

LEVEL 3 COMMUNICATIONS INC

FORM 8-K

(Current report filing)

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SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): February 15, 2005

Level 3 Communications, Inc.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

47-0210602
(I.R.S. Employer
Identification No.)

1025 Eldorado Blvd., Broomfield, Colorado
(Address of principal executive offices)

80021
(Zip code)

720-888-1000
(Registrant's telephone number including area code)

Not applicable
(Former name and former address, if changed since last report)

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

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

Item 1.01 Entry into a Material Definitive Agreement.

a) On February 15, 2005, the Board of Directors for Level 3 Communications, Inc. ("Level 3") met at their regularly scheduled meeting and approved the following changes to the compensation plan of the non-employee members of the Level 3 Board of Directors for 2005.

Program	2004	2005
Annual Cash Retainer	\$30,000.00	Increased to \$50,000.00
Annual Restricted Stock Grant	\$150,000.00	No change
Annual Committee Chair Retainer	\$20,000.00	Increase Audit Committee Chair to \$30,000.00
Annual Committee Member Retainer	\$10,000.00	Increase Audit Committee Member to \$15,000.00
New Board member Restricted Stock Grant	\$150,000.00, vests 100% three years from grant date	No change
Chairman Annual Cash Retainer	\$250,000.00	No change
Chairman Annual Restricted Stock Grant	\$150,000.00	Increase to \$180,000.00

b) Also on February 15, 2005, the Compensation Committee of the Board of Directors determined to award restricted stock units to certain executive officers of the Level 3 as part of the executive's performance based bonus for services rendered in 2004. The awards were as follows:

Kevin J. O'Hara, chief operating officer: 236,317 shares

Charles C. Miller, vice chairman: 236,317 shares

Sureel A. Choksi, executive vice president: 118,159 shares

Thomas C. Stortz, executive vice president, chief legal officer: 118,159 shares

Sunit S. Patel, group vice president and chief financial officer: 118,159 shares

One-third of the award will vest on the first three anniversaries of the date of grant. The date of grant is February 21, 2005. Level 3's form of deferred stock issuance agreement is filed as exhibit 10.1 hereto and incorporated by reference as if set forth in full.

Item 1.02 Termination of a Material Definitive Agreement.

On February 15, 2005, the Board of Directors for Level 3 met at their regularly scheduled meeting and approved an amendment (the "Amendment") to the stockholder Rights Agreement (the "Rights Agreement") between Level 3 and Wells Fargo Bank Minnesota, NA (Level 3's current transfer agent) dated May 29, 1998. The Amendment changed the Final Expiration Date of the Rights Agreement from June 10, 2008, to February 17, 2005, effectively terminating the Rights Agreement as of that date. The Rights Agreement had entitled stockholders, in certain circumstances, to buy one one-thousandth of a newly issued share of Series A Junior Participating Preferred Stock of Level 3 at an exercise price of \$490. This right was instituted to encourage anyone seeking to control Level 3 to open negotiations with the Board of Directors prior to such act. The Board of Directors believes that the continuation of the Rights Agreement was not in the current interest of Level 3 and its stockholders. Level 3 will not incur any early termination penalties regarding the Amendment.

The second amendment to the Rights Agreement is filed as exhibit 4.1 hereto and incorporated by reference as if set forth in full.

Item 9.01 Financial Statements and Exhibits

(a) Financial Statements of business acquired

None

(b) Pro forma financial information

None

(c) Exhibits

4.1 Amendment No. 2 to the Rights Agreement, dated as of February 15, 2005, by and between Level 3 Communications, Inc., a Delaware corporation (the "Company"), and Wells Fargo Bank, NA (formerly known as Norwest Bank Minnesota, N.A.), a Delaware corporation (the "Rights Agent"), and further amends the Rights Agreement, dated as of May 29, 1998, between the Company and the Rights Agent.

10.1 Form of Deferred Issuance Stock Agreement

SIGNATURES

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

Level 3 Communications, Inc.

February 22, 2005
Date

By: /s/ Neil J. Eckstein
Neil J. Eckstein, Senior Vice President

**AMENDMENT NO. 2 TO THE
RIGHTS AGREEMENT**

This Amendment to the Rights Agreement, dated as of February 15, 2005, is made by and between Level 3 Communications, Inc., a Delaware corporation (the "Company"), and Wells Fargo Bank, NA (formerly known as Norwest Bank Minnesota, N.A.), a Delaware corporation (the "Rights Agent"), and further amends the Rights Agreement, dated as of May 29, 1998, between the Company and the Rights Agent (the "Rights Agreement").

RECITALS

WHEREAS, pursuant to Section 26 of the Rights Agreement, the Board Directors of the Company has determined that an amendment to the Rights Agreement as set forth herein is necessary, desirable and in the best interest of the Company and its stockholders, and the Company and the Rights Agent desire to evidence such amendment in writing.

