

# LEVEL 3 COMMUNICATIONS INC

## FORM 8-K

(Current report filing)

Filed 06/13/06 for the Period Ending 06/07/06

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

## FORM 8-K

(Unscheduled Material Events)

Filed 6/13/2006 For Period Ending 6/7/2006

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): June 7, 2006

**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))
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**Item 1.01. Entry into a Material Definitive Agreement****Item 2.03 Creation of a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement of the Registrant**

On June 13, 2006, Level 3 Communications, Inc. (the “Company”) consummated its previously announced offerings of (i) 125,000,000 shares (the “Shares”) of its common stock, par value \$.01 per share, and (ii) \$335,000,000 aggregate principal amount of its 3.5% Convertible Senior Notes due 2012 (the “Notes”), which includes the exercise by the underwriters of such offering of the option to purchase \$35,000,000 aggregate principal amount of Notes to cover overallocments.

All of these securities were offered pursuant to the Company’s effective Registration Statement on Form S-3 (File No. 333-53914) under the Securities Act of 1933, as amended.

The Notes were issued pursuant to that certain Amended and Restated Indenture, dated as of July 8, 2003, between the Company and The Bank of New York, as trustee (the “Trustee”), as supplemented by a Third Supplemental Indenture (the “Supplemental Indenture”), dated as of June 13, 2006, between the Company and the Trustee (as supplemented, the “Indenture”).

The Notes were priced to investors at 100% of the principal amount. The Notes are senior unsecured obligations of the Company, ranking equal in right of payment with all the Company’s existing and future unsubordinated indebtedness. The Notes will mature on June 15, 2012. Interest on the Notes will be payable on June 15 and December 15 of each year, beginning on December 15, 2006.

The Notes are convertible by holders into shares of the Company’s common stock at an initial conversion price of \$5.46 per share (which is equivalent to a conversion rate of approximately 183.1502 shares of common stock per \$1,000 principal amount of the Notes), subject to adjustment upon certain events, at any time before the close of business on June 15, 2012. At the Company’s option, in lieu of delivering shares of its common stock, the Company may elect to pay holders cash or a combination of cash and shares of common stock. If a holder elects to convert its notes in connection with certain changes in control, the Company will pay, to the extent described in the Indenture, a make whole premium by increasing the number of shares deliverable upon conversion of the Notes.

The Notes will be subject to redemption at the option of the Company, in whole or in part, at any time or from time to time, on or after June 15, 2010, upon not less than 30 nor more than 60 days’ prior notice, at the redemption prices set forth below (expressed as a percentage of principal amount), plus accrued and unpaid interest thereon (if any) to the redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date). The redemption price for the Notes, if redeemed during the twelve months beginning (i) June 15, 2010 is 101.17% and (ii) June 15, 2011 is 100.58%.

The Third Supplemental Indenture is filed as Exhibit 10.1 to this Form 8-K and incorporated herein by reference. The descriptions of the material terms of each of the Third Supplemental Indenture are qualified in their entirety by reference to such exhibit.

**Item 8.01. Other Events**

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On June 7, 2006, the Company entered into a purchase agreement with Merrill Lynch & Co. and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representatives of the several underwriters named therein relating to the underwritten public offering of the Shares (the “Common Stock Underwriting Agreement”) at a price to the public of \$4.55 per share. In the Common Stock Underwriting Agreement, the Company also granted to the Underwriters (as defined in the Common Stock Underwriting Agreement”), a 30-day option to purchase up to 18,750,000 additional shares of the Company’s common stock to cover overallotments, if any. Pursuant to the terms of the Common Stock Underwriting Agreement, the Company sold the Shares to the underwriters at a price of \$4.3452 per share. The Common Stock Underwriting Agreement contains usual and customary terms, conditions, representations and warranties and indemnification provisions.

Also on June 7, 2006, the Company entered into a purchase agreement with Merrill Lynch & Co. and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representatives of the several underwriters named therein relating to the underwritten public offering of the Notes (the “Notes Underwriting Agreement”). In the Notes Underwriting Agreement, the Company also granted to the Underwriters (as defined in the Notes Underwriting Agreement”) a 30-day option to purchase up to \$45,000,000 aggregate principal amount of the Notes to cover overallotments, if any. On June 12, 2006, the underwriters exercised their option to purchase an aggregate of \$35,000,000 principal amount of the Notes to cover overallotments. Pursuant to the terms of the Notes Underwriting Agreement, the Company sold the Notes to the Underwriters at a price of 97.5% per \$1,000 Note. The Notes Underwriting Agreement contains usual and customary terms, conditions, representations and warranties and indemnification provisions.

The Common Stock Underwriting Agreement is filed as Exhibit 10.2 to this Form 8-K and incorporated herein by reference. The Notes Underwriting Agreement is filed as Exhibit 10.3 to this Form 8-K and incorporated herein by reference. The descriptions of the material terms of each of the Common Stock Underwriting Agreement and the Notes Underwriting Agreement are qualified in their entirety by reference to such exhibit, as the case may be.

A legality opinion of Willkie Farr & Gallagher LLP with respect to the validity of the Shares and the Notes is attached hereto as Exhibit 5 and is incorporated herein by reference.

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**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

5 Opinion of Willkie Farr & Gallagher LLP.

10.1 Third Supplemental Indenture between Level 3 Communications, Inc. and The Bank of New York, as Trustee, relating to up to \$345,000,000 aggregate principal amount of 3.5% Convertible Senior Notes due 2012, dated as of June 13, 2006 supplement to the Amended and Restated Indenture dated as of July 8, 2003 (Senior Debt Securities).

10.2 Purchase Agreement, dated June 7, 2006, between Level 3 Communications, Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representatives of the several Underwriters named on Schedule I thereto relating to the underwritten offering of shares of Level 3 Communications, Inc.'s common stock.

10.3 Purchase Agreement, dated June 7, 2006, between Level 3 Communications, Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representatives of the several Underwriters named on Schedule I thereto relating to the underwritten offering of Level 3 Communications, Inc.'s 3.5% Convertible Senior Notes due 2012.

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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.

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

Dated: June 13, 2006

## [Letterhead of Willkie Farr &amp; Gallagher LLP]

June 13, 2006

Level 3 Communications, Inc.  
1025 Eldorado Boulevard  
Broomfield, Colorado 80021

Re: Offerings of 3.5% Convertible Senior Notes due 2012 and 125,000,000 Shares of Common Stock

Ladies and Gentlemen:

We have acted as counsel for Level 3 Communications, Inc., a Delaware corporation (the "Company"), in connection with (i) the issuance and sale by the Company of up to an aggregate of \$345,000,000 principal amount of the Company's 3.5% Convertible Senior Notes due 2012 (the "Notes") pursuant to that certain Purchase Agreement, dated June 7, 2006, by and among the Company and the underwriters named on Schedule I thereto (the "Notes Purchase Agreement"), (ii) the issuance and sale by the Company of up to an aggregate of 143,750,000 shares (the "Shares") of common stock, par value \$0.01 per share, of the Company (the "Common Stock") pursuant to that certain Purchase Agreement dated June 7, 2006 by and among the Company and the underwriters named on Schedule I thereto (the "Shares Purchase Agreement") and (iii) the issuance of such indeterminable number of shares of Common Stock, as may be required for issuance upon conversion of the Notes (the "Conversion Shares"). The Notes were issued under that certain Amended and Restated Indenture, dated as of July 8, 2003, as supplemented by the Third Supplemental Indenture, dated as of June 13, 2006 (as supplemented, the "Indenture"), between the Company and The Bank of New York, as trustee (the "Trustee"). The Notes and the Shares are being offered pursuant to Rule 415 under the Securities Act of 1933, as amended (the "Securities Act"), and have been registered under the Company's Registration Statement on Form S-3 (File No. 333-53914) (the "Registration Statement").

In connection with the foregoing, we have examined originals or copies, certified or otherwise identified to our satisfaction, of the restated certificate of incorporation and by-laws of the Company, the Registration Statement, the final prospectus supplement dated June 7, 2006 relating to the offer of the Shares, the final prospectus supplement dated June 7, 2006 relating to the offer of the Notes, the Shares Purchase Agreement, the Notes Purchase Agreement, the Indenture, the certificate evidencing the Notes, the certificate evidencing the Shares, the Officers' Certificate of the Company dated June 13, 2006 and delivered to the Trustee pursuant to Section 102 of the Indenture, the written order of the Company dated June 13, 2006 and delivered to the Trustee pursuant to Section 303 of the Indenture, the written order of the Company dated June 13, 2006 and delivered to Wells Fargo Bank, N.A., the transfer agent for the Common Stock, and such other instruments, documents and certificates of public officials and certificates of officers of the Company as we have deemed relevant and necessary as a basis for the opinions hereinafter set forth. In all such examinations we have assumed the genuineness



of all signatures on original or certified or otherwise identified documents and the conformity to original or certified or otherwise identified documents of all copies submitted to us as conformed or photostatic copies. As to questions of fact material to such opinions, we have relied without independent investigation upon representations set forth in the Shares Purchase Agreement, the Notes Purchase Agreement, certificates of officers of the Company and certificates of public officials. We have assumed the accuracy of all factual matters contained therein and have made no independent investigation or other effort to confirm the accuracy of such factual matters.

On the basis of the foregoing and subject to the qualifications and limitations stated herein, we are of the opinion that:

- (i) The Company is validly existing under the laws of the State of Delaware.
- (ii) The Notes have been duly authorized and, when executed and authenticated in accordance with the provisions of the Indenture and delivered to and paid for by the underwriters in accordance with the terms of the Notes Purchase Agreement, will constitute valid and legally binding obligations of the Company entitled to the benefits of the Indenture, subject, as to enforcement, to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general applicability relating to or affecting creditors' rights and to general equity principles;
- (iii) The Shares have been duly and validly authorized, and, when issued and delivered to and paid for by the underwriters pursuant to the Shares Purchase Agreement, will be fully paid and nonassessable; and
- (iv) The Conversion Shares have been duly and validly authorized and reserved, and, when issued and delivered upon conversion of the Notes in accordance with the term of the Notes and the Indenture, will be validly issued, fully paid and nonassessable;

This opinion is being rendered solely in connection with the registration of the offering and sale of the Notes, the Shares and the Conversion Shares pursuant to the registration requirements of the Securities Act. We hereby consent to the filing of this opinion as an exhibit to the Company's Current Report on Form 8-K, which is incorporated by reference into the Registration Statement. By giving our consent, we do not admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations issued or promulgated thereunder.

This opinion is limited to the laws of the State of New York and the Delaware General Corporation Law, which includes the statutory provisions, applicable provisions of the Delaware constitution and reported judicial decisions interpreting such provisions.

Very truly yours,

/s/ Willkie Farr & Gallagher LLP

THIRD SUPPLEMENTAL INDENTURE

between

LEVEL 3 COMMUNICATIONS, INC.

and

THE BANK OF NEW YORK

as Trustee

Up to \$345,000,000

3.5% Convertible Senior Notes due 2012

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Dated as of June 13, 2006

Supplement to Amended and Restated Indenture dated as of July 8, 2003  
(Senior Debt Securities)

THIS THIRD SUPPLEMENTAL INDENTURE, dated as of June 13, 2006, is by and between Level 3 Communications, Inc., a Delaware corporation (the “Company”), and The Bank of New York, a New York banking corporation, as successor to IBJ Whitehall Bank & Trust Company (the “Trustee”), having a Corporate Trust Office at 101 Barclay Street, Floor 8 West, New York, New York 10286, as Trustee under the Indenture (defined below).

WHEREAS IBJ Whitehall Bank & Trust Company (f/k/a IBJ Schroder Bank & Trust Company) (“IBJ”) was originally named as trustee in an indenture, the form of which was an exhibit to the Company’s registration statement on Form S-3 filed on February 3, 1999, and the Trustee has succeeded to all or substantially all of IBJ’s corporate trust business, and the Company and the Trustee have as of July 8, 2003, entered into an amended and restated indenture (as supplemented, the “Indenture”), providing for the issuance by the Company from time to time of its senior debt securities;

WHEREAS Section 901 of the Indenture provides, among other things, that the Company, when authorized by or pursuant to a Board Resolution, and the Trustee may, without the consent of the Holders of Securities, enter into one or more indentures supplemental to the Indenture to establish the form or terms of Securities of any series, including the provisions and procedures providing for the adjustment of conversion rights with respect to Securities convertible into Common Stock, or to change or eliminate any of the provisions of the Indenture, provided that any such change or elimination shall become effective only when there is no Security Outstanding of any series created prior to the execution of such supplemental indenture which is entitled to the benefit of such provisions;

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

WHEREAS the Company and the Trustee deem it advisable to enter into this Third Supplemental Indenture for the purposes of establishing the terms of such convertible senior debt securities and providing for the rights, obligations and duties of the Trustee with respect to such debt securities;

WHEREAS, concurrently with the execution hereof, the Company has delivered an Officers’ Certificate and has caused its counsel to deliver to the Trustee an Opinion of Counsel or a reliance letter upon an opinion of counsel; and

WHEREAS all conditions and requirements of the Indenture necessary to make this Third Supplemental Indenture a valid, binding and legal instrument in accordance with its terms have been performed and fulfilled by the parties hereto, and the

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execution and delivery thereof have been in all respects duly authorized by the parties hereto.

