with full power of substitution and resubstitution (such power of attorney being deemed to be an irrevocable power coupled with an interest) to (a) deliver certificates representing

such Notes, or transfer ownership of such Notes on the account books maintained by DTC, together, in any such case, with all accompanying evidences of transfer and authenticity, to the Company, (b) present such Notes for transfer on the relevant security register, (c) receive all benefits or otherwise exercise all rights of beneficial ownership of such Notes (except that the Depositary will have no rights to, or control over, funds from the Company, except as agent for the tendering Holders, for the Consideration and Accrued Interest for any tendered Notes that are purchased by the Company) and (d) deliver to the Company the Letter of Transmittal, all upon the terms and subject to the conditions of the Offers.

Determination of Validity. All questions as to the validity, form, eligibility (including time of receipt) and acceptance for payment of Notes pursuant to the procedures described in this Offer to Purchase and the Letter of Transmittal and the form and validity of all documents will be determined by the Company in its sole discretion, which determination will be final and binding on all parties. The Company reserves the absolute right to reject any or all tenders that are not in proper form or the acceptance of, or payment for which, may, in the opinion of counsel for the Company, be unlawful. The Company also reserves the absolute right to waive any of the conditions of an Offer and any defect or irregularity in the tender of any particular Notes. The Company's interpretation of the terms and conditions of the Offers (including, without limitation, the instructions in the Letter of Transmittal) will be final and binding. No alternative, conditional or contingent tenders will be accepted. Unless waived, any irregularities in connection with tenders must be cured within such time as the Company shall determine. None of the Company or any of its affiliates or assigns, the Depositary, the Information Agent, the Dealer Managers or any other person will be under any duty to give notification of any defects or irregularities in such tenders or will incur any liability to a Holder for failure to give such notification. Tenders of Notes will not be deemed to have been made until such irregularities have been cured or waived. Any Notes received by the Depositary that are not properly tendered and as to which the irregularities have not been cured or waived will be returned by the Depositary to the tendering Holders, unless otherwise provided in the Letter of Transmittal, as promptly as practical following the applicable Expiration Date.

LETTERS OF TRANSMITTAL AND NOTES MUST BE SENT ONLY TO THE DEPOSITARY. DO NOT SEND LETTERS OF TRANSMITTAL OR NOTES TO THE COMPANY, THE DEALER MANAGERS OR THE INFORMATION AGENT.

THE METHOD OF DELIVERY OF NOTES AND LETTERS OF TRANSMITTAL, ANY REQUIRED SIGNATURE GUARANTEES AND ALL OTHER REQUIRED DOCUMENTS, INCLUDING DELIVERY THROUGH DTC AND ANY ACCEPTANCE THROUGH ATOP, IS AT THE ELECTION AND RISK OF THE PERSONS TENDERING AND DELIVERING LETTERS OF TRANSMITTAL AND, EXCEPT AS OTHERWISE PROVIDED IN THE LETTER OF TRANSMITTAL, DELIVERY WILL BE DEEMED MADE ONLY WHEN ACTUALLY RECEIVED BY THE DEPOSITARY. IF DELIVERY IS BY MAIL, IT IS SUGGESTED THAT THE HOLDER USE PROPERLY INSURED, REGISTERED MAIL WITH RETURN RECEIPT REQUESTED, AND THAT THE MAILING BE MADE SUFFICIENTLY IN ADVANCE OF THE APPLICABLE EXPIRATION DATE TO PERMIT DELIVERY TO THE DEPOSITARY PRIOR TO THE APPLICABLE EXPIRATION DATE.

No Guaranteed Delivery. There are no guaranteed delivery provisions provided for by the Company in connection with the Offers under the terms of this Offer to Purchase or any other related documents. Holders must tender their Notes in accordance with the procedures set forth above.

Withdrawal of Tenders. Except as otherwise provided herein, tenders of Notes pursuant to an Offer are irrevocable. Withdrawal of Notes may only be accomplished in accordance with the following procedures.

Holders may withdraw Notes tendered in an Offer at any time on or before the applicable Expiration Date. Thereafter, such tenders are irrevocable, except that they may be withdrawn after January 14, 2009 (if the applicable Expiration Date has not occurred prior to that date), unless such Notes have been accepted for payment as provided in this Offer to Purchase. If the Company extends an Offer, is delayed in its acceptance for payment of Notes or is unable to purchase Notes validly tendered under an Offer for any reason, then, without prejudice to the Company's rights under such Offer, the Depositary may nevertheless, on the Company's behalf, retain tendered Notes, and such Notes may not be withdrawn except to the extent that the Holder is entitled to withdrawal rights described herein.

For a withdrawal of a tender of Notes to be effective, a written or facsimile transmission notice of withdrawal must be received by the Depositary on or prior to the applicable Expiration Date, by mail, or hand delivery or by a properly transmitted "Request Message" through ATOP. Any such notice of withdrawal must (i) specify the name of the person who tendered the Notes to be withdrawn, the name in which those Notes are registered (or, if tendered by a book-entry transfer, the name of the participant in DTC whose name appears on the security position listing as the owner of such Notes), if different from that of the person who deposited the Notes, (ii) contain the description of the Notes to be withdrawn, the certificate number or numbers of such Notes, unless such Notes were tendered by book-entry delivery, and the aggregate principal amount represented by such Notes, (iii) unless transmitted through ATOP, be signed by the Holder thereof in the same manner as the original signature on such Holder's Letter of Transmittal, including any required signature guarantee(s), or be accompanied by documents of transfer sufficient to have the applicable Note trustee register the transfer of the Notes into the name of the person withdrawing such Notes and (iv) if the Letter of Transmittal was executed by a person other than the registered Holder, be accompanied by a properly completed irrevocable proxy that authorized such person to effect such withdrawal on behalf of such Holder.

The Company will determine, in its sole discretion, all questions as to the form and validity (including time of receipt) of any notice of withdrawal, and its determination will be final and binding on all parties. No withdrawal of Notes shall be deemed to have been properly made until all defects and irregularities have been cured or waived. None of the Company or any of its affiliates or assigns, the Depositary, the Information Agent, the Dealer Managers or any other person will be under any duty to give notification of any defects or irregularities in any notice of withdrawal or incur any liability for failure to give such notification. Withdrawals of tenders of Notes may not be rescinded, and any Notes properly withdrawn will be deemed not to have been validly tendered for purposes of the Offers. However, Holders may retender withdrawn Notes by following one of the procedures for tendering shares described herein at any time prior to the applicable Expiration Date.

ACCEPTANCE FOR PAYMENT AND PAYMENT

Upon the terms and subject to the conditions set forth herein and in the Letter of Transmittal, the Company will accept for payment on the applicable Expiration Date any and all outstanding Notes of the applicable series validly tendered and not validly withdrawn pursuant to an Offer (or defectively tendered, if such defect has been waived by the Company) on or prior to the applicable Expiration Date. The Payment Date is expected to be one business day after the applicable Expiration Date of such Offer, or promptly thereafter. Any Notes validly tendered and accepted for payment pursuant to an Offer will be cancelled.

The Company, at its option, may elect to extend an Expiration Date to a later date and time announced by the Company, provided that public announcement of that extension will be made not later than 9:00 a.m., New York City time, on the next business day after the last previously scheduled or announced Expiration Date.

The Company expressly reserves the right, in its sole discretion, to delay acceptance for payment Notes tendered pursuant to an Offer or the payment for Notes accepted for payment (subject to Rules 13e-4 and 14e-1(c) under the Exchange Act, which require that an offeror pay the consideration offered or return the securities deposited by or on behalf of the holders thereof promptly after the termination or withdrawal of a tender offer), or to terminate an Offer and not accept for payment any Notes not theretofore accepted for payment, if any of the conditions set forth under "Conditions to the Offers" shall not have been satisfied or waived by the Company or in order to comply, in whole or in part, with any applicable law. In all cases, payment for Notes accepted for payment pursuant to an Offer will be made only after timely receipt by the Depositary of certificates representing such Notes (or confirmation of book-entry transfer thereof), a properly completed and duly executed Letter of Transmittal (or a manually signed facsimile thereof or satisfaction of DTC's ATOP procedures) on or before the applicable Expiration Date, and any other documents required thereby.

Upon the terms and subject to the conditions set forth herein and in the Letter of Transmittal, on the applicable Expiration Date, the Company will be deemed to have accepted for payment, and thereby purchased, all Notes of the applicable series validly tendered and not validly withdrawn on or prior to such Expiration Date as, if and when the Company gives written notice to the Depositary of its acceptance for payment of such Notes. On the Payment Date, the Company shall deposit with the Depositary in respect of, and the Depositary shall thereafter transmit to the Holders of, Notes accepted for payment, the Consideration and Accrued Interest.

If the Company extends an Offer, or if the Company is delayed in its acceptance for payment of, or payment for, Notes or is unable to accept for payment or to pay for such Notes pursuant to an Offer for any reason, then, upon extension of an Offer without prejudice to the Company's rights under such Offer, the Depositary may retain tendered Notes on behalf of the Company. However, the ability of the Company to delay the payment for Notes that the Company has accepted for payment is limited by Rules 13e-4 and 14e-1(c) under the Exchange Act, which require that an offeror pay the consideration offered or return the securities deposited by or on behalf of Holders promptly after the termination or withdrawal of a tender offer.

The Company reserves the right to transfer or assign, in whole or from time to time in part, to one or more of its affiliates, the right to purchase all or any portion of the Notes tendered pursuant to an Offer, but any such transfer or assignment will not relieve the Company of its obligations under an Offer and will in no way prejudice the rights of a tendering Holder to receive payment for its Notes validly tendered and accepted for payment pursuant to such Offer.

Holders whose Notes are accepted for payment pursuant to an Offer will be entitled to Accrued Interest on those Notes. **Under no circumstances will any additional interest be payable because of any delay in the transmission of funds to the Holders of purchased Notes.**

Tendering Holders of Notes will not be required to pay brokerage commissions or fees or, subject to the instructions in the Letter of Transmittal, transfer taxes with respect to the tendering of Notes pursuant to an Offer.

Notwithstanding any other provision of an Offer, the Company's obligation to accept for payment, and pay for, any Notes validly tendered and not validly withdrawn pursuant to an Offer is conditioned on (i) there being validly tendered and not validly withdrawn on or prior to the applicable Expiration Date an aggregate principal amount of Notes satisfying the Minimum Tender Condition set forth in the table on the front cover of this Offer to Purchase for that series of Notes, (ii) the satisfaction of the General Conditions and (iii) the sale of at least \$373 million aggregate principal amount of the New Notes, the proceeds of which, along with cash on hand, will be used to fund the purchase of Notes in the Offers. In addition, (a) the Offer to purchase the 2009 Notes is conditioned on the acceptance for payment of the 2010 Senior Notes and the 2010 Subordinated Notes pursuant to the terms and conditions of such other applicable Offers, (b) the Offer to purchase the 2010 Subordinated Notes is conditioned on the acceptance for payment of the 2010 Senior Notes pursuant to the terms and conditions of such other applicable Offer and (c) the Offer to purchase the 2010 Senior Notes is conditioned on the acceptance for payment of the 2010 Subordinated Notes pursuant to the terms and conditions of such other applicable Offer. See "Conditions to the Offers."

The Company will not receive any proceeds from the offering of the New Notes if the Company does not accept for payment at least \$177,270,500 aggregate principal amount of its 2010 Senior Notes and at least \$240,833,000 aggregate principal amount of its 2010 Subordinated Notes in the respective Offers for such Notes.

If an Offer is terminated or the Notes are validly withdrawn prior to the applicable Expiration Date, or the Notes are not accepted for payment, the Consideration applicable to such series of Notes will not be paid or become payable. If any tendered Notes are not purchased pursuant to an Offer for any reason, or certificates are submitted evidencing more Notes than are tendered, such Notes not purchased will be returned, without expense, to the tendering Holder (or, in the case of Notes tendered by book-entry transfer, such Notes will be credited to the account maintained at DTC from which such Notes were delivered), unless otherwise requested by such Holder under "Special Delivery Instructions" in the Letter of Transmittal, promptly following the applicable Expiration Date or termination of an Offer.

CERTAIN MARKET INFORMATION CONCERNING THE NOTES

There is no established reporting system or trading market for trading in the Notes. To the extent that the Notes are traded, prices of the Notes may fluctuate greatly depending on the trading volume and the balance between buy and sell orders. To Level 3's knowledge, the Notes are traded infrequently in transactions arranged through brokers, and reliable market quotations for the Notes are not available.

Level 3's common stock is listed on the NASDAQ Global Select Market of The NASDAQ Stock Market LLC under the symbol "LVLT." The following table sets forth, for the periods indicated, the reported high and low sales prices in U.S. dollars for Level 3's common stock on the NASDAQ Global Select Market.

<u>Year Ended December 31, 2006</u>	<u>High</u>	<u>Low</u>
First Quarter	\$5.80	\$2.71
Second Quarter	6.00	3.74
Third Quarter	5.56	3.37
Fourth Quarter	6.09	4.75

<u>Year Ended December 31, 2007</u>	<u>High</u>	<u>Low</u>
First Quarter	\$6.80	\$5.54
Second Quarter	6.30	5.20
Third Quarter	6.42	4.28
Fourth Quarter	5.10	2.66

<u>Year Ended December 31, 2008</u>	<u>High</u>	<u>Low</u>
First Quarter	\$3.53	\$1.68
Second Quarter	4.48	1.96
Third Quarter	3.90	2.44
Fourth Quarter (through November 14, 2008)	2.75	0.60

On November 14, 2008, the last reported sale price of Level 3's common stock on the NASDAQ Global Select Market was \$0.87 per share.

HOLDERS ARE URGED TO OBTAIN CURRENT MARKET QUOTATIONS FOR LEVEL 3'S COMMON STOCK AND THE NOTES PRIOR TO MAKING ANY DECISION WITH RESPECT TO AN OFFER.

CONDITIONS TO THE OFFERS

Notwithstanding any other provision of an Offer, the Company's obligation to accept for payment, and pay for, any Notes validly tendered and not validly withdrawn pursuant to an Offer is conditioned on (i) there being validly tendered and not validly withdrawn on or prior to the applicable Expiration Date an aggregate principal amount of Notes satisfying the Minimum Tender Condition set forth in the table on the front cover of this Offer to Purchase for that series of Notes, (ii) the satisfaction of the General Conditions and (iii) the sale of at least \$373 million aggregate principal amount of the New Notes, the proceeds of which, along with cash on hand, will be used to fund the purchase of Notes in the Offers. In addition, (a) the Offer to purchase the 2009 Notes is conditioned on the acceptance for payment of the 2010 Senior Notes and the 2010 Subordinated Notes pursuant to the terms and conditions of such other applicable Offers, (b) the Offer to purchase the 2010 Subordinated Notes is conditioned on the acceptance for payment of the 2010 Senior Notes pursuant to the terms and conditions of such other applicable Offer and (c) the Offer to purchase the 2010 Senior Notes is conditioned on the acceptance for payment of the 2010 Subordinated Notes pursuant to the terms and conditions of such other applicable Offer. If the aggregate principal amount of Notes of a given series validly tendered and not validly withdrawn on or prior to the applicable Expiration Date is less than the Minimum Tender Condition set forth in the table on the front cover of this Offer to Purchase for that series, the Company will not be obligated to purchase any Notes of such series.

For purposes of the foregoing provision, all of the " *General Conditions* " shall be deemed to be satisfied on the applicable Expiration Date, unless any of the following conditions shall occur after the date of this Offer to Purchase and prior to the applicable Expiration Date:

(a) there shall have been enacted, entered, issued, promulgated, enforced or deemed applicable by any court or governmental, regulatory or administrative agency or instrumentality any order, statute, rule, regulation, executive order, stay, decree, judgment or injunction that, in the Company's reasonable judgment, would or would be reasonably likely to prohibit, prevent or materially restrict or delay consummation of each Offer or that is, or is reasonably likely to be, materially adverse to the Company's (or its subsidiaries'), business, operations, properties, condition (financial or otherwise), assets, liabilities or prospects;

(b) there shall have occurred (i) any general suspension of trading in, or limitation on prices for, securities in the United States securities or financial markets, (ii) a material impairment in the trading market for debt securities, (iii) a declaration of a banking moratorium or any suspension of payments in respect of banks in the United States (whether or not mandatory), (iv) any limitation (whether or not mandatory) by any governmental authority on, or other event having a reasonable likelihood of affecting, the extension of credit by banks or other lending institutions in the United States, (v) any attack on, outbreak or escalation of hostilities or acts of terrorism involving the United States or declaration of emergency or war by the United States that would reasonably be expected to have a materially disproportionate effect on our (or our subsidiaries') business, operations, condition or prospects relative to other companies in the Company's industry or (vi) any significant adverse change in the United States securities or financial markets generally or in the case of any of the foregoing existing on the date hereof, a material acceleration or worsening thereof;

(c) there shall be threatened or pending any action, proceeding or counterclaim brought by any domestic or foreign federal, state or local governmental, regulatory or administrative agency or authority, court, legislative body, commission or third party (i) challenging the acquisition by the Company of the Notes or otherwise seeking to restrain or prohibit the consummation of each Offer or otherwise seeking to obtain any damages as a result thereof or (ii) otherwise materially adversely affecting the Company's ability to successfully complete the Offers;

(d) there shall exist any other actual or threatened legal impediment to the Offers or any other circumstances that would materially adversely affect the transactions contemplated by each Offer or the contemplated benefits of the Offers to the Company or its subsidiaries;

(e) there shall have occurred or be reasonably expected to occur any change, event or occurrence that could materially and adversely affect the business, operations, properties, condition (financial or otherwise), assets, liabilities or prospects of the Company or its subsidiaries on a consolidated basis; or

(f) there shall have occurred or be reasonably expected to occur any change, event or occurrence that could prohibit, prevent, restrict or delay consummation of an Offer or make it impractical or inadvisable to proceed with an Offer.

The foregoing conditions are for the sole benefit of the Company and may be asserted by the Company in its sole discretion, regardless of the circumstances giving rise to any such condition (including any action or inaction by the Company) and may be waived by the Company in whole or in part, at any time and from time to time, in the sole discretion of the Company, whether any other condition of any Offer is also waived. The failure by the Company at any time to exercise any of the foregoing rights will not be deemed a waiver of any other right and each right will be deemed an ongoing right which may be asserted at any time and from time to time.

The Company expressly reserves the right, in its sole discretion, subject to applicable law, to (i) terminate an Offer prior to its Expiration Date and not accept for payment any Notes not theretofore accepted for payment, (ii) waive any and all of the conditions of any Offer prior to the date of acceptance for payment of Notes in that Offer, (iii) extend an Expiration Date or (iv) amend the terms of any Offer. Any extension, termination or amendment will be followed as promptly as practicable by a public announcement thereof, such announcement in the case of an extension to be issued no later than 9:00 a.m., New York City time, on the next business day after the last previously scheduled or announced Expiration Date. In the event that the Company extends an Offer, the term "Expiration Date" with respect to such extended Offer shall mean the time and date on which the Offer, as so extended, shall expire. Without limiting the manner in which the Company may choose to make such announcement, the Company shall not, unless required by law, have any obligation to publish, advertise or otherwise communicate any such announcement other than by issuing a press release.

MATERIAL DIFFERENCES IN THE RIGHTS OF HOLDERS OF NOTES AS A RESULT OF THE OFFERS

Effects on the Holders of Notes tendered in the Offers

If the Company accepts Notes for payment, subject to the terms and conditions of an Offer, the Company will pay the Holders the Consideration and Accrued Interest for all Notes purchased from them on the Payment Date, and thereby such Holders will give up certain rights and obligations associated with their ownership of such Notes. Below is a summary of certain rights that such Holders will forgo and obligations of which such Holders will be relieved of if such Notes are accepted for payment and paid. The summary below does not purport to describe all of the terms of the Notes. Please refer to (i) the Amended and Restated Indenture, filed on July 8, 2003 as Exhibit 4.1 to the Company's Current Report on Form 8-K, by and between Level 3 Communications, Inc. and The Bank of New York, as trustee, as supplemented by the First Supplemental Indenture, filed on July 8, 2003 as Exhibit 4.2 to the Company's Current Report on Form 8-K, for the terms of the 2010 Senior Notes; and (ii) the Form of Subordinated Indenture, filed on February 3, 1999 as Exhibit 4.2 to the Company's Amendment No. 1 to its Registration Statement on Form S-3, by and between Level 3 Communications, Inc. and The Bank of New York, as successor to IBJ Whitehall Bank & Trust Company, as Trustee, as supplemented by (a) the Second Supplemental Indenture, filed on February 29, 2000 as Exhibit 4.1 to the Company's Current Report on Form 8-K, for the terms of the 2010 Subordinated Notes and (b) the First Supplemental Indenture, filed on September 20, 1999 as Exhibit 4.1 to the Company's Current Report on Form 8-K, for the terms of the 2009 Notes. See "Available Information."

Interest. With respect to Notes accepted for payment and paid in accordance with this Offer to Purchase, 2010 Senior Notes Holders thereof will forgo regular semi-annual interest payments at the rate of 2.875% per annum on such Notes. With respect to Notes accepted for payment and paid in accordance with this Offer to Purchase, 2010 Subordinated Notes Holders thereof will forgo regular semi-annual interest payments at the rate of 6% per annum on such Notes. With respect to Notes accepted for payment and paid in accordance with this Offer to Purchase, 2009 Notes Holders thereof will forgo regular semi-annual interest payments at the rate of 6% per annum on such Notes.

Conversion Rights of Holders. With respect to Notes accepted for payment and paid in accordance with this Offer to Purchase, Holders will forgo the right to elect to convert the Notes into shares of Level 3's common stock at any time on or before the close of business on the business day immediately preceding (i) in the case of the 2010 Senior Notes, July 15, 2010, at a conversion rate of 139.2758 shares of Level 3 common stock per \$1,000 principal amount of Notes (subject to adjustment in certain events), which is equal to an initial conversion price of \$7.18 per share; (ii) in the case of the 2010 Subordinated Notes, March 15, 2010, at a conversion rate of 7.416 shares of Level 3 common stock per \$1,000 principal amount of Notes (subject to adjustment in certain events), which is equal to an initial conversion price of \$134.844 per share; and (iii) in the case of the 2009 Notes, September 15, 2009, at a conversion rate of 15.3401 shares of Level 3 common stock per \$1,000 principal amount of Notes (subject to adjustment in certain events), which is equal to an initial conversion price of \$65.189 per share.

Right of Holders to Require Repurchase by Level 3. With respect to Notes accepted for payment and paid in accordance with this Offer to Purchase, Holders will forgo the right to require the Company to repurchase all or a portion of such tendered Notes upon the occurrence of a Change of Control (as defined in each indenture for each series of Notes) of the Company, at a purchase price, subject to the next sentence, in cash equal to 100% of the principal amount of such Notes, plus accrued and unpaid interest (if any) to the date of repurchase (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date). At the option of the Company, the purchase price may be paid by delivery of shares of common stock of the Company having a fair market value equal to the purchase price.

Right of Holders to Receive Principal at Maturity. With respect to Notes accepted for payment and paid in accordance with this Offer to Purchase, Holders will forgo the right to receive, at the maturity date for each series of Notes, all of the principal due on such tendered Notes as of such maturity date.

The following considerations, in addition to the other information described elsewhere herein or incorporated by reference herein, should be carefully considered by each holder of Notes before deciding whether to tender Notes pursuant to an Offer.

Position of Level 3 Concerning the Offers. Neither Level 3 nor its board of directors nor the Dealer Managers, Depositary or Information Agent makes any recommendation to any Holder whether to tender or refrain from tendering any or all of such Holder's Notes, and none of them has authorized any person to make any such recommendation. Holders are urged to evaluate carefully all information in this Offer to Purchase, consult their own investment and tax advisors and make their own decisions whether to tender Notes, and, if so, the principal amount of Notes to tender.

Substantial Existing Indebtedness. Level 3 has substantial existing indebtedness. As of September 30, 2008, Level 3 had an aggregate of approximately \$6.8 billion of long-term debt on a consolidated basis and including current maturities. While Level 3 will continue to have substantial indebtedness following the consummation of the Offers, the aggregate amount of its outstanding indebtedness with maturities in 2009 and 2010 will be reduced as a result of consummation of such Offer. The amount of Level 3's indebtedness and restrictions contained in the indentures governing the Notes and its other outstanding indebtedness may limit its ability to effect future financings in the event Level 3 should deem it necessary or desirable to raise additional capital. Further, there can be no assurance that Level 3 will have sufficient earnings, access to liquidity or cash flow in the future to meet its debt service obligations under the Notes that remain outstanding following consummation of any Offer. For additional information about Level 3's indebtedness, capitalization and financial condition, see its Annual Report on Form 10-K, as amended, for the fiscal year ended December 31, 2007, the Quarterly Reports on Form 10-Q for the quarterly periods ended March 31, 2008, June 30, 2008 and September 30, 2008 and the other information incorporated by reference herein. See "Available Information" and "Incorporation of Documents by Reference."

Cancellation of Indebtedness Income to Level 3. The purchase of Notes pursuant to an Offer will result in cancellation of indebtedness income for U.S. federal income tax purposes to Level 3 to the extent that the cash paid is less than the adjusted issue price (as defined for U.S. federal income tax purposes) of the Notes that are purchased. Level 3 does not expect that such cancellation of indebtedness income will have a material adverse effect on the Company because, among other reasons, Level 3 believes that it has sufficient net operating losses available to offset such income.

Limited Trading Market. The Notes are not listed on any national or regional securities exchange or quoted on any automated quotation system. To Level 3's knowledge, the Notes are traded infrequently in transactions arranged through brokers, and reliable market quotations for the Notes are not available. To the extent that Notes are tendered and accepted for payment pursuant to an Offer, the trading market for Notes that remain outstanding is likely to be even more limited. In addition, a debt security with a smaller outstanding principal amount available for trading (a smaller "float") may command a lower price than would a comparable debt security with a larger float. To the extent a market continues to exist for such Notes, the market price for Notes that are not tendered and accepted for payment pursuant to an Offer may be affected adversely to the extent that the principal amount (or principal amount at maturity, as applicable) of Notes of such series purchased pursuant to the applicable Offer reduces the float, and the Notes may trade at a discount compared to present trading prices depending on prevailing interest rates, the market for debt instruments with similar credit features, the performance of Level 3 and its other subsidiaries and other factors. The extent of the market for the Notes and the availability of market quotations will depend upon the number of holders of the Notes remaining at such time, the interest in maintaining a market in the Notes on the part of securities firms and other factors. There is no assurance

that an active market in the Notes will exist and no assurance as to the prices at which the Notes may trade after the consummation of any Offer.

Treatment of Notes Not Tendered and/or not Accepted for Payment in an Offer. Notes not tendered and/or accepted for payment in an Offer will remain outstanding. The terms and conditions governing the Notes, including the covenants and other protective provisions contained in the respective indentures governing the Notes, will remain unchanged. No amendments to these indentures are being sought. From time to time after the tenth business day following the applicable Expiration Date or other date of termination of an Offer, Level 3 or its affiliates may acquire Notes that remain outstanding through open market purchases, privately negotiated transactions, tender offers, exchange offers or otherwise, upon such terms and at such prices as they may determine, which may be more or less than the price to be paid pursuant to such Offer and could be for cash or other consideration. Alternatively, Level 3 may, subject to certain conditions, redeem any or all of the Notes not purchased pursuant to an Offer at any time that it is permitted to do so under the respective indentures governing the Notes. There can be no assurance as to which, if any, of these alternatives (or combinations thereof) Level 3 or its subsidiaries will choose to pursue in the future.

Ability of Level 3 to Pay Its Debt and Other Obligations. If Level 3's cash flow is inadequate to meet its obligations, Level 3 could face substantial liquidity problems. If Level 3 is unable to generate sufficient cash flow or otherwise obtain funds necessary to make required payments on the Notes outstanding after the consummation of any Offer or its other obligations, Level 3 will be in default under the terms thereof, which will permit the Holders of the Notes and Level 3's other obligations to accelerate the maturity of the Notes and such other obligations and also could cause defaults under future indebtedness it may incur. Any such default could have a material adverse effect on Level 3's business, prospects, financial condition and operating results. In addition, Level 3 cannot assure the Holders that it would be able to repay amounts due in respect of the Notes if payment on the Notes were to be accelerated following the occurrence of an Event of Default (as defined in each Indenture governing each series of Notes).

MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES

The following is a summary of the material U.S. federal income tax consequences of the tender of Notes pursuant to the Offers and the receipt of the Consideration and Accrued Interest. This summary is based upon the Internal Revenue Code of 1986, as amended (the "*Code*"), existing, temporary and proposed Treasury regulations promulgated thereunder, and rulings and administrative and judicial decisions now in effect, all of which are subject to change (possibly on a retroactive basis). This summary assumes that the Holders of the Notes have held their Notes as "capital assets," as defined under the Code.

This summary does not discuss all aspects of U.S. federal income taxation which may be relevant to a particular Holder of Notes in light of such Holder's individual circumstances or to certain types of Holders subject to special tax rules (*e.g.* , financial institutions, broker-dealers, pass-through entities, insurance companies, expatriates, tax-exempt organizations and Holders who hold their Notes as part of a hedge, straddle or conversion or other integrated transaction), nor does it address state, local or foreign tax consequences. In addition, the Company has not sought a formal legal opinion from the Internal Revenue Service (the "*IRS* ") or from its tax counsel regarding the material U.S. federal income tax consequences under the Code of tendering Notes pursuant to an Offer in exchange for the Consideration.

