

LEVEL 3 COMMUNICATIONS INC

FORM 8-K (Current report filing)

Filed 03/26/08 for the Period Ending 03/20/08

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

OMB APPROVAL

OMB Number: 3235-0060
 Expires: April 30, 2009
 Estimated average burden hours
 per response 5.0

**UNITED STATES
 SECURITIES AND EXCHANGE COMMISSION
 Washington, D.C. 20549**

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

March 20, 2008

Date of Report (Date of earliest event reported)

Level 3 Communications, Inc.

(Exact name of registrant as specified in its charter)

Delaware

0-15658

47-0210602

(State or other jurisdiction
of incorporation)

(Commission
File Number)

IRS Employer
Identification No.)

1025 Eldorado Blvd., Broomfield, Colorado

80021

(Address of principal executive offices)

(Zip Code)

720-888-1000

Registrant's telephone number, including area code

Not applicable

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

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

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Separation Agreement.

Effective March 20, 2008, Kevin J. O'Hara entered into a Separation Agreement and General Release (the "Agreement") with Level 3 Communications, LLC ("Level 3 LLC"), on behalf of its parent and affiliates. Level 3 LLC is an indirect, wholly owned subsidiary of Level 3 Communications, Inc. (the "Company"). The Agreement confirms the termination of Mr. O'Hara's employment with Level 3 LLC effective March 10, 2008. In addition, as part of the Agreement, Mr. O'Hara resigned all of his officer and director or manager positions with each of the Company's subsidiaries.

So long as Mr. O'Hara does not revoke the Agreement, on March 28, 2008, subject to the terms of the Agreement, Level 3 LLC will pay to Mr. O'Hara one year of his base salary (\$585,000) less withholding for federal and state taxes and less appropriate payroll deductions.

In addition, all of Mr. O'Hara's outperform stock options or OSOs that were awarded to him prior to March 2007 shall be fully vested and exercisable until the earlier of the respective expiration date of the OSO, or September 9, 2009. Any OSO awards awarded after March 2007 will be forfeited. As of March 20, 2008, these OSOs have a zero value.

Mr. O'Hara and the Company agreed that all of the restrictions on his outstanding 684,057 restricted stock units or RSUs will lapse on April 1, 2008. The shares of common stock issuable upon the RSU restrictions lapsing will not be issued to Mr. O'Hara until the expiration of such period of time as may be necessary to meet the requirements of Section 409A(a)(2)(B)(i) of the Internal Revenue Code of 1986, as amended (the "Code"). As of March 20, 2008, the shares of the Company's common stock underlying these 684,057 RSUs had a value of \$1,272,346.02.

In exchange for the benefits offered in the Agreement, Mr. O'Hara provided to Level 3 LLC a general release with respect to any claims arising out of his employment or separation from employment.

Mr. O'Hara agreed, for a period of 12 months from March 10, 2008, that he will not: (a) directly or indirectly solicit the services of, induce away from employment with, or hire any employee of Level 3 LLC or its affiliates during their employment with Level 3 LLC; (b) solicit from any corporation, firm, or organization that is a customer of Level 3 LLC any business, service, or product that Level 3 LLC is providing said customer; (c) induce or attempt to induce any customer, supplier, licensee or other business relation of Level 3 LLC to cease doing business with Level 3 LLC or interfere with the relationship between any such customer, supplier, licensee or business relation and Level 3 LLC; or (d) directly or indirectly engage in, own, manage, be employed by, assist, loan money to, or promote business for any person or entity who or which is engaged in the same business as Level 3 LLC, offers for sale the same products or services as Level 3 LLC, or otherwise is a competitor of Level 3 LLC, without the express written consent of the Chairman of the Compensation Committee of the Company. Clause (d) above will be limited as set forth in the Agreement.

The Agreement is filed as Exhibit 10.1 to this Current Report on Form 8-K (this “Current Report”) and is incorporated by reference herein as if set forth in full. The descriptions of the material terms of the Agreement contained in this Current Report are qualified in their entirety by reference to such exhibit.

Consulting Agreement

Effective March 20, 2008, Mr. O’Hara and Level 3 LLC also entered into a Consulting Agreement (the “Consulting Agreement”) pursuant to which Mr. O’Hara agreed to perform the following work and services: operations analysis and support, capital raising support, regulatory and government affairs support, market positioning and strategy, customer targeting, sales, mergers and acquisitions support, and any other activities related to his prior responsibilities with Company, requested by a Group Vice President or higher level executive, and approved by the Chief Executive Officer of the Company (“Services”). The term of the Consulting Agreement began on March 20, 2008 and will extend to March 9, 2009, unless earlier terminated.

