

LEVEL 3 COMMUNICATIONS INC

FORM 8-K (Current report filing)

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): **July 21, 2014**

Level 3 Communications, Inc.

(Exact name of Registrant as specified in its charter)

Delaware

(State or other
jurisdiction of incorporation)

0-15658

(Commission File
Number)

47-0210602

(IRS employer
Identification No.)

1025 Eldorado Blvd., Broomfield, Colorado

(Address of principal executive offices)

80021

(Zip code)

720-888-1000

(Registrant's telephone number including area code)

Not applicable

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

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

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01. Entry into a Material Definitive Agreement

Amendment to the Rights Agreement

In connection with the execution of the Agreement and Plan of Merger, dated as of June 15, 2014 (as it may be amended or modified, the “Merger Agreement”), among Level 3 Communications, Inc. (the “Company”), Saturn Merger Sub 1, LLC, a Delaware limited liability company and a direct wholly owned subsidiary of the Company (“Merger Sub 1”), Saturn Merger Sub 2, LLC, a Delaware limited liability company and a direct wholly owned subsidiary of the Company (“Merger Sub 2”), and tw telecom, a Delaware corporation (“tw telecom”), the Company and Wells Fargo Bank, N.A., as rights agent, entered into an amendment (the “Rights Plan Amendment”) to that certain Rights Agreement, dated as of April 10, 2011, between the Company and Wells Fargo Bank, N.A., as rights agent and amended by Amendment No. 1 thereto dated as of March 15, 2012, between the Company and the Rights Agent (as amended, the “Rights Agreement”) to extend the term of the Rights Agreement.

The Rights Agreement, which was scheduled to expire on October 4, 2014, the third anniversary of the closing of the Company’s acquisition of Global Crossing Limited, is in place to deter acquisitions of Company common stock par value \$.01 per share (“Common Stock”) that would potentially limit the Company’s ability to use its built-in losses and any resulting net loss carryforwards (“NOLs”) to reduce potential future federal income tax obligations. In general terms, the rights issued under the Rights Agreement impose a significant penalty to any person, together with its Affiliates, that acquires more than 4.9% of the Common Stock.

Pursuant to the Rights Plan Amendment, effective July 21, 2014, Section 7(a) of the Rights Agreement was amended and restated to modify the expiration provisions of the Rights Agreement. The Rights (as defined in the Rights Agreement) issuable under the Rights Agreement, as amended by the Rights Plan Amendment, will expire, at or prior to the earliest of (i) the day following the third anniversary of the closing of the “Merger” pursuant to the Merger Agreement or the date of the termination of the Merger Agreement (the “Final Expiration Date”); provided that in no event shall the Final Expiration Date be prior to October 4, 2014, the time at which the Rights are exchanged, (ii) the time at which the Rights are redeemed, (iii) the time at which the Rights are exchanged, (iv) the time at which the Company’s board of directors determines that the NOLs are utilized in all material respects or that an ownership change under Section 382 of the Internal Revenue Code of 1986, as amended (the “Code”), would not adversely impact in any material respect the time period in which the Company could use the NOLs, or materially impair the amount of the NOLs that could be used by the Company in any particular time period, for applicable tax purposes, (v) the first anniversary of the closing of the transactions contemplated by the Merger Agreement if approval of the Rights Agreement as amended by the Rights Plan Amendment by the affirmative vote of the holders of a majority of the voting power of the outstanding Common Stock has not been obtained prior to such date, or (vii) a determination by the Company’s board of directors, prior to the Distribution Date as defined in the Rights Agreement, that the Rights Agreement and the Rights are no longer in the best interests of the Company and its stockholders.

The summary of the terms of the Rights Plan Amendment is qualified in its entirety by reference to the Rights Plan Amendment filed as Exhibit 10.1 to this Current Report and incorporated by reference as if set forth in full.