EACH HOLDER IS URGED TO CONSULT SUCH HOLDER'S TAX ADVISOR REGARDING THE SPECIFIC FEDERAL, STATE, LOCAL AND FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE OFFERS.

U.S. Holders

For purposes of this summary, a "U.S. Holder" is a beneficial owner of a Note that is for U.S. federal income tax purposes:

- an individual citizen or resident of the United States,
- a corporation (or any other entity treated as a corporation) organized under the laws of the United States, any state of the United States or the District of Columbia,
- an estate, the income of which is subject to U.S. federal income tax regardless of its source or
- a trust, if (i) a court within the United States can exercise primary supervision over the administration of the trust and one or more United States persons has authority to control all substantial decisions of the trust or (ii) it has a valid election in place to be treated as a U.S. person.

If a partnership holds Notes, the U.S. federal income tax treatment of a partner will generally depend on the status of the partner and the activities of the partnership. Each partner of a partnership holding Notes should consult its own tax advisors regarding the U.S. federal, state, local and foreign tax consequences to them of tendering the Notes.

Sale of Notes Pursuant to an Offer. The receipt of the Consideration by a U.S. Holder in exchange for the Notes will be a taxable transaction. A U.S. Holder will recognize gain or loss in an amount equal to the difference between (i) the gross amount of the Consideration paid to such U.S. Holder in respect of its tendered Notes and (ii) such U.S. Holder's adjusted tax basis in such Holder's tendered Notes. A U.S. Holder's adjusted tax basis in a Note generally will equal the U.S. Holder's initial cost of such Note, increased by any market discount previously included in income by such U.S. Holder and decreased by the amount of any bond premium previously amortized by such U.S. Holder. Except to the extent it is subject to the market discount rules discussed below, such gain or loss generally will be capital gain or loss and will be long-term capital gain or loss if such Holder has held such Notes for more than one year.

An exception to the capital gain treatment described in the preceding paragraph applies to a U.S. Holder who holds a Note with "market discount." Market discount is the amount by which the principal amount of the Note exceeded the U.S. Holder's tax basis in the Note immediately after its acquisition at a time other than the Note's original issuance by the Company. A Note will be considered to have no market discount if such excess is less than $\frac{1}{4}$ of 1% of the principal amount of the Note multiplied by the number of complete years from the U.S. Holder's acquisition date of the Note to its maturity date. The gain realized by the U.S. Holder of a Note with market discount will be treated as ordinary income to the extent that market discount has accrued (on a straight line basis or, at the election of the U.S. Holder, on a constant yield basis) from the U.S. Holder's acquisition date to the date of sale, unless the U.S. Holder has elected to include market discount in income currently as it accrues. Gain in excess of such accrued market discount will be subject to the capital gains rules described above.

The gross amount of the payments of Accrued Interest generally will be treated as ordinary income to the extent not previously included in income.

Information Reporting and Backup Withholding. A U.S. Holder may be subject to backup withholding, currently at a rate of 28% (the "Applicable Backup Withholding Rate"), with respect to the receipt of the Consideration and Accrued Interest in exchange for the Notes. The payor of the Consideration and Accrued Interest will be required to deduct and withhold at the Applicable Backup Withholding Rate from these payments if:

- the payee fails to furnish its correct Taxpayer Identification Number ("TIN") to the payor in the prescribed manner or fails to establish that it is entitled to an exemption;
- the IRS notifies the payor that the TIN furnished by the payee is incorrect;
- the payee has failed properly to report the receipt of reportable payments and the IRS has notified the payee or payor that backup withholding is required; or
- the payee fails to certify under penalties of perjury that such payee is not subject to backup withholding.

If any one of these events occurs with respect to a U.S. Holder, the Company or its paying or other withholding agent may be required to withhold at the Applicable Backup Withholding Rate from any payments of the Consideration and Accrued Interest in exchange for the Notes.

Any amount withheld from a payment to a U.S. Holder under the backup withholding rules will be allowable as a refund or credit against such Holder's U.S. federal income tax liability, so long as the required information is timely provided to the IRS. The Company, its paying agent or other withholding agent generally will report to a U.S. Holder and to the IRS the amount of any reportable payments made in respect of the Notes for each calendar year and the amount of tax withheld, if any, with respect to such payments.

Non-U.S. Holders

For purposes of this summary, a "Non-U.S. Holder" is a beneficial owner of a Note that is a nonresident alien or a corporation, estate or trust that is not a U.S. Holder.

Sale of Notes Pursuant to an Offer. The receipt of the Consideration by a Non-U.S. Holder in exchange for a Note will be a taxable transaction. Subject to the discussion of backup withholding

below, any gain realized by a Non-U.S. Holder on the exchange generally will not be subject to U.S. federal income tax, unless:

- such gain is effectively connected with the conduct by such Non-U.S. Holder of a trade or business within the United States (and, if a tax treaty applies, is attributable to a permanent establishment in the U.S.) or;
- the Non-U.S. Holder is an individual who is present in the United States for 183 days or more in the taxable year of disposition and certain other conditions are satisfied.

The gross amount of the payments of Accrued Interest to a Non-U.S. Holder generally will not be subject to U.S. federal income tax, provided that:

- the Non-U.S. Holder does not actually or constructively own 10% or more of the capital or profits interests of the Company;
- the Non-U.S. Holder is not a controlled foreign corporation that is related to the Company and is not a bank that received the Notes on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of business;
- such Non-U.S. Holder is not a bank receiving interest on a loan entered into in the ordinary course of its trade or business;
- the Accrued Interest is not effectively connected with the conduct by the Non-U.S. Holder of a trade or business within the United States (and, if a tax treaty applies, is attributable to a permanent establishment in the U.S.); and
- the Company or its paying agent has received or receives appropriate documentation establishing that the Non-U.S. Holder is not a U.S. person.

A Non-U.S. Holder that does not qualify for exemption from U.S. federal income tax under this paragraph generally will be subject to withholding of U.S. federal income tax at a 30% rate (or lower applicable treaty rate) on payments of Accrued Interest that are not effectively connected with the conduct of a U.S. trade or business.

If the gain or Accrued Interest is effectively connected with the conduct by a Non-U.S. Holder of a trade or business within the United States, (and, if a tax treaty applies, is attributable to a permanent establishment in the U.S.), such gain or interest will be subject to U.S. federal income tax on a net income basis generally in the same manner as a U.S. Holder (and, with respect to corporate Holders, may also be subject to a 30% branch profits tax). If Accrued Interest is effectively connected with a U.S. trade or business (and, if a tax treaty applies, is attributable to a permanent establishment in the U.S.), such payments will not be subject to U.S. withholding tax so long as the relevant Non-U.S. Holder provides the Company or its paying agent with the appropriate documentation.

Non-U.S. Holders should consult their own tax advisors regarding the availability of a refund of any U.S. withholding tax.

Information Reporting and Backup Withholding. The receipt of the Consideration by a Non-U.S. Holder in exchange for a Note which occurs through the U.S. office of any broker, domestic or foreign, will be subject to information reporting and backup withholding unless such Holder certifies as to its Non-U.S. status under penalties of perjury or otherwise establishes an exemption. The payment of the Consideration to a Non-U.S. Holder through a non-U.S. office of either a U.S. broker or a non-U.S. broker that is a U.S.-related person will be subject to information reporting (but not backup withholding) unless such broker has documentary evidence in its files that such Non-U.S. Holder is not

a U.S. person or the Non-U.S. Holder establishes an exemption. For this purpose, a "U.S.-related person" is:

- a controlled foreign corporation for U.S. federal income tax purposes;
- a foreign person 50% or more of whose gross income from all sources for the three-year period ending with the close of its taxable year preceding payment (or for such part of the period that the broker has been in existence) is derived from activities that are effectively connected with the conduct of a U.S. trade or business; or
- a foreign partnership that is either engaged in the conduct of a trade or business in the United States or of which 50% or more of its income or capital interests are held by U.S. persons.

Neither information reporting nor backup withholding will apply to a payment of the Consideration to a Non-U.S. Holder through a non-U.S. office of a non-U.S. broker that is not a U.S.-related person. Copies of any information returns filed with the IRS may be made available by the IRS, under the provisions of a specific treaty or agreement, to the taxing authorities of the country in which the Non-U.S. Holder resides.

Backup withholding and information reporting generally will not apply to Accrued Interest payments made to a Non-U.S. Holder in respect of the Notes if such Non-U.S. Holder furnishes the Company or its paying agent with appropriate documentation of such Holder's non-U.S. status.

Any amounts withheld under the backup withholding rules from a payment to a Non-U.S. Holder will be allowed as a refund or a credit against such Non-U.S. Holder's U.S. federal income tax liability, provided that the requisite procedures are followed.

DEALER MANAGERS; INFORMATION AGENT; DEPOSITARY

The Company has retained Citigroup Global Markets Inc. (" *Citi* ") and Merrill Lynch, Pierce, Fenner & Smith Incorporated (" *Merrill Lynch* ") to act as the exclusive Dealer Managers for each Offer. In their capacity as the Dealer Managers, Citi and Merrill Lynch may contact Holders regarding any Offer and may request DTC Participants to forward this Offer to Purchase and related materials to beneficial owners of Notes.

The Company will pay Citi customary fees for its services and reimburse Citi for its reasonable out-of-pocket expenses in connection therewith. The Company has also agreed to indemnify Citi and its affiliates against certain liabilities under U.S. federal or state law or otherwise caused by, relating to or arising out of any Offer. Citi and its affiliates have provided, and may continue to provide in the future, investment banking, general financing and banking services to the Company and its affiliates.

The Company will pay Merrill Lynch customary fees for its services and reimburse Merrill Lynch for its reasonable out-of-pocket expenses in connection therewith. The Company has also agreed to indemnify Merrill Lynch and its affiliates against certain liabilities under U.S. federal or state law or otherwise caused by, relating to or arising out of any Offer. Merrill Lynch and its affiliates have provided, and may continue to provide in the future, investment banking, general financing and banking services to the Company and its affiliates.

Global Bondholder Services Corporation has been appointed the Information Agent with respect to each Offer. The Company will pay the Information Agent customary fees for its services and reimburse the Information Agent for its reasonable out-of-pocket expenses in connection therewith. The Company has also agreed to indemnify the Information Agent for certain liabilities under U.S. federal or state law or otherwise caused by, relating to or arising out of any Offer. Requests for additional copies of documentation may be directed to the Information Agent at the address and telephone numbers set forth on the back cover of this Offer to Purchase.

Global Bondholder Services Corporation has also been appointed the Depositary for each Offer. The Company will pay the Depositary customary fees for its services and reimburse the Depositary for its reasonable out-of-pocket expenses in connection therewith. The Company has also agreed to indemnify the Depositary for certain liabilities under U.S. federal or state law or otherwise caused by, relating to or arising out of any Offer. All deliveries and correspondence sent to the Depositary should be directed to the address set forth on the back cover of this Offer to Purchase.

In connection with the Offers, directors and officers of Level 3 and its respective affiliates may solicit tenders by use of the mails, personally or by telephone, facsimile, telegram, electronic communication or other similar methods. The Company will, upon request, also pay brokerage houses and other custodians, nominees and fiduciaries the reasonable and customary handling and mailing expenses incurred by them in forwarding copies of this Offer to Purchase and related documents to the beneficial owners of the Notes and in handling or forwarding tenders of Notes by their customers.

MISCELLANEOUS

Securities Ownership. Other than as set forth below, based on the Company's records and on information provided to the Company by its directors, executive officers, affiliates and subsidiaries, neither the Company nor, to the Company's knowledge, any of its affiliates or subsidiaries or persons controlling the Company, and, to the Company's knowledge, none of the directors, managers or executive officers of the Company or any of its subsidiaries, or any affiliates or subsidiaries of any of the foregoing, beneficially owns any Notes.

As of the date of this Offer to Purchase, Walter Scott, Jr., Chairman of the Board of Directors of the Company, beneficially owns (i) \$28,500,000 aggregate principal amount of the Company's 2009 Notes, which constitutes approximately 9.3% of the aggregate principal amount outstanding of such

Notes and (ii) \$15,400,000 aggregate principal amount of the Company's 2010 Subordinated Notes, which constitutes approximately 3.2% of the aggregate principal amount outstanding of such Notes. Mr. Scott has agreed with the Company to tender all such Notes in the applicable Offers.

In addition, Mr. Scott has agreed to purchase (through various entities affiliated with him) \$10,776,000 aggregate principal amount of the New Notes (or \$36,976,000 aggregate principal amount of the New Notes if the Company accepts for payment any of its 2009 Subordinated Notes pursuant to the terms and conditions of such Offer) pursuant to the Securities Purchase Agreement described under "The Offers—Source and Amount of Funds or Other Consideration." See "The Offers—Source and Amount of Funds or Other Consideration."

As of the date of this Offer to Purchase, Robert E. Julian, a Director of the Company, beneficially owns \$4,161,000 aggregate principal amount of the Company's 2010 Subordinated Notes, which constitutes approximately 1% of the aggregate principal amount outstanding of such Notes. Mr. Julian has agreed with the Company to tender all such Notes in the applicable Offers.

In addition, Mr. Julian has agreed to purchase (through various entities affiliated with him) \$2,900,000 aggregate principal amount of the New Notes pursuant to the Securities Purchase Agreement described under "The Offers—Source and Amount of Funds or Other Consideration." See "The Offers—Source and Amount of Funds or Other Consideration."

Recent Securities Transactions. Other than as set forth below, based on the Company's records and on information provided to the Company by its directors, executive officers, affiliates and subsidiaries, neither the Company nor, to the Company's knowledge, any of its affiliates or subsidiaries or persons controlling the Company, and, to the Company's knowledge, none of the directors, managers or executive officers of the Company or any of its subsidiaries, or any affiliates or subsidiaries of any of the foregoing, have effected any transactions involving the Notes during the 60 days prior to the date of this Offer to Purchase.

- On October 8, 2008, the Company entered into an exchange agreement with an institutional holder of certain of the Company's 2010 Senior Notes, 10% Convertible Senior Notes due 2011, 5.25% Convertible Senior Notes due 2011 and 3.5% Convertible Senior Notes due 2012. Pursuant to such exchange agreement, the Company issued an aggregate of 31,719,644 shares of its common stock, par value \$0.01 per share, in exchange for \$4,209,000 aggregate principal amount of its 2010 Senior Notes, \$47,200,000 aggregate principal amount of its 10% Convertible Senior Notes due 2011, \$15,195,000 aggregate principal amount of its 5.25% Convertible Senior Notes due 2011 and \$9,025,000 aggregate principal amount of its 3.5% Convertible Senior Notes due 2012. The Company also paid aggregate accrued and unpaid interest of \$2,468,976 on such exchanged notes from the applicable last interest payment date to, but not including, the closing date of that exchange transaction.
- On October 13, 2008, the Company entered into two exchange agreements with institutional holders of its 2009 Notes. Pursuant to such exchange agreements, the Company issued an aggregate of 10,125,283 shares of its common stock, par value \$0.01 per share, in exchange for an aggregate of \$17,572,000 aggregate principal amount of its 2009 Notes. The Company also paid aggregate accrued and unpaid interest of \$84,931 on the 2009 Notes from the last interest payment date to, but not including, the closing date of these exchange transactions.
- On October 14, 2008, the Company entered into three exchange agreements with affiliated institutional holders of its 2010 Senior Notes. Pursuant to these exchange agreements, the Company issued an aggregate of 5,776,398 shares of its common stock, par value \$0.01 per share, in exchange for an aggregate of \$15,000,000 aggregate principal amount of its 2010 Senior Notes. The Company also paid aggregate accrued and unpaid interest of \$110,208 on the 2010

Senior Notes from the last interest payment date to, but not including, the closing date of these exchange transactions.

For more information about these exchange offer transactions, see the Company's Form 8-K/A filed with the SEC on October 15, 2008, which is incorporated herein by reference. See "Available Information."

Ownership of Southeastern Asset Management, Inc. As of the date of this Offer to Purchase, Southeastern Asset Management, Inc. ("*Southeastern*") beneficially owns approximately \$45 million aggregate principal amount of the 2010 Subordinated Notes. Southeastern has agreed to purchase on behalf of its advisory clients \$100,062,000 aggregate principal amount of the New Notes pursuant to the Securities Purchase Agreement described under "The Offers—Source and Amount of Funds or Other Consideration."

No Offer is being made to (nor will tenders of Notes be accepted from or on behalf of) Holders of Notes in any jurisdiction in which the making or acceptance of any Offer would not be in compliance with the laws of such jurisdiction. If the Company becomes aware of any jurisdiction in which the making of an Offer or the tender of Notes in connection therewith would not be in compliance with applicable law, the Company may, in its sole discretion, make an effort to comply with any such law. If, after such effort, the Company cannot comply with any such law, such Offer will not be made to (nor will tenders be accepted on behalf of) any Holder residing in such jurisdiction.

LEVEL 3 COMMUNICATIONS, INC.

The Depositary for the Offers is:

Global Bondholder Services Corporation

By Mail, Overnight Courier or by Hand:

65 Broadway—Suite 723
New York, New York 10006
Attn: Corporate Actions

Any questions or requests for assistance may be directed to the Dealer Managers or the Information Agent at the addresses and telephone numbers set forth below. Requests for additional copies of this Offer to Purchase and the Letter of Transmittal may be directed to the Information Agent. Requests for copies of the Incorporated Documents may also be directed to the Information Agent. Beneficial owners may also contact their broker, dealer, commercial bank, trust company or other nominee for assistance concerning the Offers.

The Information Agent for the Offers is:

Global Bondholder Services Corporation

65 Broadway—Suite 723
New York, New York 10006
Attn: Corporate Actions

Banks and Brokers call: (212) 430-3774
Toll free (866) 389-1500

The Dealer Managers for the Offers are:

Citi

390 Greenwich Street, 4th Floor
New York, New York 10013
Attn: Liability Management Group

Collect: (212) 723-6106
Toll free (800) 558-3745

Merrill Lynch & Co.

4 World Financial Center, 7th Floor
New York, New York 10080
Attn: Liability Management

Collect: (212) 449-4914
Toll free: (888) 654-8637

QuickLinks

Exhibit (a)(1)(i)

IMPORTANT
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**LETTER OF TRANSMITTAL
OF
LEVEL 3 COMMUNICATIONS, INC.**

**Pursuant to the Offer to Purchase
Dated November 17, 2008**

**2.875% Convertible Senior Notes due 2010
6% Convertible Subordinated Notes due 2010
6% Convertible Subordinated Notes due 2009
(collectively, the "Notes")**

Each Offer (as defined below) will expire at 12:00 midnight, New York City time, on December 15, 2008, unless extended for that Offer as described in the Offer to Purchase (such date and time, as the same may be extended with respect to that Offer, the "*Expiration Date*"). **If you choose to tender and wish to receive the consideration shown in the table on the front cover of the Offer to Purchase (as defined below), you must validly tender your Notes at or prior to the applicable Expiration Date.**

The Depositary for the Offers is:

Global Bondholder Services Corporation

By Mail, Overnight Courier or by Hand:
**65 Broadway—Suite 723
New York, New York 10006**

DELIVERY OF THIS LETTER OF TRANSMITTAL TO AN ADDRESS OTHER THAN AS SET FORTH ABOVE WILL NOT CONSTITUTE A VALID DELIVERY.

The instructions contained herein should be read carefully before this Letter of Transmittal is completed. All capitalized terms used herein and not defined shall have the meanings ascribed to them in the Offer to Purchase dated November 17, 2008 (as the same may be amended or supplemented from time to time, the "*Offer to Purchase*").

Questions and requests for assistance relating to the procedures for tendering Notes and requests for additional copies of the Offer to Purchase and this Letter of Transmittal may be directed to the Information Agent at the address and telephone numbers on the back cover of this Letter of Transmittal.

This Letter of Transmittal and the instructions hereto (the "*Letter of Transmittal*") and the Offer to Purchase (together with this Letter of Transmittal, as amended from time to time, the "*Offer Documents*") of Level 3 Communications, Inc. (the "*Company*") constitute the Company's offers (each, an "*Offer*" and collectively, the "*Offers*") to purchase for cash any and all of the Notes, at the consideration and subject to the terms and conditions set forth in the Offer to Purchase, from registered holders of the Notes (each, a "*Holder*" and collectively, the "*Holders*").

This Letter of Transmittal is to be used by each Holder if you desire to tender such Notes. If: (1) you hold such Notes in book entry form through the Depositary Trust Company ("*DTC*"), then you may transfer such Notes through DTC's Automated Tender Offer Program ("*ATOP*"), following the procedures set forth in the Offer to Purchase under "Procedures for Tendering Notes—Notes Held Through DTC" or (2) you hold physical certificates evidencing such Notes, then you must complete and sign this Letter of Transmittal in accordance with the instructions set forth herein, have the signature hereon guaranteed, if required hereunder, and send or deliver the manually signed Letter of Transmittal, together with any certificates you hold evidencing the Notes you are tendering and any other required documents to the Depositary at its address set forth in this Letter of Transmittal.

The Depositary and DTC have confirmed that Notes held in book-entry form through DTC that are to be tendered in the Offers are eligible for ATOP. To effectively tender Notes eligible for ATOP that are held through DTC, DTC participants must, in lieu of physically completing and signing this Letter of Transmittal and delivering it to the Depositary, electronically transmit their acceptance through ATOP, and DTC will then verify the acceptance, execute a book-entry delivery to the Depositary's account at DTC and send an Agent's Message to the Depositary for its acceptance. The confirmation of a book-entry transfer into the Depositary's account at DTC as described above is referred to herein as a "*Book-Entry Confirmation* ." Delivery of documents to DTC does not constitute delivery to the Depositary. The term "*Agent's Message* " as used herein means a message transmitted by DTC to, and received by, the Depositary and forming a part of the Book-Entry Confirmation, which states that DTC has received an express acknowledgment from the participant in DTC described in such Agent's Message, stating (a) such participant has received and agrees to be bound by the terms and conditions of an Offer as set forth in the Offer to Purchase and this Letter of Transmittal and that the Company may enforce such agreement against such participant, (b) such participant has full power and authority to tender, exchange, assign and transfer the Notes and (c) when the tendered Notes are accepted for payment by the Company, the Company will acquire good and marketable title thereto, free and clear of all liens, restrictions, charges and encumbrances and not subject to any adverse claims.

If an Offer is terminated or the Notes are validly withdrawn prior to the applicable Expiration Date, or the Notes are not accepted for payment, the Consideration applicable to such series of Notes will not be paid or become payable. If any tendered Notes are not purchased pursuant to an Offer for any reason, or certificates are submitted evidencing more Notes than are tendered, such Notes not purchased will be returned, without expense, to the tendering Holder (or, in the case of Notes tendered by book-entry transfer, such Notes will be credited to the account maintained at DTC from which such Notes were delivered), unless otherwise requested by such Holder under "Special Delivery Instructions" in this Letter of Transmittal, promptly following the applicable Expiration Date or termination of an Offer.

Each Offer is made upon the terms and subject to the conditions set forth in the Offer Documents. Holders should carefully review such information.

No Offer is not being made to, nor will tenders of Notes be accepted from or on behalf of, Holders in any jurisdiction in which the making or acceptance of any Offer would not be in compliance of the laws of such jurisdiction.

You must complete, execute and deliver this Letter of Transmittal to indicate the action you desire to take with respect to an Offer. If you hold your Notes through a broker, your broker can assist you in completing this form. The instructions included with this Letter of Transmittal must be followed. See Instruction 10 below.

Holders who wish to tender their Notes must complete the box below entitled "Method of Delivery" and complete the box below entitled "Description of Notes Tendered" and sign in the appropriate box below.

METHOD OF DELIVERY

- ☐ CHECK HERE IF CERTIFICATES FOR TENDERED NOTES ARE ENCLOSED.
- ☐ CHECK HERE IF TENDERED NOTES ARE BEING DELIVERED BY BOOK-ENTRY TRANSFER MADE TO THE ACCOUNT MAINTAINED BY THE DEPOSITARY WITH DTC AND COMPLETE THE FOLLOWING:

Name of Tendering Institution: _____

DTC Account Number: _____

Transaction Code Number: _____

List below the Notes to which this Letter of Transmittal relates. If the space provided below is inadequate, list the issue of Notes, the certificate numbers and principal amounts on a separately executed schedule and affix the schedule to this Letter of Transmittal. Tenders of Notes will be accepted only in principal amounts equal to \$1,000 or integral multiples thereof. No alternative, conditional or contingent tenders will be accepted. **This Letter of Transmittal need not be completed by Holders tendering Notes by ATOP.**

DESCRIPTION OF SECURITIES TENDERED

Name(s) and Address(es) of Holder(s) (Please fill in, if blank)	Series of Notes	Certificate Number(s)	Aggregate Principal Amount Represented	Principal Amount Tendered*
		Total Principal		
		Amounts of Notes		

* Unless otherwise indicated in this column labeled "Principal Amount Tendered" and subject to the terms and conditions of the Offer to Purchase, a Holder will be deemed to have tendered the entire aggregate principal amount represented by the Notes indicated in the column labeled "Aggregate Principal Amount Represented." See Instruction 2.

The names and addresses of the registered Holders should be printed exactly as they appear on the certificates representing Notes tendered hereby.

If you do not wish to tender your Notes, you do not need to return this Letter of Transmittal or take any other action.

**NOTE: SIGNATURES MUST BE PROVIDED BELOW.
PLEASE READ THE ACCOMPANYING INSTRUCTIONS CAREFULLY.**

Ladies and Gentlemen:

By execution hereof, the undersigned acknowledges receipt of the Offer to Purchase, dated November 17, 2008 (the "*Offer to Purchase*"), of Level 3 Communications (the "*Company*"), and this Letter of Transmittal and instructions hereto (the "*Letter of Transmittal*" and, together with the Offer to Purchase, as amended from time to time, the "*Offer Documents*"), which together constitute the Company's offers (each, an "*Offer*" and collectively, the "*Offers*") to purchase for cash any and all of its (i) 2.875% Convertible Senior Notes due 2010, (ii) 6% Convertible Subordinated Notes due 2010 and (iii) 6% Convertible Subordinated Notes due 2009 (collectively, the "*Notes*"), at the consideration per \$1,000 principal amount and subject to the terms and conditions set forth in the Offer to Purchase, from registered holders of the Notes (each, a "*Holder*" and collectively, the "*Holder*s").

Upon the terms and subject to the conditions of each Offer set forth in the Offer to Purchase, the undersigned hereby tenders to the Company the principal amount of Notes indicated above. All capitalized terms used herein and not defined shall have the meanings ascribed to them in the Offer to Purchase.

Subject to, and effective upon, the acceptance for payment of, and payment for, the Notes tendered hereby, by executing and delivering this Letter of Transmittal a tendering Holder of Notes (i) irrevocably sells, assigns and transfers to, or upon the order of, the Company, all right, title and interest in and to all the Notes tendered hereby, (ii) waives any and all rights with respect to such Notes (including, without limitation, any existing or past defaults and their consequences in respect of such Notes and the respective indentures under which such Notes were issued), (iii) releases and discharges the Company from any and all claims such Holder may have now, or may have in the future arising out of, or related to, such Notes, including, without limitation, any claims that such Holder is entitled to receive additional principal or interest payments with respect to such Notes, to convert the Notes into cash or cash and shares of common stock, to participate in any redemption or defeasance of such Notes or be entitled to any of the benefits under the respective indentures under which the Notes were issued and (iv) irrevocably constitutes and appoints the Depositary as the true and lawful agent and attorney-in-fact of such Holder with respect to any such tendered Notes, with full power of substitution and resubstitution (such power of attorney being deemed to be an irrevocable power coupled with an interest) to (a) deliver certificates representing such Notes, or transfer ownership of such Notes on the account books maintained by DTC, together, in any such case, with all accompanying evidences of transfer and authenticity, to the Company, (b) present such Notes for transfer on the relevant security register, (c) receive all benefits or otherwise exercise all rights of beneficial ownership of such Notes (except that the Depositary will have no rights to, or control over, funds from the Company, except as agent for the tendering Holders, for the Consideration and Accrued Interest for any tendered Notes that are purchased by the Company) and (d) deliver to the Company this Letter of Transmittal, all upon the terms and subject to the conditions of the Offers.

The undersigned understands and acknowledges that each Offer will expire on the applicable Expiration Date, unless extended or earlier terminated by the Company with respect to any or all Offers. In addition, the undersigned understands and acknowledges that, in order to receive the Consideration, the undersigned must have validly tendered (and not validly withdrawn) Notes at or prior to the applicable Expiration Date.

Unless otherwise indicated herein under "Special Payment Instructions," the undersigned hereby requests that checks for payments of the Consideration and Accrued Interest to be made in connection with each Offer be issued to the order of the undersigned. Similarly, unless otherwise indicated herein under "Special Delivery Instructions," the undersigned hereby requests that any Notes representing principal amounts not tendered or not accepted for payment be issued to the undersigned at the address(es) shown above. In the event that the "Special Payment Instructions" box or the "Special Delivery Instructions" box is, or both are, completed, the undersigned hereby requests that any Notes representing principal amounts not tendered or not accepted for payment be issued in the name(s) of,

certificates for such Notes be delivered to, and checks for payments of the Consideration, if any, be issued in the name(s) of, and be delivered to, the person(s) at the addresses so indicated, as applicable. The undersigned recognizes that the Company has no obligation pursuant to the "Special Payment Instructions" box or "Special Delivery Instructions" box to transfer any Notes from the name of the registered Holder(s) thereof if the Company does not accept for purchase any of the principal amount of such Notes so tendered.