In consideration for Mr. O’Hara’s full and timely performance of the Services, Level 3 LLC will pay Mr. O’Hara the sum of One Hundred Thousand Dollars (\$100,000.00) per month of each month during the term of the Consulting Agreement. Level 3 LLC will also pay Mr. O’Hara’s reasonable out of pocket expenses incurred in connection with the delivery of the Services, consistent with Level 3 LLC’s expense reimbursement policies.

Mr. O’Hara agreed to indemnify and hold harmless Level 3 LLC and its officers, directors, agents and employees, from and against any and all claims, demands, causes of action, losses, damages, costs and expenses (including reasonable attorneys’ fees) (“Losses”) arising out of or relating to the Consulting Agreement, except to the extent such claim, demand, cause of action, loss, damage, cost and expense is caused solely by the negligent acts or failures to act of Level 3 LLC, its officers, directors, agents and employees, in which case Level 3 LLC shall indemnify Mr. O’Hara for any Losses caused by Level 3 LLC’s (or its officers, directors, agents and employees’) negligent acts or failures to act.

Mr. O’Hara agreed, that for a period of 12 months from March 20, 2008, he will not: (a) directly or indirectly, solicit the services of, induce away from employment with, or hire any employee of Level 3 LLC or its affiliates during their employment with Level 3 LLC and for a period of six months after they are no longer employed by Level 3 LLC, without Level 3 LLC’s prior written consent; (b) solicit, directly or indirectly, for himself or on behalf of a third party any corporation, firm, or organization that is a customer of Level 3 LLC any business, service or product that Level 3 LLC is providing said customer; (c) without the express written consent of the Chairman of the Compensation Committee of the Company, which consent will not be unreasonably withheld, directly or indirectly engage in, own, manage, be employed by, assist,

loan money to, or promote any business, for any person or entity; or (d) directly or indirectly engage in, own, manage, be employed by, assist, loan money to, or promote any business, for any person or entity who or which is engaged in the same business of Level 3 LLC, offers for sale the same products or services of Level 3 LLC, or otherwise is a competitor of Level 3 LLC. Clause (d) shall be limited as set forth in the Consulting Agreement.

To the extent, through the Chairman of the Company's Compensation Committee, a consent contemplated by clause (c) above is granted to Mr. O'Hara, Level 3 LLC's payment obligations under the Consulting Agreement will cease as of the date of that consent.

In addition, Level 3 LLC may terminate the Consulting Agreement for "cause." For purposes of the Consulting Agreement "cause" means Level 3 LLC's good faith determination that Mr. O'Hara has committed any of the following in breach of the Consulting Agreement: (1) failure to provide the Services; (2) conduct that is materially injurious to Level 3 LLC or any of its affiliates; (3) fraud, theft or embezzlement or any other material act of dishonesty with respect to Level 3 LLC or its affiliates; (4) willful use or imparting of any confidential or proprietary information of Level 3 LLC or an affiliate; or (5) a felony or crime involving moral turpitude.

The Consulting Agreement is filed as Exhibit 10.2 to this Current Report and is incorporated by reference herein as if set forth in full. The descriptions of the material terms of the Consulting Agreement contained in this Current Report are qualified in their entirety by reference to such exhibit.

Item 9.01. Financial Statements and Exhibits

(a) Financial Statements of Business Acquired
None

(b) Pro Forma Financial Information
None

(c) Shell Company Transactions
None

(d) Exhibits

10.1	Separation Agreement and General Release, dated March 20, 2008, between Level 3 Communications, LLC and Kevin J. O'Hara.
10.2	Consulting Agreement, dated as of March 20, 2008, between Level 3 Communications, LLC and Kevin J. O'Hara

SIGNATURES

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

Level 3 Communications, Inc.

By: /s/ Neil J. Eckstein

Neil J. Eckstein, Senior Vice President

Date: March 26, 2008

SEPARATION AGREEMENT AND GENERAL RELEASE

This Separation Agreement and General Release ("Agreement") is entered into by and between Kevin J. O'Hara ("EMPLOYEE") and LEVEL 3 COMMUNICATIONS, LLC, its parent and affiliated companies ("COMPANY"). In the event that the EMPLOYEE signs and does not revoke this Agreement, the Agreement shall become effective and enforceable on the expiration date of the seven day revocation period referenced in paragraph 14 (the "Effective Date").