Amendment to the Standstill Agreement

In connection with the expected closing of the Merger Agreement, the Company and Southeastern Asset Management, Inc., a Tennessee corporation (“Southeastern”), entered into an amendment (the “Standstill Amendment”) to that certain Standstill Agreement, between the Company and Southeastern, as amended by Amendment No. 1 dated as of March 15, 2012 (such standstill agreement, as amended by Amendment No. 1 thereto, the “Standstill Agreement”).

The Standstill Agreement provides for, among other things, limitations until February 18, 2015 (the “Standstill Period”), on Southeastern’s ability to (i) acquire additional shares of Common Stock, (ii) enter arrangements, understandings or agreements that would cause a “change of control” (as defined in the indentures, supplemental indentures or credit agreements, as the case may be, relating to any indebtedness for borrowed money of the Company or any of its subsidiaries) or an “ownership change” (within the meaning in the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder) for the Company, (iii) form, join or participate in a Group (as defined by the SEC’s rules) in connection with the foregoing, and (iv) transfer shares of Common Stock in certain negotiated transactions. Southeastern beneficially owns shares of common stock of tw telecom, which will be converted into 0.7 shares of Common Stock of the Company and the right to receive \$10 in cash in connection with the transactions contemplated by the Merger Agreement. Effective upon the earlier of the consummation of the Merger contemplated by the Merger Agreement and the last day of the Standstill Period, the Standstill Amendment will increase the maximum number of shares of Common Stock that Southeastern is permitted to beneficially own during the term of the Standstill Agreement to up to 66,780,000 shares from 49,840,000 shares.

In addition, Southeastern represented to the Company in the Standstill Amendment that after giving effect to the mergers contemplated by the Merger Agreement, none of the Common Stock held by Southeastern or any fund or account which Southeastern manages or advises (the “Southeastern Investors”) is treated for purposes of Section 382 of the Code, as owned, either actually or by reason of the attribution and constructive ownership rules applicable under Section 382 of the Code, by a “5 percent shareholder” as such term is defined in Section 382 of the Code. Southeastern further represented to the Company that (i) the Southeastern Investors do not have any formal or informal understanding among themselves, or with Southeastern, to make “coordinated acquisitions” of Common Stock, and therefore are not treated as a single “entity” within the meaning of Section 1.382-3(a)(1) of the Treasury Regulations and (ii) the investment decision of each Southeastern Investor to acquire shares of Common Stock is not based on the investment decision of one or more of the other Southeastern Investors to acquire shares of Common Stock.

Southeastern also agreed that during the period beginning on the earlier of (i) completion of the mergers contemplated by the Merger Agreement and (ii) the expiration of the Standstill Period and ending on the third anniversary of the completion of the mergers contemplated by the Merger Agreement: (a) the Schedule 13Gs that Southeastern may file in the future with respect

to Common Stock will reflect that the Southeastern Investors are not a “group” under Section 13(d)(3) of the Securities Exchange Act of 1934, as amended; and (b) Southeastern shall in no event make any acquisition of Common Stock for its own account or on behalf of any Southeastern Investor if it or such Southeastern Investor is on the date of such purchase or would become, as a result of such purchase, a “5-percent shareholder” of the Company within the meaning of Section 382 of the Code.”

The summary of the terms of the Standstill Amendment is qualified in its entirety by reference to the Standstill Amendment filed as Exhibit 10.2 to this Current Report 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) Shell Company Transactions

None

(d) Exhibits

10.1 Amendment No. 2 to the Rights Agreement, dated as of July 21, 2014, by and between Level 3 Communications, Inc. and Wells Fargo Bank, N.A., as rights agent.

10.2 Amendment No. 2 to the Standstill Agreement, dated as of July 21, 2014, by and between Level 3 Communications, Inc. and Southeastern Asset Management Inc.

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

Name: Neil J. Eckstein

Title: Senior Vice President and Assistant

General Counsel

Date: July 22, 2014

Exhibit Index

Exhibit	Description
10.1	Amendment No. 2 to the Rights Agreement, dated as of July 21, 2014, by and between Level 3 Communications, Inc. and Wells Fargo Bank, N.A., as rights agent.
10.2	Amendment No. 2 to the Standstill Agreement, dated as of July 21, 2014, by and between Level 3 Communications, Inc. and Southeastern Asset Management Inc.