NOW, THEREFORE, the Company and the Rights Agent agree as follows:

1. Amendment to Section 7(a). Section 7(a) of the Rights Agreement is hereby amended and restated to read in its entirety as follows:

(a) Subject to Section 7(e) hereof, the registered holder of any Rights Certificate may exercise the Rights evidenced thereby (except as otherwise provided herein including, without limitation, the restrictions on exercisability set forth in Section 9(c), Section 11(a)(iii) and Section 23(a) hereof) in whole or in part at any time after the Distribution Date upon surrender of the Rights Certificate, with the form of election to purchase and the certificate on the reverse side thereof duly executed, to the Rights Agent at the office or offices of the Rights Agent designated for such purpose, along with a signature guarantee and such other and further documentation as the Rights Agent may reasonably request, together with payment of the aggregate Purchase Price with respect to the total number of one one-thousandths of a share (or other securities, cash or other assets, as the case may be) as to which such surrendered Rights are then exercisable, at or prior to the earlier of (i) the close of business on February 17, 2005 (the "Final Expiration Date"), or (ii) the time at which the Rights are redeemed as provided in Section 23 hereof (the earlier of (i) and (ii) being herein referred to as the "Expiration Date") .

2. Miscellaneous.

(a) Except as otherwise expressly provided, or unless the context otherwise requires, all capitalized terms used herein have the meanings assigned to them in the Rights Agreement.

(b) Each party hereto waives any requirement under the Rights Agreement that any additional notice be provided to it pertaining to the matters covered by this Agreement.

(c) This Amendment may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one end and the same document.

(d) Except as expressly provided herein, the Rights Agreement is not being amended, modified or supplemented in any respect, and it remains in full force and effect.

(e) This Amendment shall be deemed to be a contract made under the laws of the State of Delaware and for all purposes shall be governed by and construed in accordance with the laws of such State applicable to contracts made and to be performed entirely within such State.

(f) This Amendment shall be deemed effective as of the date first written above, as if executed on such date.

IN WITNESS WHEREOF, the parties have caused this Amendment to the Rights Agreement to be duly executed as of the day and year first written above.

LEVEL 3 COMMUNICATIONS, INC.

*By: /s/ Thomas C. Stortz
Name: Thomas C. Stortz
Title: Executive Vice President*

WELLS FARGO BANK, NA

*By: /s/ Barbara M. Novak
Name: Barbara M. Novak
Title: Vice President*

FORM OF DEFERRED ISSUANCE STOCK AGREEMENT

This Deferred Issuance Stock Agreement (this "Agreement") is entered into as of [dated], by and between Level 3 Communications, Inc., a Delaware corporation (the "Company"), and [name of employee] (the "Employee").

Employee is an employee of the Company or a subsidiary of the Company. The Company wants to provide the Employee an opportunity to acquire shares of its common stock, par value \$.01 per share ("Stock"), in order to retain the Employee as an employee of the Company, pursuant to the Level 3 Communications, Inc. 1995 Stock Plan (as amended from time to time, the "Plan").

The parties agree as follows:

1. **Obligation to Issue Deferred Shares.** Subject to the terms and conditions of this Agreement, the Company hereby agrees to issue to the Employee a total of [number] shares of Stock (together, the "Deferred Shares") in [number of installments] installments as follows: [vesting schedule] (each such date, an "Issuance Date"). To the extent that (i) the Employee is subject to the provisions of the Company's Insider Trading Policy that restrict an employee's ability to sell shares of Stock to open "trading windows" and (ii) the Issuance Date would be a day that the Employee is otherwise precluded from selling shares of Stock by the Company's Insider Trading Policy, the Issuance Date shall be delayed until the first business day of the next open trading window (a "Delayed Issuance").
2. **Acceleration of Issuance of Deferred Shares.** Notwithstanding Section 1, the Company will issue all unissued Deferred Shares to the Employee, including any Delayed Issuance Shares (as defined below) (i) promptly after the death of the Employee or the Disability of the Employee, or (ii) immediately before a Change in Control. "Disability" means that the Administrator has determined that the Employee has become permanently disabled under standards adopted from time to time by the Committee.
3. **Forfeiture of Right to Acquire Deferred Shares.** If the Employee ceases to be an employee of the Company or of a Subsidiary (other than as a result of death or Disability), the Company no longer will be obligated to issue any unissued Deferred Shares to the Employee, and the Employee will forfeit any right to acquire any unissued Deferred Shares from the Company; provided, however, that to the extent that any unissued Deferred Shares are unissued as a result of a Delayed Issuance ("Delayed Issuance Shares"), the Company shall issue the Delayed Issuance Shares to the Employee, but shall have no obligation to issue any other unissued Deferred Shares.
4. **Taxes; Withholding.** The Company will not be obligated to issue the Deferred Shares unless the Employee has paid (in cash or by certified or cashier's check) to the Company all withholding taxes required to be collected by the Company under Federal, State, local or foreign law as a result of the issuance of the Deferred Shares ("Withholding Taxes"). The Company, in its sole discretion, may permit the Employee to pay any or all Withholding Taxes

through delivery of outstanding Stock or withholding of Stock issuable pursuant to this Agreement. The Employee, however, will have no absolute right to pay the Withholding Taxes with Stock, and, if such payment is permitted by the Company, such payment must be made in strict compliance with rules for such payments established by the Company.