NOW, THEREFORE, for and in consideration of the mutual premises and agreements herein contained, the Company and the Trustee covenant and agree, for the equal and proportionate benefit of all Holders of the Securities, as follows:

## ARTICLE I

### Creation of the Securities

SECTION 1.1. Designation of the Series. Pursuant to the terms hereof and Sections 201 and 301 of the Indenture, the Company hereby creates a series of its convertible senior debt securities designated as the “3.5% Convertible Senior Notes due 2012” (the “Notes”), which Notes shall be deemed “Securities” for all purposes under the Indenture.

SECTION 1.2. Form of Securities. The Notes will be issued in definitive form without coupons and the definitive form of the Notes shall be substantially in the form set forth in Exhibit A attached hereto, which is incorporated herein and made part hereof. The Notes shall bear interest, be payable and have such other terms as are stated in the form of definitive Note or in the Indenture, as supplemented by this Third Supplemental Indenture. The Stated Maturity of the Notes shall be June 15, 2012.

SECTION 1.3. Limit on Amount of Securities. The Notes will not exceed \$345,000,000 and may, upon the execution and delivery of this Third Supplemental Indenture or from time to time thereafter, be executed by the Company and delivered to the Trustee for authentication, and the Trustee shall thereupon authenticate and deliver said Notes to or upon the Company Order, without further action by the Company.

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

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

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

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

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

SECTION 1.9. Definitions. (a) Capitalized terms used herein and not otherwise defined shall have the respective meanings assigned thereto in the Indenture.

(b) Solely for purposes of this Third Supplemental Indenture and the Notes, the following definitions of Section 101 of the Indenture are hereby amended in their entirety to read as follows:

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

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

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

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

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

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

“ Change in Control ” at such time after the original issuance of the Notes means the occurrence of one or more of the following events:

(a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act or any successor provisions to either of the foregoing),

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

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

(c) the Company’s consolidation or merger with or into any other Person, any merger of another Person into the Company, or any sale, transfer, assignment, lease, conveyance or other disposition, directly or indirectly, of all or substantially all the assets of the Company and its Subsidiaries, considered as a whole (other than a disposition of such assets as an entirety or virtually as an entirety to a wholly owned Subsidiary or one or more Permitted Holders) shall have occurred, other than (i) any transaction (A) that does not result in any reclassification,

conversion, exchange or cancellation of outstanding shares of the Company's Capital Stock and (B) pursuant to which Holders of the Company's Capital Stock immediately prior to the transaction are entitled to exercise, directly or indirectly, 50% or more of the total voting power of all shares of Capital Stock entitled to vote generally in the election of directors of the continuing or surviving person immediately after the transaction; or (ii) any merger, share exchange, transfer of assets or similar transaction solely for the purpose of changing the Company's jurisdiction of incorporation and resulting in a reclassification, conversion or exchange of outstanding shares of the Common Stock solely into shares of common stock of the surviving entity; or

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

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

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

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

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

"Conversion Rate" is defined in Section 1604 of the Indenture as amended by this Third Supplemental Indenture.

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

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

“Fair Market Value” has the meaning set forth in Section 1605(f)(2) of the Indenture as amended by this Third Supplemental Indenture.

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

“Permitted Holders” means the members of the Company’s Board of Directors on April 28, 1998, and their respective estates, spouses, ancestors, and lineal descendants, the legal representatives of any of the foregoing and the trustees of any bona fide trusts of which the foregoing are the sole beneficiaries or the grantors, or any Person of which the foregoing “beneficially owns” (as defined in Rule 13d-3 under the Exchange Act) at least 66-2/3% of the total voting power of the Voting Stock of such Person.

“Redemption Price” when used with respect to any of the Notes to be redeemed, means the price fixed for such redemption pursuant to Article VI and the Notes.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Specified Indebtedness” means (a) the Company’s 9 <sup>1</sup>/<sub>8</sub> % Senior Notes due 2008, 11% Senior Notes due 2008, 10 <sup>1</sup>/<sub>2</sub> % Senior Discount Notes due 2008, 10 <sup>3</sup>/<sub>4</sub> % Senior Euro Notes due 2008, 12 <sup>7</sup>/<sub>8</sub> % Senior Discount Notes due 2010, 11 <sup>1</sup>/<sub>4</sub> % Senior Euro Notes due 2010, 11 <sup>1</sup>/<sub>4</sub> % Senior Notes due 2010, 2 <sup>7</sup>/<sub>8</sub> % Convertible Senior Notes due 2010, 6.0% Convertible Subordinated Notes due 2009, 6.0% Convertible Subordinated Notes due 2010, 9% Convertible Senior Discount Notes due 2013, 5 <sup>1</sup>/<sub>4</sub> % Convertible Senior Notes due 2011, 10% Convertible Senior Notes due 2011, 11 <sup>1</sup>/<sub>2</sub> % Senior Notes due 2010, 10 <sup>3</sup>/<sub>4</sub> % Senior Notes due 2008 and (b) any indebtedness of the Company for borrowed money that (i) is in the form of, or represented by, bonds, notes, debentures or other securities or any guarantee thereof (other than promissory notes or similar evidences of indebtedness under bank loans, reimbursement agreements, receivables facilities or other bank, insurance or other institutional financing agreements under Section 4(2) of the Securities Act or any guarantee thereof) and (ii) is, or may be, quoted, listed or purchased and sold on any stock exchange, automated securities trading system or over-the-counter or other securities market (including, without prejudice to the generality of the foregoing, the market for securities eligible for resale pursuant to Rule 144A under the Securities Act). For the avoidance of doubt, “Specified Indebtedness” shall not include indebtedness among the Company or its Subsidiaries or among Subsidiaries of the Company.



“Termination of Trading” will be deemed to have occurred if the Common Stock (or other common stock into which the Notes are then convertible) is neither listed for trading on a U.S. national securities exchange nor approved for trading on the Nasdaq National Market.

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

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

## ARTICLE II

### Events of Default

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

“SECTION 501. Events of Default. An “Event of Default” with respect to any Notes occurs if:

(a) the Company defaults in the payment of principal of, or premium, if any, on, the Notes when due at maturity, upon repurchase, upon acceleration or otherwise, including, without limitation, failure of the Company to make any optional redemption payment when required pursuant to Article VI of the Third Supplemental Indenture; or

(b) the Company defaults in the payment of any installment of interest on the Notes when due (including any interest payable in connection with a repurchase pursuant to Section 1006 or in connection with any optional redemption payment pursuant to Article VI of the Third Supplemental Indenture) and continuance of such default for 30 days or more; or

(c) (i) the Company defaults in the payment of the Designated Event Payment in respect of the Notes on the date therefor; or (ii) the Company fails to provide timely notice of any Designated Event in accordance with Section 1006; or

(d) the Company defaults (other than a default set forth in clause (a), (b) or (c) above) in the performance of, or breaches, any other covenant or warranty of the Company set forth in this Indenture or the Notes and fails to remedy such default or

breach within a period of 60 days after the receipt of written notice (specifying such default or breach and requiring it to be remedied and stating that such notice is a “Notice of Default” hereunder) from the Trustee or the Holders of at least 25% in aggregate principal amount of the then outstanding Notes; or

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

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

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

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

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

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

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

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

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

SECTION 502. Acceleration. If an Event of Default (other than an Event of Default with respect to the Company specified in clauses (g) and (h) of Section 501) occurs and is continuing, then and in every such case the Trustee, by written notice to the Company, or the Holders of at least 25% in aggregate principal amount of the then outstanding Notes, by written notice to the Company and the Trustee, may declare the unpaid principal of, premium, if any, and accrued and unpaid interest on all the Notes to be due and payable. Upon such declaration, such principal amount, premium, if any, and accrued and unpaid interest shall become immediately due and payable, notwithstanding anything contained in this Indenture or the Notes to the contrary. If any Event of Default with respect to the Company specified in clause (g) or (h) of Section 501 occurs, all unpaid principal of, and premium, if any, and accrued and unpaid interest on the Notes then outstanding shall become automatically due and payable, without any declaration or other act on the part of the Trustee or any Holder of Notes.

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

In the case of any Event of Default, pursuant to the provisions of this Section 502, occurring by reason of any wilful action (or inaction) taken (or not taken) by or on behalf of the Company with the intention of avoiding payment of the premium which the Company would have had to pay if the Company then had elected to redeem the Notes pursuant to paragraph 5 of the Notes, an equivalent premium shall also become and be immediately due and payable to the extent permitted by law, upon the acceleration of the Notes notwithstanding anything contained in this Indenture or in the Notes to the contrary. If an Event of Default occurs on any date on which the Company is prohibited

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from redeeming the Notes, pursuant to paragraph 5 of the Notes, by reason of any wilful action (or inaction) taken (or not taken) by or on behalf of the Company with the intention of avoiding the prohibition on redemption of the Notes on such date, then the maximum redemption premium specified in this Indenture shall also become immediately due and payable to the extent permitted by law upon the acceleration of the Notes. A premium is due under this Indenture and under the Notes only pursuant to this paragraph, Article VI of the Third Supplemental Indenture and paragraph 5 of the Notes.

SECTION 503. Other Remedies. If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy by proceeding at law or in equity to collect the payment of principal of or interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture. The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Note in exercising any right or remedy occurring upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

SECTION 504. Waiver of Past Defaults. The Holders of a majority in aggregate principal amount of the Notes then outstanding may, on behalf of the Holders of all the Notes, waive an existing Default or Event of Default and its consequences, except a Default or Event of Default in the payment of the principal of, and premium, if any, or interest on the Notes (other than the non-payment of principal of, and premium, if any, and interest on the Notes which has become due solely by virtue of an acceleration which has been duly rescinded as provided above), or in respect of a covenant or provision of this Indenture which cannot be modified or amended without the consent of all Holders of Notes. When a Default or Event of Default is waived, it is cured and stops continuing. No waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

SECTION 505. Control by Majority. The Holders of a majority in aggregate principal amount of the then outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture that the Trustee determines may be unduly prejudicial to the rights of other Holders of Notes or that may involve the Trustee in personal liability; provided, however, that the Trustee shall have no duty or obligation (subject to Section 601) to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders; provided further, however that the Trustee may take any other action the Trustee deems proper that is not inconsistent with such directions.

SECTION 506. Limitation on Suits. A Holder of a Note may not pursue any remedy with respect to this Indenture or the Notes unless:

- (a) the Holder gives to the Trustee notice of a continuing Event of Default;

(b) the Holders of at least 25% in aggregate principal amount of the then outstanding Notes make a written request to the Trustee to pursue the remedy;

(c) such Holder or Holders offer and, if requested, provide to the Trustee indemnity satisfactory to the Trustee against any loss, liability or expense;

(d) the Trustee does not comply with the request within 30 days after receipt of the request and the offer and, if requested, the provision of indemnity; and

(e) during such 30-day period the Holders of a majority in aggregate principal amount of the then outstanding Notes do not give the Trustee a direction inconsistent with the request.

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

SECTION 507. Rights of Holders To Receive Payment. Notwithstanding any other provision of this Indenture, the right of any Holder of a Note to receive payment of principal, premium, if any, and interest on the Note, on or after the respective due dates expressed in the Note, or to bring suit for the enforcement of any such payment on or after such respective dates, or to bring suit for the enforcement of the right to convert the Note shall not be impaired or affected without the consent of the Holder of a Note.

SECTION 508. Collection Suit by Trustee. If an Event of Default specified in Section 501(a), (b) or (c)(i) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company for the whole amount of principal, premium, if any, and interest remaining unpaid on the Notes and interest on overdue principal, premium, if any, and interest and such further amount as shall be sufficient to cover the costs and, to the extent lawful, expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

SECTION 509. Trustee May File Proofs of Claim. The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Holders of Notes allowed in any judicial proceedings relative to the Company, its creditors or its property. Nothing contained herein shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder of a Note any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

SECTION 510. Priorities. Any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal (or premium, if any) or interest, upon presentation of the Notes or coupons, or both, as the

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case may be, and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee and any predecessor Trustee under Section 606;

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

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

SECTION 511. Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit, other than the Trustee, of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 507 or a suit by Holders of more than 10% in principal amount of the then outstanding Notes.”

