

LEVEL 3 COMMUNICATIONS INC

FORM 8-K (Current report filing)

Filed 05/02/07 for the Period Ending 05/02/07

Address	1025 ELDORADO BOULEVARD BLDG 2000 BROOMFIELD, CO 80021
Telephone	7208881000
CIK	0000794323
Symbol	LVLT
SIC Code	4813 - Telephone Communications, Except Radiotelephone
Industry	Communications Services
Sector	Services
Fiscal Year	12/31

LEVEL 3 COMMUNICATIONS INC

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Filed 5/2/2007 For Period Ending 5/2/2007

Address	1025 ELDORADO BOULEVARD BLDG 2000 BROOMFIELD, Colorado 80021
Telephone	720-888-1000
CIK	0000794323
Industry	Communications Services
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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): May 2, 2007

Level 3 Communications, Inc.

(Exact name of Registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation)	0-15658 (Commission File Number)	47-0210602 (IRS employer Identification No.)
1025 Eldorado Blvd., Broomfield, Colorado Address of principal executive offices)		80021 (Zip code)

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

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

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

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

Item 8.01. Other Events

On May 2, 2007, Level 3 Communications, Inc. (the "Company") consented to permitting Southeastern Asset Management, Inc. ("Southeastern") to purchase, from time to time, on behalf of its institutional advisory clients, additional shares of the Company's common stock in one or more transactions not involving the issuance of securities by the Company, so long as, after giving effect to such purchase, Southeastern would beneficially own no more than 381,869,219 shares of the Company's common stock (which would represent approximately 24.97% of the Company's outstanding common stock based on the number of shares of the Company's common stock outstanding as of May 1, 2007).

In connection with the purchase by Southeastern of the Company's 10% Convertible Senior Notes due 2011 in April 2005, Southeastern agreed, for a five year period, not to, without the prior written consent of the majority of the entire Board of Directors of the Company, alone or in concert with others, acquire any securities of the Company except pursuant to the conversion of convertible debt of the Company held by Southeastern at such time. This limitation on purchases is set forth in that certain Securities Purchase Agreement, dated as of February 18, 2005, by and among the Company and the Investors named on Exhibit A thereto, which was filed as Exhibit 10.1 to the Company's Current Report on Form 8-K dated February 24, 2005 (the "Securities Purchase Agreement"). In August 2006, the Company previously granted a waiver of the standstill provisions contained in the Securities Purchase Agreement that was granted by the Company, which was filed as Exhibit 10.1 to the Company's Current Report on Form 8-K dated August 7, 2006. Primarily as a result of various issuances of securities by the Company since April 2005, Southeastern's beneficial ownership of the Company's common stock, as of May 1, 2007, was approximately 20.85%. At the request of Southeastern, the Board of Directors of the Company consented to permitting Southeastern to purchase additional shares of the Company's common stock subject to the limitations described above. If Southeastern were to purchase the maximum number of shares permitted by the consent, Southeastern would beneficially own approximately 24.97% of the Company's outstanding common stock (based on the number of shares of the Company's common stock outstanding as of May 1, 2007). This percentage beneficial ownership would be consistent with the percentage beneficial ownership for Southeastern that was contemplated by the waiver of the standstill provisions contained in the Securities Purchase Agreement that was granted by the Company in August 2006.

A copy of the consent is filed as Exhibit 10.1 to this Form 8-K and is incorporated herein by reference in its entirety.

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 Consent, dated as of May 2, 2007, by Level 3 Communications, Inc. relating to that certain Securities Purchase Agreement, dated as of February 18, 2005, by and among Level 3 Communications, Inc. and the Investors named on Exhibit A thereto.

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: May 2, 2007

CONSENT

Reference is hereby made to that certain Securities Purchase Agreement, dated as of February 18, 2005, by and among Level 3 Communications, Inc., a Delaware corporation (the "Company"), and the Investors named on Exhibit A thereto (the "Purchase Agreement"). Capitalized terms used in this Consent without further definition have the meaning ascribed to those terms in the Purchase Agreement.

RECITALS

WHEREAS, during the Standstill Period, Southeastern has agreed in the Purchase Agreement not to, without the prior written consent of the majority of the entire Board of Directors (excluding any representatives or designees of the Investors), engage in certain actions with respect to the Company;

WHEREAS, pursuant to Section 5.6(a)(i)(B) of the Purchase Agreement, during the Standstill Period, Southeastern has agreed not to, without the prior written consent of the majority of the entire Board of Directors (excluding any representatives or designees of the Investors), alone or in concert with others, acquire any Common Stock, Voting Securities or Derivative Securities of the Company except pursuant to the conversion of convertible debt of the Company held by Southeastern;

WHEREAS, Southeastern has requested that the Company consent to permitting Southeastern, on behalf of its institutional advisory clients, to purchase, from time to time, additional shares of Common Stock in one or more transactions that do not involve the issuance of additional shares of Common Stock by the Company; and

WHEREAS, the Company is willing to consent to Southeastern purchasing, from time to time, additional shares of Common Stock in one or more transactions that do not involve the issuance of additional shares of Common Stock by the Company in accordance with the terms of this Consent.