AMENDMENT NO. 2 TO THE

RIGHTS AGREEMENT

This Amendment No. 2 to the Rights Agreement (this “Amendment”), dated as of July 21, 2014, is made by and between Level 3 Communications, Inc., a Delaware corporation (the “Company”), and Wells Fargo Bank, N.A., as rights agent (the “Rights Agent”), and amends the Rights Agreement, dated as of April 10, 2011 and amended by Amendment No. 1 thereto dated as of March 15, 2012, between the Company and the Rights Agent (the “Rights Agreement”). Capitalized terms used in this Amendment and not otherwise defined herein shall have the meanings given them in the Rights Agreement.

RECITALS

WHEREAS, the Company desires to amend the Rights Agreement to extend the exercisability of the Rights; and

WHEREAS, pursuant to Section 27 of the Rights Agreement, the Board of Directors of the Company has determined that an amendment to the Rights Agreement as set forth herein is desirable and the Company and the Rights Agent now desire to evidence such amendment in writing.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements set forth in the Rights Agreement and herein, the parties hereto agree as follows:

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

“(a) The registered holder of any Right Certificate may exercise the Rights evidenced thereby (except as otherwise provided herein), in whole or in part, at any time after the Distribution Date, upon surrender of the Right Certificate, with the form of election to purchase on the reverse side thereof duly executed, to the Rights Agent at the principal office of the Rights Agent, together with payment of the Purchase Price for each one ten-thousandth of a Preferred Share as to which the Rights are exercised, at or prior to the earliest of (i) the day following the third anniversary of the closing of the “Merger” pursuant to that certain Agreement and Plan of Merger dated as of June 15, 2014 among Level 3 Communications, Inc., Saturn Merger Sub 1, LLC, Saturn Merger Sub 2, LLC, and tw telecom inc. (as may be amended from time to time, the “Merger Agreement”) or the date of the termination of the Merger Agreement (the “Final Expiration Date”); provided that in no event shall the Final Expiration Date be prior to October 4, 2014, (ii) the time at which the Rights are redeemed as provided in Section 23 hereof (the “Redemption Date”), (iii) the time at which such Rights are exchanged as provided in Section 24 hereof, (iv) the time at which the Board determines that the Net Operating Losses (the “NOLs”) are utilized in all material respects or that an ownership change under Section 382 would not adversely impact in any material respect the time period in which the Company could use the NOLs, or materially impair the amount of the NOLs that could be used by the Company in any particular time period, for applicable tax purposes, (v) the first anniversary of the closing of the “Merger” pursuant to the Merger

Agreement if Stockholder Approval of this Agreement, as amended by Amendment No. 2 hereto, has not been obtained prior to such date or (vi) a determination by the Board, prior to the Distribution Date, that this Agreement and the Rights are no longer in the best interests of the Company and its stockholders (the earliest of the dates set forth in clauses (iv), (v) and (vi) the “Early Expiration Date”).”

2. Miscellaneous.

(a) This Amendment may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

(b) Except as specifically modified herein, the Rights Agreement shall not otherwise be supplemented or amended by virtue of this Amendment, but shall remain in full force and effect. The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, constitute a waiver or amendment of any provision of the Rights Agreement. Upon and after the effectiveness of this Amendment, each reference in the Rights Agreement to “this Agreement”, “hereunder”, “hereof” or words of like import referring to the Rights Agreement, and each reference in any other document to “the Rights Agreement”, “thereunder”, “thereof” or words of like import referring to the Rights Agreement, shall mean and be a reference to the Rights Agreement as modified hereby.

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

(d) 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 to be made and performed entirely within such state.

[Remainder of this page intentionally left blank.]

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

Attest: Level 3 Communications, Inc.

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

By /s/ John M. Ryan
Name: John M. Ryan
Title: Executive Vice President

Attest: Wells Fargo Bank, N.A.