SECTION 2.2. Notice of Default or Event of Default. The Company shall deliver to the Trustee, as soon as reasonably practicable and in any event within 30 days after an executive officer of the Company becomes aware of the occurrence of any Event of Default or any event which, with notice or the lapse of time or both, would constitute an Event of Default, an Officers’ Certificate setting forth the details of such Event of Default or Default and the action which the Company proposes to take with respect thereto.

### ARTICLE III

#### Consolidation, Merger, Sale, Lease or Conveyance

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

“SECTION 801. When the Company May Merge, Etc. The Company may not, in a single transaction or series of related transactions, consolidate or merge with or into or effect a share exchange with (whether or not the Company is the surviving corporation), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets as an entirety or substantially as an entirety to, any Person unless:

(a) either

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

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

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

(2) shall expressly assume, by supplemental indenture in form reasonably satisfactory to the Trustee, executed and delivered to the Trustee, the due and punctual payment of the principal of, and interest, and premium, if any, on all of the Notes and the performance of every covenant of the Notes and this Indenture on the part of the Company to be performed or observed, including, without limitation, modifications to rights of Holders to cause the repurchase of Notes upon a Designated Event in accordance with the Section 1006 and conversion rights in accordance with Section 1606 to the extent required by such Sections;

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

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

For purposes of this Section 801, the transfer (by lease, assignment, sale or otherwise, in a single transaction or series of transactions) of all or substantially all of the properties or assets of one or more Subsidiaries of the Company, the Capital Stock of which individually or in the aggregate constitutes all or substantially all of the properties and assets of the Company, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company.

**SECTION 802. Successor Corporation Substituted.** Upon any such consolidation, merger, share exchange, sale, assignment, conveyance, lease, transfer or other disposition in accordance with Section 801, the successor Person formed by such consolidation or share exchange or into which the Company is merged or to which such sale, assignment, conveyance, lease, transfer or other disposition is made will succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor had been named as the Company herein, and thereafter (except in the case of a lease) the predecessor corporation will be relieved of all further obligations and covenants under this Indenture and the Notes.

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SECTION 803. Purchase Option on Change of Control. This Article Eight does not affect the obligations of the Company (including without limitation any successor to the Company) under Section 1006.”

## ARTICLE IV

### Supplemental Indentures

SECTION 4.1. Amendments to Article Nine. (a) Section 901 is hereby amended with respect to the Notes by deleting the word “or” from the end of clause (9) thereof, deleting the “.” from the end of clause (10) thereof and substituting a “;” in its place and by adding the following to the end thereof:

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

(12) to provide for conversion rights or repurchase rights of Holders of Notes in the event of consolidation, merger, share exchange or sale of all or substantially all of the assets of the Company as required to comply with Section 801 or 1606;

(13) to reduce the Conversion Price;

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

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

(b) Section 902 is hereby amended by inserting “including Defaulted Interest,” after the words “or interest on,” in clause (1) thereof and by deleting the “.” from the end of clause (4) thereof and substituting a “; or” in its place and by adding the following to the end thereof:

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

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

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



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## ARTICLE V

### Purchase at Option of Holders Upon a Designated Event; Limitation on Liens

SECTION 5.1. Amendment to Article Ten. Article Ten is amended by adding to the end the following new Sections 1006 through Section 1013, in each case with respect to the Notes to read as follows:

“SECTION 1006. Purchase of Notes at Option of the Holder upon a Designated Event. (a) Following a Designated Event, the Company shall notify the Holders of Notes in writing of such occurrence and shall make an offer (the “Designated Event Offer”) to repurchase all Notes then outstanding at a repurchase price in cash (the “Designated Event Payment”) equal to 100% of the principal amount thereof, plus (subject to the following sentence) accrued and unpaid interest to, but excluding, the Designated Event Purchase Date (as defined below). If such Designated Event Purchase Date is after a Regular Record Date or a Special Record Date but on or prior to the corresponding Interest Payment Date or a Defaulted Interest payment date, however, then the Company shall pay the interest payable on such date to the Person in whose name the Security is registered at the close of business on the relevant Regular Record Date or Special Record Date.

(b) Notice of a Designated Event shall be mailed by or at the direction of the Company to the Holders of Notes as specified in Section 1007. During the period specified in such notice, Holders of Notes may elect to tender their Notes in whole or in part in integral multiples of \$1,000 in exchange for the Designated Event Payment. Payment shall be made by the Company in respect of Notes properly tendered pursuant to this Section 1006 on a Business Day specified by the Company (the “Designated Event Purchase Date”) which shall be no earlier than 20 Business Days and no later than 30 Business Days after the date of the notice given pursuant to Section 1007.

#### SECTION 1007. Notice of Designated Event; Designated Event Purchase Notice.

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

- (1) briefly, the events causing a Designated Event and the date of such Designated Event;
- (2) the date by which the Designated Event Purchase Notice pursuant to this Section 1007 must be given;

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- (3) the Designated Event Purchase Date;
  - (4) the Designated Event Payment;
  - (5) the name and address of the Paying Agent and the Conversion Agent;
  - (6) that Notes as to which a Designated Event Purchase Notice has been given may be converted pursuant to the Indenture only if the Designated Event Purchase Notice has been withdrawn in accordance with the terms of this Indenture;
  - (7) that Notes must be surrendered to the Paying Agent to collect payment;
  - (8) that the Designated Event Payment for any Note as to which a Designated Event Purchase Notice has been duly given and not withdrawn will be paid promptly following the later of the Designated Event Purchase Date and the time of surrender of such Note as described in (7) above;
  - (9) briefly, the procedures the Holder must follow to exercise rights under Section 1006;
  - (10) briefly, the conversion rights of the Notes, including the Conversion Rate and any adjustments thereto, including, if such Designated Event constitutes a Change in Control, whether any Additional Shares will be issued by the Company to Holders of Notes who convert their Notes in connection with the Change in Control;
  - (11) the procedures for withdrawing a Designated Event Purchase Notice;
  - (12) the CUSIP number of the Notes;
  - (13) that, unless the Company defaults in making the Designated Event Payment, any Note accepted for purchase pursuant to the Designated Event Offer shall cease to accrue interest on the Designated Event Purchase Date and no further interest shall accrue on or after such date; and
  - (14) that in the case of a Designated Event Purchase Date that occurs after a Regular Record Date or Special Record Date and on or prior to the corresponding Interest Payment Date or Defaulted Interest payment date, the interest due on such date shall be paid to the Holder of such Note at the close of business on the relevant Regular Record Date or Special Record Date.
- (b) A Holder may exercise its rights specified in Section 1006 hereof upon delivery of a written notice of purchase (a “ Designated Event Purchase Notice ”) to the Paying Agent prior to the Designated Event Purchase Date, stating:

- (1) the certificate number, if any, of each Note, if any, which the Holder will deliver to be purchased;
- (2) the portion of the principal amount of the Note which the Holder will deliver to be purchased, which portion must be \$1,000 or any whole multiple thereof; and
- (3) that such Note shall be purchased pursuant to the terms and conditions specified on the reverse side of the Notes and in this Indenture;

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

The delivery of such Note to the Paying Agent prior to the Designated Event Purchase Date (together with all necessary endorsements) at the offices of the Paying Agent shall be a condition to the receipt by the Holder of the Designated Event Payment therefor; provided, however, that such Designated Event Payment shall be so paid only if the Note so delivered to the Paying Agent shall conform in all respects to the description thereof set forth in the related Designated Event Purchase Notice.

The Company shall purchase from the Holder thereof, pursuant to this Section 1007, a portion of a Note so delivered for purchase if the principal amount of such portion is \$1,000 or an integral multiple of \$1,000. Provisions of this Indenture that apply to the purchase of all of a Note also apply to the purchase of such portion of such Note.

Any purchase by the Company contemplated pursuant to the provisions of this Section 1007 shall be consummated by the delivery of the consideration to be received by the Holder promptly following the later of the Designated Event Purchase Date and the time of delivery of the Note to the Paying Agent in accordance with this Section 1007

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Designated Event Purchase Notice contemplated by this Section 1007(b) shall have the right to withdraw such Designated Event Purchase Notice at any time prior to the close of business on the Business Day immediately preceding the Designated Event Purchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 1008.

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

**SECTION 1008. Effect of Designated Event Purchase Notice.** Upon receipt by the Paying Agent of the Designated Event Purchase Notice specified in Section 1007, the Holder of the Note in respect of which such Designated Event Purchase Notice was given shall (unless such Designated Event Purchase Notice is withdrawn as specified in the following two paragraphs) thereafter be entitled to receive solely the Designated Event Payment with respect to such Note. Such payment shall be paid to such Holder, subject to receipt of consideration for the Notes by the Paying Agent, promptly following the later of (x) the Designated Event Purchase Date with respect to such Note (provided the conditions in Section 1007, as the case may be, have been satisfied) and (y) the time of delivery of such Note to the Paying Agent by the Holder thereof in the manner required by Section 1007, as the case may be. Notes in respect of which a Designated Event Purchase Notice has been given by the Holder thereof may not be converted on or after the date of the delivery of such Designated Event Purchase Notice unless such Designated Event Purchase Notice has first been validly withdrawn as specified in the following two paragraphs.

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

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

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

There shall be no purchase of any Notes pursuant to Section 1006 if there has occurred (prior to, on or after, as the case may be, the giving by the Holders of such Notes of the required Designated Event Purchase Notice) and is continuing an Event of Default (other than a default in the payment of the Designated Event Payment with respect to such Notes). The Paying Agent will promptly return to the respective Holders thereof any Notes (x) with respect to which a Designated Event Purchase Notice has been withdrawn in compliance with this Indenture, or (y) held by it during the continuance of an Event of Default (other than a default in the payment of the Designated Event Payment with respect to such Notes) in which case, upon such return, the Designated Event Purchase Notice with respect thereto shall be deemed to have been withdrawn.

**SECTION 1009. Deposit of Designated Event Payment.** Prior to 11:00 a.m. (New York City time) on the Designated Event Purchase Date, the Company shall deposit with the Trustee or with the Paying Agent an amount of cash (in immediately available funds if deposited on such Business Day) sufficient to pay the aggregate Designated Event Payment of all the Notes or portions thereof which are to be purchased as of the Designated Event Purchase Date.

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

SECTION 1010. Notes Purchased in Part. Any Note which is to be purchased only in part shall be surrendered at the office of the Paying Agent (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Note, without service charge, a new Note or Notes, of any authorized denomination as requested by such Holder in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Note so surrendered which is not purchased.

SECTION 1011. Covenant to Comply with Securities Laws upon Purchase of Notes. In connection with any offer to purchase or purchase of Notes under Section 1006 hereof (provided that such offer or purchase constitutes an "issuer tender offer" for purposes of Rule 13e-4 (which term, as used herein, includes any successor provision thereto) under the Exchange Act at the time of such offer or purchase), the Company shall (i) comply with Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act which may then be applicable, (ii) file the related Schedule TO (or any successor schedule, form or report) or any other schedule required under the Exchange Act, and (iii) otherwise comply with all applicable federal and state securities laws so as to permit the rights and obligations under Section 1006 to be exercised in the time and in the manner specified in Section 1006 and 1007.

SECTION 1012. Repayment to the Company. The Trustee and the Paying Agent shall return to the Company any cash or other consideration that remains unclaimed as provided in the Notes, together with interest, if any, thereon, held by them for the payment of the Designated Event Payment; provided, however, that to the extent that the aggregate amount of cash deposited by the Company pursuant to Section 1009 exceeds the aggregate Designated Event Payment of the Notes or portions thereof which the Company is obligated to purchase as of the Designated Event Purchase Date then promptly after the Business Day following the Designated Event Purchase Date the Trustee shall return any such excess to the Company together with interest, if any, thereon.

SECTION 1013. Limitation on Liens. The Company will not, directly or indirectly, incur or suffer to exist any Lien (other than existing Liens) securing Specified Indebtedness of any nature whatsoever on any of its properties or assets, whether owned at the issue date of the Notes or thereafter acquired, without making effective provision for securing the Notes equally and ratably with (or, if the obligation to be secured by the

Lien is subordinated in right of payment to the Notes, prior to) the obligations so secured for so long as such obligations are so secured. The Lien, if granted, to secure the Notes may also secure obligations in addition to Specified Indebtedness. Any Lien created to secure the Notes pursuant to this Section 1013 may provide by its terms that such Lien will be automatically and unconditionally released and discharged upon the full and unconditional release and discharge of the Lien securing the Specified Indebtedness and that the Holders of some or all of such Specified Indebtedness may exclusively control the disposition of property subject to such Lien.