NOW THEREFORE, in consideration of the representations, warranties and covenants contained in that certain Certificate of Southeastern attached hereto as Exhibit A (the "Certificate"), the Company hereby consents as follows:

1. Holdings of Southeastern. In the Certificate, Southeastern has represented and warranted to the Company that as of the date thereof Southeastern Beneficially Owned (for purposes of the Purchase Agreement) approximately 20.85% of the Common Stock, such percentage including certain shares of Common Stock that Southeastern has represented it is not currently deemed to beneficially own under Securities Exchange Commission Rule 13d-3 promulgated under the Securities Exchange Act of 1934.
2. Consent. Pursuant to Section 5.6(a) of the Purchase Agreement and notwithstanding the last sentence of Section 5.6(b) of the Purchase Agreement, the Company hereby consents to permitting Southeastern to purchase, from time to time, on behalf of its institutional advisory clients, additional shares of Common Stock in one or more transactions; provided, however, that Southeastern shall not purchase (or agree to purchase) any Common

Stock (a) other than in transactions that do not involve the issuance of Common Stock by the Company, (b) unless after giving effect to such purchase Southeastern would Beneficially Own (for purposes of the Purchase Agreement) less than 381,869,219 shares of Common Stock (subject to adjustment on account of stock splits, combinations, subdivisions and reclassifications) and unless such purchase comply with the provisions of Section 5.6 of the Purchase Agreement other than Section 5.6(a)(i)(B) thereof, or (c) for its own account or on behalf of any Southeastern investment advisory client if it or such investment advisory client is on the date of such purchase, has been at any time within the three year period ending on the date of 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).

3. No Other Effects. Except as otherwise set forth in this Consent, the terms of the Purchase Agreement remain unchanged and in full force and effect without any amendment, modification or alteration.

4. Authorization. The Company hereby represents and warrants to Southeastern that pursuant to the requirements of Section 5.6(a) of the Purchase Agreement, a majority of the entire Board of Directors (excluding any representatives or designees of the Investors) has consented to the execution and delivery of this Consent.

IN WITNESS WHEREOF, the undersigned has executed this Consent as of this 2nd day of May, 2007.

LEVEL 3 COMMUNICATIONS, INC.

*By: /s/ James Q. Crowe
Name: James Q. Crowe
Title: Chief Executive Officer*

Exhibit A

CERTIFICATE

May 2, 2007

Reference is hereby made to that certain Securities Purchase Agreement, dated as of February 18, 2005, by and among Level 3 Communications, Inc., a Delaware corporation (the "Company"), and the Investors named on Exhibit A thereto (the "Purchase Agreement"). Capitalized terms used herein without further definition have the meaning ascribed to those terms in the Purchase Agreement.

In order to induce the Company to grant the consent, dated the date hereof, to which this Certificate is an exhibit (the "Consent"), the undersigned hereby certifies to, and agrees with, the Company that:

1. As of the date hereof, Southeastern Beneficially Owns approximately 20.85% of the Common Stock, such percentage including certain shares of Common Stock that Southeastern is not currently deemed to beneficially own under Securities Exchange Commission Rule 13d-3 under the Securities Exchange Act of 1934.
2. Southeastern has not formed a Group with any other Person or Persons and is not a member of a Group. Southeastern shall not take any actions such that it and any other Person or Persons may be deemed to be a Group.
3. During the Standstill Period, Southeastern shall not purchase (or agree to purchase) any Common Stock (a) other than in transactions that do not involve the issuance of Common Stock by the Company, (b) unless after giving effect to such purchase Southeastern would Beneficially Own less than 381,869,219 shares of Common Stock (subject to adjustment on account of stock splits, combinations, subdivisions and reclassifications) and unless such purchase comply with the provisions of Section 5.6 of the Purchase Agreement other than Section 5.6(a)(i) (B) thereof or (c) for its own account or on behalf of any Southeastern investment advisory client if it or such investment advisory client is on the date of such purchase, has been at any time within the three year period ending 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).
4. The decision to acquire shares of Common Stock for any one investment advisory client of Southeastern or for Southeastern's own account has not been, and will not be based, in whole or in part, on the fact that shares are acquired by any other investment advisory client or any other person.

5. Except as otherwise set forth in the Consent, the terms of the Purchase Agreement remain unchanged and in full force and effect without any amendment, modification or alteration.

SOUTHEASTERN ASSET MANAGEMENT, INC.

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