By /s/ Suzanne M. Swits
Name: Suzanne M. Swits
Title: Assistant Secretary

By /s/ Pamela E. Herlick
Name: Pamela E. Herlick
Title: Vice President

[Signature Page to Amendment No. 2 to the Rights Agreement]

AMENDMENT NO. 2 TO THE
STANDSTILL AGREEMENT

This Amendment No. 2 to the Standstill Agreement (this “Amendment”), dated as of July 21, 2014, is made by and between Level 3 Communications, Inc., a Delaware corporation (the “Company”), and Southeastern Asset Management, Inc., a Tennessee corporation (“Southeastern”), and amends the Standstill Agreement, dated as of May 20, 2011, between the Company and Southeastern as amended by Amendment No. 1 thereto dated as of March 15, 2012 (such standstill agreement as amended by Amendment No. 1 thereto, the “Standstill Agreement”). Capitalized terms used in this Amendment and not otherwise defined herein shall have the meanings given them in the Standstill Agreement. This Amendment will only become effective as provided in Section 3(c) below.

RECITALS

WHEREAS, Southeastern is the Beneficial Owner of shares of common stock, \$0.01 par value per share (“Common Stock”), of the Company; and

WHEREAS, pursuant to the Standstill Agreement, during the Standstill Period, Southeastern has agreed not to, without the prior written consent of a majority of the entire Board of Directors, acquire any Common Stock, Voting Securities or Derivative Securities of the Company, other than in open market transactions that do not involve the issuance of Common Stock by the Company and unless after giving effect to such acquisition Southeastern would Beneficially Own less than 49,840,000 shares of Common Stock;

WHEREAS, on June 14, 2014, the Company entered into an Agreement and Plan of Merger (as it may be amended or modified, the “Merger Agreement”) with Saturn Merger Sub 1, LLC, a Delaware limited liability company and a direct wholly owned subsidiary of the Company (“Merger Sub 1”), Saturn Merger Sub 2, LLC, a Delaware limited liability company and a direct wholly owned subsidiary of the Company (“Merger Sub 2”), and tw telecom, a Delaware corporation (“tw telecom”); and

WHEREAS, the Merger Agreement provides that, among other things and subject to the satisfaction of certain closing conditions set forth therein, (1) Merger Sub 1 will merge with and into tw telecom (the “Merger”), with tw telecom continuing as the surviving corporation, (2) immediately following the Merger, tw telecom as the surviving corporation will merge with and into Merger Sub 2 (the “Subsequent Merger”), with Merger Sub 2 continuing as the surviving company and (3) each issued and outstanding share of common stock of tw telecom, other than dissenting shares, will be converted into .7 shares of Common Stock and the right to receive \$10 in cash (the “Merger Consideration”); and

WHEREAS, Southeastern is the Beneficial Owner of shares of common stock of tw telecom, and such shares will be converted into shares of Common Stock in the Merger; and

WHEREAS, in connection with the transactions contemplated by the Merger Agreement, the Company and Southeastern desire to increase the maximum number of shares of Common

Stock that Southeastern is permitted to Beneficially Own pursuant to the terms of the Standstill Agreement and make certain other amendments to the Standstill Agreement; and

WHEREAS, the Company (by action of a majority of the entire the Board of Directors of the Company) has determined that an amendment to the Standstill Agreement as set forth herein is desirable in connection with the foregoing and has approved this Amendment; and

WHEREAS, pursuant to Section 5.10 of the Standstill Agreement, the Company and Southeastern now desire to duly execute and evidence such amendment in writing.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements set forth in the Standstill Agreement and herein, the parties hereto agree as follows:

1. Amendment and Restatement of Section 4.1(a)(i)(B). Section 4.1(a)(i)(B) of the Standstill Agreement is hereby amended and restated in its entirety to read as follows:

“B. any Common Stock, Voting Securities or Derivative Securities of the Company (x) other than in open market transactions that do not involve the issuance of Common Stock by the Company or pursuant to the Exchange Agreement dated as of March 13, 2012, by and among the Company, Longleaf Partners Fund and Southeastern (solely with respect to Sections 3, 5.2 and 5.4 therein), and (y) unless after giving effect to such acquisition Southeastern would Beneficially Own less than 66,780,000 shares of Common Stock (subject to appropriate adjustment to take into account any stock splits, subdivisions, stock dividends, combinations, reclassifications or similar events occurring after the date hereof); provided that Southeastern shall in no event make any such acquisition for its own account or on behalf of any Advisory Client if it or such Advisory Client is on the date of such purchase or would become, as a result of such purchase, a “5-percent shareholder” of the Company within the meaning of Section 382 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (including all applicable attribution rules) (the “Code”);”

2. Further Amendment to Standstill Agreement. The Standstill Agreement is hereby further amended to add thereto the following Section 3.6 and Section 4.3:

“3.6. Tax Representations. After giving effect to the Merger and the Subsequent Merger, none of the Common Stock held by Southeastern or any fund or account which Southeastern manages or advises (the “Southeastern Investors”) is treated for purposes of Section 382 of the Code as owned, either actually or by reason of the attribution and constructive ownership rules applicable under Section 382 of the Code, by a “5 percent shareholder” as such term is defined in Section 382 of the Code. The Southeastern Investors do not have any formal or informal understanding among themselves, or with Southeastern, to make “coordinated acquisitions” of Common Stock, and therefore are not treated as a single “entity” within the meaning of Section 1.382-3(a)(1) of the Treasury Regulations. The investment decision of each Southeastern Investor to acquire shares of Common Stock is not based on the investment decision of one or more of the other Southeastern Investors to acquire shares of Common Stock.”

“4.3 No Creation of “5-Percent Shareholders”. During the period beginning on the earlier of (i) completion of the Subsequent Merger and (ii) the expiration of the Standstill

Period and ending on the third anniversary of the completion of the Subsequent Merger: (a) the Schedule 13Gs that Southeastern may file in the future with respect to Common Stock will reflect that the Southeastern Investors are not a “group” under Section 13(d)(3) of the Securities Exchange Act of 1934, as amended; and (b) Southeastern shall in no event make any acquisition of Common Stock for its own account or on behalf of any Southeastern Investor if it or such Southeastern Investor is on the date of such purchase or would become, as a result of such purchase, a “5-percent shareholder” of the Company within the meaning of Section 382 of the Code.”

3. Miscellaneous.

(a) This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original, and all such counterparts shall together constitute one instrument.

(b) Except as specifically modified by this Amendment upon its effectiveness in accordance with Section 3(c), the Standstill Agreement shall not otherwise be supplemented or amended by virtue of this Amendment, but shall remain in full force and effect. The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, constitute a waiver or amendment of any provision of the Standstill Agreement. Upon and after the effectiveness of this Amendment, each reference in the Standstill Agreement to “this Agreement”, “hereunder”, “hereof” or words of like import referring to the Standstill Agreement, and each reference in any other document to “the Standstill Agreement”, “thereunder”, “thereof” or words of like import referring to the Standstill Agreement, shall mean and be a reference to the Standstill Agreement as modified hereby.

(c) This Amendment will become effective automatically without any additional action required by either Southeastern or the Company upon the earlier of (i) consummation of the Merger contemplated by the Merger Agreement and (ii) the last day of the Standstill Period. Prior to the consummation of the Merger, the Standstill Agreement shall remain in full force and effect. In the event that the Merger Agreement is terminated for any reason whatsoever, this Amendment shall automatically terminate and the Standstill Agreement shall remain in full force and effect.

(d) This Amendment 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.

[Remainder of this page intentionally left blank.]

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

LEVEL 3 COMMUNICATIONS, INC.

By /s/ John M. Ryan
Name: John M. Ryan
Title: Executive Vice President

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

By /s/ Andrew R. McCarroll
Name: Andrew R. McCarroll
Title: General Counsel