The foregoing restrictions in this Section 1013 shall not apply to (a) Liens to secure Acquired Debt; provided, however, that (i) such Lien attaches to the acquired property prior to the time of the acquisition of such property and (ii) such Lien does not extend to or cover any other property; and (b) Liens to secure indebtedness incurred to refinance, in whole or in part, debt secured by any Lien referred to in the foregoing clause (a) or this clause (b) so long as such Lien does not extend to any other property (other than improvements and accessions to the original property) and the principal amount of indebtedness so secured is not increased.”

## ARTICLE VI

### Optional Redemption

Pursuant to Section 301(6) of the Indenture, so long as any of the Notes are Outstanding, the following provisions shall be applicable to the Notes in lieu of the provisions of Article Eleven of the Indenture:

SECTION 6.1. Company’s Right to Redeem. The Notes will be subject to redemption at the option of the Company, in whole or in part, on the terms and at the redemption prices (expressed as percentages of principal amount) set forth in paragraph 5 on the reverse of the form of Note, plus accrued and unpaid interest thereon (if any) to the Redemption Date. However, if a Redemption Date occurs after a Regular Record Date or a Special Record Date but on or prior to the corresponding Interest Payment Date or Defaulted Interest payment date, the Company will instead pay the applicable interest payment to the record Holder on the Regular Record Date or Special Record Date corresponding to such Interest Payment Date or Defaulted Interest payment date.

SECTION 6.2. Notices to Trustee. If the Company elects to redeem Notes pursuant to the optional redemption provisions of paragraph 5 of the Notes, it shall furnish to the Trustee, at least 30 days but not more than 60 days before a Redemption Date (unless a shorter period shall be satisfactory to the Trustee), an Officers’ Certificate setting forth (i) the Section of this Indenture pursuant to which the redemption shall occur, (ii) the Redemption Date, (iii) the principal amount of Notes (if less than all) to be redeemed, (iv) the Redemption Price and the amount of any accrued and unpaid interest, if any, payable on the Redemption Date and (v) the CUSIP number of the Notes being redeemed.

SECTION 6.3. Selection of Notes To Be Redeemed. If less than all the Notes are to be redeemed, the Trustee shall select the Notes to be redeemed by a method that complies with the requirements of the principal national securities exchange, if any, on which the Notes are listed or quoted or, if the Notes are not so listed, on a pro rata basis, by lot or by any other method that the Trustee considers fair and appropriate. The Trustee shall make the selection not more than 60 days and not less than 30 days before the Redemption Date from Notes outstanding and not previously called for redemption. The Trustee may select for redemption a portion of the principal of any Notes that has a denomination larger than \$1,000. Notes and portions thereof will be redeemed in the amount of \$1,000 or integral multiples of \$1,000.

Provisions of this Indenture that apply to Notes called for redemption also apply to portions of Notes called for redemption. The Trustee shall notify the Company promptly of the Notes or portions of Notes to be called for redemption.

If any Note selected for partial redemption is converted in part after such selection, the converted portion of such Note shall be deemed (so far as possible) to be the portion to be selected for redemption. The Notes (or portion thereof) so selected shall be deemed duly selected for redemption for all purposes hereof, notwithstanding that any such Note is converted in whole or in part before the mailing of the notice of redemption. Upon any redemption of less than all the Notes, the Company and the Trustee may treat as outstanding any Notes surrendered for conversion during the period of 15 days immediately preceding the mailing of a notice of redemption and need not treat as outstanding any Note authenticated and delivered during such period in exchange for the unconverted portion of any Note converted in part during such period.

In the event of any redemption of less than all the Notes, the Company will not be required to (i) issue or register the transfer or exchange of any Note during a period of 15 days immediately preceding the mailing of a notice of redemption for such Notes for redemption, or (ii) register the transfer or exchange of any Note so selected for redemption, in whole or in part, except the unredeemed portion of any Note being redeemed in part, in which case the Company will execute and the Trustee will authenticate and deliver to the Holder a new Note or Notes equal in principal amount to the unredeemed portion of the Note surrendered.

SECTION 6.4. Notice of Redemption. At least 30 days but not more than 60 days before a Redemption Date, the Company shall mail by first class mail a notice of redemption to each Holder whose Notes are to be redeemed, at such Holder's registered address.

The notice shall identify the Notes to be redeemed and shall state:

- (1) the Redemption Date;
- (2) the Redemption Price and any accrued and unpaid interest payable on the Redemption Date;

(3) if any Note is being redeemed in part, the portion of the principal amount of such Note to be redeemed and that, after the Redemption Date, upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion will be issued in the name of the Holder thereof;

(4) that Notes called for redemption must be surrendered to the Paying Agent to collect the Redemption Price and any accrued and unpaid interest;

(5) that interest on Notes called for redemption and for which funds have been set apart for payment, ceases to accrue on and after the Redemption Date (unless the Company defaults in the payment of the Redemption Price or any accrued and unpaid interest);

(6) the aggregate principal amount of Notes (if less than all) that are being redeemed;

(7) the CUSIP number of the Notes ( provided that any such notice may state that no representation is made as to the correctness or accuracy of the CUSIP numbers printed in the notice or on the Notes and that reliance may be placed only on the other identification numbers printed on the Notes);

(8) the name and address of the Paying Agent;

(9) that Notes called for redemption may be converted at any time prior to the close of business on the last Trading Day immediately preceding the Redemption Date and if not converted prior to the close of business on such date, the right of conversion will be lost; and

(10) that in the case of Notes or portions thereof called for redemption on a date that is also an Interest Payment Date or a Defaulted Interest payment date, the interest due on such date shall be paid to the Holder of such Note at the close of business on the relevant Regular Record Date or Special Record Date.

The notice, if mailed in the manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. In any case, failure to give such notice by mail or any defect in the notice to any Holder designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any Note.

At the Company's request, the Trustee shall give notice of redemption in the Company's name and at the Company's expense.

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SECTION 6.5. Effect of Notice of Redemption. Once notice of redemption is mailed, Notes called for redemption become due and payable on the Redemption Date at the Redemption Price set forth in the Note.

SECTION 6.6. Deposit of Redemption Price. On or before 11:00 a.m. New York City time on the Redemption Date, the Company shall deposit with the Trustee or with the Paying Agent money in immediately available funds sufficient to pay the Redemption Price of and accrued interest, if any, on all Notes to be redeemed on that date. The Trustee or the Paying Agent shall return to the Company any money not required for that purpose.

On and after the Redemption Date, unless the Company shall default in the payment of the Redemption Price or any accrued and unpaid interest, interest will cease to accrue on the principal amount of the Notes or portions thereof called for redemption and for which funds have been set apart for payment, and such Notes, or portions thereof, shall cease after the close of business on the Business Day immediately preceding the Redemption Date to be convertible into Common Stock and, except as provided in this Section 6.6 and Article Four of the Indenture, to be entitled to any benefit or security under the Indenture, and the Holders thereof shall have no right in respect of such Notes, or portions thereof, except the right to receive the Redemption Price thereof and unpaid interest to (but excluding) the Redemption Date. In the case of Notes or portions thereof redeemed on a Redemption Date which is after a Regular Record Date or a Special Record Date and on or prior to the corresponding Interest Payment Date or Defaulted Interest payment date, the interest due on such date shall be paid to the Person in whose name the Note is registered at the close of business on the relevant Regular Record Date or Special Record Date.

SECTION 6.7. Notes Redeemed in Part. Upon surrender of a Note that is redeemed in part only, the Company shall issue and the Trustee shall authenticate and deliver to the Holder of such Note a new Note or Notes equal in principal amount to the unredeemed portion of the Note surrendered, at the expense of the Company, except as specified in Section 305 of the Indenture.

SECTION 6.8. Conversion Arrangement on Call for Redemption. In connection with any redemption of Notes, the Company may arrange for the purchase and conversion of any Notes by an arrangement with one or more investment bankers or other purchasers to purchase such Notes by paying to the Trustee in trust for the Holders, on or before the date fixed for redemption, an amount not less than the applicable Redemption Price, together with interest accrued to the date fixed for redemption of such Notes. Notwithstanding anything to the contrary contained in this Article VI, the obligation of the Company to pay the Redemption Price of such Notes, together with interest accrued to the date fixed for redemption shall be deemed to be satisfied and discharged to the extent such amount is so paid by the purchasers. If such an agreement is entered into, a copy shall be filed with the Trustee prior to the date fixed for redemption. Any Notes not duly surrendered for conversion by the Holders thereof may, at the option of the Company, be deemed, to the fullest extent permitted by law, acquired by such purchasers from such Holders and (notwithstanding anything to the contrary



contained in this Article VI) surrendered by such purchasers for conversion, all as of immediately prior to the close of business on the date fixed for redemption (and the right to convert any such Notes shall be deemed to have been extended through such time), subject to payment of the above amount as aforesaid. At the direction of the Company, the Trustee shall hold and dispose of any such amount paid to it in the same manner as it would moneys deposited with it by the Company for the redemption of Notes. Without the Trustee's prior written consent, no arrangement between the Company and such purchasers for the purchase and conversion of any Notes shall increase or otherwise affect any of the powers, duties, responsibilities or obligations of the Trustee as set forth in this Indenture, and the Company agrees to indemnify the Trustee from, and defend and hold it harmless against, any loss, liability or expense arising out of or in connection with any such arrangement for the purchase and conversion of any Notes between the Company and such purchasers to which the Trustee has not consented in writing, including the costs and expenses incurred by the Trustee in the defense of any claim or liability arising out of or in connection with the exercise or performance of any of its powers, duties, responsibilities or obligations under this Indenture.

## ARTICLE VII

### Conversion of Securities

SECTION 7.1. Applicability of Conversion Provisions. Pursuant to Section 301(24) of the Indenture, the Notes will be convertible in accordance with the provisions of, and pursuant to, Article Sixteen of the Indenture, as amended hereby, and the definitive form of the Notes; provided, however, that, prior to any conversion, any applicable governmental consents have been received by the Company or the Holder.

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

“SECTION 1601. Right To Convert. Subject to and upon compliance with the provisions of this Indenture (including Section 6.8 of the Third Supplemental Indenture), each Holder of Notes shall have the right, at his or her option, at any time on or before the close of business on the Stated Maturity Date (except that, (a) with respect to any Note or portion thereof which is called for redemption prior to such date, such right shall terminate, except as provided in the penultimate paragraph of Section 1602, at the close of business on the last Trading Day preceding the date fixed for redemption (unless the Company defaults in payment of the Redemption Price in which case the conversion right will terminate at the close of business on the date such default is cured) and (b) with respect to any Note or portion thereof subject to a duly completed election for repurchase, such right shall terminate at the close of business on the Business Day immediately preceding the Designated Event Purchase Date (unless the Company defaults in the payment due upon repurchase or such Holder elects to withdraw the submission of such election to repurchase in accordance with Section 1006)) to convert the principal amount of any Note held by such Holder, or any portion of such principal amount which is \$1,000 or an integral multiple thereof, into that number of fully paid and non-assessable shares of Common Stock (as such shares shall then be constituted)

obtained by dividing the principal amount of the Note or portion thereof to be converted by the Conversion Price in effect at such time, by surrender of the Note so to be converted in whole or in part in the manner provided in Section 1602. A Holder of Notes is not entitled to any rights of a holder of Common Stock until such Holder of Notes has converted his or her Notes to Common Stock, and then only to the extent such Notes are deemed to have been converted to Common Stock under this Article Sixteen.

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

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

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

#### Additional Shares

Stock Price on Effective Date	Effective Date				
	June 13, 2006	June 15, 2007	June 15, 2008	June 15, 2009	June 15, 2010
\$ 4.55	36.6300	36.6300	36.6300	36.6300	36.6300
\$ 5.00	30.9107	27.6440	23.9440	19.5353	16.8498

Stock Price on		Effective Date				
Effective Date		June 13, 2006	June 15, 2007	June 15, 2008	June 15, 2009	June 15, 2010
\$ 6.00		22.7335	19.2489	15.1353	9.8467	0.0000
\$ 7.00		17.9817	14.6954	10.8424	6.0174	0.0000
\$ 8.00		14.9523	11.9736	8.5466	4.4408	0.0000
\$ 10.00		11.3823	8.9649	6.2974	3.2480	0.0000
\$ 15.00		7.4364	5.8279	4.0800	2.1505	0.0000
\$ 20.00		5.5807	4.3677	3.0595	1.6154	0.0000
\$ 25.00		4.4788	3.4979	2.4508	1.2943	0.0000
\$ 50.00		2.2854	1.7670	1.2325	0.6548	0.0000

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

(i) if the actual Stock Price on the Effective Date is between two Stock Prices on the table or the actual Effective Date is between two Effective Dates on the table, the number of Additional Shares will be determined by a straight-line interpolation between the adjustment amounts set forth for the two Stock Prices and the two Effective Dates on the table based on a 360-day year, as applicable;

(ii) if the Stock Price on the Effective Date exceeds \$50.00 per share (subject to adjustment as described below), no Additional Shares will be issued upon conversion; and

(iii) if the Stock Price on the Effective Date is less than or equal to \$4.55 per share (subject to adjustment as described below), no Additional Shares will be issued upon conversion.