In connection with certain organizational changes, COMPANY and EMPLOYEE have determined that it is in their mutual best interests to end their employment relationship. Because COMPANY wants to recognize the service of EMPLOYEE and because EMPLOYEE and COMPANY wish to end the relationship without any disputes or differences following execution of this Agreement, and in consideration for the mutual promises contained herein, EMPLOYEE and COMPANY agree as follows:

1. EMPLOYEE'S employment with and position as an officer of the COMPANY has been terminated effective March 10, 2008. EMPLOYEE shall execute the Resignation attached hereto as Exhibit "A".
2. If EMPLOYEE signs and does not revoke this Agreement, subject to the terms of this Agreement, on the Effective Date, COMPANY will pay to EMPLOYEE, in all cases less withholding for federal and state taxes and less appropriate payroll deductions: the amount of Five Hundred Eighty-Five Thousand Dollars (\$585,000). In addition, if EMPLOYEE elects such coverage, COMPANY will provide to EMPLOYEE COBRA benefit continuation coverage for one month. The costs associated with these additional benefits shall be deemed separation pay that COMPANY has offered to EMPLOYEE freely and without obligation and in consideration for this Agreement.
3. As additional consideration for this Agreement, subject to the terms of this Agreement, if EMPLOYEE signs and does not revoke this Agreement, upon the Effective Date, EMPLOYEE will be entitled to the following:
 - 3.1 Outperform Stock Options ("OSOs"). EMPLOYEE and COMPANY are parties to an Outperform Stock Option Master Award Agreement, which incorporates and is governed by the Level 3 Communications, Inc. 1995 Stock Plan, as amended and restated (the "Stock Plan"). Notwithstanding the terms of the OSO Master Award Agreement, as of March 10, 2008, all of EMPLOYEE'S OSO's shall be fully vested and exercisable until the earlier of the respective expiration of the OSO, or September 9, 2009. No OSOs shall be exercisable beyond the date upon which they expire under the terms of the applicable OSO Master Award Agreement. In addition, EMPLOYEE expressly recognizes and agrees, notwithstanding the terms of the OSO Master Award Agreement, that with respect to any OSO award where the period in which to exercise has been modified herein, the Adjusted Initial Price may never be below the Initial Price as set forth in the Outperform Stock Option Award Letter of the corresponding OSO(s). Any OSO awards awarded after March 2007, shall be forfeited.

- 3.2 Restricted Stock Units ("RSUs"). EMPLOYEE and COMPANY are parties to an Amended Master Deferred Issuance Stock Agreement, which incorporates and is governed by the Stock Plan. Consistent with the above-referenced Amended Master Deferred Issuance Stock Agreement, EMPLOYEE has been awarded RSUs, and as of March 10, 2008, 684,057 RSUs have restrictions that have not lapsed. Notwithstanding the terms of the Amended Master Deferred Issuance Stock Agreement, the restrictions on said 684,057 RSUs shall all lapse on April 1, 2008.
- 3.3. COMPANY reserves the right to make, and the EMPLOYEE hereby consents to, any amendments to the Plan, the EMPLOYEE'S Amended Master Issuance Deferred Stock Agreement, RSU Award Letters, OSO Master Award Agreements, and Outperform Stock Option Award letters, as COMPANY deems necessary to comply with the provisions of Section 409A of the Internal Revenue Code of 1986, and the applicable rules and regulations thereunder.
- 3.4 Except as provided here in, EMPLOYEE will not be entitled to any additional awards or vesting in any of the COMPANY'S stock plans, stock option plans, or other benefit plans. *In addition, nothing in the Agreement is intended to nor shall modify the actual expiration date of any award of OSOs.*
4. Notwithstanding any provision in this Agreement to the contrary, any payment, or issuance, otherwise required to be made hereunder to EMPLOYEE, at any date as a result of the termination of EMPLOYEE'S employment (other than any payment made in reliance upon Treas. Reg. Section 1.409A-1(b)(9) (Separation Pay Plans) or Treas. Reg. Section 409A-1(b)(4) (Short-Term Deferrals)) shall be delayed for such period of time as may be necessary to meet the requirements of Section 409A(a)(2)(B)(i) of the Internal Revenue Code of 1986, as amended (the "Code"). On the earliest date on which such payments, or issuance, can be made without violating the requirements of Section 409A(a) (2) (B)(i) of the Code, there shall be paid to EMPLOYEE, in a single cash lump sum or issuance, an amount equal to the aggregate amount of all payments, or RSUs delayed pursuant to the preceding sentence.
5. Except as provided herein, this Agreement shall expressly and unconditionally supersede and render void any and all claims, rights, title or interest in or with respect to any employee compensation, commission payments, or benefit to which EMPLOYEE may have been entitled by virtue of his employment with COMPANY, excluding claims relating to social security, workers' compensation or unemployment insurance benefits.
6. Release and Covenant Not To Sue. In exchange for the benefits offered herein, EMPLOYEE hereby releases and discharges COMPANY, its directors, officers, employees, agents or successors and assigns, of and from any demands or claims, of whatever kind or nature, whether known or unknown, arising out of his employment or separation from employment with COMPANY, except for the unwaivable claims referred to above and any indemnification rights available in the Certificate of Incorporation or by-laws at the time of an indemnification claim, if any. EMPLOYEE waives these claims on behalf of himself and on behalf of his heirs, assigns, and anyone who may or does make a claim in his behalf. The claims waived and discharged include, but are not limited to: claims of breach of express or implied contract, promissory estoppel, detrimental reliance, wrongful discharge, infliction of emotional distress, claims under