Tenders of Notes may be validly withdrawn at any time up until 12:00 midnight, New York City time, on the applicable Expiration Date. Thereafter, such tenders are irrevocable, except that they may be withdrawn after January 14, 2009 (if the applicable Expiration Date has not occurred prior to that date), unless such Notes have been accepted for payment as provided in the Offer to Purchase. In the event of a termination of any of the Offers, the respective tendered Notes will promptly be returned to the Holder or credited to such Holder's account through DTC and such Holder's DTC participant, unless otherwise indicated under "Special Delivery Instructions." In the event Notes tendered by a Holder are not purchased due to proration, they will be promptly returned to such Holder or credited to such Holder's account, unless otherwise indicated under "Special Delivery Instructions."

For a withdrawal of a tender of Notes to be effective, a written or facsimile transmission notice of withdrawal must be received by the Depositary on or prior to the applicable Expiration Date, by mail or hand delivery or by a properly transmitted "Request Message" through ATOP. Any such notice of withdrawal must (a) specify the name of the person who tendered the Notes to be withdrawn, the name in which those Notes are registered (or, if tendered by a book-entry transfer, the name of the participant in DTC whose name appears on the security position listing as the owner of such Notes), if different from that of the person who deposited the Notes, (b) contain the description of the Notes to be withdrawn, the certificate number or numbers of such Notes, unless such Notes were tendered by book-entry delivery, and the aggregate principal amount represented by such Notes, (c) unless transmitted through ATOP, be signed by the Holder thereof in the same manner as the original signature on this Letter of Transmittal, including any required signature guarantee(s), or be accompanied by documents of transfer sufficient to have the applicable Note trustee register the transfer of the Notes into the name of the person withdrawing such Notes and (d) if this Letter of Transmittal was executed by a person other than the registered Holder, be accompanied by a properly completed irrevocable proxy that authorized such person to effect such withdrawal on behalf of such Holder.

The undersigned understands that tenders of Notes pursuant to any of the procedures described in the Offer Documents and acceptance thereof by the Company will constitute a binding agreement between the undersigned and the Company upon the terms and subject to the conditions of each Offer.

The undersigned hereby represents and warrants that the undersigned has full power and authority to tender, sell, assign and transfer the Notes tendered hereby, and that when such Notes are accepted for payment by the Company, the Company will acquire good title thereto, free and clear of all liens, restrictions, charges and encumbrances and not subject to any adverse claim or right. The undersigned will, upon request, execute and deliver any additional documents deemed by the Depositary or by the Company to be necessary or desirable to complete the sale, assignment and transfer of the Notes tendered hereby.

For purposes of each Offer, the undersigned understands that the Company will be deemed to have accepted for payment, and thereby purchased, all Notes validly tendered and not validly withdrawn on or prior to the applicable Expiration Date, or defectively tendered Notes with respect to which the Company has waived such defect, if, as and when the Company gives written notice thereof to the Depositary.

The undersigned understands that, as set forth in the Offer to Purchase, the Company will not be required to accept for purchase any of the Notes tendered if the conditions to an Offer as described therein are not met.

All authority conferred or agreed to be conferred by this Letter of Transmittal shall survive the death or incapacity of the undersigned and every obligation of the undersigned under this Letter of Transmittal shall be binding upon the undersigned's heirs, personal representatives, executors, administrators, successors, assigns, trustees in bankruptcy and other legal representatives.

The undersigned understands that the delivery and surrender of the Notes is not effective, and the risk of loss of the Notes does not pass to the Depositary, until receipt by the Depositary of (1) certificates representing such Notes or timely confirmation of a book-entry transfer of such Notes into the Depositary's account at DTC pursuant to the procedures set forth in this section, (2) a properly completed and duly executed Letter of Transmittal or a properly transmitted Agent's Message through ATOP and (3) any other documents required by this Letter of Transmittal at or prior to the applicable Expiration Date, together with all accompanying evidences of authority and any other required documents in form satisfactory to us. All questions as to the form of all documents and the validity (including time of receipt) and acceptance of tenders and withdrawals of Notes will be determined by the Company, which determination shall be final and binding.

PLEASE SIGN BELOW—To Be Completed By All Tendering Holders

This Letter of Transmittal must be signed by the registered Holder(s) of Notes exactly as his, her, its or their name(s) appear(s) on certificate(s) for such Notes or, if tendered by a DTC participant, exactly as such participant's name appears on a security position listing such participant as the owner of the Notes, or by person(s) authorized to become registered Holder(s) by endorsements on certificates for Notes or by bond powers transmitted with this Letter of Transmittal. Endorsements on Notes and signatures on bond powers by registered Holders not executing this Letter of Transmittal must have a guarantee by a Medallion Signature Guarantor. See Instruction 3 below. If signature is by a trustee, executor, administrator, guardian, attorney-in-fact, officer or other person acting in a fiduciary or representative capacity, such person must set forth his or her full title below under "Capacity" and submit evidence satisfactory to the Company of such person's authority to so act. See Instruction 3 below.

X

X

(Signature of Registered Holder(s) or Authorized Signatory)

Date: _____, 2008

Name(s):

(Please Print)

Capacity:

Address:

(Including Zip Code)

Area Code and Telephone Number:

**PLEASE COMPLETE SUBSTITUTE FORM W-9 HEREIN AND
SIGNATURE GUARANTEE, IF REQUIRED (See Instruction 3 below)
Certain Signatures Must be Guaranteed by a Medallion Signature Guarantor**

(Name of Medallion Signature Guarantor)

(Address (including zip code) and Telephone Number (including area code) of Medallion Signature Guarantor)

(Authorized Signature)

(Printed Name)

(Title)

Date: _____, 2008

SPECIAL PAYMENT INSTRUCTIONS
(See Instruction 3)

To be completed ONLY if the Consideration and Accrued Interest is to be issued to someone other than the person or persons whose signature(s) appear(s) within this Letter of Transmittal or issued to an address different from that shown in the box entitled "Description of Notes Tendered" within this Letter of Transmittal.

Pay the Consideration and Accrued Interest to:

Name _____

(Please Print)

Address _____

(Including Zip Code)

(Taxpayer Identification or Social Security Number)

(See Substitute Form W-9 herein)

SPECIAL DELIVERY INSTRUCTIONS
(See Instruction 3)

To be completed ONLY if certificates for Notes in a principal amount not tendered or not accepted for payment are to be sent to someone other than the person or persons whose signature(s) appear(s) within this Letter of Transmittal or issued to an address different from that shown in the box entitled "Description of Notes Tendered" within this Letter of Transmittal.

Deliver the Notes to:

Name _____

(Please Print)

Address _____

(Including Zip Code)

(Taxpayer Identification or Social Security Number)

(See Substitute Form W-9 herein)

Credit unpurchased Notes delivered by book-entry transfer to the DTC account set forth below:

DTC Account Number: _____

INSTRUCTIONS

Forming Part of the Terms and Conditions of Each Offer

1. **Delivery of this Letter of Transmittal and Certificates for Notes or Book-Entry Confirmations; Withdrawal of Tenders.** This Letter of Transmittal is to be used by each registered Holder if (1) certificates representing Notes are to be physically delivered to the Depositary herewith by such Holder or (2) tender of Notes is to be made by book-entry transfer to the Depositary's account at DTC; and, in each case, instructions are not being transferred through ATOP. The method of delivery of this Letter of Transmittal, the Notes and all other required documents to the Depositary is at the election and risk of Holders, and delivery will be deemed made when actually received or confirmed by the Depositary. If such delivery is by mail, it is suggested that Holders use properly insured registered mail with return receipt requested, and that the mailing be made sufficiently in advance of the applicable Expiration Date to permit delivery to the Depositary on or prior to such date. **This Letter of Transmittal and Notes should be sent only to the Depositary. Delivery of documents to DTC, the Dealer Managers, the Company or the Information Agent shall not constitute delivery to the Depositary.**

The Depositary and DTC have confirmed that Notes held in book-entry form through DTC that are to be tendered in the Offers are eligible for ATOP. To effectively tender Notes eligible for ATOP that are held through DTC, DTC participants must, in lieu of physically completing and signing this Letter of Transmittal and delivering it to the Depositary, electronically transmit their acceptance through ATOP, and DTC will then verify the acceptance, execute a book-entry delivery to the Depositary's account at DTC and send an Agent's Message to the Depositary for its acceptance. The confirmation of a book-entry transfer into the Depositary's account at DTC as described above is referred to herein as a "*Book-Entry Confirmation* ." Delivery of documents to DTC does not constitute delivery to the Depositary. The term "*Agent's Message* " as used herein means a message transmitted by DTC to, and received by, the Depositary and forming a part of the Book-Entry Confirmation, which states that DTC has received an express acknowledgment from the participant in DTC described in such Agent's Message, stating (a) such participant has received and agrees to be bound by the terms and conditions of an Offer as set forth in the Offer to Purchase and this Letter of Transmittal and that the Company may enforce such agreement against such participant, (b) such participant has full power and authority to tender, exchange, assign and transfer the Notes and (c) when the tendered Notes are accepted for payment by the Company, the Company will acquire good and marketable title thereto, free and clear of all liens, restrictions, charges and encumbrances and not subject to any adverse claims. **Holders desiring to tender Notes on the applicable Expiration Date through ATOP should note that such Holders must allow sufficient time for completion of the ATOP procedures during the normal business hours of DTC on such date.**

All tendering Holders, by execution of this Letter of Transmittal or a facsimile hereof, or delivery of an Agent's Message through ATOP, waive any right to receive notice of the acceptance of their Notes for purchase.

Holders who wish to exercise their right of withdrawal with respect to an Offer must give written notice of withdrawal, delivered by mail or hand delivery, or a properly transmitted "Request Message" through ATOP, which notice must be received by the Depositary at its address set forth on the cover of this Letter of Transmittal on or prior to the applicable Expiration Date or at such other permissible times as are described in the Offer to Purchase. In order to be valid, a notice of withdrawal must include the items listed in the Offer to Purchase. Holders may not rescind withdrawals of tendered Notes. However, validly withdrawn Notes may be retendered by following the procedures therefor described elsewhere in the Offer to Purchase at any time at or prior to the applicable Expiration Date.

2. **Partial Tenders.** Valid tenders of the 2.875% Convertible Senior Notes due 2010, the 6% Convertible Subordinated Notes due 2010 and the 6% Convertible Subordinated Notes due 2009 pursuant to the applicable Offers will be accepted only in principal amounts of \$1,000 or integral multiples thereof. If less than the entire principal amount of any Notes evidenced by a submitted certificate is tendered, the tendering Holder must fill in the principal amount tendered in the column

of the box entitled "Description of Notes Tendered" herein. The entire principal amount represented by the certificates for all Notes delivered to the Depositary will be deemed to have been tendered unless otherwise indicated. If the entire principal amount of all Notes is not tendered or not accepted for payment, Notes representing such untendered amount will be sent to, or if tendered by book-entry transfer through DTC, returned by credit to the account at DTC designated herein of, the Holder unless otherwise provided in the appropriate box on this Letter of Transmittal (see Instruction 4), promptly after the Payment Date.

3. Signatures on this Letter of Transmittal, Bond Powers and Endorsement; Guarantee of Signatures. If this Letter of Transmittal is signed by the registered Holder(s) of the Notes tendered hereby, the signature(s) must correspond with the name(s) as written on the face of the certificate(s) without alteration, enlargement or any change whatsoever. If this Letter of Transmittal is signed by a participant in DTC whose name is shown as the owner of the Notes tendered hereby, the signature must correspond with the name shown on the security position listed as the owner of the Notes.

If any of the Notes tendered hereby are registered in the name of two or more Holders, all such Holders must sign this Letter of Transmittal. If any tendered Notes are registered in different names on several certificates, it will be necessary to complete, sign and submit as many separate copies of this Letter of Transmittal and any necessary accompanying documents as there are different names in which certificates are held.

If this Letter of Transmittal is signed by the Holder, and certificates for any principal amount of Notes not tendered or not accepted for payment are to be issued, or if any principal amount of Notes that is not tendered or not accepted for payment is to be reissued or returned, to or, if tendered by book-entry transfer, credited to the account at DTC of the Holder, to the Holder, and checks for payments of the Consideration and Accrued Interest to be made in connection with an Offer are to be issued to the order of the Holder, then the Holder need not endorse any certificates for tendered Notes, nor provide a separate bond power. In any other case, the Holder must either properly endorse the certificates for Notes tendered or transmit a separate properly completed bond power with this Letter of Transmittal, in either case, executed exactly as the name(s) of the registered Holder(s) appear(s) on such Notes, and, with respect to a participant in DTC whose name appears on a security position listing as the owner of the Notes, exactly as the name(s) of the participant(s) appear(s) on such security position listing, with the signature on the endorsement or bond power guaranteed by a Medallion Signature Guarantor, unless such certificates or bond powers are executed by a Medallion Signature Guarantor.

If this Letter of Transmittal or any certificates for Notes or bond powers are signed by trustees, executors, administrators, guardians, attorneys-in-fact, officers of corporations or others acting in a fiduciary or representative capacity, such persons should so indicate when signing, and proper evidence satisfactory to the Company and the Depositary of their authority so to act must be submitted with this Letter of Transmittal.

Endorsements on certificates for Notes and signatures on bond powers provided in accordance with this Instruction 3 by registered Holders not executing this Letter of Transmittal must be guaranteed by a Medallion Signature Guarantor.

No signature guarantee is required if (a) this Letter of Transmittal is signed by the registered Holder(s) of the Notes tendered herewith, or by a participant in DTC whose name appears on a security position listing as the owner of the Notes, and the payment of the Consideration and Accrued Interest is to be made, or any Notes for principal amounts not tendered or not accepted for payment are to be issued, directly to such Holder(s), or, if signed by a participant in DTC, any Notes for principal amounts not tendered or not accepted for payment are to be credited to such participant's account at DTC, and neither the "Special Payment Instructions" box nor the "Special Delivery Instructions" box of this Letter of Transmittal has been completed or (b) such Notes are tendered for the account of a member firm of a registered national securities exchange, a member of the Financial Industry Regulatory Authority or a commercial bank, trust company or other nominee having an office or correspondent in the United States. In all other cases, all signatures on Letters of Transmittal and

endorsements on certificates, signatures on bond powers, if any, accompanying Notes must be guaranteed by a recognized participant in the Notes Transfer Agents Medallion Program, the New York Stock Exchange Medallion Signature Program or the Stock Exchange Medallion Program (a " *Medallion Signature Guarantor* ").

4. Special Payment and Special Delivery Instructions. Tendering Holders should indicate in the applicable box or boxes the name and address to which Notes for principal amounts not tendered or not accepted for payment or checks for payment of the Consideration and Accrued Interest to be made in connection with an Offer are to be issued or sent, if different from the name and address of the registered Holder signing this Letter of Transmittal. In the case of issuance in a different name, the taxpayer identification number or social security number (collectively, the " *TIN* ") of the person named must also be indicated. If no instructions are given (a) payment of the Consideration and Accrued Interest to be made in connection with an Offer will be made to and (b) Notes not tendered or not accepted for payment will be returned to, the registered Holder of the Notes tendered. The Company has no obligation pursuant to the "Special Payment Instructions" box or "Special Delivery Instructions" box to transfer any Notes from the name of the registered Holder(s) thereof if the Company does not accept for purchase any of the principal amount of such Notes.

5. TIN; Substitute Form W-9; Backup Withholding. Each tendering U.S. Holder is required to provide the Depositary with such U.S. Holder's correct TIN, which, in the case of a U.S. Holder who is an individual, is generally such U.S. Holder's social security number, on the Substitute Form W-9 provided herein or, alternatively, establish another basis for exemption from backup withholding. A U.S. Holder must cross out item (2) in Part III of the Substitute Form W-9 if such U.S. Holder is subject to backup withholding. If the Depositary is not provided with the correct TIN or an adequate basis for an exemption, such Holder may be subject to a penalty imposed by the Internal Revenue Service (the " *IRS* ") and backup withholding in an amount equal to 28% of the amount of the gross proceeds received pursuant to the Offer to Purchase. If withholding results in an overpayment of taxes, a refund may be obtained, provided that the required information is timely furnished to the IRS.

To prevent backup withholding, each tendering Holder must provide such Holder's correct TIN by completing the Substitute Form W-9 set forth herein, certifying that the TIN provided is correct (or that such Holder is awaiting a TIN) and that (a) the Holder is exempt from backup withholding, (b) the Holder has not been notified by the IRS that such Holder is subject to backup withholding as a result of a failure to report all interest or dividends or (c) the IRS has notified the Holder that such Holder is no longer subject to backup withholding. Such Holder must also certify that such Holder is a "U.S. person" as defined under the Internal Revenue Code and applicable Treasury regulations.

If a U.S. Holder does not have a TIN, such U.S. Holder should consult the enclosed Guidelines to Substitute Form W-9 for directions on applying for a TIN, write "Applied For" in the space for the TIN in Part I of the Substitute Form W-9 attached herein and sign and date the Substitute Form W-9. If the U.S. Holder does not provide such U.S. Holder's TIN to the Depositary by the date the payments are due, the payments will be subject to backup withholding at a rate of 28%. **Note: Writing "Applied For" on the form means that the U.S. Holder has already applied for a TIN or that such U.S. Holder intends to apply for one in the near future.**

If the Notes are held in more than one name or are not in the name of the actual owner, consult the Guidelines to Substitute Form W-9 for information on which TIN to report.

Exempt Holders (including, among others, all corporations and certain foreign individuals) are not subject to these backup withholding and reporting requirements. To prevent possible erroneous backup withholding, an exempt Holder that is a U.S. person should check the box titled "Exempt from backup withholding" after the name and address lines of Substitute Form W-9. See the Guidelines to Substitute Form W-9 for additional directions. In order for a nonresident alien or foreign entity to qualify as exempt, such person must submit a completed applicable IRS Form W-8BEN, W-8ECI, W-8EXP or W-8IMY, Certificate of Foreign Status, as the case may be, signed under penalties of perjury attesting to such exempt status. Such form may be obtained from the Depositary or the IRS at its website: <http://www.irs.gov> .

6. **Transfer Taxes.** The Company will pay all transfer taxes applicable to the purchase and transfer of Notes pursuant to each Offer, except if the payment of the Consideration and Accrued Interest is being made to, or if certificates representing Notes for principal amounts not tendered or not accepted for payment are registered or issued in the name of, any person other than the registered holder of Notes tendered thereby or if tendered certificates are registered in the name of any person other than the person(s) signing this Letter of Transmittal or electronically transmitting acceptance through ATOP, then, in such event, the amount of any transfer taxes (whether imposed on the registered Holder(s) or such other person(s)) payable on account of the transfer to such person will be deducted from the Consideration, unless satisfactory evidence of the payment of such taxes or exemption therefrom is submitted.

Except as provided in this Instruction 6, it will not be necessary for transfer tax stamps to be affixed to the certificates listed in this Letter of Transmittal.

7. **Irregularities.** All questions as to the form of all documents and the validity and eligibility (including time of receipt) and acceptance of tenders and withdrawals of Notes will be determined by the Company, in its sole discretion, which determination shall be final and binding on all parties. No alternative, conditional or contingent tenders will be accepted. The Company reserves the absolute right to reject any or all tenders of Notes that are not in proper form or the acceptance of which would, in the opinion of counsel for the Company, be unlawful. The Company also reserves the absolute right to waive any of the conditions of an Offer and any defect or irregularity in the tender of any Notes. The Company's interpretations of the terms and conditions of each Offer, including the instructions in this Letter of Transmittal, will be final and binding. Tenders of Notes will not be deemed to have been validly made until such defects or irregularities have been cured or waived by the Company. All tendering Holders, by execution of this Letter of Transmittal or a facsimile hereof, waive any right to receive notice of the acceptance of their Notes for purchase. None of the Company or any of its affiliates or assigns, the Depositary, the Dealer Managers, the Information Agent or any other person will be under any duty to give notice of any defects or irregularities in such tenders or will incur any liability to a Holder for failure to give such notification.

8. **Waiver of Conditions.** The Company expressly reserves the absolute right, in its sole discretion, to amend or waive any of the conditions to any Offer in the case of any Notes tendered, in whole or in part, at any time and from time to time.

9. **Mutilated, Lost, Stolen or Destroyed Certificates for Notes.** Any Holder whose certificates for Notes have been mutilated, lost, stolen or destroyed should contact the Depositary at the address or telephone number set forth on the back cover of this Letter of Transmittal to receive information about the procedures for obtaining replacement certificates for Notes.

10. **Requests for Assistance or Additional Copies.** Questions and requests for assistance relating to the procedures for tendering Notes and requests for additional copies of the Offer to Purchase and this Letter of Transmittal may be directed to the Information Agent at the address and telephone numbers set forth on the back cover of this Letter of Transmittal.

TO BE COMPLETED BY ALL TENDERING U.S. HOLDERS OF SECURITIES

PAYER'S NAME: Global Bondholder Services Corporation

Name (if in joint names, list first and circle the name of the person or entity whose number you enter in Part I as provided in the enclosed Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9 (the "Guidelines"))

Business Name (Sole proprietors see the instructions in the enclosed Guidelines)

Check appropriate box: ☐ Individual/Sole Proprietor ☐ Corporation ☐ Partnership
☐ Other ☐ Exempt from backup withholding

Address

SUBSTITUTE
IRS Form W-
9

Payer's Request
for
Taxpayer
Identification
Number ("TIN")
and
Certification

Part I— TIN *in the box at right* . (For most individuals, this is your social security number. If you do not have a number, see **Obtaining a Number** in the enclosed Guidelines). Certify by signing and dating below.
Note: If the account is in more than one name, see chart in the enclosed Guidelines to determine which number to give the payer.

Social Security
Number

OR
Employer
Identification Number

(If awaiting TIN write
"Applied For")

Part II— For Payees exempt from backup withholding, see enclosed Guidelines and complete as instructed therein.

Part III—Certification— Under penalties of perjury, I certify that:

- (1) The number shown on this form is my correct Taxpayer Identification Number (or I am waiting for a number to be issued to me);
- (2) I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS notified me that I am no longer subject to backup withholding; and
- (3) I am a U.S. person (including a U.S. resident alien).

Certification Instructions— You should cross out item (2) above if the IRS has notified you that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. However, if after being notified by the IRS that you were subject to backup withholding you received another notification from the IRS that you were no longer subject to backup withholding, do not cross out item (2). (Also see instructions in the enclosed Guidelines.)

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

SIGNATURE

DATE

, 2008

**YOU MUST COMPLETE THE FOLLOWING CERTIFICATE IF YOU WROTE
"APPLIED FOR" IN PART I OF THIS SUBSTITUTE FORM W-9**

CERTIFICATE OF AWAITING TAXPAYER IDENTIFICATION NUMBER

I certify under penalties of perjury that a taxpayer identification number has not been issued to me, and either (a) I have mailed or delivered an application to receive a taxpayer identification number to the appropriate Internal Revenue Service Center or Social Security Administration Office or (b) I intend to mail or deliver such application in the near future. I understand that, notwithstanding the information I provided in Part III of the Substitute Form W-9 (and the fact that I have completed this Certificate of Awaiting Taxpayer Identification Number), all reportable payments made to me will be subject to a 28% backup withholding tax until I provide a properly certified taxpayer identification number.

Signature

Date

, 2008

NOTE: FAILURE TO COMPLETE AND RETURN THE SUBSTITUTE FORM W-9 MAY RESULT IN BACKUP WITHHOLDING TAX OF 28% OF ANY PAYMENTS MADE TO YOU PURSUANT TO AN OFFER. PLEASE REVIEW THE ENCLOSED GUIDELINES FOR CERTIFICATION OF TAXPAYER IDENTIFICATION NUMBER ON SUBSTITUTE FORM W-9 AND CONTACT YOUR TAX ADVISOR FOR ADDITIONAL DETAILS.

GUIDELINES FOR CERTIFICATION OF TAXPAYER IDENTIFICATION NUMBER ON SUBSTITUTE FORM W-9

Guidelines for Determining the Proper Identification Number to Give the Payer. Social Security numbers have nine digits separated by two hyphens: i.e. 000-00-0000. Employer identification numbers have nine digits separated by only one hyphen: i.e. 00-0000000. The table below will help determine the number to give the Company.

Give the TAXPAYER IDENTIFICATION number of—		Give the TAXPAYER IDENTIFICATION number of—	
For this type of account		For this type of account	
1. An individual's account	The individual	7. A valid trust, estate, or pension trust.	The legal entity (Do not furnish the identifying number of the personal representative or trustee unless the legal entity itself is not designated in the account title)(5)
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account(1)	8. Corporate or LLC's electing corporate status on Form 8832 account	The corporation
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor(2)	9. Religious, charitable, or educational organization account	The organization
4. Account in the name of guardian or committee for a designated ward, minor, or incompetent person.	The ward, minor, or incompetent person(3)	10. Partnership or multi-member LLC account	The partnership
5. a. The usual revocable savings trust account (grantor is also trustee)	The grantor-trustee(1)	11. Association, club or other tax-exempt organization	The organization
b. So-called trust account that is not a legal or valid trust under State law	The actual owner(1)	12. A broker or registered nominee	The broker or registered nominee
6. Sole proprietorship account or single-owner limited liability company ("LLC")	The owner(4)	13. Account with the Department of Agriculture in the name of a public entity (such as a State or local government, school district, or prison) that receives agricultural program payments	The public entity

(1) List first and circle the name of the person whose number you furnish. If only one person on a joint account has a SSN, that person's number must be furnished.

(2) Circle the minor's name and furnish the minor's social security number.

(3) Circle the ward's, minor's, or incompetent person's name and furnish such person's social security number.

(4) Show the name of the owner.

(5) List first and circle the name of the legal trust, estate, or pension trust.

Note: If no name is circled when there is more than one name, the number will be considered to be that of the first name listed.

**GUIDELINES FOR CERTIFICATION OF TAXPAYER IDENTIFICATION NUMBER
ON SUBSTITUTE FORM W-9
Page 2**

Obtaining a Number

If you do not have a taxpayer identification number or you do not know your number, obtain Form SS-5, Application for a Social Security Number Card, Form W-7, Application for an IRS Individual Taxpayer Identification Number, or Form SS-4, Application for Employer Identification Number, at the local office of the Social Security Administration or the Internal Revenue Service and apply for a number.

Payees Exempt From Backup Withholding

Payees specifically exempted from backup withholding on ALL payments include the following:

- An organization exempt from tax under section 501(a) of the Internal Revenue Code of 1986, as amended (the "Code"), or an individual retirement arrangement (IRA) or custodial account under section 403(b)(7) of the Code.
- The United States or any of its agencies or instrumentalities.
- A state, the District of Columbia, a possession of the United States, or any political subdivisions or instrumentalities.
- A foreign government, or any of its political subdivisions, agencies, or instrumentalities.
- An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include the following:

- A corporation.
- A foreign central bank of issue.
- A dealer in securities or commodities required to register in the U.S. or a possession of the U.S.
- A futures commission merchant registered with the Commodity Futures Trading Commission.
- A real estate investment trust.
- An entity registered at all times during the tax year under the Investment Company Act of 1940.
- A common trust fund operated by a bank under section 584(a) of the Code.
- A financial institution.
- A middleman known in the investment community as a nominee or listed in the most recent publication of the American Society of Corporate Secretaries, Inc., Nominee List.
- A trust exempt from tax under section 664 of the Code or described in section 4947 of the Code.

Payments of interest not generally subject to backup withholding include the following:

- Payments of interest on obligations issued by individuals. Note: You may be subject to backup withholding if this interest is \$600 or more and is paid in the course of the payer's trade or business and you have not provided your correct taxpayer identification number to the payer.
- Payments of tax-exempt interest (including exempt-interest dividends under section 852) of the Code.
- Payments described in section 6049(b)(5) of the Code to non-resident aliens.
- Payments on tax-free covenant bonds under section 1451 of the Code.
- Payments made by certain foreign organizations.

Exempt payees described above should file Form W-9 to avoid possible erroneous backup withholding. FILE THIS FORM WITH THE PAYER, FURNISH YOUR TAXPAYER IDENTIFICATION NUMBER, CHECK THE BOX TITLED "EXCERPT FROM BACKUP WITHOLDING" ON THE FORM, SIGN AND DATE THE FORM, AND RETURN IT TO THE PAYER.

Certain payments other than interest, dividends, and patronage dividends that are not subject to information reporting are also not subject to backup withholding. For details, see the regulations under sections 6041, 6041A(a), 6042, 6045, 6049, 6050A, and 6050N of the Code.

Privacy Act— Notice-Section 6109 of the Code requires most recipients of dividend, interest, or other payments to give taxpayer identification numbers to payers who must report the payments to the IRS. The IRS uses the numbers for identification purposes and to help verify the accuracy of a your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states and the District of Columbia to carry out their tax laws. The IRS may also disclose this information to other countries under a tax treaty, or to Federal and states agencies to enforce Federal nontax criminal laws and to combat terrorism. Payers must be given the numbers whether or not recipients are required to file tax returns. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not furnish a taxpayer identification number to a payer. Certain penalties may also apply.