The Stock Prices set forth in the first column of the table above will be adjusted as of any date on which the Conversion Rate is adjusted. The adjusted Stock Prices will equal the Stock Prices applicable immediately prior to such adjustment multiplied by a fraction, the numerator of which is the Conversion Rate immediately prior to the adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares set forth in the table above will be adjusted in the same manner as the Conversion Rate as set forth in Section 1605 hereof.

Notwithstanding the foregoing, in no event will the Conversion Rate exceed 219.7802 shares of Common Stock per \$1,000 principal amount of Notes, subject to adjustment in the manner set forth in Section 1605 hereof.

**SECTION 1602. Exercise of Conversion Privilege; Issuance of Common Stock on Conversion; No Adjustment for Interest or Dividends.** To exercise, in whole or in part, the conversion privilege with respect to any Note, the Holder of such Note shall surrender such Note, duly endorsed, at an office or agency maintained by the Company pursuant to Section 1002, accompanied by the funds, if any, required by the last paragraph of this Section 1602, and shall give written notice of conversion in the form provided on the Notes (or such other notice which is acceptable to the Company) to such office or agency that the Holder of Notes elects to convert such Note or such portion

thereof specified in said notice. Such notice shall also state the name or names (with address or addresses) in which the certificate or certificates for shares of Common Stock which are issuable on such conversion shall be issued, and shall be accompanied by transfer taxes, if required pursuant to Section 1607. If the Notes are not in certificated form, the Holders may exercise their right of conversion by complying with the applicable Depositary procedures. Each such Note surrendered for conversion shall, unless the shares issuable on conversion are to be issued in the same name as the registration of such Note, be duly endorsed by, or be accompanied by instruments of transfer in form satisfactory to the Company duly executed by, the Holder of Notes or his or her duly authorized attorney. The Holder of such Notes will not be required to pay any tax or duty which may be payable in respect of the issue or delivery of Common Stock on conversion, but will be required to pay any tax or duty which may be payable in respect of any transfer involved in the issue or delivery of Common Stock in a name other than the same name as the registration of such Note.

As promptly as practicable after satisfaction of the requirements for conversion set forth above, the Company shall issue and shall deliver to such Holder at the office or agency maintained by the Company for such purpose pursuant to Section 1002, a certificate or certificates for the number of full shares of Common Stock (including any full shares as a result of rounding fractional shares up to a full number of shares pursuant to Section 1603) issuable upon the conversion of such Note or portion thereof in accordance with the provisions of this Article Sixteen and a check or cash (which payment, if any, shall be paid no later than three Business Days after satisfaction of the requirements for conversion set forth above) in respect of any fractional interest in respect of a share of Common Stock, pursuant to Section 1603. Certificates representing shares of Common Stock will not be issued or delivered unless all taxes and duties, if any, payable by the Holder have been paid. In case any Note of a denomination of an integral multiple greater than \$1,000 is surrendered for partial conversion, and subject to Section 303, the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of the Note so surrendered, without charge to him or her, a new Note or Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Note.

In lieu of delivery of shares of Common Stock upon conversion of any Notes, for all or any portion of the Notes surrendered for conversion, the Company, subject to compliance with this Section 1602, may elect to pay Holders surrendering Notes for conversion an amount in cash per Note (or a portion of a Note) equal to the average of the Applicable Stock Price over the fifteen Trading Day period starting on and including the third Trading Day following the Conversion Date multiplied by the Conversion Rate in effect on the Conversion Date (or portion of the Conversion Rate applicable to a portion of a Note if a combination of Common Stock and cash is to be delivered). If the Company elects to deliver other than solely shares of Common Stock (other than cash in lieu of fractional shares) upon conversion, the Company shall inform each converting Holder through the Trustee no later than two Business Days following the Conversion Date of the Company's election to deliver shares of Common Stock, to pay cash in lieu of delivery of the shares of Common Stock or to deliver a combination of Common Stock and cash. Such notice shall specify the percentage of the conversion

value per \$1,000 principal amount of the Notes to be converted to be paid in cash and Common Stock, if any. If the Company elects to deliver solely shares of the Common Stock, these will be delivered through the Conversion Agent no later than the third Business Day following the Conversion Date. If the Company elects to deliver a combination of shares of Common Stock and cash or to pay all of such payment in cash, such delivery and payment will be made to Holders surrendering Notes for conversion no later than the twenty-first Business Day following the Conversion Date. The Company may not change its election with respect to the consideration (or components or percentages of components thereof) to be payable any Holder upon conversion once the Company has given the notice to such Holder pursuant to this Section 1602.

The “Applicable Stock Price” with respect to a Trading Day is equal to the volume-weighted average price per share of the Common Stock on such Trading Day. The “volume-weighted average price,” with respect to a Trading Day, means such price as displayed on Bloomberg (or any successor service) page LVLT <equity> VAP in respect of the period from 9:30 a.m. to 4:00 p.m., New York City time, on such Trading Day; or, if such price is not available, the “Applicable Stock Price” means the market value per share of the Common Stock on such day as determined by a nationally recognized independent investment banking firm retained by the Company for this purpose.

Each conversion shall be deemed to have been effected as to any such Note (or portion thereof) on the date (the “Conversion Date”) on which the requirements set forth above in this Section 1602 have been satisfied as to such Note (or portion thereof), and the Person in whose name any certificate or certificates for shares of Common Stock are issuable upon such conversion shall be deemed to have become on said date the Holder of record of the shares represented thereby; provided, however, that any such surrender on any date when the Company’s stock transfer books are closed shall constitute the Person in whose name the certificates are to be issued as the record Holder thereof for all purposes on the next succeeding day on which such stock transfer books are open, but such conversion shall be at the Conversion Price in effect on the date upon which such Note is surrendered.

Any Note or portion thereof surrendered for conversion during the period from the close of business on the Regular Record Date for any interest payment through the close of business on the last Trading Day immediately preceding such Interest Payment Date shall (unless (i) such Note or portion thereof being converted has been called for redemption on a date during the period from the close of business on such Regular Record Date to the close of business on the last Trading Day immediately preceding the corresponding Interest Payment Date pursuant to a notice of redemption mailed by the Company to the Holders in accordance with the provisions of Section 6.4 of the Third Supplemental Indenture or (ii) the Company has specified a Designated Event Purchase Date during such period) be accompanied by payment, in funds acceptable to the Company, of an amount equal to the interest otherwise payable on such Interest Payment Date on the principal amount being converted; provided, however, that such payment may be reduced by the amount of any existing payment default in respect of such Notes. An amount equal to such payment shall be paid by the Company on such

Interest Payment Date to the Holder of such Note at the close of business on such Regular Record Date. Except as provided above in this Section 1602, no adjustment shall be made for interest accrued on any Note converted or for dividends on any shares issued upon the conversion of such Note as provided in this Article Sixteen. If any Note or portion thereof that has been called for redemption on a date during the period from the close of business on a Regular Record Date to the close of business on the last Trading Day immediately preceding the corresponding Interest Payment Date is converted after such Regular Record Date for the payment of interest and prior to such corresponding Interest Payment Date, interest payable on such Interest Payment Date shall be payable notwithstanding such conversion, and such interest shall be paid to the Holder of such Note on the applicable Regular Record Date.

SECTION 1603. Cash Payments in Lieu of Fractional Shares. If more than one Note shall be surrendered for conversion at one time by the same Holder, the number of full shares which shall be issuable upon conversion shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof to the extent permitted hereby) so surrendered for conversion. In respect of any fractional share of stock that otherwise would be issuable upon the conversion of any Note or Notes, the Company shall make an adjustment therefor in cash based upon the current market price thereof or the Company shall, at its option, round such fraction up to the nearest whole number of shares for issuance upon conversion. For purposes of this Section 1603, the “current market price” of a share of Common Stock shall be the Closing Sale Price on the last Trading Day immediately preceding the day on which the Notes (or specified portions thereof) are deemed to have been converted.

SECTION 1604. Conversion Rate. Each \$1,000 principal amount of the Notes shall be convertible into the number of shares of Common Stock (the “Conversion Rate”) specified in the form of Note attached as Exhibit A hereto, subject to adjustment as provided in this Article Sixteen.

SECTION 1605. Adjustment of the Conversion Rate. The Conversion Rate shall be adjusted from time to time by the Company as follows:

(a) In case the Company shall hereafter pay a dividend or make a distribution to all holders of the outstanding Common Stock in shares of Common Stock, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect at the opening of business on the date following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution by a fraction,

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

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

such increase to become effective immediately after the opening of business on the day following the date fixed for such determination. For the purpose of this paragraph (a), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company. If any dividend or distribution of the type described in this Section 1605 is declared but not so paid or made, the Conversion Rate shall again be adjusted to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

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

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

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

Such adjustment shall be successively made whenever any such rights or warrants are issued, and shall become effective immediately after the opening of business on the day following the date fixed for determination of stockholders entitled to receive such rights or warrants. To the extent that shares of Common Stock are not delivered after the expiration of such rights or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights or warrants are not so issued, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such date fixed for the determination of stockholders entitled to receive such rights or warrants had not been fixed. In determining whether any rights or warrants entitle the Holders to subscribe for or purchase shares of Common Stock

at less than such Current Market Price, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

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

(d) In case the Company shall pay a cash dividend to all holders of its Common Stock or, by dividend or otherwise, distribute to all holders of its Common Stock shares of any class of Capital Stock of the Company or evidences of its indebtedness or assets, including cash and securities (any such distribution, a “Distribution”; provided, however, that the term “Distribution” shall not include, and this Section 1605(d) shall not apply to, (x) any rights or warrants referred to in Section 1605(b) and (y) any dividend or distribution referred to in Section 1605(a)), then, in each such case (unless the Company elects to reserve such Distribution for distribution to the Holders upon the conversion of the Notes so that any such Holder converting Notes will receive upon such conversion, in addition to the shares of Common Stock to which such Holder is entitled, the amount and kind of such Distribution which such Holder would have received if such Holder had converted its Notes into Common Stock immediately prior to the Record Date), the Conversion Rate shall be increased so that the same shall be equal to the rate determined by multiplying the Conversion Rate in effect on the Record Date with respect to such distribution by a fraction,

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

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



such adjustment to become effective immediately prior to the opening of business on the day following such Record Date; provided, however, that if the then Fair Market Value (as so determined) of the portion of the Distribution so distributed applicable to one share of Common Stock is equal to or greater than the Current Market Price on the Record Date, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder shall have the right to receive upon conversion the amount of Distribution such Holder would have received had such Holder converted each Note on the Record Date. If such Distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such Distribution had not been declared. If the Board of Directors determines the Fair Market Value of any distribution for purposes of this Section 1605 by reference to the actual or when issued trading market for any securities, it must in doing so consider the prices in such market over the same period used in computing the Current Market Price on the applicable Record Date. Notwithstanding the foregoing, if the Distribution distributed by the Company to all holders of its Common Stock consists of Capital Stock of, or similar equity interests in, a Subsidiary or other business unit, the Conversion Rate shall be increased so that the same shall be equal to the rate determined by multiplying the Conversion Rate in effect on the Record Date with respect to such distribution by a fraction:

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

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

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

Rights or warrants distributed by the Company to all holders of Common Stock entitling the Holders thereof to subscribe for or purchase shares of the Company’s Capital Stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events (“Trigger”

Event”): (i) are deemed to be transferred with such shares of Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this Section 1605 (and no adjustment to the Conversion Rate under this Section 1605 will be required) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 1605. If any such right or warrant, including any such existing rights or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and record date with respect to new rights or warrants with such rights (and a termination or expiration of the existing rights or warrants without exercise by any of the Holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 1605 was made, (1) in the case of any such rights or warrants that shall all have been redeemed or repurchased without exercise by any Holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights or warrants (assuming such Holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights or warrants that shall have expired or been terminated without exercise by any Holders thereof, the Conversion Rate shall be readjusted as if such rights and warrants had not been issued.

No adjustment of the Conversion Rate shall be made pursuant to this Section 1605 in respect of rights or warrants distributed or deemed distributed on any Trigger Event to the extent that such rights or warrants are actually distributed, or reserved by the Company for distribution to Holders of Notes upon conversion by such Holders of Notes to Common Stock.