the Employee Retirement Income Security Act of 1974 or the Family and Medical Leave Act of 1993, the WARN Act, or claims of discrimination under the Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, as amended, the Americans with Disabilities Act of 1990, the Sarbanes Oxley Act of 2002, the Internal Revenue Code, or any other local, state or federal law or regulation, as of the date of this Agreement. EMPLOYEE specifically agrees and covenants not to sue COMPANY, its predecessors, successors and assigns, as well as past and present officers, directors, and employees for any of the above mentioned claims, or any other claim related to his employment and EMPLOYEE represents and warrants that he has not filed any such claim to date.

7. Non Disparagement; Cooperation. EMPLOYEE will engage in no conduct and make no statements that are derogatory about or detrimental to COMPANY or any of its officers or employees. COMPANY, through any of its leadership at the level of Group Vice President and above, will engage in no conduct and make no statements that are derogatory about or detrimental to EMPLOYEE. EMPLOYEE further agrees to continue to cooperate with the COMPANY and its representatives in all pending and future claims and litigation against the COMPANY for which he may have information and knowledge, and further agrees to cooperate with COMPANY with respect to wrapping up matters where he was involved, including necessary debriefings.

8. Company Information, Property and Intellectual Property.

EMPLOYEE affirms that

(a) s/he has turned over to his/her manager any information in his/her custody that is (i) considered a COMPANY record; (ii) subject to a legal hold; or (iii) otherwise critical to the conduct of Level 3 business; and that he/she has not deleted, removed or altered and will not delete or otherwise remove or alter any data or configuration from any COMPANY equipment or system without prior written approval from his/her direct supervisor; and

(b) s/he has returned or will promptly return to COMPANY all COMPANY equipment, Confidential Information, and other materials and that s/he will not at any time, except as authorized by the President of COMPANY, for his/her own benefit or the benefit of any other person or entity, disclose or cause to be disclosed any information, materials, systems, procedures, processes, manuals, forms, customer or employee lists, business plans or other trade secrets or confidential information regarding COMPANY. EMPLOYEE further acknowledges and agrees that s/he continues to be bound by the COMPANY'S Intellectual Property and Confidential Information policies, previously acknowledged by EMPLOYEE, copies of which are attached hereto as Exhibit "B".

9. No Solicitation/No Competition. EMPLOYEE agrees, for a period of 12 months beyond EMPLOYEE'S termination date set forth in paragraph 1 above, that he will not: (a) directly or indirectly solicit the services of, induce away from employment with, or hire any employee of COMPANY or its affiliates during their employment with COMPANY; (b) solicit from any corporation, firm, or organization that is a customer of COMPANY any business, service, or product that the COMPANY is providing said customer; (c) induce or attempt to induce any