Penalties

- (1) **Penalties for Failure to Furnish Taxpayer Identification Number** —If you fail to furnish your taxpayer identification number to a payer, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.
- (2) **Civil Penalty for False Information With Respect to Withholding** —If you make a false statement with no reasonable basis which results in no imposition of backup withholding, you are subject to a penalty of \$500.
- (3) **Criminal Penalty for Falsifying Information**— Falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

FOR ADDITIONAL INFORMATION CONTACT YOUR TAX CONSULTANT OR THE INTERNAL REVENUE SERVICE.

The Depositary for the Offers is:

Global Bondholder Services Corporation

By Mail, Overnight Courier or by Hand:

65 Broadway—Suite 723
New York, New York 10006
Attn: Corporate Actions

Any questions or requests for assistance may be directed to the Dealer Managers or the Information Agent at the addresses and telephone numbers set forth below. Requests for additional copies of the Offer to Purchase and this Letter of Transmittal may be directed to the Information Agent. Requests for copies of the Incorporated Documents may also be directed to the Information Agent. Beneficial owners may also contact their broker, dealer, commercial bank, trust company or other nominee for assistance concerning the Offers.

The Information Agent for the Offers is:

Global Bondholder Services Corporation

65 Broadway—Suite 723
New York, New York 10006
Attn: Corporate Actions

Banks and Brokers call: (212) 430-3774
Toll free (866) 389-1500

The Dealer Managers for the Offers are:

Citi

390 Greenwich Street, 4th Floor
New York, New York 10013
Attn: Liability Management Group

Collect: (212) 723-6106
Toll free (800) 558-3745

Merrill Lynch & Co.

4 World Financial Center, 7th Floor
New York, New York 10080
Attn: Liability Management

Collect: (212) 449-4914
Toll free: (888) 654-8637

QuickLinks

Exhibit (a)(1)(ii)

LETTER OF TRANSMITTAL OF LEVEL 3 COMMUNICATIONS, INC.



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

NEWS RELEASE

Level 3 contacts:

Media: Jeff Battcher
720-888-3288

Investors: Valerie Finberg
720-888-2501

Debra Havins
720-888-7466

Mark Stoutenberg
720-888-2518

Level 3 Announces Tender Offers To Purchase For Cash Its Convertible Debt Securities Due 2009 and 2010

BROOMFIELD, Colo., November 17, 2008 —Level 3 Communications, Inc. (NASDAQ: LVL3) announced today that it has commenced three separate tender offers to purchase for cash any and all of its outstanding convertible notes listed in the table below at the consideration per \$1,000 principal amount set forth next to the corresponding series of notes in the table below.

Title of Security	Outstanding Principal	Minimum Tender	
	Amount	Condition	Consideration(1)
2.875% Convertible Senior Notes due 2010 CUSIP No. 52729NBA7	\$ 354,541,000	\$ 177,270,500	\$ 620.00
6% Convertible Subordinated Notes due 2010 CUSIP No. 52729NAS9	\$ 481,666,000	\$ 240,833,000	\$ 700.00
6% Convertible Subordinated Notes due 2009 CUSIP No. 52729NAG5	\$ 305,135,000	\$ 152,567,500	\$ 920.00

(1) Per \$1,000 principal amount of notes.

Each offer is scheduled to expire at 12:00 midnight, New York City time, on December 15, 2008, unless extended for that offer or earlier terminated with respect to that offer. Holders of notes of any series validly tendered and not validly withdrawn on or prior to 12:00 midnight, New York City time on the applicable expiration date will receive the consideration for that series shown in the table above if such notes are accepted for payment pursuant to the terms and conditions of that offer. Accrued interest up to, but not including, the payment date will be paid in cash on all validly tendered and accepted notes.

The company intends to fund purchases of the notes from the net proceeds of the sale of Level 3's to be newly issued 15% convertible senior notes due 2013 (the "New Notes") announced today and from cash on hand. The investors in Level 3's New Notes are not obligated to purchase these notes if Level 3 does not accept for payment at least 50%, \$177,270,500 in aggregate principal amount, of its 2.875% Convertible Senior Notes due 2010 (the "2.875% Notes") and 50%, \$240,833,000 in aggregate principal amount, of its 6% Convertible Subordinated Notes due 2010 (the "2010 Notes") in the respective offers for such notes and if other customary closing conditions are not satisfied.

Conditions of the Offers

All three offers are subject to the satisfaction or waiver of certain other conditions as set forth in the Offer to Purchase, dated the date hereof, filed with the SEC, including (i) there being validly tendered and not validly withdrawn on or prior to the applicable expiration date at least such principal amount of that series of notes to satisfy the Minimum Tender Condition as set forth in the table above and (ii) the sale of at least \$373 million aggregate principal amount of the New Notes.

In addition, (a) the offer to purchase its 6% Convertible Subordinated Notes due 2009 (the "2009 Notes") is conditioned on the acceptance for payment by the company of both its 2.875% Notes and its 2010 Notes pursuant to the terms and conditions of such other applicable offers, (b) the offer to purchase its 2010 Notes is conditioned on the acceptance for payment by the company of its 2.875% Notes pursuant to the terms and conditions of the offer for those 2.875% Notes and (c) the offer to purchase its 2.875% Notes is conditioned on the acceptance for payment by the company of its 2010 Notes pursuant to the terms and conditions of the offer for those 2010 Notes.

This announcement 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 any series of notes. The offers may only be made pursuant to the terms of the Offer to Purchase and the related Letter of Transmittal.

The complete terms and conditions of each offer are set forth in the Offer to Purchase that is being sent to holders of the notes and is also available online on the SEC's website at www.sec.gov as an exhibit to the Schedule TO filed by the company with the SEC. Holders are urged to read the tender offer documents carefully. Copies of the Offer to Purchase and the related Letter of Transmittal may be obtained from the Information Agent for the offers, Global Bondholder Services Corporation, at (212) 430-3774 (collect) and (866) 873-6300 (toll free).

Citi and Merrill Lynch & Co. are the dealer managers for the offers. Questions regarding the offers may be directed to Citi at (800) 558-3745 (toll-free) and (212) 723-6106 or Merrill Lynch at (888) 654-8637 (toll-free) and (212) 449-4914.

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.

Important Information about the Tender Offers

This announcement and the description contained herein are for informational purposes only and are not offers to purchase or solicitations of an offer to sell securities of Level 3 Communications, Inc. Level 3 Communications, Inc. has filed with the SEC a tender offer statement on Schedule TO containing an offer to purchase, a letter of transmittal and other documents relating to the offers. These documents contain important information about the tender offers. Holders of notes of Level 3 Communications, Inc. are urged to read them carefully, and can obtain these documents free of charge from the SEC's website at www.sec.gov or by contacting the Information Agent for the offers, Global Bondholder Services Corporation, at (212) 430-3774 or (866) 389-1500 (toll free).

QuickLinks

[Exhibit \(a\)\(5\)\(i\)](#)

**Supplement to Indenture dated as of [], 2008
(Senior Debt Securities)**

THIS FIRST SUPPLEMENTAL INDENTURE, dated as of [], 2008 is by and between Level 3 Communications, Inc., a Delaware corporation (the " Company "), and The Bank of New York Mellon, a New York banking corporation (the " Trustee "), as Trustee under the Indenture (defined below).

WHEREAS the Company and the Trustee have as of [], 2008, entered into an indenture (as supplemented, the " Indenture "), providing for the issuance by the Company from time to time of its senior debt securities;

WHEREAS Section 9.01 of the Indenture provides, among other things, that the Company, when authorized by or pursuant to a Board Resolution, and the Trustee may, without the consent of the Holders of Securities, enter into one or more indentures supplemental to the Indenture to establish the form or terms of Securities of any series, including the provisions and procedures providing for the adjustment of conversion rights with respect to Securities convertible into Common Stock, or to change or eliminate any of the provisions of the Indenture, provided that any such change or elimination shall become effective only when there is no Security Outstanding of any series created prior to the execution of such supplemental indenture which is entitled to the benefit of such provisions;

WHEREAS the Company desires to issue one series of convertible senior debt securities under the Indenture, and has duly authorized the creation and issuance of such debt securities under the Indenture, and has duly authorized the execution and delivery of this First Supplemental Indenture to modify the Indenture and to provide certain additional provisions as hereinafter described;

WHEREAS the Company has requested that the Trustee enter into this First Supplemental Indenture for the purposes of establishing the terms of such convertible senior debt securities and providing for the rights, obligations and duties of the Trustee with respect to such debt securities;

WHEREAS, concurrently with the execution hereof, the Company has delivered an Officers' Certificate and has caused its counsel to deliver to the Trustee an Opinion of Counsel pursuant to Sections 3.03 and 9.03 of the Indenture and a reliance letter upon an opinion of counsel; and

WHEREAS all conditions and requirements of the Indenture necessary to make this First 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 and the Trustee covenant and agree, for the equal and proportionate benefit of all Holders of the Securities, as follows:

ARTICLE I

CREATION OF THE SECURITIES

SECTION 1.1. *Designation of the Series.* Pursuant to the terms hereof and Sections 2.01 and 3.01 of the Indenture, the Company hereby creates a series of its convertible senior debt securities designated as the "15% Convertible Senior Notes due 2013" (the " Notes "), which Notes shall be deemed "Securities" for all purposes under the Indenture.

SECTION 1.2. *Form of Securities.* The Notes will be issued in definitive form without coupons and the definitive form of the Notes shall be substantially in the form set forth in *Exhibit A* attached hereto, which is incorporated herein and made part hereof. The Notes shall bear interest, be payable and have such other terms as are stated in the form of definitive Note or in the Indenture, as supplemented by this First Supplemental Indenture. The Stated Maturity of the Notes shall be January 15, 2013.

SECTION 1.3. *Limit on Amount of Securities.* The aggregate principal amount of the Notes will not exceed \$500,000,000 and may, upon the execution and delivery of this First Supplemental Indenture or from time to time thereafter, be executed by the Company and delivered to the Trustee for

authentication, and the Trustee shall thereupon authenticate and deliver said Notes to or upon the Company Order, without further action by the Company.

SECTION 1.4. *Ranking.* The Notes will be the Company's unsecured and unsubordinated obligations and rank equal in right of payment with all of the Company's existing and future unsecured and unsubordinated indebtedness.

SECTION 1.5. *Certificate of Authentication.* The Trustee's certificate of authentication to be borne on the Notes shall be substantially as provided in the form of note attached hereto as *Exhibit A*.

SECTION 1.6. *No Sinking Fund.* No sinking fund will be provided with respect to the Notes (notwithstanding any provisions of the Indenture with respect to sinking fund obligations).

SECTION 1.7. *No Additional Amounts.* No Additional Amounts will be payable with respect to the Notes (notwithstanding any provisions of the Indenture with respect to Additional Amount obligations).

SECTION 1.8. *Repayment at the Option of Holders.* There will be no right of repayment at the option of the Holders pursuant to Article Thirteen of the Indenture.

SECTION 1.9. *Redemption of Securities.* There will be no right of redemption pursuant to Article Eleven of the Indenture.

SECTION 1.10. *Definitions.* (a) Capitalized terms used herein and not otherwise defined shall have the respective meanings assigned thereto in the Indenture.

(b) Solely for purposes of this First Supplemental Indenture and the Notes, the following definitions of Section 1.01 of the Indenture are hereby amended in their entirety to read as follows:

" *Material Subsidiary* " means any Subsidiary of the Company which at the date of determination is a "significant subsidiary" as defined in Rule 1-02(w) of Regulation S-X under the Securities Act and the Exchange Act.

" *Person* " means any individual, corporation, company, partnership, joint venture, limited liability company, association, joint stock company, trust, unincorporated organization, government or agency or political subdivision thereof or any other entity.

" *Subsidiary* " of any Person means (a) a corporation more than 50% of the combined voting power of the outstanding Voting Stock of which is owned, directly or indirectly, by such Person or by one or more other Subsidiaries of such Person or by such Person and one or more Subsidiaries thereof or (b) any other Person (other than a corporation) in which such Person, or one or more other Subsidiaries of such Person and one or more other Subsidiaries thereof, directly or indirectly, has at least a majority ownership and power to direct the policies, management and affairs thereof.

(c) Solely for purposes of this First Supplemental Indenture and the Notes, the following terms shall have the indicated meanings:

" *Acquired Debt* " means, with respect to any specified Person, (a) indebtedness of any other Person existing at the time such Person merges with or into or consolidates with such specified Person and (b) indebtedness secured by a Lien encumbering any property acquired by such specified Person, which indebtedness in each case was not incurred in anticipation of, and was outstanding prior to, such merger, consolidation or acquisition.

" *Capital Stock* " of any Person means any and all shares, interests, participations or other equivalents (however designated) of corporate stock or other equity participations, including partnership interests, whether general or limited, of such Person and any rights (other than debt securities convertible and exchangeable into an equity interest), warrants or options to acquire an equity interest in such Person.

" *Change in Control* " after the original issuance of the Notes means the occurrence of one or more of the following events:

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act or any successor provisions to either of the foregoing), including any group acting for the purpose of acquiring, holding, voting or disposing of securities within the meaning of Rule 13d-5(b)(1) under the Exchange Act, other than any one or more of the Permitted Holders, becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act, except that a person will be deemed to have "beneficial ownership" of all shares that any such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of 35% or more of the total voting power of the Voting Stock of the Company (other than as a result of any merger, share exchange, transfer of assets or similar transaction solely for the purpose of changing the Company's jurisdiction of incorporation and resulting in a reclassification, conversion or exchange of outstanding shares of the Common Stock solely into shares of common stock of the surviving entity); *provided, however*, that the Permitted Holders are the "beneficial owners" (as defined in Rule 13d-3 under the Exchange Act, except that a person will be deemed to have "beneficial ownership" of all shares that any such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, in the aggregate of a lesser percentage of the total voting power of the Voting Stock of the Company than such other person or group (for purposes of this clause (a), such person or group shall be deemed to beneficially own any Voting Stock of a corporation (the " *specified corporation* ") held by any other corporation (the " *parent corporation* ") so long as such person or group beneficially owns, directly or indirectly, in the aggregate a majority of the total voting power of the Voting Stock of such parent corporation); or

(b) (i) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act or any successor provisions to either of the foregoing), including any group acting for the purpose of acquiring, holding, voting or disposing of securities within the meaning of Rule 13d-5(b)(1) under the Exchange Act, becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act, except that a person will be deemed to have "beneficial ownership" of all shares that any such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of a majority of the total voting power of the Voting Stock of the Company (other than as a result of any merger, share exchange, transfer of assets or similar transaction solely for the purpose of changing the jurisdiction of incorporation of the Company and resulting in a reclassification, conversion or exchange of outstanding shares of the Common Stock solely into shares of common stock of the surviving entity) and (ii) a Termination of Trading shall have occurred; or

(c) the Company's consolidation or merger with or into any other Person, any merger of another Person into the Company, or any sale, transfer, assignment, lease, conveyance or other disposition, directly or indirectly, of all or substantially all the assets of the Company and its Subsidiaries, considered as a whole (other than a disposition of such assets as an entirety or virtually as an entirety to a wholly owned Subsidiary or one or more Permitted Holders) shall have occurred, other than (i) any transaction (A) that does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of the Company's Capital Stock and (B) pursuant to which holders of the Company's Capital Stock immediately prior to the transaction are entitled to exercise, directly or indirectly, 50% or more of the total voting power of all shares of Capital Stock entitled to vote generally in the election of directors of the continuing or surviving person immediately after the transaction; or (ii) any merger, share exchange, transfer of assets or similar transaction solely for the purpose of

changing the Company's jurisdiction of incorporation and resulting in a reclassification, conversion or exchange of outstanding shares of the Common Stock solely into shares of common stock of the surviving entity; or

(d) during any period of two consecutive years, individuals who at the beginning of such period constituted the board of directors of the Company (together with any new directors whose election or appointment by such board or whose nomination for election by the shareholders of the Company was approved by a vote of a majority of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the board of directors of the Company then in office; or

(e) the shareholders of the Company shall have approved any plan of liquidation or dissolution of the Company.

" *Closing Sale Price* " of the shares of Common Stock on any date means the closing per share sale price (or, if no closing sale price is reported, the average of the closing bid and ask prices or, if more than one in either case, the average of the average closing bid and the average closing ask prices) on such date as reported in composite transactions on the Nasdaq Global Select Market or such principal United States securities exchange on which shares of Common Stock may be traded or, if the shares of Common Stock are not approved for trading on the Nasdaq Global Select Market or listed on a United States national or regional securities exchange, as reported by the Nasdaq system or by the National Quotation Bureau Incorporated. In the absence of such quotations, the Company shall be entitled to determine the Closing Sale Price on the basis of such quotations as it considers appropriate. Closing Sale Price shall be determined without reference to extended or after hours trading.

" *Conversion Agent* " means the Trustee or any other Person appointed by the Company to accept Notes presented for conversion.

" *Conversion Price* " means \$1,000 divided by the applicable Conversion Rate.

" *Conversion Rate* " is defined in Section 15.04 of the Indenture as amended by this First Supplemental Indenture.

" *Designated Event* " means the occurrence of a Change in Control or a Termination of Trading.

" *Exchange Act* " means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

" *Fair Market Value* " has the meaning set forth in Section 15.05(f)(2) of the Indenture as amended by this First Supplemental Indenture.

" *HSR Act* " means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

" *Lien* " means any mortgage or deed of trust, pledge, hypothecation, security interest, lien, charge, encumbrance or other security agreement of any kind or nature whatsoever; *provided, however*, that Liens shall not include defeasance trusts or funds. For purposes of this definition, the sale, lease, conveyance or other transfer by the Company or any of its subsidiaries of, including the grant of indefeasible rights of use or equivalent arrangements with respect to, dark or lit communications fiber capacity or communications conduit shall not constitute a Lien.

" *Permitted Holders* " means the members of the Company's Board of Directors on April 28, 1998, and their respective estates, spouses, ancestors, and lineal descendants, the legal representatives of any of the foregoing and the trustees of any bona fide trusts of which the foregoing are the sole beneficiaries or the grantors, or any Person of which the foregoing

"beneficially owns" (as defined in Rule 13d-3 under the Exchange Act) at least $66 \frac{2}{3} \%$ of the total voting power of the Voting Stock of such Person.

" *Securities Act* " means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

" *Specified Indebtedness* " means (a) the Company's 6.0% Convertible Subordinated Notes due 2009, 11.5% Senior Notes due 2010, 6.0% Convertible Subordinated Notes due 2010, 2.875% Convertible Senior Notes due 2010, 10.0% Convertible Senior Notes due 2011, 5.25% Convertible Senior Notes due 2011, 3.5% Convertible Senior Notes due 2012, 9% Convertible Senior Discount Notes due 2013 and (b) any indebtedness of the Company for borrowed money that (i) is in the form of, or represented by, bonds, notes, debentures or other securities or any guarantee thereof (other than promissory notes or similar evidences of indebtedness under bank loans, reimbursement agreements, receivables facilities or other bank, insurance or other institutional financing agreements under Section 4(2) of the Securities Act or any guarantee thereof) and (ii) is, or may be, quoted, listed or purchased and sold on any stock exchange, automated securities trading system or over-the-counter or other securities market (including, without prejudice to the generality of the foregoing, the market for securities eligible for resale pursuant to Rule 144A under the Securities Act). For the avoidance of doubt, "Specified Indebtedness" shall not include indebtedness among the Company or its Subsidiaries or among Subsidiaries of the Company.

" *Termination of Trading* " will be deemed to have occurred if the Common Stock (or other common stock into which the Notes are then convertible) is not listed for trading on a U.S. national securities exchange.

" *Trading Day* " means (a) if the applicable security is quoted on the Nasdaq Global Select Market, a day on which trades may be made thereon, (b) if the applicable security is listed or admitted for trading on the New York Stock Exchange or another national or regional securities exchange, a day on which the New York Stock Exchange or such other national or regional securities exchange is open for business or (c) if the applicable security is not so listed, admitted for trading or quoted, any day other than a Saturday or Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

" *Voting Stock* " of any Person means the Capital Stock of such Person which ordinarily has voting power for the election of directors (or persons performing similar functions) of such Person, whether at all times or only for so long as no senior class of securities has such voting power by reason of any contingency.

ARTICLE II

EVENTS OF DEFAULT

SECTION 2.1. *Amendments to Article Five.* Article Five of the Indenture is amended in its entirety with respect to the Notes as follows:

"SECTION 5.01. *Events of Default.* An " *Event of Default* " with respect to any Notes occurs if:

(a) the Company defaults in the payment of principal of, or premium, if any, on the Notes when due at maturity, upon repurchase, upon acceleration or otherwise; or

(b) the Company defaults in the payment of any installment of interest on the Notes when due (including any interest payable in connection with a repurchase pursuant to Section 10.06 or in connection with an Automatic Conversion pursuant to Section 15.12) and continuance of such default for 30 days or more; or

(c) (i) the Company defaults in the payment of the Designated Event Payment in respect of the Notes on the date therefor; or (ii) the Company fails to provide timely notice of any Designated Event in accordance with Sections 10.06 and 10.07; or

(d) the Company defaults (other than a default set forth in clause (a), (b) or (c) above) in the performance of, or breaches, any other covenant or warranty of the Company set forth in this Indenture or the Notes and fails to remedy such default or breach within a period of 60 days after the receipt of written notice (specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder) from the Trustee or the Holders of at least 25% in aggregate principal amount of the then outstanding Notes; or

(e) a default under any credit agreement, mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any indebtedness for money borrowed by the Company or any Material Subsidiary (or the payment of which is guaranteed or secured by the Company or any of its Material Subsidiaries), whether such indebtedness or guarantee exists on the date of this Indenture or is created thereafter, which default (i) is caused by a failure to pay when due any principal of such indebtedness within the grace period provided for in such indebtedness, which failure continues beyond any applicable grace period (a " *Payment Default* "), or (ii) results in the acceleration of such indebtedness prior to its express maturity (without such acceleration being rescinded or annulled) and, in each case, the principal amount of such indebtedness, together with the principal amount of any other such indebtedness under which there is a Payment Default or the maturity of which has been so accelerated, aggregates \$25,000,000 or its foreign currency equivalent or more and such Payment Default is not cured or such acceleration is not annulled within 10 days after receipt of written notice (specifying such default and requiring the Company to cause such Payment Default to be cured or cause such acceleration to be rescinded or annulled and stating that such notice is a "Notice of Default" hereunder) by the Company from the Trustee or by the Company and the Trustee from any Holder of Notes; or

(f) failure to pay a final, nonappealable judgment or final, nonappealable judgments (other than any judgment as to which a reputable insurance company has accepted full liability) for the payment of money entered by a court or courts of competent jurisdiction against the Company or any Material Subsidiaries of the Company, which judgments remain unstayed, unbonded or undischarged for a period of 60 days, *provided* that the aggregate amount of all such judgments exceeds \$25,000,000 or its foreign currency equivalent; or

(g) the Company or any Material Subsidiary, pursuant to or within the meaning of any Bankruptcy Law:

- (i) commences a voluntary case,
- (ii) consents to the entry of an order for relief against it in an involuntary case,
- (iii) consents to the appointment of a Custodian of it or for all or substantially all of its property,
- (iv) makes a general assignment for the benefit of its creditors, or
- (v) makes the admission in writing that it generally is unable to pay its debts as the same become due; or

(h) a court of competent jurisdiction enters a judgment, order or decree under any Bankruptcy Law that:

(i) is for relief against the Company or any Material Subsidiary in an involuntary case, and the order or decree remains unstayed and in effect for 90 days,

(ii) appoints a Custodian of the Company or any Material Subsidiary, and the order or decree remains unstayed and in effect for 90 days, or

(iii) orders the liquidation of the Company or any Material Subsidiary, and the order or decree remains unstayed and in effect for 90 days.

The term "*Bankruptcy Law*" means Title 11, U.S. Code or any similar Federal or state law for the relief of debtors. The term "*Custodian*" means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

(i) The Company defaults with respect to its obligation to deliver when due all shares of Common Stock deliverable upon conversion of the Notes (including upon an Automatic Conversion (as defined in Section 15.12), which default continues for 5 Business Days.

SECTION 5.02. *Acceleration.* If an Event of Default (other than an Event of Default with respect to the Company specified in clauses (g) and (h) of Section 5.01) occurs and is continuing, then and in every such case the Trustee, by written notice to the Company, or the Holders of at least 25% in aggregate principal amount of the then outstanding Notes, by written notice to the Company and the Trustee, may declare the unpaid principal of, premium, if any, and accrued and unpaid interest on all the Notes to be due and payable. Upon such declaration, such principal amount, premium, if any, and accrued and unpaid interest shall become immediately due and payable, notwithstanding anything contained in this Indenture or the Notes to the contrary. If any Event of Default with respect to the Company specified in clause (g) or (h) of Section 5.01 occurs, all unpaid principal of, and premium, if any, and accrued and unpaid interest on the Notes then outstanding shall become automatically due and payable, without any declaration or other act on the part of the Trustee or any Holder of Notes.

The Holders of a majority in aggregate principal amount of the then outstanding Notes by notice to the Trustee may rescind an acceleration of the Notes and its consequences if all existing Events of Default (other than nonpayment of principal of, premium, if any, and interest on the Notes which has become due solely by virtue of such acceleration) have been cured or waived and if the rescission would not conflict with any judgment or decree of any court of competent jurisdiction. No such rescission shall affect any subsequent Default or Event of Default or impair any right consequent thereto.

SECTION 5.03. *Other Remedies.* If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy by proceeding at law or in equity to collect the payment of principal of or interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture. The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Note in exercising any right or remedy occurring upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

SECTION 5.04. *Waiver of Past Defaults.* The Holders of a majority in aggregate principal amount of the Notes then outstanding may, on behalf of the Holders of all the Notes, waive an existing Default or Event of Default and its consequences, except a Default or Event of Default in the payment of the principal of, and premium, if any, or interest on the Notes (other than the non-payment of principal of, and premium, if any, and interest on the Notes which has become

due solely by virtue of an acceleration which has been duly rescinded as provided above), or in respect of a covenant or provision of this Indenture which cannot be modified or amended without the consent of all Holders of Notes. When a Default or Event of Default is waived, it is cured and stops continuing. No waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

SECTION 5.05. *Control by Majority.* The Holders of a majority in aggregate principal amount of the then outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture that the Trustee determines may be unduly prejudicial to the rights of other Holders of Notes or that may involve the Trustee in personal liability; *provided, however*, that the Trustee shall have no duty or obligation (subject to Section 6.02) to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders; *provided further, however* that the Trustee may take any other action the Trustee deems proper that is not inconsistent with such directions.

SECTION 5.06. *Limitation on Suits.* A Holder of a Note may not pursue any remedy with respect to this Indenture or the Notes unless:

- (a) the Holder gives to the Trustee notice of a continuing Event of Default;
- (b) the Holders of at least 25% in aggregate principal amount of the then outstanding Notes make a written request to the Trustee to pursue the remedy;
- (c) such Holder or Holders offer and, if requested, provide to the Trustee indemnity satisfactory to the Trustee against any loss, liability or expense;
- (d) the Trustee does not comply with the request within 30 days after receipt of the request and the offer and, if requested, the provision of indemnity; and
- (e) during such 30-day period the Holders of a majority in aggregate principal amount of the then outstanding Notes do not give the Trustee a direction inconsistent with the request.

A Holder of a Note may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder.

SECTION 5.07. *Rights of Holders To Receive Payment.* Notwithstanding any other provision of this Indenture, the right of any Holder of a Note to receive payment of principal, premium, if any, and interest on the Note, on or after the respective due dates expressed in the Note, or to bring suit for the enforcement of any such payment on or after such respective dates, or to bring suit for the enforcement of the right to convert the Note shall not be impaired or affected without the consent of the Holder of a Note.

SECTION 5.08. *Collection Suit by Trustee.* If an Event of Default specified in Section 5.01(a), (b) or (c)(i) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company for the whole amount of principal, premium, if any, and interest remaining unpaid on the Notes and interest on overdue principal, premium, if any, and interest and such further amount as shall be sufficient to cover the costs and, to the extent lawful, expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

SECTION 5.09. *Trustee May File Proofs of Claim.* The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Holders of Notes allowed in any judicial proceedings relative to the Company, its creditors or its property. Nothing contained herein shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder of a Note any plan of

reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

SECTION 5.10. *Priorities.* Any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal (or premium, if any) or interest, upon presentation of the Notes or coupons, or both, as the case may be, and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee and any predecessor Trustee under Section 6.07;

SECOND: To the payment of the amounts then due and unpaid upon the Notes for principal (and premium, if any) and interest, in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the aggregate amounts due and payable on such Notes for principal (and premium, if any) and interest, respectively; and

THIRD: To the payment of the remainder, if any, to the Company.

SECTION 5.11. *Undertaking for Costs.* In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit, other than the Trustee, of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 5.07 or a suit by Holders of more than 25% in principal amount of the then outstanding Notes.

SECTION 5.12. *Restoration of Rights and Remedies.* If the Trustee or any Holder of a Note has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case the Company, the Trustee and the Holders of Notes shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

SECTION 5.13. *Rights and Remedies Cumulative.* Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities or coupons in the last paragraph of Section 3.06, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders of Notes is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

SECTION 5.14. *Waiver of Usury, Stay or Extension Laws.* The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any usury, stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder,

delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted."