For purposes of this Section 1605(d) and 1605(a) and (b), any dividend or distribution to which this Section 1605(d) is applicable that also includes shares of Common Stock, or rights or warrants to subscribe for or purchase shares of Common Stock (or both), shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, assets or shares of Capital Stock other than such shares of Common Stock or rights or warrants (and any Conversion Rate adjustment required by this Section 1605 with respect to such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such shares of Common Stock or such rights or warrants (and any further Conversion Rate adjustment required by Sections

1605(a) and (b) with respect to such dividend or distribution shall then be made), except

(A) the record date of such dividend or distribution shall be substituted as “the date fixed for the determination of stockholders entitled to receive such dividend or other distribution”, “the date fixed for the determination of stockholders entitled to receive such rights or warrants” and “the date fixed for such determination” within the meaning of Section 1605(a) and (b) and

(B) any shares of Common Stock included in such dividend or distribution shall not be deemed “outstanding at the close of business on the date fixed for such determination” within the meaning of Section 1605(a).

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

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

(ii) the denominator of which shall be the number of shares of Common Stock outstanding (including any tendered or exchanged shares) at the Expiration Time multiplied by the Closing Sale Price of a share of Common Stock on the Trading Day next succeeding the Expiration Time

such adjustment to become effective immediately prior to the opening of business on the day following the Expiration Time. If the Company is obligated to purchase shares pursuant to any such tender or exchange offer, but the Company is permanently prevented by applicable law from effecting any such purchases or

all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made.

(f) For purposes of this Section 1605, and, in the case of the term “Fair Market Value”, Section 1606, the following terms shall have the meaning indicated:

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

If another issuance, distribution, subdivision or combination to which this Section 1605 applies occurs during the period applicable for calculating “Current Market Price” pursuant to the definition in the preceding paragraph, “Current Market Price” shall be calculated for such period in a manner determined by the Board of Directors to reflect the impact of such issuance, distribution, subdivision or combination on the Closing Sale Price of the Common Stock during such period.

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

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

(g) The Company may make such increases in the Conversion Rate, in addition to those required by Section 1605(a), (b), (c), (d) or (e) as the Board of Directors considers to be advisable to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock resulting from any

dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

To the extent permitted by applicable law, the Company from time to time may increase the Conversion Rate by any amount for any period of time if the period is at least twenty (20) days, the increase is irrevocable during the period and the Board of Directors shall have made a determination that such increase would be in the best interests of the Company, which determination shall be conclusive. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall mail to Holders of record of the Notes a notice of the increase at least fifteen (15) days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(h) No adjustment in the Conversion Rate shall be required unless such adjustment would require an increase or decrease of at least one percent (1%) in such rate; provided, however, that any adjustments that by reason of this Article Sixteen are not required to be made shall be carried forward and made (i) as part of any subsequent adjustment, (ii) at the time the Company mails a notice of redemption pursuant to Section 6.4 or (iii) at the time the Company mails a notice of a Designated Event pursuant to Section 1006(b). All calculations under this Article Sixteen shall be made by the Company and shall be made to the nearest cent or to the nearest one-ten thousandth (1/10,000) of a share, as the case may be. No adjustment need be made for rights to purchase Common Stock pursuant to a Company plan for reinvestment of dividends or interest. To the extent the Notes become convertible into cash, assets, property or securities (other than capital stock), no adjustment need be made thereafter as to the cash, assets, property or such securities. Interest will not accrue on any cash into which the Notes are convertible. The Conversion Rate shall be adjusted only once for a single event or occurrence that would require an adjustment under more than one of Section 1605(a), (b), (c), (d) or (e).

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

(j) In any case in which this Section 1605 provides that an adjustment shall become effective immediately after (1) a record date or Record Date for an event, (2) the date fixed for the determination of stockholders entitled to receive a dividend or distribution pursuant to Section 1605(a), (3) a date fixed for the determination of stockholders entitled to receive rights or warrants pursuant to Section 1605(b), or (4) the Expiration Time for any tender or exchange offer pursuant to Section 1605, (each a “Determination Date”), the Company may elect to defer until the occurrence of the applicable Adjustment Event (as hereinafter defined) (x) issuing to the Holder of any Note converted after such Determination Date and before the occurrence of such Adjustment Event, the additional shares of Common Stock or other consideration issuable upon such conversion by reason of the adjustment required by such Adjustment Event over and above the Common Stock issuable upon such conversion before giving effect to such adjustment and (y) paying to such Holder any amount in cash in lieu of any fractional share pursuant to Section 1603. For purposes of this Section 1605(j), the term “Adjustment Event” shall mean:

- (i) in any case referred to in clause (1) hereof, the occurrence of such event,
- (ii) in any case referred to in clause (2) hereof, the date any such dividend or distribution is paid or made,
- (ii) in any case referred to in clause (3) hereof, the date of expiration of such rights or warrants, and
- (iv) in any case referred to in clause (4) hereof, the date a sale or exchange of Common Stock pursuant to such tender or exchange offer is consummated and becomes irrevocable.

(k) For purposes of this Section 1605, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company.

**SECTION 1606. Effect of Reclassification, Consolidation, Merger or Sale.** If any of the following events occur (each, a “Business Combination”): (i) any reclassification or change of the outstanding shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination), (ii) any consolidation, merger, share exchange or combination of the Company with another Person or (iii) any sale or conveyance of all or substantially all of the properties and assets of the Company as an entirety or substantially as an entirety, in each case as a result of which holders of Common Stock shall receive stock, securities or other property or assets (including cash) with respect to or in exchange for such Common Stock, then the Company or the

successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture (which shall comply with the TIA as in force at the date of execution of such supplemental indenture if such supplemental indenture is then required to so comply) providing that the Holders of the Notes then outstanding will be entitled thereafter to convert such Notes into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) which they would have owned or been entitled to receive upon such Business Combination had such Notes been converted into Common Stock (assuming for such purpose such conversion were settled entirely in the Company's Common Stock and without giving effect to any adjustment to the Conversion Rate with respect to a Business Combination constituting a Change in Control) immediately prior to such Business Combination, except that such Holders will not receive the Additional Shares if such Holder does not convert during the period set forth in the second paragraph of Section 1601. In the event holders of Common Stock have the opportunity to elect the form of consideration to be received in such Business Combination, the Company shall make adequate provision whereby the Notes shall be convertible from and after the effective date of such Business Combination into the form of consideration received in such Business Combination by Holders of the greatest number of shares of Common Stock who made a given election with respect to the form of consideration. Appropriate provisions will be made, as determined in good faith by the Company's Board of Directors, to preserve the optional cash settlement provisions in Section 1603 following such Business Combination to the extent feasible. The Company may not become a party to any Business Combination unless its terms are consistent with this Section 1606. Such supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article Sixteen. If, in the case of any such Business Combination, the stock or other securities and assets receivable thereupon by a holder of shares of Common Stock includes shares of stock or other securities and assets of a Person other than the successor or purchasing Person, as the case may be, in such Business Combination, then such supplemental indenture shall also be executed by such other Person and shall contain such additional provisions to protect the interests of the Holders of the Notes as the Board of Directors shall reasonably consider necessary by reason of the foregoing, including to the extent practicable the provisions providing for the purchase rights set forth in Section 1006 hereof. Notwithstanding anything contained in this Section, and for the avoidance of doubt, this Section shall not affect the right of a Holder to convert its Notes into shares of Common Stock prior to the effective date of the Business Combination.

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

The above provisions of this Section 1606 shall similarly apply to successive reclassifications, changes, consolidations, mergers, share exchanges, combinations, sales and conveyances.

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If this Section 1606 applies to any event or occurrence, Section 1605 shall not apply.

SECTION 1607. Taxes on Shares Issued. The issue of stock certificates on conversions of Notes shall be made without charge to the converting Holder for any tax in respect of the issue thereof. The Company shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of stock in any name other than that of the Holder of any Note converted, and the Company shall not be required to issue or deliver any such stock certificate unless and until the Person or Persons requesting the issue thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

SECTION 1608. Reservation of Shares; Shares to Be Fully Paid; Listing of Common Stock. The Company shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to provide for the conversion of the Notes from time to time as such Notes are presented for conversion. Before taking any action which would cause an adjustment increasing the Conversion Rate to an amount that would cause the Conversion Price to be reduced below the then par value, if any, of the shares of Common Stock issuable upon conversion of the Notes, the Company shall take all corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue shares of such Common Stock at such adjusted Conversion Rate.

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

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

SECTION 1609. Responsibility of Trustee. The Trustee and any Conversion Agent shall have no duty, responsibility or liability to any Holder to determine whether any facts exist which may require any adjustment of the Conversion Rate, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. Neither the Trustee nor any Conversion Agent shall be accountable with respect to the registration under securities laws, listing, validity or value (or the kind or amount) of any shares of Common Stock, or of any other securities or property, which may at any time be issued or delivered upon the conversion of any Note, and neither the Trustee nor any Conversion Agent makes any representation with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for



any failure of the Company to make any cash payment or to issue, transfer or deliver any shares of stock or stock certificates or other securities or property upon the surrender of any Note for the purpose of conversion; and the Trustee and any Conversion Agent shall not be responsible for any failure of the Company to comply with any of the covenants of the Company contained in this Article Sixteen.

**SECTION 1610. Notice to Holders Prior to Certain Actions. If:**

- (a) the Company declares a dividend (or any other distribution) on its Common Stock (other than in cash out of retained earnings);
- (b) the Company authorizes the granting to the holders of its Common Stock of rights or warrants to subscribe for or purchase any share of any class of Common Stock or any other rights or warrants (other than rights or warrants referred to in the second paragraph of Section 1605 (d));
- (c) there is any reclassification of the Common Stock (other than a subdivision or combination of outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation, merger or share exchange to which the Company is a party, or of the sale or transfer of all or substantially all of the assets of the Company; or
- (d) there is any voluntary or involuntary dissolution, liquidation or winding-up of the Company;

then the Company shall cause to be filed with the Trustee and at the office or agency maintained for the purpose of conversion of the Notes pursuant to Section 1002, and shall caused to be mailed to each Holder of Notes, at their last addresses as they shall appear on the Security Register of the Company as promptly as possible but in any event at least 10 days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend or distribution of rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend or distribution are to be determined or (y) the date on which such reclassification, consolidation, merger, share exchange, sale, transfer, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, share exchange, sale, transfer, dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, share exchange, sale, transfer, dissolution, liquidation or winding-up. The Company shall also disseminate a press release through Dow Jones & Company Inc., Bloomberg Business News or PR Newswire containing this information.

**SECTION 1611. Rights Issued in Respect of Common Stock Issued Upon Conversion.** If the Company has a stockholder rights plan in effect on any Conversion Date, the Company shall issue, in addition to the Common Stock, the rights under the

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rights plan unless the rights have separated from the Common Stock at the time of conversion, in which case the Conversion Rate will be adjusted as if the Company had distributed to all holders of the Common Stock, shares of the Capital Stock, evidences of indebtedness or assets as set forth in Section 1605, subject to readjustment in the event of the expiration, termination or redemption of such rights.

## ARTICLE VIII

### Miscellaneous

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

SECTION 8.2. Benefits of Third Supplemental Indenture. Nothing contained in this Third Supplemental Indenture shall or shall be construed to confer upon any Person other than a Holder of the Notes, the Company or the Trustee any right or interest to avail itself or himself, as the case may be, of any benefit under any provision of the Indenture or this Third Supplemental Indenture.

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

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

SECTION 8.5. Counterparts. This Third Supplemental Indenture may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Third Supplemental Indenture to be duly executed by their respective officers hereunto duly authorized, all as of the day and year first above written.

LEVEL 3 COMMUNICATIONS, INC.

By: /s/ Neil J. Eckstein

Name: Neil J. Eckstein

Title: Senior Vice President

THE BANK OF NEW YORK, as Trustee

By: /s/ Stacey B. Poindexter

Name: Stacey B. Poindexter

Title: Assistant Vice President

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EXHIBIT A  
(Face of Security)

[Global Securities Legend]

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

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

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

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

Level 3 Communications, Inc.

3.5% CONVERTIBLE SENIOR NOTE DUE 2012

Level 3 Communications, Inc. promises to pay to \_\_\_\_\_, or registered assigns, the principal sum of \_\_\_\_\_ Dollars on June 15, 2012.

Interest Payment Dates: June 15 and December 15, commencing December 15, 2006  
Regular Record Dates: June 1 and December 1

Level 3 Communications, Inc.