customer, supplier, licensee or other business relation of the COMPANY to cease doing business with the COMPANY or interfere with the relationship between any such customer, supplier, licensee or business relation and COMPANY; or (d) directly or indirectly engage in, own, manage, be employed by, assist, loan money to, or promote business for any person or entity who or which is engaged in the same business as COMPANY, offers for sale the same products or services as the COMPANY, or otherwise is a competitor of COMPANY, without the express written consent of the Chairman of the Compensation Committee of the COMPANY. Section 9(d) shall be limited to: (i) companies that include within their corporate structure competitive local exchange carrier(s) and/or incumbent local exchange carrier(s), which with affiliates have, for their most recent fiscal year, annual consolidated total communications revenue equal to or greater than \$1 Billion; or (ii) providers of content delivery network services which with affiliates have, for their most recent fiscal year, consolidated total content delivery network revenues greater than \$50 million; or (iii) international communication services providers which with affiliates have a presence in the United States and, with affiliates, have, for their most recent fiscal year, annual consolidated total revenue equal to or greater than \$1Billion; or (iv) XO Holdings, Inc., Global Crossing Ltd., Qwest Communications International Inc., AT&T Inc., Sprint Nextel Corporation, Time Warner Telecom Inc., Verizon Communications Inc., Limelight Networks, Inc., Akamai Technologies Inc., PAETEC Holding Corp., Reliance Communications Venture Limited, including in each case their affiliates, successors and assigns.

10. Remedies. EMPLOYEE agrees further that if he breaches or otherwise acts inconsistent with the provisions of Paragraphs 6, 7, 8 or 9, COMPANY'S obligations under the provisions of Paragraphs 2 and 3 are terminated, and COMPANY may bring an action in a court of competent jurisdiction and recover as liquidated damages pursuant to the terms of Paragraph 2 and 3 of this Agreement, its costs and attorney's fees and any other available remedy. EMPLOYEE also expressly acknowledges that any breach or threatened breach of Paragraphs 8 or 9 might cause irreparable injury to the COMPANY and that money damages may not provide an adequate remedy at law for such injury. To the extent there is litigation involving this Agreement, the party who substantially prevails shall be entitled to their fees and expenses.

11. Non-Admission. This Agreement will not in any way be construed as an admission by COMPANY of a violation of any federal, state or local law or ordinance, or any enforceable right of EMPLOYEE, and COMPANY specifically denies any wrongdoing on its part, or on the part of its directors, employees or agents.

12. Headings. The headings of the sections herein are included solely for convenience of reference and, whether included or not, shall not control the meaning or interpretation of any of the provisions of this Agreement.

13. Review and Acknowledgment. This Separation Agreement and General Release sets forth the entire agreement between EMPLOYEE and COMPANY and may not be modified or canceled in any manner except in writing and signed by both parties. EMPLOYEE hereby acknowledges that COMPANY has made no representations or promises to me other than those contained in this Agreement. If any provision of this Agreement is found to be unenforceable, that provision will be enforced to the greatest extent permitted by law and all other provisions will remain fully enforceable.

This Agreement will be governed by Colorado law. Any action to enforce the terms of this Separation Agreement and General Release will be brought exclusively in state or federal court located in the City and County of Denver, Colorado and EMPLOYEE and COMPANY consent to personal jurisdiction and venue in those courts.

14. ***EMPLOYEE acknowledges that he has read and understands the following notifications:***

- (a) ***EMPLOYEE is advised to and understands his opportunity to consult with an attorney regarding the Agreement before executing it;***
- (b) ***EMPLOYEE acknowledges that he executes this Agreement having been advised and understands that it releases any and all claims under the Age Discrimination in Employment Act of 1967;***
- (c) ***EMPLOYEE acknowledges that he was provided this Agreement on March 12, 2008 and that he has up to twenty-one (21) days in which to consider and accept this Agreement;***
- (d) ***EMPLOYEE may revoke this Agreement at any time within seven (7) days following execution of this Agreement by delivering written notice of such revocation to Thomas C. Stortz, Executive Vice President, 1025 Eldorado Boulevard, Broomfield, Colorado 80021, and that this Agreement will not become effective or enforceable until the expiration of this seven (7) day revocation period;***
- (e) ***by entering into this Agreement, EMPLOYEE has read and understands the terms of this Agreement, that his signature below is truly voluntary, and that he has entered into this Agreement knowingly and willfully.***

DATED this 20th day of March, 2008

EMPLOYEE

/s/ Kevin J.
O'Hara
Kevin J. O'Hara

COMPANY

By: /s/ Thomas C. Stortz
Title: EVP

CONSULTING AGREEMENT

This CONSULTING AGREEMENT (“Agreement”) is made as of the 20th day of March 2008 (the “Effective Date”) by and between **LEVEL 3 COMMUNICATIONS, LLC**, a Delaware limited liability company (“Company”), whose address is 1025 Eldorado Boulevard, Broomfield, CO 80021 and **KEVIN J. O’HARA**, (“Consultant”), whose address is 3747 Mountain Laurel Place, Boulder, CO 80304. Company and Consultant hereby agree as follows:

1. **Services**. During the term of this Agreement, Consultant agrees to perform the following work and services: operations analysis and support, capital raising support, regulatory and government affairs support, market positioning and strategy, customer targeting, sales, mergers and acquisitions support, and any other activities related to his prior responsibilities with Company, requested by a Group Vice President or higher level executive, and approved by James Q. Crowe, or his successor, to be performed at such locations as are designated by Company (“Services”). Consultant shall be available to provide Company the Services under this Agreement for such time as reasonably requested by Company.
2. **Representations**. Consultant represents and warrants that the execution of this Agreement and the performance of Consultant’s obligations hereunder shall not violate the terms of any other agreement or any rule, law, order or consent decree by which Consultant is bound.
3. **Term**. Unless earlier terminated, the term of this Agreement shall be from the Effective Date to March 9, 2009, unless earlier terminated as provided herein.
4. **Consideration**. In consideration for Consultant’s full and timely performance of the Services, Company shall pay Consultant the sum of One Hundred Thousand Dollars (\$100,000.00) per month (the 10th of one month to the 9th of the next month), payable in arrears on the 9th day of each month during the term of this Consulting Agreement.
5. **Expenses and Administrative Support**. Subject to the Company’s travel and expense reimbursement policies, the Company shall reimburse Consultant for Consultant’s reasonable expenses incurred in performing the Services. Company will provide Consultant with administrative support, to the extent it is necessary for the performance of Services. In addition, Consultant shall be allowed to continue the use of Company’s computer during the term of this Agreement, but will not have access to Company’s computer network. All expenses to be reimbursed shall be submitted directly to Thomas C. Stortz for payment.
6. **Independent Contractor**. Consultant and Company, expressly intending that no employment, partnership, or joint venture relationship is created by this Agreement, hereby agree as follows:

- A. Consultant shall act at all times as an independent contractor hereunder and is not an employee, partner, or co-venturer of, or in any other relationship with Company. The manner in which Consultant's services are rendered shall be within Consultant's sole control and discretion.
 - B. Neither Consultant nor anyone employed by or acting for or on behalf of Consultant shall ever be construed as an employee of Company and Company shall not be liable for employment or withholding taxes or any benefits respecting Consultant or any employee of Consultant.
 - C. Consultant shall determine when, where and how Consultant shall perform the Services.
 - D. Consultant shall take all steps to ensure that Consultant and Consultant's employees (if any) are treated as independent contractors of Company.
 - E. Consultant expressly acknowledges and agrees that except to the extent expressly provided in Sections 5 and 6 above, neither Consultant nor anyone employed by or acting for or on behalf of Consultant shall receive or be entitled to any consideration, compensation or benefits of any kind from Company, including without limitation, pension, stock options, profit sharing or similar plans or benefits, or accident, health, medical, life or disability insurance benefits or coverages.
 - F. To the extent permitted by law, Consultant, for Consultant and for anyone claiming through Consultant, waives any and all rights to any consideration, compensation or benefits, except as expressly provided for herein.
7. **Indemnity**. Consultant shall indemnify and hold harmless Company and its officers, directors, agents and employees, from and against any and all claims, demands, causes of action, losses, damages, costs and expenses (including reasonable attorneys' fees) arising out of or relating to Consultant's execution of this Agreement, Consultant's performance of the Services, a breach of the Consultant's representations contained in this Agreement or any claim for withholding or other taxes that might arise or be imposed due to this Agreement or the performance of the Services, except to the extent such claim, demand, cause of action, loss, damage, cost and expense is caused solely by the negligent acts or failures to act of Company, its officers, directors, agents and employees, in which case Company shall indemnify and hold Consultant harmless from any and all claims, demands, causes of action, losses, damages, costs and expenses (including reasonable attorney fees) to the extent and in the same proportion as said loss or damage was caused by Company's (or its officers, directors, agents and employees') negligent acts or failures to act.
8. **Confidential Information**. All information and materials disclosed during the performance of this Agreement shall be subject to the Non-Disclosure Agreement dated March 10, 2008, executed between the parties, which is incorporated herein and is considered a material part of this Agreement.
9. **Confidentiality of Agreement**. The terms of this Agreement, and the proposal of and discussions relating to this Agreement, are and shall remain confidential as between the

parties, unless, and to the extent, disclosure is required by law or to secure advice from a legal or tax advisor.