ARTICLE III

CONSOLIDATION, MERGER, SALE, LEASE OR CONVEYANCE

SECTION 3.1. *Amendments to Article Eight.* Article Eight of the Indenture is amended in its entirety with respect to the Notes as follows:

"SECTION 8.01. *When the Company May Merge, Etc.* The Company may not, in a single transaction or series of related transactions, consolidate or merge with or into or effect a share exchange with (whether or not the Company is the surviving corporation), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets as an entirety or substantially as an entirety to, any Person unless:

(a) either

(i) the Company shall be the surviving or continuing corporation, or

(ii) the Person formed by or surviving any such consolidation, merger or share exchange (if other than the Company) or the Person which acquires by sale, assignment, transfer, lease, conveyance or other disposition the properties and assets of the Company substantially as an entirety:

(1) shall be a corporation organized and validly existing under the laws of the United States or any State thereof or the District of Columbia and

(2) shall expressly assume, by supplemental indenture in form reasonably satisfactory to the Trustee, executed and delivered to the Trustee, the due and punctual payment of the principal of, and interest, and premium, if any, on all of the Notes and the performance of every covenant of the Notes and this Indenture on the part of the Company to be performed or observed, including, without limitation, modifications to rights of Holders to cause the repurchase of Notes upon a Designated Event in accordance with Section 10.06 and conversion rights in accordance with Section 15.06 to the extent required by such Sections;

(b) immediately after giving effect to such transaction no Default and no Event of Default shall have occurred and be continuing; and

(c) the Company or such successor Person shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel each stating that such consolidation, merger, share exchange, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, comply with this provision of this Indenture and that all conditions precedent in this Indenture relating to such transaction have been satisfied.

For purposes of this Section 8.01, the transfer (by lease, assignment, sale or otherwise, in a single transaction or series of transactions) of all or substantially all of the properties or assets of one or more Subsidiaries of the Company, the Capital Stock of which individually or in the aggregate constitutes all or substantially all of the properties and assets of the Company, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company.

SECTION 8.02. *Successor Corporation Substituted.* Upon any such consolidation, merger, share exchange, sale, assignment, conveyance, lease, transfer or other disposition in accordance with Section 8.01, the successor Person formed by such consolidation or share exchange or into which the Company is merged or to which such sale, assignment, conveyance, lease, transfer or

other disposition is made will succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor had been named as the Company herein, and thereafter (except in the case of a lease) the predecessor corporation will be relieved of all further obligations and covenants under this Indenture and the Notes.

SECTION 8.03. *Purchase Option on Change of Control.* This Article Eight does not affect the obligations of the Company (including without limitation any successor to the Company) under Section 10.06."

ARTICLE IV

SUPPLEMENTAL INDENTURES

SECTION 4.1. *Amendments to Article Nine.* (a) Section 9.01 is hereby amended with respect to the Notes by deleting the "." from the end of clause (10) thereof and substituting "; or" in its place and by adding the following to the end thereof:

"(11) to provide for the assumption of our obligations to Holders of Notes in the Indenture as supplemented by Article III of the First Supplemental Indenture; or

(12) to provide for conversion rights or repurchase rights of Holders of Notes in the event of consolidation, merger, share exchange or sale of all or substantially all of the assets of the Company as required to comply with Section 8.01 or 15.06; or

(13) to reduce the Conversion Price; or

(14) to add guarantees with respect to the Notes; or

(15) to comply with the requirements of the Commission in order to effect or maintain the qualification of this Indenture under the TIA."

(b) Section 9.02(1) is hereby amended in its entirety with respect to the Notes to read as follows: "(1) change the Stated Maturity of the principal of (or premium, if any, on) or any installment of principal of or interest on, including Defaulted Interest, any Note; or reduce the principal amount thereof or the rate or amount of interest thereon or any Additional Amounts payable in respect thereof, or any premium payable upon the redemption thereof or alter the provisions of this Indenture with respect to the purchase of the Notes at the option of the Holders upon a Designated Event in a manner adverse to the Holders thereof, or change any obligation of the Company to pay Additional Amounts pursuant to Section 10.05 (except as contemplated by Section 8.01(1) and permitted by Section 9.01(1)), or reduce the amount of the principal of an Original Issue Discount Security that would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 5.02 or the amount thereof provable in bankruptcy pursuant to Section 5.04, or adversely affect any right of repayment at the option of the Holder of any Note, or change any Place of Payment where, or the currency or currencies, currency unit or units or composite currency or currencies in which, any Note or any premium or the interest thereon is payable, or impair the right to institute suit for the enforcement of any payment on or after the Stated Maturity thereof (or, in the case of purchase at the option of the Holder, on or after the Designated Event Purchase Date), or"

(c) Section 9.02(4) is hereby amended with respect to the Notes by deleting the "." from the end of such clause and substituting a ", or" in its place and by adding the following to the end thereof:

"(5) waive a Default or Event of Default in the payment of principal of or premium, if any, or interest on the Notes (except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the Notes then outstanding and a waiver of the payment default that resulted from such acceleration) or of a Designated Event Payment; or

(6) make any change in the provisions of this Indenture relating to waivers of past Defaults or Events of Default or the rights of Holders of Notes to receive payments of principal of, premium, if any, or interest on the Notes; or

(7) make any adverse change to the abilities of Holders of Notes to enforce their rights under this Indenture; or

(8) except as permitted by this Indenture (including Section 9.01(9)), increase the Conversion Price, or modify the provisions of this Indenture relating to conversion of the Notes in a manner adverse to the Holders thereof or otherwise impair the right of Holders to convert their Notes, upon the terms established pursuant to or in accordance with the provisions of this Indenture."

ARTICLE V

PURCHASE AT OPTION OF HOLDERS UPON A DESIGNATED EVENT; LIMITATION ON LIENS

SECTION 5.1. *Amendment to Article Ten.* Article Ten is amended by adding to the end the following new Sections 10.06 through Section 10.13, in each case with respect to the Notes to read as follows:

"SECTION 10.06. *Purchase of Notes at Option of the Holders upon a Designated Event.* (a) Following a Designated Event, the Company shall notify the Holders of Notes in writing of such occurrence and shall make an offer (the "*Designated Event Offer*") to repurchase all Notes then outstanding at a repurchase price in cash (the "*Designated Event Payment*") equal to 100% of the principal amount thereof, plus (subject to the following sentence) accrued and unpaid interest to, but excluding, the Designated Event Purchase Date (as defined below). If such Designated Event Purchase Date is after a Regular Record Date or a Special Record Date but on or prior to the corresponding Interest Payment Date or a Defaulted Interest payment date, however, then the Company shall pay the interest payable on such date to the Person in whose name the Note is registered at the close of business on the relevant Regular Record Date or Special Record Date.

(b) Notice of a Designated Event shall be mailed by or at the direction of the Company to the Holders of Notes as specified in Section 10.07. During the period specified in such notice, Holders of Notes may elect to tender their Notes in whole or in part in integral multiples of \$1,000 in exchange for the Designated Event Payment. Payment shall be made by the Company in respect of Notes properly tendered pursuant to this Section 10.06 on a Business Day specified by the Company (the "*Designated Event Purchase Date*") which shall be no earlier than 20 Business Days and no later than 30 Business Days after the date of the notice given pursuant to Section 10.07.

SECTION 10.07. *Notice of Designated Event; Designated Event Purchase Notice.*

(a) Within 30 days after the occurrence of a Designated Event, the Company, or, at the written request and expense of the Company within 30 days after such occurrence, the Trustee, shall give to all Holders notice of the occurrence of the Designated Event and of the purchase right set forth herein arising as a result thereof. The Company shall also deliver a copy of such notice of a purchase right to the Trustee. The notice shall include a form of Designated Event Purchase Notice to be completed by the Holder and shall state:

- (1) briefly, the events causing a Designated Event and the date of such Designated Event;
- (2) the date by which the Designated Event Purchase Notice pursuant to this Section 10.07 must be given;

(3) the Designated Event Purchase Date;

(4) the Designated Event Payment;

(5) the name and address of the Paying Agent and the Conversion Agent;

(6) that Notes as to which a Designated Event Purchase Notice has been given may be converted pursuant to the Indenture only if the Designated Event Purchase Notice has been withdrawn in accordance with the terms of this Indenture;

(7) that Notes must be surrendered to the Paying Agent to collect payment;

(8) that the Designated Event Payment for any Note as to which a Designated Event Purchase Notice has been duly given and not withdrawn will be paid promptly following the later of the Designated Event Purchase Date and the time of surrender of such Note as described in (7) above;

(9) briefly, the procedures the Holder must follow to exercise rights under Section 10.06;

(10) briefly, the conversion rights of the Notes, including the Conversion Rate and any adjustments thereto, including, if such Designated Event constitutes a Change in Control described in clause (b) or (c) in the definition thereof, whether any Additional Shares (as defined in Section 15.01) will be issued by the Company to Holders of Notes who convert their Notes in connection with such Change in Control;

(11) the procedures for withdrawing a Designated Event Purchase Notice;

(12) the CUSIP number of the Notes;

(13) that, unless the Company defaults in making the Designated Event Payment, any Note accepted for purchase pursuant to the Designated Event Offer shall cease to accrue interest on the Designated Event Purchase Date and no further interest shall accrue on or after such date; and

(14) that in the case of a Designated Event Purchase Date that occurs after a Regular Record Date or Special Record Date and on or prior to the corresponding Interest Payment Date or Defaulted Interest payment date, the interest due on such date shall be paid to the Holder of such Note at the close of business on the relevant Regular Record Date or Special Record Date.

(b) A Holder may exercise its rights specified in Section 10.06 hereof upon delivery of a written notice of purchase (a " *Designated Event Purchase Notice* ") to the Paying Agent prior to the Designated Event Purchase Date, stating:

(1) the certificate number, if any, of each Note, if any, which the Holder will deliver to be purchased;

(2) the portion of the principal amount of the Note which the Holder will deliver to be purchased, which portion must be \$1,000 or any whole multiple thereof; and

(3) that such Note shall be purchased pursuant to the terms and conditions specified on the reverse side of the Notes and in this Indenture;

provided, however, that if the Notes are not in certificated form, a Holder's Designated Event Purchase Notice must comply with the applicable Depositary procedures.

The delivery of such Note to the Paying Agent prior to the Designated Event Purchase Date (together with all necessary endorsements) at the offices of the Paying Agent shall be a condition to the receipt by the Holder of the Designated Event Payment therefor; *provided, however*, that

such Designated Event Payment shall be so paid only if the Note so delivered to the Paying Agent shall conform in all respects to the description thereof set forth in the related Designated Event Purchase Notice.

The Company shall purchase from the Holder thereof, pursuant to this Section 10.07, a portion of a Note so delivered for purchase if the principal amount of such portion is \$1,000 or an integral multiple of \$1,000. Provisions of this Indenture that apply to the purchase of all of a Note also apply to the purchase of such portion of such Note.

Any purchase by the Company contemplated pursuant to the provisions of this Section 10.07 shall be consummated by the delivery of the consideration to be received by the Holder promptly following the later of the Designated Event Purchase Date and the time of delivery of the Note to the Paying Agent in accordance with this Section 10.07.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Designated Event Purchase Notice contemplated by this Section 10.07(b) shall have the right to withdraw such Designated Event Purchase Notice at any time prior to the close of business on the Business Day immediately preceding the Designated Event Purchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 10.08.

The Paying Agent shall promptly notify the Company of the receipt by it of any Designated Event Purchase Notice or written withdrawal thereof.

SECTION 10.08. *Effect of Designated Event Purchase Notice.* Upon receipt by the Paying Agent of the Designated Event Purchase Notice specified in Section 10.07, the Holder of the Note in respect of which such Designated Event Purchase Notice was given shall (unless such Designated Event Purchase Notice is withdrawn as specified in the following two paragraphs) thereafter be entitled to receive solely the Designated Event Payment with respect to such Note. Such payment shall be paid to such Holder, subject to receipt of consideration for the Notes by the Paying Agent, promptly following the later of (x) the Designated Event Purchase Date with respect to such Note (provided the conditions in Section 10.07, as the case may be, have been satisfied) and (y) the time of delivery of such Note to the Paying Agent by the Holder thereof in the manner required by Section 10.07, as the case may be. Notes in respect of which a Designated Event Purchase Notice has been given by the Holder thereof may not be converted on or after the date of the delivery of such Designated Event Purchase Notice unless such Designated Event Purchase Notice has first been validly withdrawn as specified in the following two paragraphs.

A Designated Event Purchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the office of the Paying Agent in accordance with the Designated Event Purchase Notice at any time prior to the close of business on the Business Day immediately preceding the Designated Event Purchase Date specifying:

- (a) the certificate number, if any, of each Note in respect of which such notice of withdrawal is being submitted;
- (b) the principal amount of the Note with respect to which such notice of withdrawal is being submitted; and
- (c) the principal amount, if any, of each such Note which remains subject to the original Designated Event Purchase Notice and which has been or will be delivered for purchase by the Company;

provided, however, that if the Notes are not in certificated form, a Holder's notice of withdrawal must comply with the applicable Depositary procedures.

There shall be no purchase of any Notes pursuant to Section 10.06 if there has occurred (prior to, on or after, as the case may be, the giving by the Holders of such Notes of the required Designated Event Purchase Notice) and is continuing an Event of Default (other than a default in the payment of the Designated Event Payment with respect to such Notes). The Paying Agent will promptly return to the respective Holders thereof any Notes (x) with respect to which a Designated Event Purchase Notice has been withdrawn in compliance with this Indenture, or (y) held by it during the continuance of an Event of Default (other than a default in the payment of the Designated Event Payment with respect to such Notes) in which case, upon such return, the Designated Event Purchase Notice with respect thereto shall be deemed to have been withdrawn.

SECTION 10.09. *Deposit of Designated Event Payment.* Prior to 11:00 a.m. (New York City time) on the Designated Event Purchase Date, the Company shall deposit with the Trustee or with the Paying Agent an amount of cash (in immediately available funds if deposited on such Business Day) sufficient to pay the aggregate Designated Event Payment of all the Notes or portions thereof which are to be purchased as of the Designated Event Purchase Date.

If the Trustee or other Paying Agent appointed by the Company holds cash sufficient to pay the aggregate Designated Event Payment of all the Notes or portions thereof that are to be purchased as of the Designated Event Purchase Date, on or after the Designated Event Purchase Date (i) such Notes will cease to be outstanding, (ii) interest on such Notes will cease to accrue and (iii) all other rights of the Holders of such Notes will terminate, whether or not book-entry transfer of the Notes has been made or the Notes have been delivered to the Trustee or Paying Agent, other than the right to receive the Designated Event Payment upon delivery of the Notes.

SECTION 10.10. *Notes Purchased in Part.* Any Note which is to be purchased only in part shall be surrendered at the office of the Paying Agent (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Note, without service charge, a new Note or Notes, of any authorized denomination as requested by such Holder in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Note so surrendered which is not purchased.

SECTION 10.11. *Covenant to Comply with Securities Laws upon Purchase of Notes.* In connection with any offer to purchase or purchase of Notes under Section 10.06 hereof (provided that such offer or purchase constitutes an "issuer tender offer" for purposes of Rule 13e-4 (which term, as used herein, includes any successor provision thereto) under the Exchange Act at the time of such offer or purchase), the Company shall (i) comply with Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act which may then be applicable, (ii) file the related Schedule TO (or any successor schedule, form or report) or any other schedule required under the Exchange Act, and (iii) otherwise comply with all applicable federal and state securities laws so as to permit the rights and obligations under Section 10.06 to be exercised in the time and in the manner specified in Section 10.06 and 10.07.

SECTION 10.12. *Repayment to the Company.* The Trustee and the Paying Agent shall return to the Company any cash or other consideration that remains unclaimed as provided in the Notes, together with interest, if any, thereon, held by them for the payment of the Designated Event Payment; *provided, however*, that to the extent that the aggregate amount of cash deposited by the Company pursuant to Section 10.09 exceeds the aggregate Designated Event Payment of the Notes or portions thereof which the Company is obligated to purchase as of the Designated Event Purchase Date then promptly after the Business Day following the Designated Event Purchase

Date the Trustee shall return any such excess to the Company together with interest, if any, thereon.

SECTION 10.13. *Limitation on Liens.* The Company will not, directly or indirectly, incur or suffer to exist any Lien (other than existing Liens) securing Specified Indebtedness of any nature whatsoever on any of its properties or assets, whether owned at the issue date of the Notes or thereafter acquired, without making effective provision for securing the Notes equally and ratably with (or, if the obligation to be secured by the Lien is subordinated in right of payment to the Notes, prior to) the obligations so secured for so long as such obligations are so secured. The Lien, if granted, to secure the Notes may also secure obligations in addition to Specified Indebtedness. Any Lien created to secure the Notes pursuant to this Section 10.13 may provide by its terms that such Lien will be automatically and unconditionally released and discharged upon the full and unconditional release and discharge of the Lien securing the Specified Indebtedness and that the Holders of some or all of such Specified Indebtedness may exclusively control the disposition of property subject to such Lien.

The foregoing restrictions in this Section 10.13 shall not apply to (a) Liens to secure Acquired Debt; *provided, however*, that (i) such Lien attaches to the acquired property prior to the time of the acquisition of such property and (ii) such Lien does not extend to or cover any other property; and (b) Liens to secure indebtedness incurred to refinance, in whole or in part, debt secured by any Lien referred to in the foregoing clause (a) or this clause (b) so long as such Lien does not extend to any other property (other than improvements and accessions to the original property) and the principal amount of indebtedness so secured is not increased."

ARTICLE VI

COMPANY REPORTS

SECTION 6.1. *Amendments to Article Seven.* Section 7.03 of the Indenture is amended in its entirety with respect to the Notes as follows:

"**SECTION 7.03. *Reports by Company.*** (a) For so long as the indentures governing any of the Company's outstanding 6.0% Convertible Subordinated Notes due 2009, 11.5% Senior Notes due 2010, 6.0% Convertible Subordinated Notes due 2010, 2.875% Convertible Senior Notes due 2010, 10.0% Convertible Senior Notes due 2011, 5.25% Convertible Senior Notes due 2011, 3.5% Convertible Senior Notes due 2012 or 9% Convertible Senior Discount Notes due 2013 contain a provision with respect to the Company's obligation to file with the Trustee certain information, documents and reports that are substantially identical to the requirements set forth below in this Section 7.03(a), the Company will:

(1) file with the Trustee, within 15 days after the Company is required to file the same with the Commission, copies of the annual reports and of the information, documents, and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act; or, if the Company is not required to file information, documents or reports pursuant to either of such Sections of the Exchange Act, then it will file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Exchange Act in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(2) file with the Trustee and the Commission, in accordance with the rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company with the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations; and

(3) transmit by mail to the Holders of Notes, within 30 days after the filing thereof with the Trustee, in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act, such summaries of any information, documents and reports required to be filed by the Company pursuant to paragraphs (1) and (2) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

(b) From and after the date on which Section 7.03(a) is no longer applicable to the Company with respect to the Notes, the Company shall file with the Trustee and the Commission such information, documents and other reports, and such summaries thereof, as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant to the Trust Indenture Act; provided that any such information, documents or reports required to be filed with the Commission pursuant to Section 13 or 15(d) of the Exchange Act shall be filed with the Trustee within 15 days after the same is actually filed with the Commission. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates)."

ARTICLE VII

CONVERSION OF SECURITIES

SECTION 7.1. *Applicability of Conversion Provisions.* Pursuant to Section 3.01(24) of the Indenture, the Notes will be convertible in accordance with the provisions of, and pursuant to, Article Fifteen of the Indenture, as amended hereby, and the definitive form of the Notes; *provided, however*, that, prior to any conversion, any applicable governmental consents have been received by the Company or the Holder.

SECTION 7.2. *Amendments to Article Fifteen.* Article Fifteen is amended in its entirety with respect to the Notes to read as follows:

"SECTION 15.01. *Right To Convert.* Subject to and upon compliance with the provisions of this Indenture, each Holder of Notes shall have the right (upon delivery to the Company of the HSR Certificate (a form of which is attached to the Notes)), at his or her option, at any time on or before the close of business on the Stated Maturity date (except that, with respect to any Note or portion thereof subject to a duly completed election for repurchase, such right shall terminate at the close of business on the Business Day immediately preceding the Designated Event Purchase Date (unless the Company defaults in the payment due upon repurchase or such Holder elects to withdraw the submission of such election to repurchase in accordance with Section 10.08)) to convert the principal amount of any Note held by such Holder, or any portion of such principal amount which is \$1,000 or an integral multiple thereof, into that number of fully paid and non-assessable shares of Common Stock (as such shares shall then be constituted) obtained by dividing the principal amount of the Note or portion thereof to be converted by the Conversion Price in effect at such time, by surrender of the Note so to be converted in whole or in part in the manner provided in Section 15.02. A Holder of Notes is not entitled to any rights of a holder of Common Stock until such Holder of Notes has converted his or her Notes to Common Stock, and

then only to the extent such Notes are deemed to have been converted to Common Stock under this Article Fifteen.

If a Change in Control described in clause (b) or (c) of the definition thereof occurs, then the Conversion Rate per \$1,000 principal amount of Notes otherwise in effect in respect of Notes for which a conversion notice is received by the Conversion Agent during the period beginning 10 Trading Days before the anticipated Effective Date (as defined below) of the Change in Control and ending at the close of business on the Trading Day immediately preceding the related Designated Event Purchase Date shall be increased by the amount (the " *Additional Shares* "), if any, determined by reference to the table below, based on the Effective Date of such Change in Control and the Stock Price of such Change in Control; *provided, however*, that the Company shall not be required to pay the Additional Shares if a Change in Control described in clause (c) of the definition of Change in Control occurs and at least 90% of the consideration (excluding cash payments for fractional shares) in the transaction or transactions constituting the Change in Control consists of shares of common stock that are, or upon issuance will be, traded on the New York Stock Exchange or the NYSE Alternext or approved for trading on a Nasdaq market and as a result of such transaction or transactions the Notes become convertible solely into such common stock and other consideration payable in such transaction or transactions. The Company will mail a notice to Holders and issue a press release no later than 20 Business Days prior to the anticipated Effective Date of such anticipated Change in Control.

The number of Additional Shares will be determined by reference to the table below and is based on the date on which the Change in Control becomes effective (the " *Effective Date* ") and the price (the " *Stock Price* ") paid per share of Common Stock in the transaction constituting the Change in Control. If holders of the Common Stock receive only cash in the transaction constituting the Change in Control, the Stock Price shall be the cash amount paid per share of the Common Stock. Otherwise, the Stock Price shall be equal to the average of the Closing Sale Price over the five Trading Day period ending on the Trading Day immediately preceding the Effective Date.

The following table sets forth the Additional Shares, if any, issuable upon conversion of each \$1,000 principal amount of Notes in connection with such a Change in Control for each Stock Price and Effective Date set forth below.

Additional Shares

Stock Price on Effective Date	Effective Date				
	On or before				
	January 15, 2009	January 15, 2010	January 15, 2011	January 15, 2012	January 15, 2013
\$ 0.87	593.8697	593.8697	593.8697	593.8697	593.8697
\$ 1.00	484.0124	452.7214	444.4444	444.4444	444.4444
\$ 1.25	347.2444	313.6596	274.2036	244.4444	244.4444
\$ 1.50	261.6078	231.3678	189.6671	139.2131	111.1111
\$ 1.75	202.2347	177.3582	139.2799	84.3673	15.8730
\$ 2.00	157.8529	138.5164	106.5924	55.2309	0.0000
\$ 2.25	122.8267	108.4227	83.1916	39.5227	0.0000
\$ 2.50	94.0600	83.7336	64.7528	30.2024	0.0000
\$ 2.75	69.7750	62.6677	49.1055	23.4888	0.0000
\$ 3.00	49.0634	44.4091	35.3288	17.6264	0.0000
\$ 3.50	17.4062	15.8687	13.0099	7.0350	0.0000
\$ 4.00	0.0000	0.0000	0.0000	0.0000	0.0000

If actual Stock Prices on the Effective Date are not set forth on the table above and:

- (i) if the actual Stock Price on the Effective Date is between two Stock Prices on the table or the actual Effective Date is between two Effective Dates on the table, the number of Additional Shares will be determined by a straight-line interpolation between the adjustment amounts set forth for such two Stock Prices or such two Effective Dates on the table based on a 360-day year, as applicable;
- (ii) if the Stock Price on the Effective Date equals or exceeds \$4.00 per share (subject to adjustment as described below), no Additional Shares will be issued upon conversion; and
- (iii) if the Stock Price on the Effective Date is less than \$0.87 per share (subject to adjustment as described below), no Additional Shares will be issued upon conversion.

The Stock Prices set forth in the first column of the table above will be adjusted as of any date on which the Conversion Rate is adjusted. The adjusted Stock Prices will equal the Stock Prices applicable immediately prior to such adjustment multiplied by a fraction, the numerator of which is the Conversion Rate immediately prior to the adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares set forth in the table above will be adjusted in the same manner as the Conversion Rate as set forth in Section 15.05 hereof.

Notwithstanding the foregoing, in no event will the Conversion Rate exceed 1,149.4252 shares of Common Stock per \$1,000 principal amount of Notes, subject to adjustment in the manner set forth in Section 15.05 hereof.

SECTION 15.02. *Exercise of Conversion Privilege; Issuance of Common Stock on Conversion; No Adjustment for Interest or Dividends.* To exercise, in whole or in part, the conversion privilege with respect to any Note, the Holder of such Note shall surrender such Note, duly endorsed, at an office or agency maintained by the Company pursuant to Section 10.02, accompanied by the funds, if any, required by the last paragraph of this Section 15.02, and shall give written notice of conversion in the form provided on the Notes (or such other notice which is acceptable to the Company) to such office or agency that the Holder of Notes elects to convert such Note or such portion thereof specified in said notice. Such notice shall also state the name or names (with address or addresses) in which the shares of Common Stock which are issuable on such conversion shall be issued, and shall be accompanied by transfer taxes, if required pursuant to Section 15.07. If the Notes are not in certificated form, the Holders may exercise their right of conversion by complying with the applicable Depositary procedures. Each such Note surrendered for conversion shall, unless the shares issuable on conversion are to be issued in the same name as the registration of such Note, be duly endorsed by, or be accompanied by instruments of transfer in form satisfactory to the Company duly executed by, the Holder of Notes or his or her duly authorized attorney. The Holder of such Notes will not be required to pay any tax or duty which may be payable in respect of the issue or delivery of Common Stock on conversion, but will be required to pay any tax or duty which may be payable in respect of any transfer involved in the issue or delivery of Common Stock in a name other than the same name as the registration of such Note.

As promptly as practicable after satisfaction of the requirements for conversion set forth above, the Company shall issue the number of full shares of Common Stock (including any full shares as a result of rounding fractional shares up to a full number of shares pursuant to Section 15.03) issuable upon the conversion of such Note or portion thereof in accordance with the provisions of this Article Fifteen and a check or cash (which payment, if any, shall be paid no later than three Business Days after satisfaction of the requirements for conversion set forth above) in respect of any fractional interest in respect of a share of Common Stock, pursuant to

Section 15.03. Shares of Common Stock will not be issued or delivered unless all taxes and duties, if any, payable by the Holder have been paid. In case any Note of a denomination of an integral multiple greater than \$1,000 is surrendered for partial conversion, and subject to Section 3.03, the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of the Note so surrendered, without charge to him or her, a new Note or Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Note.

Each conversion shall be deemed to have been effected as to any such Note (or portion thereof) on the date (the "*Conversion Date*") on which the requirements set forth in this Section 15.02 have been satisfied as to such Note (or portion thereof), and the Person in whose name any shares of Common Stock are issuable upon such conversion shall be deemed to have become on said date the holder of record of the shares represented thereby; *provided, however*, that any such surrender on any date when the Company's stock transfer books are closed shall constitute the Person in whose name the shares are to be issued as the record holder thereof for all purposes on the next succeeding day on which such stock transfer books are open, but such conversion shall be at the Conversion Price in effect on the date upon which such Note is surrendered.

Any Note or portion thereof surrendered for conversion during the period from the close of business on the Regular Record Date for any interest payment through the close of business on the last Trading Day immediately preceding such Interest Payment Date shall (unless the Company has specified a Designated Event Purchase Date or an Automatic Conversion Date during such period) be accompanied by payment, in funds acceptable to the Company, of an amount equal to the interest otherwise payable on such Interest Payment Date on the principal amount being converted; *provided, however*, that such payment may be reduced by the amount of any existing payment default in respect of such Notes. An amount equal to such payment shall be paid by the Company on such Interest Payment Date to the Holder of such Note at the close of business on such Regular Record Date. Except as provided above in this Section 15.02 or in Section 15.12, no adjustment shall be made for interest accrued on any Note converted or for dividends on any shares issued upon the conversion of such Note as provided in this Article Fifteen.

SECTION 15.03. *Cash Payments in Lieu of Fractional Shares.* If more than one Note shall be surrendered for conversion at one time by the same Holder, the number of full shares which shall be issuable upon conversion shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof to the extent permitted hereby) so surrendered for conversion. In respect of any fractional share of stock that otherwise would be issuable upon the conversion of any Note or Notes, the Company shall make an adjustment therefor in cash based upon the current market price thereof or the Company shall, at its option, round such fraction up to the nearest whole number of shares for issuance upon conversion. For purposes of this Section 15.03, the "current market price" of a share of Common Stock shall be the Closing Sale Price on the last Trading Day immediately preceding the day on which the Notes (or specified portions thereof) are deemed to have been converted.

SECTION 15.04. *Conversion Rate.* Each \$1,000 principal amount of the Notes shall be convertible into the number of shares of Common Stock (the "*Conversion Rate*") specified in the form of Note attached as *Exhibit A* hereto, subject to adjustment as provided in this Article Fifteen.