By: \_\_\_\_\_  
Name:  
Title:

Certificate of Authentication

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

The Bank of New York, as Trustee

By: \_\_\_\_\_  
Authorized Signatory



3.5% CONVERTIBLE SENIOR NOTE DUE 2012

1. **INTEREST.** Level 3 Communications, Inc., a Delaware corporation (the “Company”), promises to pay interest on the principal amount of this Note at the rate per annum shown above. The Company will pay interest semi-annually in arrears on June 15 and December 15 of each year, beginning December 15, 2006. Interest on the Notes will accrue from the most recent Interest Payment Date to which interest has been paid or, if no interest has been paid, from June 13, 2006. Interest will be computed on the basis of a 360-day year composed of twelve 30-day months.
2. **METHOD OF PAYMENT.** The Company will pay interest on the Notes (except Defaulted Interest) to the Person in whose name each Note is registered at the close of business on the June 1 or December 1 immediately preceding the relevant Interest Payment Date (each a “Regular Record Date”). The Holder must surrender Notes to a Paying Agent to collect principal payments. The Company will pay the principal of, premium, if any, and interest on the Notes at the office or agency of the Company maintained for such purpose, in money of the United States that at the time of payment is legal tender for payment of public and private debts. Until otherwise designated by the Company, the Company’s office or agency maintained for such purpose will be the principal Corporate Trust Office of the Trustee (as defined below). However, the Company may pay principal, premium, if any, and interest by check payable in such money, and may mail such check to the Holders of the Notes at their respective addresses as set forth in the Security Register of Holders of Notes.
3. **PAYING AGENT AND REGISTRAR.** The Bank of New York (together with any successor Trustee under the Indenture referred to below, the “Trustee”) will act as Paying Agent and Security Registrar. The Company may change the Paying Agent, Registrar or co-registrar without prior notice. Subject to certain limitations in the Indenture, the Company or any of its subsidiaries may act in any such capacity.
4. **INDENTURE.** This is one of a duly authorized issue of securities of the Company designated as its “3.5% Convertible Senior Notes Due 2012” issued under an amended and restated indenture dated as of July 8, 2003 (the “Base Indenture”), between the Company and the Trustee, and a supplemental indenture to be dated as of June 13, 2006 (the “Supplemental Indenture”), between the Company and the Trustee (the Base Indenture as supplemented by the Supplemental Indenture, the “Indenture”). The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (the “TIA”) as in effect on the date of the Indenture.

The Notes are subject to, and qualified by, all such terms, certain of which are summarized hereon, and Holders are referred to the Indenture and the TIA for a statement of such terms. The Notes are unsecured and unsubordinated obligations of the Company limited to (except as otherwise provided in the Indenture) up to \$345,000,000 in aggregate principal amount. Capitalized terms not defined below have the same meaning as is given to them in the Indenture.

5. **OPTIONAL REDEMPTION.** No sinking fund is provided for the Notes. The Notes may not be redeemed at the option of the Company prior to June 15, 2010. On and after that date, the Company may redeem all or any portion of the Notes at once or over time, after giving the required notice under the Indenture. The Notes may be redeemed at the redemption prices (each a “Redemption Price”) set forth below, plus accrued and unpaid interest, if any, to the redemption date (the “Redemption Date”). However, if a Redemption Date occurs after a Regular Record Date or a Special Record Date, the Company will instead pay the applicable interest payment to the record Holder on the Regular Record Date or Special Record Date corresponding to such Interest Payment Date or Defaulted Interest payment date. The following Redemption Prices are for Notes redeemed during the 12-month period commencing on June 15 of the years set forth below, and are expressed as percentages of principal amount:

<u>Period</u>	<u>Redemption Price</u>
2010	101.17%
2011	100.58%

Notice of redemption will be mailed by first class mail at least 30 days but not more than 60 days before the date fixed for redemption to each Holder of Notes to be redeemed at his or her registered address. Notes in denominations larger than \$1,000 may be redeemed in part but only in integral multiples of \$1,000. If less than all the Notes are to be redeemed, the Trustee shall select the Notes to be redeemed by a method that complies with the requirements of the principal national securities exchange, if any, on which the Notes are listed or quoted, or, if the Notes are not so listed, on a pro rata basis by lot or by any other method that the Trustee considers fair and appropriate. On and after the Redemption Date, interest ceases to accrue on Notes or portions thereof called for redemption (unless the Company defaults in the payment of the Redemption Price). If this Note is redeemed on a date which is also an Interest Payment Date, the interest due on such date will be paid to the Person in whose name this Note is registered at the close of business on the relevant Regular Record Date.

6. **DESIGNATED EVENT.** Upon the occurrence of a Designated Event, the Company shall make a Designated Event Offer to repurchase all outstanding Notes at a price equal to 100% of the aggregate principal amount of the Notes, plus accrued and unpaid interest to, but excluding, the date of repurchase, such offer to be made as provided in the Indenture. To accept the Designated Event



Offer, the Holder hereof must comply with the terms thereof, including surrendering this Note, with the “Designated Event Purchase Notice” portion hereof completed, to the Company, a depositary, if appointed by the Company, or a Paying Agent, at the address specified in the notice of the Designated Event Offer mailed to Holders as provided in the Indenture, prior to the close of business on the Business Day immediately preceding the Designated Event Purchase Date.

7. **DENOMINATIONS, TRANSFER, EXCHANGE.** The Notes are in registered form without coupons in denominations of \$1,000 and integral multiples of \$1,000. The transfer of Notes may be registered and Notes may be exchanged as provided in the Indenture. As a condition of transfer, the Security Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents, and the Company and the Security Registrar may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Company or the Security Registrar need not exchange or register the transfer of any Note or portion of a Note selected for redemption or submitted for repurchase or surrendered for conversion. Also, the Company or the Security Registrar need not exchange or register the transfer of any Note for a period of 15 days before the mailing of a notice of redemption for such Notes to be redeemed.
8. **PERSONS DEEMED OWNERS.** The registered holder of a Note shall be treated as its owner for all purposes.
9. **AMENDMENTS AND WAIVERS.** Subject to certain exceptions, the Indenture or the Notes may be amended or supplemented with the consent of the Holders of at least a majority in principal amount of the then outstanding Notes, and any existing default may be waived with the consent of the Holders of a majority in principal amount of the then outstanding Notes.

Without the consent of any Holder, the Indenture or the Notes may be amended to: (a) cure any ambiguity or correct or supplement any defective or inconsistent provision contained in the Indenture, or make any other changes in the provisions of the Indenture which the Company and the Trustee may deem necessary or desirable provided such amendment does not materially and adversely affect the legal rights under the Indenture of the Holders of Notes; (b) provide for uncertificated Notes in addition to or in place of certificated Notes so long as uncertificated Notes are in registered form for purposes of the Code; (c) evidence the succession of another Person to the Company and provide for the assumption by such successor of the covenants and obligations of the Company thereunder and in the Notes as permitted by Section 801 of the Indenture; (d) provide for conversion rights or repurchase rights of Holders of Notes in the event of consolidation, merger, share exchange or sale of all or substantially all of the assets of the Company as required to comply with Sections 801 or 1606 of the Indenture; (e) reduce the Conversion Price; provided that the reduction will not adversely affect the interests of the Holders in any material respect; (f) evidence

and provide for the acceptance of the appointment under the Indenture of a successor Trustee; (g) make any change that would provide any additional rights or benefits to the Holders of Notes or that does not adversely affect the legal rights under the Indenture of any such Holder; (h) comply with the requirements of the Commission in order to effect or maintain the qualification of the Indenture under the TIA; or (i) secure the Notes.

Without the consent of each Holder affected, an amendment or waiver may not (with respect to any Notes held by a nonconsenting Holder): (a) reduce the principal amount of Notes whose Holders must consent to an amendment, supplement or waiver; (b) reduce the principal of, or change the fixed maturity of any Note or alter the provisions with respect to the redemption or mandatory repurchase of the Notes; (c) reduce the rate of, or change the time for payment of, interest, including Defaulted Interest, if any, on any Notes; (d) waive a Default or Event of Default in the payment of principal of or the premium, if any, or interest on the Notes (except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the Notes then outstanding and a waiver of the payment default that resulted from such acceleration); (e) make the principal of, or interest on, any Note payable in money other than as provided for in the Indenture and in the Notes; (f) make any change in the provisions of the Indenture relating to waivers of past Defaults or Events of Default or the rights of Holders of Notes to receive payments of principal of, premium, if any, or interest on the Notes; (g) waive a redemption or mandatory repurchase payment with respect to any Note; (h) except as permitted by the Indenture (including Section 901(9)), increase the Conversion Price or modify the provisions of the Indenture relating to conversion of the Notes in a manner adverse to the Holders thereof or (i) make any adverse change to the ability of Holders of Notes to enforce their rights under the Indenture.

10. **DEFAULTS AND REMEDIES.** An Event of Default is: (a) default in payment of the principal of, or premium, if any, on the Notes, when due at maturity, upon repurchase, upon acceleration or otherwise; (b) default for 30 days or more in payment of any installment of interest on the Notes; (c) default in the payment of the Designated Event Payment in respect of the Notes on the date therefor or failure to provide timely notice of a Designated Event; (d) default by the Company (other than a default set forth in clause (a), (b) or (c) above) for 60 days or more after notice in the observance or performance of any other covenants in the Indenture; (e) default under any credit agreement, mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any indebtedness for money borrowed by the Company or any of its Material Subsidiaries (or the payment of which is guaranteed or secured by the Company or any of its Material Subsidiaries), whether such indebtedness or guarantee exists on the date of the Indenture or is created thereafter, which default (i) is caused by a failure to pay when due any principal of such indebtedness within the grace period provided for in such indebtedness, which failure continues beyond any applicable grace period (a "Payment Default"), or (ii) results in the acceleration of such indebtedness prior to its express maturity (without such

acceleration being rescinded or annulled) and, in each case, the principal amount of such indebtedness, together with the principal amount of any other such indebtedness under which there is a Payment Default or the maturity of which has been so accelerated, aggregates \$25,000,000 or more and such Payment Default is not cured or such acceleration is not annulled within 10 days after notice; or (f) failure by the Company or any Material Subsidiary of the Company to pay final, nonappealable judgments (other than any judgment as to which a reputable insurance company has accepted full liability) aggregating in excess of \$25,000,000, which judgments are not stayed, bonded or discharged within 60 days after their entry; or (g) certain events involving bankruptcy, insolvency or reorganization of the Company or any Material Subsidiary. If an Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the then outstanding Notes may declare the unpaid principal of, premium, if any, and accrued and unpaid interest on all Notes then outstanding to be due and payable immediately, except that in the case of an Event of Default arising from certain events of bankruptcy, insolvency, or reorganization with respect to the Company, all outstanding Notes become due and payable without further action or notice. Holders of Notes may not enforce the Indenture or the Notes except as provided in the Indenture. The Trustee may require an indemnity satisfactory to it before it enforces the Indenture or the Notes. Subject to certain limitations, Holders of a majority in principal amount of the then outstanding Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders notice of any continuing default (except a default in payment of principal, premium, if any, or interest) if it determines that withholding notice is in their interests. The Company must furnish annual compliance certificates to the Trustee.

11. **TRUSTEE DEALINGS WITH THE COMPANY.** The Trustee or any of its Affiliates, in their individual or any other capacities, may make or continue loans to or guaranteed by, accept deposits from and perform services for the Company or its Affiliates and may otherwise deal with the Company or its Affiliates as if it were not Trustee.
12. **NO RECOURSE AGAINST OTHERS.** No director, officer, employee, shareholder or Affiliate, as such, of the Company shall have any liability for any obligations of the Company under the Notes or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for the Notes.
13. **AUTHENTICATION.** This Note shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent.
14. **ABBREVIATIONS.** Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN CO = tenants in common, TEN ENT = tenants by the entireties, JT TEN = joint tenants with right of survivorship and not

as tenants in common, CUST = Custodian and U/G/M/A = Uniform Gifts to Minors Act.