5. Share Certificates. Unless otherwise requested by the Employee, certificates for Deferred Shares will be registered in the name of the Employee and will be delivered to the Employee at the Employee's address then listed in the employment records of the Company.

6. Non-Transferability of Right to Receive Deferred Shares. Unless specifically permitted by the Committee, the Employee may not transfer, assign, pledge or hypothecate the right to receive the Deferred Shares, and the right to receive the Deferred Shares may not be transferred or assigned by operation of law, or be subject to execution, attachment or similar process other than by will or the laws of descent and distribution.

7. Changes in Capital Structure. The number of Deferred Shares subject to this Agreement is subject to adjustment pursuant to Section 9.1 of the Plan upon the occurrence of the events described in that Section.

8. Change in Control. Notwithstanding Section 1, upon a Change in Control of the Company, the Company will either (a) issue all unissued Deferred Shares to the Employee in accordance with Section 9.2(a) of the Plan or (b) pay the Employee in a combination of cash and stock the value of the Deferred Shares in accordance with Section 9.2(b) of the Plan.

9. Gross-Up. If the issuance of Deferred Shares would result in "excess parachute payments" to the Employee pursuant to Section 280G of the Internal Revenue Code of 1986, as amended (the "Code"), the Company will pay the Employee an amount sufficient to put the Employee in the same position as the Employee would have been if the taxes imposed on the Employee pursuant to Section 4999 of the Code had not been imposed. Any such payment will include payment of an amount equal to any income taxes assessed on the Employee with respect to payments pursuant to this Section. The Company will make any such payment not later than the date upon which such excise tax payment is due from the Employee pursuant to Section 4999 of the Code. Any such payment will in all other respects be made in accordance with the rules, regulations and procedures adopted by the Company from time to time with respect to such payments under the Plan.

10. Costs. The Company will pay all original issue and transfer taxes with respect to, and all other costs, fees and expenses incurred by the Company in connection with, the issuance of Deferred Shares.

11. Applicable Law. No certificate or certificates for Deferred Shares will be issued and delivered unless and until, in the opinion of legal counsel for the Company, such securities may be issued and delivered without causing the Company to be in violation of or incur any liability under any federal, state or other legal requirement, including applicable securities laws.

12. The Plan. This Agreement is subject to, and the Employee agrees to be bound by, all of the terms and conditions of the Plan. The Employee acknowledges that the Plan may be amended from time to time, and that under the Plan, the Committee has conclusive authority to interpret and construe the Plan and this Agreement and is authorized to adopt rules for carrying out the Plan. In the event of any inconsistency or discrepancy between the provisions of this Agreement and the terms and conditions of the Plan, the provisions of the Plan will govern and prevail. No amendment to or interpretation of the Plan, however, may deprive the Employee of any of his rights under this Agreement.

13. Issuance of Shares. Any Deferred Shares issuable upon satisfaction of the terms and conditions of this Agreement will be issued by the Company to the Employee prior to the date that is 2 1/2 months after the end of the calendar year in which the Deferred Shares shall have vested pursuant to the terms of this Agreement, provided, that if the Employee has not complied by such date with the provisions of Section 4 of this Agreement relating to payment of all required Withholding Taxes with respect to such Deferred Shares, the Employee's right to receive such Deferred Shares shall be forfeited.

14. Miscellaneous. (a) The Employee will not have any interest in, or any dividend, voting or other rights of a shareholder with respect to, the Deferred Shares until the Deferred Shares are issued in accordance with this Agreement.

(b) Any notice to be given to the Company must be in writing addressed to the Company in care of the Administrator, at its principal office, and any notice to be given to the Employee must be in writing addressed to the Employee at the address for the Employee in the records of the Company. Any such notice will be deemed duly given when delivered by hand or deposited in the United States mail, registered or certified mail.

(c) The Employee is an employee at will, and nothing in this Agreement confers upon the Employee any right to continued employment with the Company or limits in any way the right of the Company to terminate the employment of the Employee at any time.

(d) This Agreement must be construed in accordance with the laws of the State of Colorado, other than choice of law rules thereof calling for the application of laws of another jurisdiction.

(e) Terms used but not defined in this Agreement have the meanings ascribed to them under the Plan.

IN WITNESS WHEREOF, this Agreement is entered into by the Employee and by the Company as of the date first above written.

LEVEL 3 COMMUNICATIONS, INC.

By: _____
Title: _____

EMPLOYEE

[name]