SECTION 15.05. *Adjustment of the Conversion Rate.* The Conversion Rate shall be adjusted from time to time by the Company as follows:

- (a) In case the Company shall hereafter pay a dividend or make a distribution to all holders of the outstanding Common Stock in shares of Common Stock, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the

Conversion Rate in effect at the opening of business on the date following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution by a fraction,

(i) the numerator of which shall be the sum of the number of shares of Common Stock outstanding at the close of business on the date fixed for the determination of stockholders entitled to receive such dividend or other distribution plus the total number of shares of Common Stock constituting such dividend or other distribution; and

(ii) the denominator of which shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination,

such increase to become effective immediately after the opening of business on the day following the date fixed for such determination. For the purpose of this paragraph (a), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company. If any dividend or distribution of the type described in this Section 15.05 is declared but not so paid or made, the Conversion Rate shall again be adjusted to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(b) In case the Company shall issue rights or warrants to all holders of its outstanding shares of Common Stock entitling them to subscribe for or purchase shares of Common Stock at a price per share less than the Current Market Price on the date fixed for determination of stockholders entitled to receive such rights or warrants, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to the date fixed for determination of stockholders entitled to receive such rights or warrants by a fraction,

(i) the numerator of which shall be the number of shares of Common Stock outstanding on the date fixed for determination of stockholders entitled to receive such rights or warrants plus the total number of additional shares of Common Stock offered for subscription or purchase, and

(ii) the denominator of which shall be the sum of the number of shares of Common Stock outstanding at the close of business on the date fixed for determination of stockholders entitled to receive such rights or warrants plus the number of shares that the aggregate offering price of the total number of shares so offered would purchase at such Current Market Price.

Such adjustment shall be successively made whenever any such rights or warrants are issued, and shall become effective immediately after the opening of business on the day following the date fixed for determination of stockholders entitled to receive such rights or warrants. To the extent that shares of Common Stock are not delivered after the expiration of such rights or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights or warrants are not so issued, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such date fixed for the determination of stockholders entitled to receive such rights or warrants had not been fixed. In determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such Current Market Price, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights or warrants and any amount

payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) In case outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock, the Conversion Rate in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately increased, and conversely, in case outstanding shares of Common Stock shall be combined into a smaller number of shares of Common Stock, the Conversion Rate in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately reduced, such increase or reduction, as the case may be, to become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(d) In case the Company shall pay a cash dividend to all holders of its Common Stock or, by dividend or otherwise, distribute to all holders of its Common Stock shares of any class of Capital Stock of the Company or evidences of its indebtedness or assets, including cash and securities (any such distribution, a " *Distribution* "; *provided, however*, that the term "Distribution" shall not include, and this Section 15.05(d) shall not apply to, (x) any rights or warrants referred to in Section 15.05(b) and (y) any dividend or distribution referred to in Section 15.05(a)), then, in each such case (unless the Company elects to reserve such Distribution for distribution to the Holders upon the conversion of the Notes so that any such Holder converting Notes will receive upon such conversion, in addition to the shares of Common Stock to which such Holder is entitled, the amount and kind of such Distribution which such Holder would have received if such Holder had converted its Notes into Common Stock immediately prior to the Record Date), the Conversion Rate shall be increased so that the same shall be equal to the rate determined by multiplying the Conversion Rate in effect on the Record Date with respect to such distribution by a fraction,

(i) the numerator of which shall be the Current Market Price on such Record Date; and

(ii) the denominator of which shall be the Current Market Price on such Record Date less (A) in the case of Distributions other than cash, the Fair Market Value (as determined by the Board of Directors, whose determination shall be conclusive, and described in a resolution of the Board of Directors) on the Record Date of the portion of such Distributions applicable to one share of Common Stock and (B) in the case of Distributions of cash, the amount of such Distributions applicable to one share of Common Stock,

such adjustment to become effective immediately prior to the opening of business on the day following such Record Date; *provided, however*, that if the then Fair Market Value (as so determined) of the portion of the Distribution so distributed applicable to one share of Common Stock is equal to or greater than the Current Market Price on the Record Date, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder shall have the right to receive upon conversion the amount of Distribution such Holder would have received had such Holder converted each Note on the Record Date. If such Distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such Distribution had not been declared. If the Board of Directors determines the Fair Market Value of any distribution for purposes of this Section 15.05 by reference to the actual or when issued trading market for any securities, it must in doing so consider the prices in such market over the same period used in computing the Current Market Price on the applicable Record Date. Notwithstanding the foregoing, if the Distribution distributed by the Company to all holders of its Common Stock consists of

Capital Stock of, or similar equity interests in, a Subsidiary or other business unit, the Conversion Rate shall be increased so that the same shall be equal to the rate determined by multiplying the Conversion Rate in effect on the Record Date with respect to such distribution by a fraction:

(i) the numerator of which shall be the sum of (x) the average Closing Sale Price of one share of Common Stock over the ten consecutive Trading Day period (the "*Spinoff Valuation Period*") commencing on and including the fifth Trading Day after the date on which "ex-dividend trading" commences on the Common Stock on the Nasdaq Global Select Market or such other national or regional exchange or market on which the Common Stock is then listed or quoted and (y) the average Fair Market Value (as determined by the Board of Directors, whose determination shall be conclusive, and described in a resolution of the Board of Directors) over the Spinoff Valuation Period of the portion of the Distribution so distributed applicable to one share of Common Stock; and

(ii) the denominator of which shall be the average Closing Sale Price of one share of Common Stock over the Spinoff Valuation Period,

such adjustment to become effective immediately prior to the opening of business on the day following such Record Date; *provided, however*, that the Company may in lieu of the foregoing adjustment make adequate provision so that each Holder shall have the right to receive upon conversion the amount of Distribution such Holder would have received had such Holder converted each Note on the Record Date with respect to such Distribution.

Rights or warrants distributed by the Company to all holders of Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company's Capital Stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("*Trigger Event*"): (i) are deemed to be transferred with such shares of Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this Section 15.05 (and no adjustment to the Conversion Rate under this Section 15.05 will be required) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 15.05. If any such right or warrant, including any such existing rights or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and record date with respect to new rights or warrants with such rights (and a termination or expiration of the existing rights or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 15.05 was made, (1) in the case of any such rights or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights or warrants that shall have expired or been terminated without exercise by

any holders thereof, the Conversion Rate shall be readjusted as if such rights and warrants had not been issued.

No adjustment of the Conversion Rate shall be made pursuant to this Section 15.05 in respect of rights or warrants distributed or deemed distributed on any Trigger Event to the extent that such rights or warrants are actually distributed, or reserved by the Company for distribution to Holders of Notes upon conversion by such Holders of Notes to Common Stock.

For purposes of this Section 15.05(d) and 15.05(a) and (b), any dividend or distribution to which this Section 15.05(d) is applicable that also includes shares of Common Stock, or rights or warrants to subscribe for or purchase shares of Common Stock (or both), shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, assets or shares of Capital Stock other than such shares of Common Stock or rights or warrants (and any Conversion Rate adjustment required by this Section 15.05 with respect to such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such shares of Common Stock or such rights or warrants (and any further Conversion Rate adjustment required by Sections 15.05(a) and (b) with respect to such dividend or distribution shall then be made), except

(A) the Record Date of such dividend or distribution shall be substituted as "the date fixed for the determination of stockholders entitled to receive such dividend or other distribution", "the date fixed for the determination of stockholders entitled to receive such rights or warrants" and "the date fixed for such determination" within the meaning of Section 15.05(a) and (b) and

(B) any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding at the close of business on the date fixed for such determination" within the meaning of Section 15.05(a).

(e) In case a tender or exchange offer made by the Company or any Subsidiary for all or any portion of the Common Stock shall expire and such tender or exchange offer (as amended upon the expiration thereof) shall require the payment to tendering or exchanging stockholders of consideration per share of Common Stock having a Fair Market Value (as determined by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors) that as of the last time (the "*Expiration Time*") tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended) exceeds the Closing Sale Price of a share of Common Stock on the Trading Day next succeeding the Expiration Time, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to the Expiration Time by a fraction,

(i) the numerator of which shall be the sum of (x) the Fair Market Value (determined as aforesaid) of the aggregate consideration payable to tendering or exchanging stockholders based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Expiration Time (the shares deemed so accepted up to any such maximum, being referred to as the "*Purchased Shares*") and (y) the product of the number of shares of Common Stock outstanding (less any Purchased Shares) at the Expiration Time and the Closing Sale Price of a share of Common Stock on the Trading Day next succeeding the Expiration Time, and

(ii) the denominator of which shall be the number of shares of Common Stock outstanding (including any tendered or exchanged shares) at the Expiration Time

multiplied by the Closing Sale Price of a share of Common Stock on the Trading Day next succeeding the Expiration Time

such adjustment to become effective immediately prior to the opening of business on the day following the Expiration Time. If the Company is obligated to purchase shares pursuant to any such tender or exchange offer, but the Company is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made.

(f) For purposes of this Section 15.05, the following terms shall have the meaning indicated:

(1) "*Current Market Price*" shall mean, with respect to any date, the average of the daily Closing Sale Prices per share of Common Stock for the 10 consecutive Trading Days immediately preceding the earlier of such date of determination and the day before the "ex" date with respect to the issuance, distribution, subdivision or combination requiring such computation immediately prior to the date in question. For purpose of this paragraph, the term "ex" date, (1) when used with respect to any issuance or distribution, means the first date on which the Common Stock trades, regular way, on the relevant exchange or in the relevant market from which the Closing Sale Price was obtained without the right to receive such issuance or distribution, and (2) when used with respect to any subdivision or combination of shares of Common Stock, means the first date on which the Common Stock trades, regular way, on such exchange or in such market after the time at which such subdivision or combination becomes effective.

If another issuance, distribution, subdivision or combination to which this Section 15.05 applies occurs during the period applicable for calculating "*Current Market Price*" pursuant to the definition in the preceding paragraph, "*Current Market Price*" shall be calculated for such period in a manner determined by the Board of Directors to reflect the impact of such issuance, distribution, subdivision or combination on the Closing Sale Price of the Common Stock during such period.

(2) "*Fair Market Value*" shall mean the amount which a willing buyer would pay a willing seller in an arm's-length transaction.

(3) "*Record Date*" shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

(g) The Company may make such increases in the Conversion Rate, in addition to those required by Section 15.05(a), (b), (c), (d) or (e) as the Board of Directors considers to be advisable to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

To the extent permitted by applicable law, the Company from time to time may increase the Conversion Rate by any amount for any period of time if the period is at least twenty (20) days, the increase is irrevocable during the period and the Board of Directors shall have made a determination that such increase would be in the best interests of the Company, which determination shall be conclusive. Whenever the Conversion Rate is increased pursuant to the

preceding sentence, the Company shall mail to Holders of record of the Notes a notice of the increase at least fifteen (15) days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(h) No adjustment in the Conversion Rate shall be required unless such adjustment would require an increase or decrease of at least one percent (1%) in such rate; *provided, however*, that any adjustments that by reason of this Article Fifteen are not required to be made shall be carried forward and made (i) as part of any subsequent adjustment or (ii) at the time the Company mails a notice of a Designated Event pursuant to Section 10.06(b) or an Automatic Conversion Notice (as defined below) pursuant to Section 15.12. All calculations under this Article Fifteen shall be made by the Company and shall be made to the nearest cent or to the nearest one-ten thousandth (1/10,000) of a share, as the case may be. No adjustment need be made for rights to purchase Common Stock pursuant to a Company plan for reinvestment of dividends or interest. To the extent the Notes become convertible into cash, assets, property or securities (other than capital stock), no adjustment need be made thereafter as to the cash, assets, property or such securities. Interest will not accrue on any cash into which the Notes are convertible. The Conversion Rate shall be adjusted only once for a single event or occurrence that would require an adjustment under more than one of Section 15.05(a), (b), (c), (d) or (e).

(i) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee and any Conversion Agent other than the Trustee an Officers' Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Trustee shall have received such Officers' Certificate, the Trustee shall not be deemed to have actual knowledge of any adjustment of the Conversion Rate and may assume that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to the Holder of each Note, within twenty (20) days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(j) In any case in which this Section 15.05 provides that an adjustment shall become effective immediately after (1) a record date or Record Date for an event, (2) the date fixed for the determination of stockholders entitled to receive a dividend or distribution pursuant to Section 15.05(a), (3) a date fixed for the determination of stockholders entitled to receive rights or warrants pursuant to Section 15.05(b), or (4) the Expiration Time for any tender or exchange offer pursuant to Section 15.05, (each a " *Determination Date* "), the Company may elect to defer until the occurrence of the applicable Adjustment Event (as hereinafter defined) (x) issuing to the Holder of any Note converted after such Determination Date and before the occurrence of such Adjustment Event, the additional shares of Common Stock or other consideration issuable upon such conversion by reason of the adjustment required by such Adjustment Event over and above the Common Stock issuable upon such conversion before giving effect to such adjustment and (y) paying to such Holder any amount in cash in lieu of any fractional share pursuant to Section 15.03. For purposes of this Section 15.05(j), the term " *Adjustment Event* " shall mean:

(i) in any case referred to in clause (1) hereof, the occurrence of such event,

(ii) in any case referred to in clause (2) hereof, the date any such dividend or distribution is paid or made,

(ii) in any case referred to in clause (3) hereof, the date of expiration of such rights or warrants, and

(iv) in any case referred to in clause (4) hereof, the date a sale or exchange of Common Stock pursuant to such tender or exchange offer is consummated and becomes irrevocable.

(k) For purposes of this Section 15.05, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company.

SECTION 15.06. *Effect of Reclassification, Consolidation, Merger or Sale.* If any of the following events occur (each, a "*Business Combination*"): (i) any reclassification or change of the outstanding shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination), (ii) any consolidation, merger, share exchange or combination of the Company with another Person or (iii) any sale or conveyance of all or substantially all of the properties and assets of the Company as an entirety or substantially as an entirety, in each case as a result of which holders of Common Stock shall receive stock, securities or other property or assets (including cash) with respect to or in exchange for such Common Stock, then the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture (which shall comply with the TIA as in force at the date of execution of such supplemental indenture if such supplemental indenture is then required to so comply) providing that the Holders of the Notes then outstanding will be entitled thereafter to convert such Notes into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) which they would have owned or been entitled to receive upon such Business Combination had such Notes been converted into Common Stock (without giving effect to any adjustment to the Conversion Rate with respect to a Business Combination constituting a Change in Control) immediately prior to such Business Combination, except that such Holders will not receive the Additional Shares if such Holder does not convert during the period set forth in the second paragraph of Section 15.01. In the event holders of Common Stock have the opportunity to elect the form of consideration to be received in such Business Combination, the Company shall make adequate provision whereby the Notes shall be convertible from and after the effective date of such Business Combination into the form of consideration received in such Business Combination by Holders of the greatest number of shares of Common Stock who made a given election with respect to the form of consideration. The Company may not become a party to any Business Combination unless its terms are consistent with this Section 15.06. Such supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article Fifteen. If, in the case of any such Business Combination, the stock or other securities and assets receivable thereupon by a holder of shares of Common Stock includes shares of stock or other securities and assets of a Person other than the successor or purchasing Person, as the case may be, in such Business Combination, then such supplemental indenture shall also be executed by such other Person and shall contain such additional provisions to protect the interests of the Holders of the Notes as the Board of Directors shall reasonably consider necessary by reason of the foregoing, including to the extent practicable the provisions providing for the purchase rights set forth in Section 10.06 hereof. Notwithstanding anything contained in this Section, and for the avoidance of doubt, this Section shall not affect the right of a Holder to convert its Notes into shares of Common Stock prior to the effective date of the Business Combination.

The Company shall cause notice of the execution of such supplemental indenture to be mailed to each Holder of Notes within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

The above provisions of this Section 15.06 shall similarly apply to successive reclassifications, changes, consolidations, mergers, share exchanges, combinations, sales and conveyances.

If this Section 15.06 applies to any event or occurrence, Section 15.05 shall not apply.

SECTION 15.07. *Taxes on Shares Issued.* The issue of shares on conversions of Notes shall be made without charge to the converting Holder for any tax in respect of the issue thereof. The Company shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of stock in any name other than that of the Holder of any Note converted, and the Company shall not be required to issue or deliver any such shares unless and until the Person or Persons requesting the issue thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

SECTION 15.08. *Reservation of Shares; Shares to Be Fully Paid; Listing of Common Stock.* The Company shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to provide for the conversion of the Notes from time to time as such Notes are presented for conversion. Before taking any action which would cause an adjustment increasing the Conversion Rate to an amount that would cause the Conversion Price to be reduced below the then par value, if any, of the shares of Common Stock issuable upon conversion of the Notes, the Company shall take all corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue shares of such Common Stock at such adjusted Conversion Rate.

The Company covenants that all shares of Common Stock issued upon conversion of Notes will be fully paid and nonassessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.

The Company further covenants that as long as the Common Stock is approved for trading on the Nasdaq Global Select Market, or its successor, the Company shall cause all Common Stock issuable upon conversion of the Notes to be eligible for such quotation in accordance with, and at the times required under, the requirements of such market, and if at any time the Common Stock becomes listed on the New York Stock Exchange or any other national securities exchange, the Company shall cause all Common Stock issuable upon conversion of the Notes to be so listed and remain listed.

SECTION 15.09. *Responsibility of Trustee.* The Trustee and any Conversion Agent shall have no duty, responsibility or liability to any Holder to determine whether any facts exist which may require any adjustment of the Conversion Rate, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. Neither the Trustee nor any Conversion Agent shall be accountable with respect to the registration under securities laws, listing, validity or value (or the kind or amount) of any shares of Common Stock, or of any other securities or property, which may at any time be issued or delivered upon the conversion of any Note, and neither the Trustee nor any Conversion Agent makes any representation with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to make any cash payment or to issue, transfer or deliver any shares of stock or stock certificates or other securities or property upon the surrender of any Note for the purpose of conversion; and the Trustee and any Conversion Agent shall not be responsible for any failure of the Company to comply with any of the covenants of the Company contained in this Article Fifteen.

SECTION 15.10. *Notice to Holders Prior to Certain Actions.* If:

- (a) the Company declares a dividend (or any other distribution) on its Common Stock (other than in cash out of retained earnings);
- (b) the Company authorizes the granting to the holders of its Common Stock of rights or warrants to subscribe for or purchase any share of any class of Common Stock or any other rights or warrants (other than rights or warrants referred to in the second paragraph of Section 15.05(d));
- (c) there is any reclassification of the Common Stock (other than a subdivision or combination of outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation, merger or share exchange to which the Company is a party, or of the sale or transfer of all or substantially all of the assets of the Company; or
- (d) there is any voluntary or involuntary dissolution, liquidation or winding-up of the Company;

then the Company shall cause to be filed with the Trustee and at the office or agency maintained for the purpose of conversion of the Notes pursuant to Section 10.02, and shall caused to be mailed to each Holder of Notes, at their last addresses as they shall appear on the Security Register of the Company as promptly as possible but in any event at least 10 days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend or distribution of rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend or distribution are to be determined or (y) the date on which such reclassification, consolidation, merger, share exchange, sale, transfer, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, share exchange, sale, transfer, dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, share exchange, sale, transfer, dissolution, liquidation or winding-up. The Company shall also disseminate a press release through Dow Jones & Company Inc., Bloomberg Business News, PR Newswire or another comparable news service containing this information.

SECTION 15.11. *Rights Issued in Respect of Common Stock Issued Upon Conversion.* If the Company has a stockholder rights plan in effect on any Conversion Date, the Company shall issue, in addition to the Common Stock, the rights under the rights plan unless the rights have separated from the Common Stock at the time of conversion, in which case the Conversion Rate will be adjusted as if the Company had distributed to all holders of the Common Stock, shares of the Capital Stock, evidences of indebtedness or assets as set forth in Section 15.05, subject to readjustment in the event of the expiration, termination or redemption of such rights.

SECTION 15.12. *Automatic Conversion.*

(a) If at any time following the date of original issuance of the Notes and on or prior to the Stated Maturity, the Closing Sale Price exceeds 222.2% of the Conversion Price then in effect for at least twenty (20) Trading Days in any thirty (30) consecutive Trading Day period (an "Automatic Conversion Event"), the Notes shall automatically convert into shares of Common Stock at the then applicable Conversion Rate on the Automatic Conversion Date (as defined below) specified in the Automatic Conversion Notice (as defined below) (the "Automatic Conversion").

(b) Following the occurrence of an Automatic Conversion Event, at the request and expense of the Company, the Trustee shall mail or cause to be mailed to each Holder notice (the "*Automatic Conversion Notice*") of the Automatic Conversion Event, which notice shall specify the date designated by the Company for the Automatic Conversion to become effective (such effective date, the "*Automatic Conversion Date*"). The Automatic Conversion Date shall be no less than three (3) Business Days after the date of the Automatic Conversion Notice. If the Company gives such notice, it shall also deliver a copy of such Automatic Conversion Notice to the Trustee. Such mailing shall be by first class mail. Such notice, if mailed in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not the holder receives such notice.

(d) Each Automatic Conversion Notice shall state:

- (1) the CUSIP number of the Notes being automatically converted,
- (3) the Automatic Conversion Date,
- (4) that on and after said date Interest thereon will cease to accrue,
- (5) the place or places where the Securities are to be surrendered for conversion, and
- (6) the Conversion Price then in effect.

(e) Prior to or contemporaneous with the mailing of an Automatic Conversion Notice to the Holders, the Company shall disseminate a press release containing the information contained in the Automatic Conversion Notice through Dow Jones & Company, Bloomberg Business News, PR Newswire or another comparable news service.

(f) In the event of an Automatic Conversion, the Company shall issue and deliver (i) shares of Common Stock, (ii) any cash in respect of any fractional shares of Common Stock otherwise issuable upon conversion of the Notes and (iii) accrued and unpaid interest on the Notes to, but excluding, the Automatic Conversion Date, for payment to the Holders as promptly as practicable following the Automatic Conversion Date, but in no event later than the close of business on the third next succeeding Business Day following such Automatic Conversion Date. If such Automatic Conversion Date is after a Regular Record Date or a Special Record Date but on or prior to the corresponding Interest Payment Date or a Defaulted Interest payment date, however, then the Company shall pay the interest payable on such date to the Person in whose name the Note is registered at the close of business on the relevant Regular Record Date or Special Record Date.

(g) All Notes subject to an Automatic Conversion shall be delivered to the Trustee or its agent to be cancelled by or at the direction of the Trustee, which shall dispose of the same.

(h) As of the Automatic Conversion Date, Interest on the Notes shall cease to accrue and the Holders thereof shall have no right in respect of such Notes except the right to receive the Common Stock and cash, if any, and accrued and unpaid interest to which they are entitled pursuant to this Section 15.12.

(i) If any of the provisions of this Section 15.12 are inconsistent with applicable law at the time of such Automatic Conversion, such law shall govern."

ARTICLE VIII

MISCELLANEOUS

SECTION 8.1. *Application of First Supplemental Indenture.* Each and every term and condition contained in this First Supplemental Indenture that modifies, amends or supplements the terms and conditions of the Indenture shall apply only to the Notes created hereby and not to any future series of Securities established under the Indenture.

SECTION 8.2. *Benefits of First Supplemental Indenture.* Nothing contained in this First Supplemental Indenture shall or shall be construed to confer upon any Person other than a Holder of the Notes, the Company or 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 this First Supplemental Indenture.

SECTION 8.3. *Effective Date.* This First Supplemental Indenture shall be effective as of the date first above written and upon the execution and delivery hereof by each of the parties hereto.

SECTION 8.4. *Governing Law.* This First Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to conflicts of laws principles thereof.

SECTION 8.5. *Counterparts.* This First Supplemental Indenture may be executed in any number of counterparts, 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 8.6. *Trustee Not Responsible for Recitals or Issuance of Securities.* The recitals contained herein and in the Notes, except the Trustee's certificates of authentication, shall be taken as the statements of the Company and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this First Supplemental Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of Notes or the proceeds thereof.

IN WITNESS WHEREOF, the parties hereto have caused this First 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 COMMUNICATIONS, INC.

By: _____
Name:
Title:

THE BANK OF NEW YORK MELLON, as Trustee

By: _____
Name:
Title:

EXHIBIT A
(Face of Security)

[Global Securities Legend]

[The following legend shall appear on the face of each Global Security: THIS NOTE IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITARY OR A NOMINEE OF THE DEPOSITARY, WHICH MAY BE TREATED BY THE COMPANY, THE TRUSTEE AND ANY AGENT THEREOF AS OWNER AND HOLDER OF THIS NOTE FOR ALL PURPOSES.]

[The following legend shall appear on the face of each Global Security for which The Depository Trust Company is to be the Depository:

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY THE AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR REGISTERED NOTES IN DEFINITIVE REGISTERED FORM IN THE LIMITED CIRCUMSTANCES REFERRED TO IN THE INDENTURE, THIS GLOBAL SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.]

Level 3 Communications, Inc.

15% CONVERTIBLE SENIOR NOTE DUE 2013

Level 3 Communications, Inc. promises to pay to _____, or registered assigns, the principal sum of _____ Dollars on January 15, 2013.

Interest Payment Dates: January 15 and July 15, commencing January 15, 2009
Regular Record Dates: January 1 and July 1

Dated: [], 2008

Level 3 Communications, Inc.

By:

Name:

Title:

Certificate of Authentication

This is one of the Convertible Senior Notes referred to in the within-mentioned Indenture.

Date: [], 2008

The Bank of New York Mellon, as Trustee

By:

Authorized Signatory

15% CONVERTIBLE SENIOR NOTE DUE 2013

1. **INTEREST.** Level 3 Communications, Inc., a Delaware corporation (the "Company"), promises to pay interest on the principal amount of this Note at the rate per annum shown above. The Company will pay interest semi-annually in arrears on January 15 and July 15 of each year, beginning January 15, 2009. Interest on the Notes will accrue from the most recent Interest Payment Date to which interest has been paid or, if no interest has been paid, from [], 2008. Interest will be computed on the basis of a 360-day year composed of twelve 30-day months.
2. **METHOD OF PAYMENT.** The Company will pay interest on the Notes (except Defaulted Interest) to the Person in whose name each Note is registered at the close of business on the January 1 or July 1 immediately preceding the relevant Interest Payment Date (each a "Regular Record Date"). The Holder must surrender Notes to a Paying Agent to collect principal payments. The Company will pay the principal of, premium, if any, and interest on the Notes at the office or agency of the Company maintained for such purpose, in money of the United States that at the time of payment is legal tender for payment of public and private debts. Until otherwise designated by the Company, the Company's office or agency maintained for such purpose will be the principal Corporate Trust Office of the Trustee (as defined below). However, the Company may pay principal, premium, if any, and interest by check payable in such money, and may mail such check to the Holders of the Notes at their respective addresses as set forth in the Security Register of Holders of Notes.
3. **PAYING AGENT, CONVERSION AGENT AND REGISTRAR.** The Bank of New York Mellon (together with any successor Trustee under the Indenture referred to below, the "Trustee") will act as Paying Agent, Conversion Agent and Security Registrar. The Company may change the Paying Agent, Conversion Agent, Registrar or co-registrar without prior notice. Subject to certain limitations in the Indenture, the Company or any of its subsidiaries may act in any such capacity.
4. **INDENTURE.** This is one of a duly authorized issue of securities of the Company designated as its "15% Convertible Senior Notes Due 2013" issued under an indenture dated as of [], 2008 (the "Base Indenture"), between the Company and the Trustee, and a supplemental indenture dated as of [], 2008 (the "Supplemental Indenture"), between the Company and the Trustee (the Base Indenture as supplemented by the Supplemental Indenture, the "Indenture"). The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (the "TIA") as in effect on the date of the Indenture. The Notes are subject to, and qualified by, all such terms, certain of which are summarized hereon, and Holders are referred to the Indenture and the TIA for a statement of such terms. The Notes are unsecured and unsubordinated obligations of the Company limited to (except as otherwise provided in the Indenture) up to \$500,000,000 in aggregate principal amount. Capitalized terms not defined below have the same meaning as is given to them in the Indenture.
5. [RESERVED].
6. **DESIGNATED EVENT.** Upon the occurrence of a Designated Event, the Company shall make a Designated Event Offer to repurchase all outstanding Notes at a price equal to 100% of the aggregate principal amount of the Notes, plus accrued and unpaid interest to, but excluding, the date of repurchase, such offer to be made as provided in the Indenture. To accept the Designated Event Offer, the Holder hereof must comply with the terms thereof, including surrendering this Note, with the "Designated Event Purchase Notice" portion hereof completed, to the Company, a depository, if appointed by the Company, or a Paying Agent, at the address specified in the notice

of the Designated Event Offer mailed to Holders as provided in the Indenture, prior to the close of business on the Business Day immediately preceding the Designated Event Purchase Date.

7. **DENOMINATIONS, TRANSFER, EXCHANGE.** The Notes are in registered form without coupons in denominations of \$1,000 and integral multiples of \$1,000. The transfer of Notes may be registered and Notes may be exchanged as provided in the Indenture. As a condition of transfer, the Security Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents, and the Company and the Security Registrar may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Company or the Security Registrar need not exchange or register the transfer of any Note or portion of a Note submitted for repurchase or surrendered for conversion.
8. **PERSONS DEEMED OWNERS.** The registered holder of a Note shall be treated as its owner for all purposes.
9. **AMENDMENTS AND WAIVERS.** Subject to certain exceptions, the Indenture or the Notes may be amended or supplemented with the consent of the Holders of at least a majority in principal amount of the then outstanding Notes and any existing default may be waived with the consent of the Holders of a majority in principal amount of the then outstanding Notes.