10. **Standard of Conduct.** In rendering Services under this Agreement, Consultant shall conform to high professional standards of work and business ethics.
11. **Public Relations .** This Agreement shall not be construed as granting to Consultant any right to use any of Company or its affiliates' trademarks, service marks or trade names, or otherwise refer to Company in any marketing, promotional or advertising materials or activities. Without limiting the generality of the forgoing, Consultant shall not disclose (i) the terms and conditions of this Agreement, or (ii) the existence of the project or any contractual relationship between Company and Consultant, except as is reasonably necessary to perform the Services, or (iii) issue any publication or press release relating directly or indirectly to (i) or (ii) above; without Company's prior written consent.
12. **No - Solicitation / No Competition .** Consultant agrees, that for a period of 12 months from the Effective Date, he will not: (a) directly or indirectly, solicit the services of, induce away from employment with, or hire any employee of Company or its affiliates during their employment with Company and for a period of six months after they are no longer employed by Company, without Company's prior written consent; (b) solicit, directly or indirectly, for himself or on behalf of a third party any corporation, firm, or organization that is a customer of Company any business, service or product that the Company is providing said customer; (c) without the express written consent of the Chairman of the Compensation Committee of the Company, which consent will not be unreasonably withheld, directly or indirectly engage in, own, manage, be employed by, assist, loan money to, or promote any business, for any person or entity; or (d) directly or indirectly engage in, own, manage, be employed by, assist, loan money to, or promote any business, for any person or entity who or which is engaged in the same business of Company, offers for sale the same products or services of the Company, or otherwise is a Competitor of Company. Section 12(d) shall be limited to: (i) companies that include within their corporate structure competitive local exchange carrier(s) and/or incumbent local exchange carrier(s), which with affiliates have, for their most recent fiscal year, annual consolidated total communications revenue equal to or greater than \$1 Billion; or (ii) providers of content delivery network services which with affiliates have, for their most recent fiscal year, consolidated total content delivery network revenues greater than \$50 million; or (iii) international communication services providers which with affiliates have a presence in the United States and, with affiliates, have, for their most recent fiscal year, annual consolidated total revenue equal to or greater than \$1Billion; or (iv) XO Holdings, Inc., Global Crossing Ltd., Qwest Communications International Inc., AT&T Inc., Sprint Nextel Corporation, Time Warner Telecom Inc., Verizon Communications Inc., Limelight Networks, Inc., Akamai Technologies Inc., PAETEC Holding Corp., Reliance Communications Venture Limited, including in each case their affiliates, successors and assigns.
13. **Conceptions .** Consultant acknowledges that Company is engaged in a continuous program of research, development and marketing in connection with its business and that, in the performance of the Services, Consultant may participate in and support such activities. To the extent that Consultant participates in or supports such activities on behalf of Company,

Consultant hereby agrees to promptly disclose exclusively to Company all improvements, original works of authorship, process, computer programs, ideas, discoveries, techniques, data bases and trade secrets (“Conceptions”), whether or not patentable or copyrightable, that are made, conceived, first reduced to practice or created by Consultant, either alone or jointly with others. Consultant further agrees that all Conceptions that (a) are developed using equipment, supplies, facilities or trade secrets of Company, or (b) result from or are any way connected with the Services performed by Consultant, or (c) relate to the business or the actual or anticipated research or development of Company, including any “moral” rights under any copyright or other similar law, shall be the sole and exclusive property of, and are hereby automatically assigned to, Company. Consultant agrees to assist Company in obtaining and enforcing all rights and other legal protections for the Proprietary Information and the Conceptions and to execute any and all documents that Company may reasonably request in connection therewith. Consultant’s agreement set forth in the preceding sentence shall continue throughout the period of five (5) years following the termination or expiration of this Agreement; however, Company agrees to pay Consultant reasonable consideration for time actually spent and sufficiently documented by Consultant for such assistance during such five (5) year period.

- 14. Termination.** To the extent the Company, through its Compensation Committee Chairman, provides a consent pursuant to Section 12(c), the Company’s payment obligations under this Agreement shall cease as of the date of such consent.