Without the consent of any Holder, the Indenture or the Notes may be amended to: (a) cure any ambiguity or correct or supplement any defective or inconsistent provision contained in the Indenture, or make any other changes in the provisions of the Indenture which the Company and the Trustee may deem necessary or desirable provided such amendment does not materially and adversely affect the legal rights under the Indenture of the Holders of Notes; (b) provide for uncertificated Notes in addition to or in place of certificated Notes; (c) evidence the succession of another Person to the Company and provide for the assumption by such successor of the covenants and obligations of the Company thereunder and in the Notes as permitted by Section 8.01 of the Indenture; (d) provide for conversion rights or repurchase rights of Holders of Notes in the event of consolidation, merger, share exchange or sale of all or substantially all of the assets of the Company as required to comply with Sections 8.01 or 15.06 of the Indenture; (e) reduce the Conversion Price; (f) add guarantees with respect to the Notes; (g) evidence and provide for the acceptance of the appointment under the Indenture of a successor Trustee or to provide for or facilitate the administration of the trusts by more than one Trustee; (h) make any change that would provide any additional rights or benefits to the Holders of Notes or that does not adversely affect the legal rights under the Indenture of any such Holder; (i) comply with the requirements of the Commission in order to effect or maintain the qualification of the Indenture under the TIA; (j) secure the Notes; or (k) permit or facilitate the defeasance and discharge of Notes.

Without the consent of each Holder affected, an amendment or waiver may not (with respect to any Notes held by a nonconsenting Holder): (a) reduce the principal amount of Notes whose Holders must consent to an amendment, supplement or waiver; (b) change the stated maturity of the principal of or any installment of interest on, any Note; (c) reduce the principal amount of any Note or the rate or amount of interest thereon or alter the provisions with respect to the purchase of Notes at the option of the Holders upon a Designated Event in a manner adverse to the Holders thereof; (d) waive a Default or Event of Default in the payment of principal of or premium, if any, or interest on the Notes (except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the Notes then outstanding and a waiver of the payment default that resulted from such acceleration) or of a Designated Event Payment; (e) make the principal of, or interest on, any Note payable in money other than as provided for in the Indenture and in the Notes; (f) make any change in the provisions of the Indenture relating to waivers of past Defaults or Events of Default or the rights of Holders of Notes to receive payments of principal of, premium, if any, or interest on the Notes; (g) make any

adverse change to the abilities of Holders of Notes to enforce their rights under the Indenture; (h) impair the right to institute suit for the enforcement of any payment on or with respect to any Note; or (i) except as permitted by the Indenture (including Section 9.01(9)), increase the Conversion Price, or modify the provisions of the Indenture relating to conversion of the Notes in a manner adverse to the Holders thereof or otherwise impair the right of Holders to convert their Notes, upon the terms established pursuant to or in accordance with the provisions of the Indenture.

10. **DEFAULTS AND REMEDIES.** An Event of Default is: (a) default in payment of the principal of, or premium, if any, on the Notes, when due at maturity, upon repurchase, upon acceleration or otherwise; (b) default for 30 days or more in payment of any installment of interest on the Notes; (c) default in the payment of the Designated Event Payment in respect of the Notes on the date therefor or failure to provide timely notice of a Designated Event; (d) default by the Company (other than a default set forth in clause (a), (b) or (c) above) for 60 days or more after notice in the observance or performance of any other covenants in the Indenture; (e) default under any credit agreement, mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any indebtedness for money borrowed by the Company or any of its Material Subsidiaries (or the payment of which is guaranteed or secured by the Company or any of its Material Subsidiaries), whether such indebtedness or guarantee exists on the date of the Indenture or is created thereafter, which default (i) is caused by a failure to pay when due any principal of such indebtedness within the grace period provided for in such indebtedness, which failure continues beyond any applicable grace period (a "Payment Default"), or (ii) results in the acceleration of such indebtedness prior to its express maturity (without such acceleration being rescinded or annulled) and, in each case, the principal amount of such indebtedness, together with the principal amount of any other such indebtedness under which there is a Payment Default or the maturity of which has been so accelerated, aggregates \$25,000,000 (or its foreign currency equivalent) or more and such Payment Default is not cured or such acceleration is not annulled within 10 days after notice; (f) failure by the Company or any Material Subsidiary of the Company to pay final, nonappealable judgments (other than any judgment as to which a reputable insurance company has accepted full liability) aggregating in excess of \$25,000,000 (or its foreign currency equivalent), which judgments are not stayed, bonded or discharged within 60 days after their entry; (g) certain events involving bankruptcy, insolvency or reorganization of the Company or any Material Subsidiary; or (h) default for more than 5 Business Days of the delivery of shares of Common Stock upon conversion of the Notes. If an Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the then outstanding Notes may declare the unpaid principal of, premium, if any, and accrued and unpaid interest on all Notes then outstanding to be due and payable immediately, except that in the case of an Event of Default arising from certain events of bankruptcy, insolvency, or reorganization with respect to the Company, all outstanding Notes become due and payable without further action or notice. Holders of Notes may not enforce the Indenture or the Notes except as provided in the Indenture. The Trustee may require an indemnity reasonably satisfactory to it before it enforces the Indenture or the Notes. Subject to certain limitations, Holders of a majority in principal amount of the then outstanding Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders notice of any continuing default (except, among other things, a default in payment of principal, premium, if any, or interest) if it determines that withholding notice is in their interests. The Company must furnish annual compliance certificates to the Trustee.
11. **TRUSTEE DEALINGS WITH THE COMPANY.** The Trustee or any of its Affiliates, in their individual or any other capacities, may make or continue loans to or guaranteed by, accept deposits from and perform services for the Company or its Affiliates and may otherwise deal with the Company or its Affiliates as if it were not Trustee.

12. **NO RECOURSE AGAINST OTHERS.** No director, officer, employee, shareholder or Affiliate, as such, of the Company shall have any liability for any obligations of the Company under the Notes or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for the Notes.
13. **AUTHENTICATION.** This Note shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent.
14. **ABBREVIATIONS.** Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN CO = tenants in common, TEN ENT = tenants by the entireties, JT TEN = joint tenants with right of survivorship and not as tenants in common, CUST = Custodian and U/G/M/A = Uniform Gifts to Minors Act.
15. **CONVERSION.** Subject to and upon compliance with the provisions of the Indenture, the registered holder of this Note has the right (upon delivery to the Company of the HSR Certificate (a form of which is attached to the Notes)) at any time on or before the close of business on the Stated Maturity date (or in case this Note or any portion hereof is subject to a duly completed election for repurchase, on or before the close of business on the Business Day immediately preceding the Designated Event Purchase Date (unless the Company defaults in payment due upon repurchase or such Holder elects to withdraw the submission of such election to repurchase)) to convert the principal amount hereof, or any portion of such principal amount which is \$1,000 or an integral multiple thereof, into that number of fully paid and non-assessable shares of common stock of the Company ("Common Stock") obtained by dividing the principal amount of the Note or portion thereof to be converted by the conversion price of \$1.80 per share (the "Conversion Price") (which is equivalent to a conversion rate of 555.5556 shares per \$1,000 of notes (the "Conversion Rate"), as adjusted from time to time as provided in the Indenture), upon surrender of this Note to the Company at the office or agency maintained for such purpose (and at such other offices or agencies designated for such purpose by the Company), accompanied by written notice of conversion duly executed (and if the shares of Common Stock to be issued on conversion are to be issued in any name other than that of the registered holder of this Note by instruments of transfer, in form satisfactory to the Company, duly executed by the registered holder or its duly authorized attorney) and, in case such surrender shall be made during the period from the close of business on the Regular Record Date immediately preceding any Interest Payment Date through the close of business on the last Trading Day immediately preceding such Interest Payment Date (unless a Designated Event Purchase Date or an Automatic Conversion Date has been specified by the Company during such period), also accompanied by payment, in funds acceptable to the Company, of an amount equal to the interest otherwise payable on such Interest Payment Date on the principal amount of this Note then being converted. Subject to the aforesaid requirement for a payment in the event of conversion after the close of business on a Regular Record Date immediately preceding an Interest Payment Date, no adjustment shall be made on conversion for interest accrued hereon or for dividends on Common Stock delivered on conversion. The right to convert this Note is subject to the provisions of the Indenture relating to conversion rights in the case of certain consolidations, mergers, share exchanges or sales or transfers of substantially all the Company's assets.

The Notes shall automatically convert (the "Automatic Conversion") on the Automatic Conversion Date (as defined below) into shares of Common Stock at the then applicable Conversion Rate (plus accrued and unpaid interest on the Notes to, but excluding, the Automatic Conversion Date), if at any time following the date of original issuance of the Notes and on or prior to the State Maturity the Closing Sale Price (as defined in the Indenture) per share of the Common Stock exceeds 222.2% of the Conversion Price then in effect for at least twenty (20) Trading Days within a period of thirty (30) consecutive Trading Days (an "Automatic

Conversion Event"). Following the occurrence of an Automatic Conversion Event, at the request and expense of the Company, the Trustee shall mail or cause to be mailed to each Holder notice (the "Automatic Conversion Notice") of the Automatic Conversion Event, which notice shall specify the date designated by the Company for the Automatic Conversion to become effective (such effective date, the "Automatic Conversion Date"). The Automatic Conversion Date shall be no less than three (3) Business Days after the date of the Automatic Conversion Notice.

The Conversion Rate on any Notes converted in connection with certain specified Changes in Control as designated in the Indenture may be increased by an amount, if any, determined in accordance with Article Fifteen of the Indenture.

The Company shall, in respect of fractional shares representing fractions of shares of Common Stock upon any such conversion, make an adjustment in cash based upon the current market price of the Common Stock on the last Trading Day prior to the date of conversion or round such fraction up to the nearest whole number of shares.

The Company will furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to: Level 3 Communications, Inc., 1025 Eldorado Boulevard, Broomfield, Colorado 80021, Attention: Vice President, Investor Relations, or by telephone at (720) 888-1000.

The Indenture and this Note shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to conflicts of laws principles thereof.

FORM OF CONVERSION NOTICE

To: Level 3 Communications, Inc.

The undersigned owner of the Note hereby irrevocably exercises the option to convert this Note, or portion hereof (which is \$1,000 or an integral multiple thereof) below designated, into shares of Common Stock of Level 3 Communications, Inc., in accordance with the terms of the Indenture referred to in this Note, and directs that the shares issuable and deliverable upon the conversion, together with any check in payment for fractional shares and Notes representing any unconverted principal amount hereof, be issued and delivered to the owner hereof unless a different name has been indicated below. If shares or any portion of this Note not converted are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto. Any amount required to be paid by the undersigned on account of interest and taxes accompanies this Note.

Dated:

Fill in for registration of shares if to be delivered, and Notes if to be issued, other than to and in the name of the owner

(Please Print):

Signature

Principal amount to be converted (if less than all):

(Name)

\$ _____,000

(Street Address)

Social Security or other Taxpayer Identification Number

(City, State and Zip Code)

Signature Guarantee:

Signatures must be guaranteed by an eligible Guarantor Institution (banks, brokers, dealers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if shares are to be issued, or Notes are to be delivered, other than to and in the name of the registered holder.

ASSIGNMENT FORM

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this Note to

(Insert assignee's social security or tax I.D. no.)

(Print or type assignee's name, address and zip code)

and irrevocably appoint _____ agent to transfer this Note on the books of the Company. The agent may substitute another to act for him.

Your Signature:

(Sign exactly as your name appears on the other side of this Note)

Date:

Medallion Signature Guarantee:

DESIGNATED EVENT PURCHASE NOTICE

If you wish to have this Note repurchased by the Company pursuant to Section 10.06 of the Indenture, check the Box: ☐

If you wish to have a portion of this Note purchased by the Company pursuant to Section 10.06 of the Indenture, state the amount (in multiples of \$1,000): \$ _____.

Date: _____

Your Signature: _____

(Sign exactly as your name appears on the other side of this Note)

Medallion Signature Guarantee:

HSR ACT CERTIFICATE

To: Level 3 Communications, Inc.

The undersigned beneficial owner of this Note (the "Owner") has delivered herewith a conversion notice pursuant to which it is irrevocably exercising the option to convert this Note, or portion hereof designated in such conversion notice, into shares of Common Stock of Level 3 Communications, Inc. (the "Company"), in accordance with the terms of the Indenture referred to in this Note. As a condition to the Company's obligation to effect such conversion pursuant to the term of Indenture, the undersigned Owner of the Note, represents and warrants to the Company as follows:

EITHER:

(1) That:

such Owner or its "ultimate parent entity", if any, is an "institutional investor" (as defined by 16 C.F.R. §802.64(a)) and any entity controlled by such Owner, or its "ultimate parent entity", if any, that holds Voting Stock is an "institutional investor".

such Owner or its "ultimate parent entity" (as defined by 16 C.F.R. §801.1(a)(3)), if any, is acquiring Common Stock issuable on the conversion of its Note or a portion of the principal amount thereof (i) for its own account, (ii) in the ordinary course of business and (iii) "solely for the purpose of investment" (as defined by 16 C.F.R. §801.1(i)(1)), and as a result of such acquisition, such Owner, or its "ultimate parent entity", if any, including the holdings of its controlled subsidiaries, will hold fifteen percent (15%) or less of the outstanding Voting Stock.

OR

(2) That such Owner or its "ultimate parent entity", if any, is acquiring Common Stock issuable on the conversion of its Note or a portion of the principal amount thereof "solely for the purpose of investment" (as defined in 16 C.F.R. §801.1(i)(1)), and as a result of such acquisition, such Owner, or its "ultimate parent entity", if any, including the holdings of its controlled subsidiaries, will hold ten percent (10%) or less of the outstanding Voting Stock.

OR

(3) That such Owner has filed with the Federal Trade Commission and the United States Department of Justice all reports and other documents required to be filed under the HSR Act with respect to the Common Stock issuable upon conversion of the Note and the applicable waiting period with the HSR Act shall have expired or been terminated.

OR

(4) That as a result of the conversion of its Note, such Owner or its "ultimate parent entity", if any, will hold Voting Stock of the Company valued at not more than \$63.1 million, as determined pursuant to 16 C.F.R. Section 801.13.

Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the First Supplemental Indenture, dated as of [], 2008, by and between Level 3 Communications, Inc. and The Bank of New York Mellon.

Certificate Number: _____

Date: _____

Name of Owner: _____

By: _____

Name:
Title:

QuickLinks

Exhibit (b)(1)

[ARTICLE II EVENTS OF DEFAULT](#)

[ARTICLE III CONSOLIDATION, MERGER, SALE, LEASE OR CONVEYANCE](#)

[ARTICLE IV SUPPLEMENTAL INDENTURES](#)

[ARTICLE V PURCHASE AT OPTION OF HOLDERS UPON A DESIGNATED EVENT; LIMITATION ON LIENS](#)

[ARTICLE VI COMPANY REPORTS](#)

[ARTICLE VII CONVERSION OF SECURITIES](#)

[ARTICLE VIII MISCELLANEOUS](#)

EXECUTION COPY

This SECURITIES PURCHASE AGREEMENT (this "*Agreement*") is dated as of November 17, 2008, by and among Level 3 Communications, Inc., a Delaware corporation (the "*Company*"), and each of the investors named in *Exhibit A* attached hereto (each, an "*Investor*" and collectively, the "*Investors*").

WITNESSETH:

WHEREAS, the Company desires to issue and sell to each Investor pursuant to this Agreement and the Registration Statement (as defined below), and each Investor, severally, desires to purchase from the Company the aggregate principal amount of the Company's 15% Convertible Senior Notes due 2013 as is set forth opposite its respective name in *Exhibit A* attached hereto, which Notes will be convertible into authorized but unissued shares of the Company's common stock, par value \$0.01 per share (the "*Common Stock*");

WHEREAS, the Company is commencing on the date hereof three separate offers (collectively, the "*Tender Offers*") to purchase for cash any and all of its (i) 2.875% Convertible Senior Notes due 2010, (ii) 6% Convertible Subordinated Notes due 2010 and (iii) 6% Convertible Subordinated Notes due 2009, at the consideration and subject to the terms and conditions set forth in that certain Offer to Purchase, dated the date hereof, as the same may be amended, supplemented, modified or waived (the "*Offer to Purchase*"); and

WHEREAS, the Company will fund purchases pursuant to the Tender Offers from the proceeds of the issuance and sale of the Notes (as defined below) contemplated by this Agreement.

NOW THEREFORE, in consideration of the mutual agreements, representations, warranties and covenants herein contained, the parties hereto agree as follows:

1. *Definitions.* As used in this Agreement, the following terms shall have the following respective meanings:

(a) "*Advisory Clients*" shall mean those institutional investment clients of Southeastern, Davis and Chou, respectively, on whose behalf Southeastern and Chou are purchasing the Notes.

(b) "*Affiliate*" shall mean, with respect to any Person, any other Person controlling, controlled by or under direct or indirect common control with such Person. For the purposes of this definition "control," when used with respect to any specified Person, shall mean the power to direct the management and policies of such Person, directly or indirectly, whether through ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" shall have meanings correlative to the foregoing.

(c) "*Beneficially Own*" with respect to any securities means having "beneficial ownership" of such securities (as determined pursuant to Rule 13d-3 under the Exchange Act, as in effect on the date hereof); provided, however, that a Person will be deemed to beneficially own (and have beneficial ownership of) all securities that such Person has the right to acquire, whether such right is exercisable immediately or with the passage of time or the satisfaction of conditions. The terms "Beneficial Ownership" and "Beneficial Owner" have correlative meanings.

(d) "*Board of Directors*" shall mean the board of directors of the Company.

(e) "*Chou*" shall mean Chou Associates Management Inc.

(f) "*Davis*" shall mean Davis Selected Advisers, L.P., a Colorado limited partnership.

(g) "*Disclosure Documents*" shall mean the Company's Annual Report on Form 10-K for the year ended December 31, 2007, the Company's Quarterly Reports on Form 10-Q for the quarters ended March 31, 2008, June 30, 2008 and September 30, 2008, any Current Reports on Form 8-K filed and not furnished by the Company to the SEC on or after December 31, 2007, the Company's Schedule 14A Proxy Statement for its Annual Meeting of Stockholders, dated April 4,

2008, the Registration Statement and the Prospectus, together in each case with any documents incorporated by reference therein or exhibits thereto.

(h) "*Exchange Act*" shall mean the Securities Exchange Act of 1934, as amended, and all of the rules and regulations promulgated thereunder.

(i) "*Escrow Agent*" shall mean The Bank of New York Mellon or any successor or permitted assign of such Escrow Agent appointed in accordance with the Escrow Agreement.

(j) "*Escrow Agreement*" shall mean that certain Escrow Agreement in the form attached hereto as *Exhibit B*.

(k) "*Escrow Deposit Date*" shall mean December 8, 2008 or such later date as determined by the Company after providing written notice thereof to the Investors.

(l) "*Exhibit A-1 Investors*" shall mean those Investors set forth on *Exhibit A-1* attached hereto.

(m) "*Fairfax*" shall mean Fairfax Financial Holdings Limited, a corporation incorporated under the laws of Canada.

(n) "*Group*" shall mean any group of Persons who, with respect to those acquiring, holding, voting or disposing of Voting Securities would, assuming ownership of the requisite percentage thereof, be required under Section 13(d) of the Exchange Act to file a statement on Schedule 13D with the SEC as a "person" within the meaning of Section 13(d)(3) of the Exchange Act, or who would be considered a "person" for purposes of Section 13(g)(3) of the Exchange Act.

(o) "*Markel*" shall mean Markel Corporation.

(p) "*Material Adverse Effect*" shall mean any change, event or occurrence which, individually or in the aggregate, has had, or is reasonably expected to have, a material adverse effect on, or a material adverse change in, (i) the business, operations, financial condition or results of operations of the Company and its subsidiaries, taken as a whole, or (ii) the ability of the Company to perform its obligations under this Agreement, in each case other than any change, event or occurrence (a) resulting from conditions in the United States or foreign economies or securities or financial markets in general, including, without limitation, debt markets, (b) resulting from any change in the Company's stock price or the Company's failure to meet revenue or earnings projections in and of itself (provided that the underlying causes of such changes or failures shall not be excluded), (c) resulting from conditions in the telecommunications industry in general, except to the extent that the Company is disproportionately affected thereby, (d) resulting from the public announcement of the transactions contemplated by this Agreement (e) arising out of or resulting from actions of the Investors in connection with this Agreement, (f) arising out of or resulting from acts of war, terrorism or military actions, or the escalation thereof, or (g) arising out of or resulting from any changes in generally accepted accounting principles or laws or regulations applicable to the Company.

(q) "*Notes*" shall mean one or more of the Company's 15% Convertible Senior Notes due 2013 containing the same terms and conditions and with the same conversion features as set forth in the form of note attached hereto as *Exhibit C*.

(r) "*Person*" shall mean an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association or joint venture.

(s) "*Prospectus*" shall mean the base prospectus included in the Registration Statement together with the prospectus supplement relating to the Securities first filed with the SEC pursuant to Rule 424(b) under the Securities Act.

(t) "*SEC*" shall mean the Securities and Exchange Commission.

(u) " *Securities* " shall mean the Notes and the shares of Common Stock issuable upon conversion of the Notes.

(v) " *Securities Act* " shall mean the Securities Act of 1933, as amended, and all of the rules and regulations promulgated thereunder.

(w) " *Southeastern* " shall mean Southeastern Asset Management, Inc., a Tennessee corporation.

(x) " *Trust Indenture Act* " shall mean the Trust Indenture Act of 1939, as amended and as in force as the date hereof.

(y) " *Voting Securities* " shall mean the shares of the Common Stock and any other capital stock or equity securities of the Company having the general voting power under ordinary circumstances to elect members of the Board of Directors, and any other securities which are convertible into, or exchangeable for, Voting Securities.

2. *Purchase and Sale of the Notes.*

2.1. *Purchase and Sale of the Notes; Escrow Deposit.*

(a) Subject to and upon the terms and conditions set forth in this Agreement, at the Closing (as defined below), the Company shall issue and sell to each Investor (in the case of each of Southeastern, Davis and Chou, on behalf of its respective Advisory Clients), and each Investor (in the case of each of Southeastern, Davis and Chou, on behalf of its respective Advisory Clients), severally, shall purchase from the Company the aggregate principal amount of Notes set forth opposite the name of such Investor under the heading "Principal Amount of Notes to be Purchased" on *Exhibit A* attached hereto, at a purchase price equal to 100% of the principal amount of Notes purchased.

(b) Subject to the satisfaction or waiver of the conditions set forth in Section 6.1, on or prior to the Escrow Deposit Date, each Investor (other than the Exhibit A-1 Investors) shall deposit (or cause to be deposited) into escrow an amount equal to the purchase price set forth opposite the name of such Investor under the heading "Purchase Price" on *Exhibit A* attached hereto, which amount shall be held by the Escrow Agent pursuant to the terms of the Escrow Agreement.

2.2. *Closing.*

(a) The closing (the " *Closing* ") shall take place at the offices of Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York on the first business day after the satisfaction or waiver of the conditions set forth in Sections 6.2 and 6.3 (other than those that by their terms are to be satisfied or waived at the Closing), or such other date mutually agreed to by the Company and the Investors (the " *Closing Date* "). At the Closing, (i) each Exhibit A-1 Investor shall pay to the Company the purchase price set forth opposite such Investor's name on *Exhibit A* attached hereto under the heading "Purchase Price" by wire transfer to the Company of immediately available funds and (ii) the Company shall deliver to the Escrow Agent a certificate certifying the satisfaction or waiver of the conditions set forth in Section 6.2 (with a copy to the Investors) and instruct the Escrow Agent to release to the Company by wire transfer to the Company of immediately available funds of \$360,124,000 (the " *Escrow Deposit Amount* ") or, in the event the Escrow Amount (as defined in the Escrow Agreement) is less than the Escrow Deposit Amount, the Escrow Amount, against delivery by the Company to each Investor of Notes in the principal amount set forth opposite such Investor's name on *Exhibit A* attached hereto.

3. *Representations and Warranties of the Company.* Except as set forth in the Disclosure Documents filed with the SEC not less than one day prior to the date of this Agreement, the Company hereby represents and warrants to each of the Investors as follows:

3.1. *Incorporation.* The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified to do business in each jurisdiction in which the character of its properties or the nature of its business requires such qualification, except where the failure to so qualify would not reasonably be expected to have a Material Adverse Effect. The Company has all requisite corporate power and authority to carry on its business as now conducted.

3.2. *Subsidiaries.* Each subsidiary of the Company that is a corporation has been duly incorporated, is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, has the corporate power and authority to own its properties and to conduct its business and is duly registered, qualified and authorized to transact business and is in good standing in each jurisdiction in which the conduct of its business or the nature of its properties requires such registration, qualification or authorization, except where such failure to so qualify or register would not be reasonably be expected to have a Material Adverse Effect.

3.3. *Capitalization.* As of the date of this Agreement, the authorized capital stock of the Company consists of 2,250,000,000 shares of Common Stock and 10,000,000 shares of undesignated preferred stock, par value \$0.01 per share. As of October 31, 2008, there were 1,611,053,938 shares of Common Stock outstanding. All outstanding shares of Common Stock have been duly authorized, and have been validly issued, are fully paid and nonassessable, and have been approved for quotation on the Nasdaq Global Select Market. Since September 30, 2008, (i) the Company has only issued options or other rights to acquire Common Stock in the normal course of business consistent with past practice pursuant to the Company's equity incentive and employee benefit plans, and (ii) the only shares of capital stock issued by the Company were pursuant to the exercise or conversion of outstanding awards under the Company's equity incentive and employee benefit plans or pursuant to those certain exchanges of Common Stock for outstanding debt described in the Disclosure Documents.

3.4. *Authorization.* All corporate action on the part of the Company, its officers, directors and stockholders necessary for the authorization of the issuance of the Notes, the authorization, execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein has been taken. When executed and delivered by the Company, this Agreement shall constitute the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally and by general equitable principles. The Company has all requisite corporate power to enter into this Agreement and to carry out and perform its obligations under the terms of this Agreement. At or prior to the Closing, the Company will have reserved for issuance the shares of Common Stock issuable upon conversion of the Notes.

3.5. *Valid Issuance.*

(a) The Notes have been duly authorized and, when executed by the Company and authenticated by the Trustee (as defined below) in accordance with the terms of the Indenture (as defined below) and delivered to and paid for by the Investors in accordance with the terms of this Agreement, will constitute the valid and legally binding obligations of the Company entitled to the benefits provided by the indenture to be dated as of the Closing Date (the "*Base Indenture*") between the Company and The Bank of New York Mellon, as Trustee (the "*Trustee*"), as supplemented by the First Supplemental Indenture, to be dated as of the Closing Date (the "*First Supplemental Indenture*") and together with the Base Indenture, the "*Indenture*") between the Company and the Trustee, under which such Notes are to be issued.

The Base Indenture will be substantially in the form filed as an exhibit to the Registration Statement; the Indenture has been duly authorized and duly qualified under the Trust Indenture Act and, when executed and delivered by the Company and the Trustee, will constitute a valid and legally binding obligation of the Company, enforceable against the Company in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally and by general equitable principles; and the Securities and the Indenture will conform to the descriptions thereof in the Prospectus.

(b) Upon their issuance in accordance with the terms of the Notes, the shares of Common Stock issued upon conversion of the Notes will be duly authorized, validly issued, fully paid and non-assessable shares of Common Stock free of all preemptive or similar rights.

(c) The Company's registration statement on Form S-3 (File No. 333-154976) (the "*Registration Statement*"), including the base prospectus relating to certain debt and equity securities to be offered from time to time by the Company: (i) was prepared by the Company in conformity with the requirements of the Securities Act and (ii) automatically became effective upon the filing thereof with the SEC. The SEC has not issued a stop order suspending the effectiveness of the Registration Statement. The Company has at all times relevant to the offering of the Notes contemplated hereby complied with the conditions for the use of Form S-3 and is eligible to use Form S-3. Copies of the Registration Statement, including any amendments thereto and the Prospectus contained therein have heretofore been delivered by the Company to the Investors. The Registration Statement is effective under the Securities Act and no post-effective amendment to the Registration Statement has been filed as of the date of this Agreement. The Company has prepared and delivered to the Investors and will file with the SEC pursuant to Rule 424(b), no later than two business days after the date hereof, a supplement to the base prospectus included in the Registration Statement relating to the Securities and the offering thereof in conformity with the requirements of the Securities Act.

3.6. *Absence of Certain Changes.* Since September 30, 2008, there has not been any Material Adverse Effect.

3.7. *Disclosure Documents.* The information contained or incorporated by reference in the Disclosure Documents was true and correct in all material respects as of the respective dates of the filing thereof with the SEC (or if amended prior to the date hereof, as of the date of such amendment); and, as of such respective dates, the Disclosure Documents did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The Prospectus does not as of the date hereof contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

3.8. *Consents.* All consents, approvals, orders and authorizations required on the part of the Company in connection with the execution, delivery or performance of this Agreement and the consummation of the transactions contemplated herein have been obtained and will be effective as of the Closing Date, other than (i) such filings required to be made after the Closing under applicable federal and state securities laws and (ii) with respect to any of the foregoing, where the failure to make or obtain would not reasonably be expected to have a Material Adverse Effect.