Company may terminate this Agreement for “cause”. For purposes of this Agreement “cause” shall mean the Company’s good faith determination that the Consultant has committed any of the following in breach of this Agreement: (1) failure to provide Services; (2) conduct that is materially injurious to Company or any of its affiliates; (3) fraud, theft or embezzlement or any other material act of dishonesty with respect to Company or its affiliates; (4) willful use or imparting of any confidential or proprietary information of Company or an affiliate; (5) a felony or crime involving moral turpitude. In the event that Company reasonably believes, in good faith, that Consultant has breached the Agreement, Company shall provide Consultant prior written notice of such alleged breach (the “Alleged Breach Notice”), which notice shall identify with reasonable particularity the basis for such belief, along with the provision of the Agreement that Company alleges has been breached. If Consultant disagrees with Company’s belief as set forth in the Alleged Breach Notice, Consultant and the Chairman of the Compensation Committee, on Company’s behalf, shall attempt in good faith to resolve the dispute within fourteen (14) business days of Consultant’s receipt of the Alleged Breach Notice. If Consultant and Company are unable to definitively resolve the dispute and Company, in good faith, maintains its position that Consultant has breached the Agreement, Company shall promptly send a second notice to Consultant (the “Notice of Breach”). If Consultant does not cure such alleged breach within five (5) business days of receipt of the Notice of Breach, Company may take any action at law or in equity that it may otherwise have against Consultant, including terminating the Agreement, and paying to Consultant the pro-rata amount due for Services performed as of the date of termination. Except for such payment, Company’s payment obligations under this Agreement shall cease.

If this Agreement is terminated, the provisions of Sections 2, 6, 7, 8, 9, 11, 12 (but not Section 12(c)), 13, 17, 18, 19, 20, and 21 shall survive and be enforceable by either party to this Agreement.

- 15. Assignment.** Neither this Agreement nor any rights or obligations created hereby may be assigned by either party and any attempt to do so shall be void, provided, however, Company may freely assign this Agreement to Company affiliates and subsidiaries and in connection with a change in control of Company.

16. Notice.

- A.** Whenever under the provisions of this Agreement it shall be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party, the same shall be in writing and shall be served (i) personally; (ii) by independent, reputable, overnight commercial carrier; or (iii) by electronic transmission where the sender is able to obtain verification of receipt and review, and where the electronic transmission is immediately followed by service of the original of the subject item in the manner provided in clause (i), or (ii) hereof; addressed as follows:

If to Company: Level 3 Communications, LLC

Attn: Chief Legal Officer
1025 Eldorado Blvd.
Broomfield, CO 80021
Facsimile (720) 888-5127

If to Consultant: Kevin J. O'Hara
3747 Mountain Laurel Place
Boulder, CO 80304

- B.** Any party may, from time to time, by notice in writing served upon the other party as aforesaid, designate an additional and/or a different mailing address or an additional and/or a different person to whom all such notices, requests, demands, reports and communications are thereafter to be addressed. Any notice, request, demand, report or other communication served personally shall be deemed delivered upon receipt, if received by independent courier shall be deemed delivered on the date of receipt as shown by the addressee's registry or certification receipt or on the date receipt at the appropriate address, as shown on the records or manifest of the independent courier, and if served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile (provided the original is thereafter delivered as aforesaid).

17. **Affiliates** . All representations, covenants and agreements of Consultant set forth in this Agreement made to or for the benefit or protection of Company shall also benefit and protect, with equal force and effect, all affiliates of Company.
18. **Authority** . Consultant shall have no authority to legally bind Company or its affiliates to any liability or obligation whatsoever. Consultant shall advise all persons and entities with whom he communicates on behalf of Company that Consultant is only a consultant and has no authority to bind Company or its affiliates.
19. **Entire Agreement** . The foregoing constitutes the entire agreement between the parties relating to the subject matter hereof, and supersedes all prior understandings, agreements and documentation relating to the subject matter hereof. This Agreement may be amended only by an instrument executed by Company and Consultant.
20. **Severability** . If any provision of this Agreement is held to be unenforceable for any reason, it shall be modified rather than voided, if possible, in order to achieve the intent of the parties to the extent possible. In any event, all other provisions of this Agreement shall be deemed valid and enforceable to the fullest extent possible.
21. **Governing Law** . This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed and enforced in accordance with, the laws of the State of Colorado.

LEVEL 3 COMMUNICATIONS, LLC

By: /s/ Thomas C. Stortz
Name: Thomas C. Stortz
Title: EVP

CONSULTANT

/s/ Kevin J. O'Hara
Kevin J. O'Hara