3.9. *No Conflict.* The execution and delivery of this Agreement by the Company and the consummation of the transactions contemplated hereby will not conflict with or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or to a loss of a material benefit

under (i) any provision of the Certificate of Incorporation or By-laws of the Company or (ii) any agreement or instrument, permit, franchise, license, judgment, order, statute, law, ordinance, rule or regulations, applicable to the Company or its properties or assets, except, in the case of clause (ii), as would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect.

3.10. *No Manipulation of Stock.* The Company has not taken, in violation of applicable law, any action designed to or that might reasonably be expected to cause or result in stabilization or manipulation of the price of the Common Stock to facilitate the transactions contemplated hereby or the sale or resale of the shares of Common Stock.

3.11. *Company Not an "Investment Company".* The Company is not, and immediately after receipt of payment for the Notes will not be, an "investment company" or an entity "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

4. *Representations and Warranties of Each Investor.* Each Investor, severally for itself and not jointly with the other Investors (in the case of each of Southeastern, Davis and Chou, for itself (unless otherwise indicated)), represents and warrants to the Company as follows:

4.1. *Organization.* Such Investor, if it is a legal entity, is duly and validly existing under the jurisdiction of its organization.

4.2. *Authorization.* All action on the part of such Investor (in the case of each of Southeastern, Davis and Chou, on its part and on the part of its respective Advisory Clients) necessary for the authorization, execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein has been taken. This Agreement constitutes the legal, valid and binding obligation of such Investor, enforceable against such Investor in accordance with its terms, except as such may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally and by general equitable principles. Such Investor has all requisite power to enter into this Agreement and to carry out and perform its obligations under the terms of this Agreement.

4.3. *No Conflict.* The execution and delivery of this Agreement by such Investor and the consummation of the transactions contemplated hereby will not conflict with or result in any violation of or default by such Investor (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or to a loss of a material benefit under (i) any provision of the organizational documents of such Investor or (ii) any agreement or instrument, permit, franchise, license, judgment, order, statute, law, ordinance, rule or regulations, applicable to such Investor or its respective properties or assets, except as would not, individually or in the aggregate, be reasonably expected to have a material adverse effect on the ability of such Investor to perform its obligations under this Agreement.

4.4. *Consents.* All consents, approvals, orders and authorizations required on the part of such Investor (in the case of each of Southeastern, Davis and Chou, on its part, and to its knowledge, on the part of its respective Advisory Clients) in connection with the execution, delivery or performance of this Agreement and the consummation of the transactions contemplated herein have been obtained and will be effective as of the Closing Date.

4.5. *No Manipulation of Stock.* Such Investor (in the case of each of Southeastern, Davis and Chou, it and, to its knowledge, its respective Advisory Clients) has not taken, in violation of applicable law, any action designed to or that might reasonably be expected to cause or result in stabilization or manipulation of the price of the Common Stock to facilitate the transactions contemplated hereby or the sale or resale of the shares of Common Stock.

4.6. *Group; Affiliate.*

(a) In the case of Southeastern, Southeastern together with the other Investors do not constitute a Group. Southeastern hereby agrees that it shall not take any actions such that it and the other Investors may be deemed to be a Group. After giving effect to the sale and purchase of the Notes contemplated under this Agreement, Southeastern together with its Affiliates will Beneficially Own less than thirty-five percent (35%) of the Company's outstanding Common Stock. Southeastern has on the date hereof delivered to the Company a certificate setting forth a true and correct list of the Common Stock Beneficially Owned by Southeastern and its Affiliates as of such date.

(b) Such Investor (other than Southeastern) together with the other Investors do not constitute a Group. Such Investor hereby agrees that it shall not take any actions such that the Investors may be deemed to be a Group. After giving effect to the sale and purchase of the Notes contemplated under this Agreement, such Investor together with its Affiliates will Beneficially Own less than fifteen percent (15%) of the Company's outstanding Common Stock.

4.7. *Purchase Entirely for Own Account.* Such Investor is acquiring the Notes for its own account (in the case of each of Southeastern, Davis and Chou, on behalf of its respective Advisory Clients) and not with a view to, or for sale in connection with any distribution of the Notes, but subject, nevertheless, to any requirement of law that the disposition of such Investor's property shall at all times be within such Investor's control. Such Investor has no present agreement, undertaking, arrangement, obligation or commitment providing for the disposition of the Notes.

4.8. *Investor Status.* In the case of Southeastern, Davis and Chou, each of their respective Advisory Clients is a institutional "accredited investor" as defined in Rule 501 under the Securities Act.

4.9. *Accuracy of Information Supplied for Registration Statement.* In the case of each of Southeastern and Fairfax (each a "Holder" and together the "Holders"), the information regarding such Investor and its Affiliates supplied or to be supplied by it in writing specifically for inclusion or incorporation by reference into that certain registration statement referred to in Section 5.5 herein will not, as of the date of such registration statement, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading.

5. *Covenants.*

5.1. *Governmental Approvals.*

(a) As soon as practicable after the execution of this Agreement, the Company and each Investor shall file all applications and reports and take such other action which is reasonably required to be taken or filed with any governmental authority in connection with the transactions contemplated by this Agreement. The Company and each Investor shall give all additional notices to third parties and take other action reasonably required to be or taken by it under any authorization, lease, note, mortgage, indenture, agreement or other instrument or any law, rule, regulation, demand or court or administrative order in connection with the transactions contemplated by this Agreement.

(b) Following the Closing, in connection with the conversion of the Notes to the extent required by applicable law, the Company and each Investor shall (i) make any required filing with the U.S. Federal Trade Commission ("FTC"), Department of Justice ("DOJ") and any other governmental authority required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act") or any other applicable law with respect to such conversion of the Notes, (ii) as promptly as practicable make or cause their Affiliates to make

any filing or notice required under any other antitrust or competition law or other law or regulation agreed by the parties to be applicable to such conversion of the Notes and (c) provide any supplemental information requested in connection with the HSR Act or such other antitrust, competition or other laws or regulations as promptly as practicable after such request is made. Each of the Company and the Investors shall, and shall cause its Affiliates to, furnish to the other such information and assistance as the other may reasonably request in connection with its preparation of any filing or submission which is necessary under the HSR Act or such other applicable law or which is otherwise requested by the FTC or DOJ or other governmental authority and shall keep each other apprised of the status of any communications with, and inquiries or requests for additional information from, the FTC and DOJ or other governmental authority.

5.2. *Further Assurances.* Each party agrees to cooperate with each other and their respective officers, employees, attorneys, accountants and other agents, and, generally, do such other acts and things in good faith as may be reasonable or appropriate to timely effectuate the intents and purposes of this Agreement and the consummation of the transactions contemplated hereby, including, but not limited to, taking any action to facilitate the filing any document or the taking of any action to assist the other parties hereto in complying with the terms of Section 5.1 hereof.

5.3. *Nasdaq.* Within ten business days following the Closing Date, the Company shall cause the shares of Common Stock initially issuable upon conversion of the Notes to be listed and admitted and authorized for trading, subject to official notice of issuance, on the Nasdaq Global Select Market.

5.4. *Shares Issuable upon Conversion.* The Company will at all times have and keep available for issuance such number of shares of Common Stock as shall be sufficient to permit the conversion of the Notes into Common Stock as provided for in the Indenture, including as may be adjusted in accordance with the Notes.

5.5. *Registration.*

(a) The Company shall use reasonable best efforts to prepare and file with the SEC within 20 days following the Closing a registration statement on Form S-3 under Rule 415 of the Securities Act to enable the resale of the Registrable Securities (as defined below) by each Holder, from time to time, in compliance with the Securities Act (the "*Resale Registration Statement*"). The Company shall use reasonable best efforts to prepare and file with the SEC such amendments and supplements to the Resale Registration Statement and the prospectus used in connection therewith (the "*Resale Prospectus*") as may be necessary to keep the Resale Registration Statement effective and free from any material misstatement or omission to state a material fact. Notwithstanding the foregoing, the Company shall not be required to keep the Resale Registration Statement in effect with respect to the Registrable Securities of a Holder if the Company shall have received an opinion of counsel reasonably satisfactory to the Company and such Holder, that such Holder is not an Affiliate of the Company. "*Registrable Securities*" shall mean (i) any securities of the Company held by the Advisory Clients of Southeastern at the time of the Company's filing of the Resale Registration Statement and over which securities Southeastern has discretionary authority and (ii) any securities of the Company Beneficially Owned by Fairfax at the time of the Company's filing of the Resale Registration Statement. The Company shall bear all expenses in connection with the Company's registration of the Registrable Securities pursuant to this Section 5.5, provided, however, that the Holders shall bear the cost of all underwriting discounts and selling commissions and similar fees applicable to the sale of the Securities and fees and expenses of its legal counsel and all transfer taxes.

(b) In the event (i) of any request by the SEC or any other federal or state governmental authority during the period of effectiveness of the Resale Registration Statement for amendments or supplements to a Resale Registration Statement or related Prospectus or for additional information; (ii) of the issuance by the SEC or any other federal or state governmental authority of any stop order suspending the effectiveness of a Resale Registration Statement or the initiation of any proceedings for that purpose; (iii) of any event or circumstance not otherwise covered by clause (iv) below which, upon the advice of its counsel, necessitates the making of any changes in the Resale Registration Statement or Resale Prospectus, or any document incorporated or deemed to be incorporated therein by reference, so that, in the case of the Resale Registration Statement, it will not contain any untrue statement of a material fact or any omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and that in the case of the Resale Prospectus, it will not contain any untrue statement of a material fact or any omission to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; or (iv) the Company determines in good faith that offers and sales pursuant to the Resale Registration Statement should not be made by reason of the presence of material undisclosed circumstances or developments with respect to which the disclosure that would be required in such a Resale Registration Statement or related Resale Prospectus, is reasonably likely to have a seriously detrimental effect on the Company, then the Company shall deliver a certificate in writing to the Holders (the "*Suspension Notice*") to the effect of the foregoing and, upon receipt of such Suspension Notice, each Holder will refrain from selling any Registrable Securities pursuant to the Resale Registration Statement (a "*Suspension*") until it receives copies of a supplemented or amended Resale Prospectus prepared and filed by the Company, or until it is advised in writing by the Company that the current Resale Prospectus may be used, and has received copies of any additional or supplemental filings that are incorporated or deemed incorporated by reference in any such Resale Prospectus. In the event of any Suspension, the Company will use reasonable best efforts to cause the use of the Resale Prospectus so suspended to be resumed as soon as reasonably practicable after the delivery of a Suspension Notice to the Holders.

(c) Notwithstanding the foregoing paragraphs of this Section 5.5, no Suspension under clause (v) of Section 5.5(b) shall continue for more than forty-five (45) days and the Company shall not deliver more than one Suspension Notice under such clause in any twelve-month period.

(d) Provided that a Suspension is not then in effect, each Holder may sell Registrable Securities under the Resale Registration Statement, *provided*, to the extent required by applicable law, that it arranges for delivery of a current Resale Prospectus to the transferee of such securities. Upon receipt of a request therefor, the Company will provide an adequate number of current Resale Prospectuses to each Holder.

(e) Upon the effectiveness of the Resale Registration Statement, the Company shall withdraw the Company's Registration Statement on Form S-3 (File No.: 333-125030) and all securities registered thereunder which remain unsold as of the date thereof shall be removed from registration.

5.6. *Tender Offer.* Each Exhibit A-1 Investor shall tender into the Tender Offers all of the Company's 2.875% Convertible Senior Notes due 2010, 6% Convertible Subordinated Notes due 2010 and 6% Convertible Subordinated Notes due 2009 Beneficially Owned by such Investor within 10 business days following the date hereof in accordance with the Offer to Purchase. Such Exhibit A-1 Investor shall not withdraw any such notes tendered into the Tender Offers.

6. *Conditions Precedent.*

6.1. *Conditions to the Obligation of the Investors to Deposit the Purchase Price into Escrow.* The several obligations of each Investor (other than the Exhibit A-1 Investors) to deposit (or cause to be deposited) an amount equal to the purchase price set forth opposite the name of such Investor under the heading "Purchase Price" on *Exhibit A* attached hereto pursuant to Section 2.1(b) of this Agreement, are subject to the satisfaction of the following conditions precedent:

(a) The representations and warranties of the Company contained in Section 3 of this Agreement shall be true and correct in all material respects on the date hereof and on the Escrow Deposit Date as though made on the Escrow Deposit Date (except that those representations and warranties that address matters only as of a particular date shall have been true and correct only on such date). The Company shall have performed and complied in all material respects with all obligations, covenants and conditions to be performed and complied with by the Company under this Agreement on or prior to the Escrow Deposit Date.

(b) The purchase of, and payment for, the Notes by each Investor shall not be prohibited or enjoined by any law or governmental or court order or regulation.

(c) No stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been instituted or threatened.

(d) The Company and the Escrow Agent shall have executed and delivered the Escrow Agreement in the form attached hereto as *Exhibit B*.

(e) The Tender Offers shall not have been terminated.

6.2. *Conditions to the Obligation of the Investors to Consummate the Closing.* The several obligations of each Investor to consummate the transactions to be consummated at the Closing, and to purchase and to cause the Escrow Agent to deliver the purchase price payable for the Notes being purchased by it at the Closing pursuant to this Agreement, are subject to the satisfaction of the following conditions precedent:

(a) The representations and warranties of the Company contained in Section 3 of this Agreement shall be true and correct in all material respects on the date hereof and on the Closing Date as though made on the Closing Date (except that those representations and warranties that address matters only as of a particular date shall have been true and correct only on such date).

(b) The purchase of, and payment for, the Notes by each Investor shall not be prohibited or enjoined by any law or governmental or court order or regulation.

(c) No stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been instituted or threatened.

(d) The Company and the Trustee shall have executed and delivered the Base Indenture in the form filed as an exhibit to the Registration Statement and the First Supplemental Indenture in the form attached hereto as *Exhibit D* and the Trustee shall have executed and delivered a certificate of authentication with respect to the Notes. The Company shall have performed and complied in all material respects with all obligations, covenants and conditions to be performed and complied with by the Company under this Agreement on or prior to the Closing Date.

(e) Each Investor shall have received from the Company's counsel, Willkie Farr & Gallagher LLP, an opinion substantially in the form attached hereto as *Exhibit E*.

(f) The Company shall have accepted for payment at least \$177,270,500 aggregate principal amount of the Company's 2.875% Convertible Senior Notes due 2010 and at least \$240,833,000 aggregate principal amount of the Company's 6% Convertible Subordinated Notes due 2010 in the Tender Offers for such notes.

Notwithstanding anything in this Agreement to the contrary, no Investor shall be obligated to consummate the transactions contemplated by this Agreement unless the conditions set forth in Section 6.3 herein have been satisfied with respect to other Investors purchasing in the aggregate such principal amount of the Notes that, when taken together with the principal amount of Notes to be purchased by such Investor, equals at least \$373,000,000.

6.3. *Conditions to the Obligation of the Company to Consummate the Closing.* The obligation of the Company to consummate the transactions to be consummated at the Closing, and to issue and sell to each Investor the Notes to be purchased by it at the Closing pursuant to this Agreement, is subject to the satisfaction of the following conditions precedent:

(a) The representations and warranties of such Investor contained in Section 4 of this Agreement shall be true and correct in all material respects on the date hereof and on the Closing Date as though made on the Closing Date (except that those representations and warranties that address matters only as of a particular date shall have been true and correct only on such date). Such Investor shall have performed and complied in all material respects with all obligations, covenants and conditions to be performed and complied with by such Investor under this Agreement on or prior to the Closing Date.

(b) (i) The Escrow Agent shall have delivered to the Company an amount equal to the Escrow Deposit Amount or, in the event the Escrow Amount is less than Escrow Deposit Amount, the Escrow Amount and (ii) each Exhibit A-1 Investor shall have delivered to the Company an amount equal to the purchase price set forth opposite such Investor's name on *Exhibit A* attached hereto under the heading "Purchase Price."

(c) The sale of the Notes by the Company shall not be prohibited or enjoined by any law or governmental or court order or regulation.

(d) No stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been instituted or threatened.

(e) The Trustee shall have executed and delivered the Base Indenture in the form filed as an exhibit to the Registration Statement and the First Supplemental Indenture in the form attached hereto as *Exhibit D* and the Trustee shall have executed and delivered a certificate of authentication with respect to the Notes.

(f) The Company shall have accepted for payment at least \$177,270,500 aggregate principal amount of the Company's 2.875% Convertible Senior Notes due 2010 and at least \$240,833,000 aggregate principal amount of the Company's 6% Convertible Subordinated Notes due 2010 in the Tender Offers for such notes.

(g) Southeastern shall have executed and delivered a certificate confirming the accuracy of its representations in that certain certificate delivered pursuant to *Section 4.6(a)*, regarding the beneficial ownership by Southeastern of certain shares of Common Stock.

Each Investor's obligations under this Agreement shall be several and independent from the obligations of each other Investor; *provided*, *however*, that, notwithstanding anything in this Agreement to the contrary, the Company shall not be obligated to consummate the transactions contemplated by this Agreement unless the conditions set forth in this Section 6.3 have been satisfied with respect to all of the Investors.

7. *Termination.*

7.1. *Conditions of Termination.* Notwithstanding anything to the contrary contained herein, this Agreement may be terminated at any time before the Closing (a) by mutual consent of the Company and the Investors, (b) by an Investor or the Company if the Closing shall not have occurred on or prior to January 31, 2009.

7.2. *Effect of Termination.* In the event of termination pursuant to Section 7.1 hereof, this Agreement shall become null and void and have no effect (other than this Section 7.2 and Article 8, which shall survive termination), with no liability on the part of the Company or the Investors, or their directors, officers, agents or stockholders, with respect to this Agreement, except for the liability for any willful breach of this Agreement. Upon termination of this Agreement, any amounts then held in escrow pursuant to the terms of the Escrow Agreement shall be distributed by the Escrow Agent to the Investors in accordance with the terms of the Escrow Agreement. In addition, in the event this Agreement is terminated pursuant to Section 7.1(b) (other than as a result of a breach of this Agreement by one or more of the Investors), the Company shall promptly pay to the Investors (other than the Exhibit A-1 Investors), by wire transfer of immediately available funds, an aggregate of \$2,000,000 (the "*Termination Fee*"), with each such Investor receiving such fraction of the Termination Fee as represents the principal amount of Notes to be purchased by such Investor divided by the aggregate principal amount of the Notes to be purchased by all Investors (other than the Exhibit A-1 Investors) under this Agreement.

8. *Miscellaneous Provisions.*

8.1. *Public Statements or Releases.* Neither the Company nor any Investor shall make any public announcement with respect to the existence or terms of this Agreement or the transactions provided for herein without the prior approval of the other parties, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, nothing in this Section 8.1 shall prevent any party from making any public announcement it considers necessary in order to satisfy its obligations under the law or the rules of any national securities exchange or market, provided such party, to the extent practicable, provides the other parties with an opportunity to review and comment on any proposed public announcement before it is made.

8.2. *Pronouns.* All pronouns or any variation thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person, persons, entity or entities may require.

8.3. *Notices.*

(a) Any notices, reports or other correspondence (hereinafter collectively referred to as "*correspondence*") required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given (i) on the date of service if served personally; (ii) on the business day after delivery to Federal Express or similar overnight courier; or (iii) on the third business day after mailing, if mailed to the party to whom notice is to be given by first class mail, registered or certified, postage prepaid and properly addressed, to the party as set forth in (b) and (c) below.

(b) All correspondence to the Company shall be addressed as follows:

Level 3 Communications, Inc.
1025 Eldorado Boulevard
Broomfield, CO 80021
Attention: Thomas C. Stortz

with a copy to:

Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019
Attention: David K. Boston

(c) All correspondence to any Investor shall be sent to such Investor at the address set forth in *Exhibit A* attached hereto.

(d) Any Person may change the address to which correspondence to it is to be addressed by notification as provided for herein.

8.4. *Captions.* The captions and paragraph headings of this Agreement are solely for the convenience of reference and shall not affect its interpretation.

8.5. *Severability.* Should any part or provision of this Agreement be held unenforceable or in conflict with the applicable laws or regulations of any jurisdiction, the invalid or unenforceable part or provisions shall be replaced with a provision which accomplishes, to the extent possible, the original business purpose of such part or provision in a valid and enforceable manner, and the remainder of this Agreement shall remain binding upon the parties hereto.

8.6. *Governing Law.* This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to conflict of law principles thereof.

8.7. *Waiver.* No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or be construed as, a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Agreement.

8.8. *Expenses.* Each party shall bear the cost of any and all fees and expenses incurred in connection with the transactions contemplated hereby including, without limitation, legal, consulting and accounting fees; provided, however, that the Company shall pay the fees of one counsel to the Investors not in excess of \$50,000. Each Investor shall bear all expenses in connection with any filings under the HSR Act in connection with its purchase of Notes and acquisition of Common Stock upon conversion of such Notes.

8.9. *Assignment.* The rights and obligations of the parties hereto shall inure to the benefit of and shall be binding upon the authorized successors and permitted assigns of each party. None of the parties may assign its rights or obligations under this Agreement or designate another person (i) to perform all or part of its obligations under this Agreement or (ii) to have all or part of its rights and benefits under this Agreement, in each case without the prior written consent of the other parties. In the event of any assignment in accordance with the terms of this Agreement, the assignee shall specifically assume and be bound by the provisions of the Agreement by executing and agreeing to an assumption agreement reasonably acceptable to the Company. Notwithstanding the foregoing, each of Fairfax and Markel may assign its rights and obligations under this Agreement to one or more its respective subsidiaries, provided that any such subsidiary assignee specifically assumes and agrees to be bound by the provisions of the Agreement by executing an assumption agreement reasonably acceptable to the Company, and provided further that, in the event of any such assignment by Fairfax or Markel, Fairfax and Markel, as the case may be, shall remain liable for the performance of all such assigned obligations under this Agreement.

8.10. *Counterparts.* This Agreement may be signed in one or more counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

8.11. *Entire Agreement; Amendment.* This Agreement (including the exhibits hereto) constitutes the entire agreement between the parties hereto respecting the subject matter hereof and supersedes all prior agreements, negotiations, understandings, representations and statements respecting the subject matter hereof, whether written or oral, including that certain Securities Purchase Agreement, dated as of November 17, 2008 and delivered by the parties hereto (other than Davis) prior to this Agreement, by and among the Company and each of the Investors (other than Davis) regarding the issuance and sale of the Notes. No modification, alteration, waiver or change in any of the terms of this Agreement (other than Sections 5.5 and 5.6) shall be valid or binding upon the parties hereto unless made in writing and duly executed by the Company and the Investors. No modification, alteration, waiver or change in any of the terms of Section 5.5 shall be valid or binding upon the Company or the Holders unless made in writing and duly executed by the Company and the Holders. No modification, alteration, waiver or change in any of the terms of Section 5.6 shall be valid or binding upon the Company or the Exhibit A-1 Investors unless made in writing and duly executed by the Company and Exhibit A-1 Investors.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the day and year first above written.

LEVEL 3 COMMUNICATIONS, INC.

By: /s/ THOMAS C. STORTZ

Name: Thomas C. Stortz
Title: *Vice President, Chief Legal Officer and Secretary*

INVESTORS :

MARKEL CORPORATION

By: /s/ STEVEN A. MARKEL

Name: Steven A. Markel
Title: *Vice Chairman*

WALTER SCOTT, JR. CHARITABLE REMAINDER ANNUITY TRUST

By: /s/ WALTER SCOTT, JR.

Walter Scott, Jr., Trustee
Walter Scott, Jr. Charitable Remainder Annuity Trust
Dated December 19, 1990

SUZANNE AND WALTER SCOTT CHARITABLE REMAINDER UNITRUST

By: /s/ WALTER SCOTT, JR.

Walter Scott, Jr., Trustee
Suzanne and Walter Scott Charitable Remainder Unitrust
Dated March 12, 1997

WS CHARITABLE REMAINDER UNITRUST (II)

By: /s/ WALTER SCOTT, JR.

Walter Scott, Jr., Trustee
WS Charitable Remainder Unitrust (II)
Dated July 21, 1997

/s/ WALTER SCOTT, JR.

Walter Scott, Jr.

2002 ROBERT EDWARD JULIAN IRREVOCABLE DESCENDANT'S TRUST

By: /s/ CAROLE L. JULIAN

Carole L. Julian, Trustee

CAROLE LEE JULIAN REVOCABLE TRUST

By: /s/ CAROLE L. JULIAN

Name: Carole L. Julian
Title: *Trustee*

/s/ ROBERT E. JULIAN

Robert E. Julian

JULIAN PROPERTIES LP

By: Julian Management Inc., its general partner

By: /s/ ROBERT E. JULIAN

Name: Robert E. Julian
Title: *President*

ROBERT AND CAROLE JULIAN CHARITABLE FOUNDATION

By: /s/ ROBERT E. JULIAN

Name: Robert E. Julian
Title: *Director*

/s/ GARY L. WEST

Gary L. West

/s/ MARY E. WEST

Mary E. West

STEELHEAD NAVIGATOR MASTER, L.P.

By: Steelhead Partners, LLC, its investment manager

By: /s/ CAROL LOKEY

Name: Carol Lokey
Title: *Chief Financial Officer*

SOUTHEASTERN ASSET MANAGEMENT, INC.,
on behalf of certain institutional clients

By: /s/ ANDREW R. MCCARROLL

Name: Andrew R. McCarroll
Title: *Vice President and General Counsel*

CHOU ASSOCIATES MANAGEMENT INC.,
on behalf of certain institutional clients

By: /s/ FRANCIS CHOU

Name: Francis Chou
Title: *Chief Executive Officer*

FAIRFAX FINANCIAL HOLDINGS LIMITED,

By its Investment Manager, Hamblin Watsa Investment Counsel Ltd.

By: /s/ PAUL RIVETT

Name: Paul Rivett
Title: *Vice President and Chief Operating Officer*

DAVIS SELECTED ADVISERS, L.P.

By: Davis Investments, LLC

By: /s/ TOM TAYS

Name: Tom Tays
Title: Vice President and Chief Legal Officer

EXHIBIT A

<u>Investor Name and Address</u>	<u>Principal Amount of Notes</u>	
	<u>to be Purchased</u>	<u>Purchase Price</u>
Fairfax Financial Holdings Limited	\$ 100,062,000	\$100,062,000
Southeastern Asset Management, Inc.	\$ 100,062,000	\$100,062,000
Chou Associates Management Inc.	\$ 50,000,000	\$ 50,000,000
Steelhead Navigator Master, L.P.	\$ 20,000,000	\$ 20,000,000
Davis Selected Advisers, L.P.	\$ 40,000,000	\$ 40,000,000
Markel Corporation	\$ 25,000,000	\$ 25,000,000
Mary E. West	\$ 12,500,000	\$ 12,500,000
Gary L. West	\$ 12,500,000	\$ 12,500,000
Walter Scott, Jr.	\$ 6,370,000(1)	\$ 6,370,000(1)
Walter Scott, Jr. Charitable Remainder Annuity Trust	\$ 0(2)	\$ 0(2)
Suzanne and Walter Scott Charitable Remainder Unitrust	\$ 2,116,000	\$ 2,116,000
WS Charitable Remainder Unitrust (II)	\$ 2,290,000	\$ 2,290,000
2002 Robert Edward Julian Irrevocable Descendant's Trust	\$ 430,000	\$ 430,000
Carole Lee Julian Revocable Trust	\$ 790,000	\$ 790,000
Robert and Carol Julian Charitable Foundation	\$ 280,000	\$ 280,000
Julian Properties LP	\$ 980,000	\$ 980,000
Robert E. Julian	\$ 420,000	\$ 420,000

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- (1) If the Company shall have accepted for payment any of its 6% Convertible Subordinated Notes due 2009 pursuant to the terms of the Tender Offer for such securities, for all purposes under this Agreement and this Exhibit A, the "Principal Amount of Notes to be Purchased" by Walter Scott, Jr. shall be deemed to equal \$29,370,000 and the "Purchase Price" to be paid by Walter Scott, Jr. for such principal amount of Notes shall be deemed to equal \$29,370,000.
- (2) If the Company shall have accepted for payment any of its 6% Convertible Subordinated Notes due 2009 pursuant to the terms of the Tender Offer for such securities, for all purposes under this Agreement and this Exhibit A, the "Principal Amount of Notes to be Purchased" by Walter Scott, Jr. Charitable Remainder Annuity Trust shall be deemed to equal \$3,200,000 and the "Purchase Price" to be paid by Walter Scott, Jr. Charitable Remainder Annuity Trust for such principal amount of Notes shall be deemed to equal \$3,200,000.
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EXHIBIT A-1

Exhibit A-1 Investors

Walter Scott, Jr.

Walter Scott, Jr. Charitable Remainder Annuity Trust

Suzanne and Walter Scott Charitable Remainder Unitrust

WS Charitable Remainder Unitrust (II)

2002 Robert Edward Julian Irrevocable Descendant's Trust

Carole Lee Julian Revocable Trust

Robert and Carol Julian Charitable Foundation

Julian Properties LP

Robert E. Julian

EXHIBIT B

FORM OF ESCROW AGREEMENT

EXHIBIT C

FORM OF NOTE

See Exhibit A to Exhibit D hereto.

EXHIBIT D

FORM OF FIRST SUPPLEMENTAL INDENTURE

EXHIBIT E

FORM OF OPINION OF WILLKIE FARR & GALLAGHER LLP

QuickLinks

[Exhibit \(b\)\(2\)](#)