15. **CONVERSION.** Subject to and upon compliance with the provisions of the Indenture, the registered holder of this Note has the right at any time on or before the close of business on the Maturity Date (or in case this Note or any portion hereof is (a) called for redemption prior to such date, before the close of business on the last Trading Day preceding the date fixed for redemption (unless the Company defaults in payment of the Redemption Price in which case the conversion right will terminate at the close of business on the date such default is cured) or (b) subject to a duly completed election for repurchase, on or before the close of business on the Business Day immediately preceding the Designated Event Purchase Date (unless the Company defaults in payment due upon repurchase or such Holder elects to withdraw the submission of such election to repurchase ) to convert the principal amount hereof, or any portion of such principal amount which is \$1,000 or an integral multiple thereof, into that number of fully paid and non-assessable shares of common stock of the Company ("Common Stock") obtained by dividing the principal amount of the Note or portion thereof to be converted by the conversion price of \$5.46 per share (the "Conversion Price") (which is equivalent to a conversion rate of 183.1502 shares per \$1,000 of notes (the "Conversion Rate"), as adjusted from time to time as provided in the Indenture), upon surrender of this Note to the Company at the office or agency maintained for such purpose (and at such other offices or agencies designated for such purpose by the Company), accompanied by written notice of conversion duly executed (and if the shares of Common Stock to be issued on conversion are to be issued in any name other than that of the registered holder of this Note by instruments of transfer, in form satisfactory to the Company, duly executed by the registered holder or its duly authorized attorney) and, in case such surrender shall be made during the period from the close of business on the Regular Record Date immediately preceding any Interest Payment Date through the close of business on the last Trading Day immediately preceding such Interest Payment Date (unless this Note or the portion thereof being converted has been called for redemption on a date in such period or a Designated Event Purchase Date has been specified by the Company during such period), also accompanied by payment, in funds acceptable to the Company, of an amount equal to the interest otherwise payable on such Interest Payment Date on the principal amount of this Note then being converted. Subject to the aforesaid requirement for a payment in the event of conversion after the close of business on a Regular Record Date immediately preceding an Interest Payment Date, no adjustment shall be made on conversion for interest accrued hereon or for dividends on Common Stock delivered on conversion. The right to convert this Note is subject to the provisions of the Indenture relating to conversion rights in the case of certain consolidations, mergers, share exchanges or sales or transfers of substantially all the Company's assets.

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

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

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

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FORM OF CONVERSION NOTICE

To: Level 3 Communications, Inc.

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

Dated:

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

(Please Print):

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City, State and Zip Code)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
\$\_\_\_\_,000

\_\_\_\_\_  
Social Security or other Taxpayer Identification Number

Signature Guarantee:

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

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ASSIGNMENT FORM

To assign this Note, fill in the form below:

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

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

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

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

Your Signature: \_\_\_\_\_  
(Sign exactly as your name appears on the other side of this Note)

Date: \_\_\_\_\_

Medallion Signature Guarantee: \_\_\_\_\_

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DESIGNATED EVENT PURCHASE NOTICE

If you wish to have this Note repurchased by the Company pursuant to Section 1006 of the Indenture, check the Box: ☐

If you wish to have a portion of this Note purchased by the Company pursuant to Section 1006 of the Indenture, state the amount (in multiples of \$1,000): \$ \_\_\_\_\_.

Date: \_\_\_\_\_

Your Signature: \_\_\_\_\_  
(Sign exactly as your name appears on the other side of this Note)

Medallion Signature Guarantee:

\_\_\_\_\_  
Certificate Number: \_\_\_\_\_



LEVEL 3 COMMUNICATIONS, INC.

125,000,000 Shares of Common Stock  
(par value \$0.01 per share)

**PURCHASE AGREEMENT**

New York, New York  
June 7, 2006

**MERRILL LYNCH & CO.**

Merrill Lynch, Pierce, Fenner & Smith  
Incorporated as Representatives of the several Underwriters  
c/o Merrill Lynch & Co.  
Merrill Lynch, Pierce, Fenner & Smith Incorporated  
4 World Financial Center  
New York, New York 10080

Ladies and Gentlemen:

Level 3 Communications, Inc., a corporation organized under the laws of Delaware (the "Company"), proposes to sell to the several underwriters named in Schedule I hereto (the "Underwriters"), for whom you (the "Representatives") are acting as representatives, 125,000,000 shares of Common Stock, \$0.01 par value per share ("Common Stock"), of the Company (the "Underwritten Securities"). The Company also proposes to grant to the Underwriters an option to purchase up to 18,750,000 additional shares of Common Stock to cover over-allotments, if any (the "Option Securities"; and together with the Underwritten Securities, the "Securities"). To the extent there are no additional Underwriters listed on Schedule I other than you, the term Representatives as used herein shall mean you, as Underwriters, and the terms Representatives and Underwriters shall mean either the singular or plural as the context requires. Any reference herein to the Registration Statement, the Basic Prospectus, any Preliminary Prospectus or the Final Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 which were filed under the Exchange Act on or before the Effective Date of the Registration Statement or the issue date of the Basic Prospectus, any Preliminary Prospectus or the Final Prospectus, as the case may be; and any reference herein to the terms "amend", "amendment" or "supplement" with respect to the Registration Statement, the Basic Prospectus, any Preliminary Prospectus or the Final Prospectus shall be deemed to refer to and include the filing of any document under the Exchange Act after the Effective Date of the Registration Statement, or the issue date of the Basic Prospectus, any Preliminary Prospectus or the Final Prospectus, as the case may be, deemed to be incorporated therein by reference. Certain terms used herein are defined in Section 19 hereof.

1. Representations and Warranties. The Company represents and warrants to, and agrees with, each Underwriter as set forth below in this Section 1.

(a) The Company meets the requirements for use of Form S-3 under the Securities Act and has prepared and filed with the Commission a registration statement (file number 333-53914) on Form S-3, including a related basic prospectus, for registration under the Securities Act of the offering and sale of the Securities. Such Registration Statement, including any amendments thereto filed prior to the Applicable Time, has become effective. The Company may have filed with the Commission, as part of an amendment to the Registration Statement or pursuant to Rule 424(b), the Preliminary Prospectus, which has previously been furnished to you. The Company will file with the Commission a final prospectus supplement relating to the Securities in accordance with Rule 424(b). As filed, such final prospectus supplement shall contain all information required by the Securities Act and the rules thereunder, and, except to the extent the Representatives shall agree in writing to a modification, shall be in all substantive respects in the form furnished to you prior to the Applicable Time or, to the extent not completed at the Applicable Time, shall contain only such specific additional information and other changes (beyond that contained in the Basic Prospectus and the Preliminary Prospectus) as the Company has advised you, prior to the Applicable Time, will be included or made therein. At the Applicable Time, the Company was eligible to use the Registration Statement for an offering pursuant to Rule 415(a)(1)(x).

(b) On the Effective Date, the Registration Statement did, and when the Final Prospectus is first filed in accordance with Rule 424(b) and on the Closing Date (as defined herein) and on any date on which Option Securities are purchased, if such date is not the Closing Date (a "settlement date"), the Final Prospectus (and any supplement thereto) will, comply in all material respects with the applicable requirements of the Securities Act and the Exchange Act and the respective rules thereunder; on the Effective Date and at the Applicable Time, the Registration Statement did not or will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading; and, on the date of any filing pursuant to Rule 424(b) and on the Closing Date and any settlement date, the Final Prospectus (together with any supplement thereto) will not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided, however*, that the Company makes no representations or warranties as to the information contained in or omitted from the Registration Statement or the Final Prospectus (or any supplement thereto) in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of any Underwriter through the Representatives specifically for inclusion in the Registration Statement or the Final Prospectus (or any supplement thereto), it being understood and agreed that the only such information furnished by or on behalf of any Underwriters consists of the information described as such in Section 8 hereof.

(c) At the Applicable Time, the Disclosure Package does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not

misleading. The preceding sentence does not apply to statements in or omissions from the Disclosure Package based upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives specifically for use therein, it being understood and agreed that the only such information furnished by or on behalf of any Underwriter consists of the information described as such in Section 8 hereof.

(d) (i) At the earliest time after the filing of the Registration Statement that the Company or another offering participant made a *bona fide* offer (within the meaning of Rule 164(h)(2)) of the Securities and (ii) as of the Applicable Time (with such date being used as the determination date for purposes of this clause (ii)), the Company was not and is not an Ineligible Issuer (as defined in Rule 405), without taking account of any determination by the Commission pursuant to Rule 405 that it is not necessary that the Company be considered an Ineligible Issuer.

(e) Each Issuer Free Writing Prospectus does not include any information that conflicts with the information contained in the Registration Statement, including any document incorporated therein and any prospectus supplement deemed to be a part thereof that has not been superseded or modified. The foregoing sentence does not apply to statements in or omissions from the Disclosure Package based upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives specifically for use therein, it being understood and agreed that the only such information furnished by or on behalf of any Underwriter consists of the information described as such in Section 8 hereof.

(f) Subsequent to the respective dates as of which information is given in the Disclosure Package and the Final Prospectus, except as set forth or contemplated in the Disclosure Package and the Final Prospectus, neither the Company nor any of its subsidiaries has incurred any liabilities or obligations, direct or contingent, which are material to the Company and its subsidiaries taken as a whole, nor entered into any transaction not in the ordinary course of business that is material to the Company and its subsidiaries taken as a whole, and there has not been, singularly or in the aggregate, any material adverse effect in the properties, business, results of operations, financial condition, affairs or business prospects of the Company and its subsidiaries taken as a whole (a "Material Adverse Effect"). Without limiting the foregoing, neither the Company nor any of its subsidiaries has sustained since the respective dates as of which information is given in the Disclosure Package and the Final Prospectus any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental or regulatory action, order or decree, constituting a Material Adverse Effect, otherwise than as set forth or contemplated in the Disclosure Package and the Final Prospectus.

(g) Each of the Company and the Subsidiaries (x) has been duly organized and is validly existing as a corporation or other business organization under the laws of its jurisdiction of organization and is in good standing under the laws of such jurisdiction, (y) has the requisite corporate power and authority to carry on its business as it is currently being conducted and as described in the Disclosure Package and the Final

Prospectus, and to own, lease and operate its properties and (z) is duly qualified and is authorized to do business and is in good standing in each jurisdiction where the operation, ownership or leasing of property or the conduct of its business requires such qualification, except where any failure to be so qualified would not, singularly or when aggregated with failures to be qualified elsewhere, have a Material Adverse Effect. The Company has the requisite corporate power and authority to execute, deliver and perform this Agreement and to issue, sell and deliver the Securities. The term "Subsidiary" means each entity listed on Schedule II hereto.

(h) The Company has an authorized equity capitalization of 2,260,000,000 shares, consisting of 2,250,000,000 shares of Common Stock, par value \$0.01 per share, and 10,000,000 shares of Preferred Stock, par value \$0.01 per share. All of the issued shares of capital stock of the Company have been duly and validly authorized and are fully paid and non-assessable and conform in all material respects to the descriptions thereof contained in the Disclosure Package and the Final Prospectus. All of the issued and outstanding shares of capital stock or equity interests of each of the Subsidiaries have been duly and validly authorized and issued, are fully paid and non-assessable and, except as set forth or contemplated in the Disclosure Package and the Final Prospectus, are owned, directly or through subsidiaries, by the Company, free and clear of any lien or other claim or encumbrance (other than the pledge of such shares or equity interests pursuant to the agreements the Company and certain of its subsidiaries have entered into in connection with the senior secured term loan described in the Disclosure Package and the Final Prospectus).

(i) The Securities have been duly authorized, and, when issued by the Company and delivered to and duly paid for by the Underwriters in accordance with the terms of this Agreement, will be validly issued, fully paid and non-assessable. The Securities will conform to the description thereof in the Disclosure Package and the Final Prospectus.

(j) There is no franchise, contract or other document of a character required to be described in the Disclosure Package or the Final Prospectus, or to be filed as an exhibit thereto, which is not described or filed as required; and the statements (i) incorporated by reference in the Disclosure Package and the Final Prospectus from the Company's Annual Report on Form 10-K for the year ended December 31, 2005, under the heading "Legal Proceedings", as supplemented by the Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2006, and (ii) in the Preliminary Prospectus and the Final Prospectus under the heading "Business—Regulation", in each case fairly summarize the matters therein described.

(k) This Agreement has been duly authorized, executed and delivered by the Company.

(l) The Company is not and, after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Disclosure Package and the Final Prospectus, will not be an "investment company" as defined in the Investment Company Act of 1940, as amended.

(m) The execution and delivery of this Agreement, the issuance and sale of the Securities hereunder, the performance by the Company of this Agreement and the consummation of the other transactions herein contemplated will not (x) conflict with or result in a breach or violation of any of the respective charters, by-laws or other organizational documents of the Company or any of the Subsidiaries, (y) violate or conflict with any statute, rule or regulation applicable to the Company or any Subsidiary or any order or decree of any governmental or regulatory agency or body or any court having jurisdiction over the Company or any Subsidiary or any of their respective properties or (z) after giving effect to the waivers and consents obtained on or prior to the date hereof, if any, conflict with or result in a breach or violation of any term or provision of, constitute a default or cause an acceleration of any obligation under, or result in the imposition or creation of (or the obligation to create or impose) a lien or other claim or encumbrance with respect to, any bond, note, debenture or other evidence of indebtedness or any indenture, mortgage or deed of trust or any other agreement or instrument to which the Company or any of the Subsidiaries, is a party or by which it or any of them is bound, or to which any properties of the Company or any of the Subsidiaries is or may be subject, except, in the case of clauses (y) and (z) for violations, conflicts, breaches, defaults, accelerations of obligations or liens that would not, individually or in the aggregate, have a Material Adverse Effect. No material authorization, approval or consent or order of, or filing, registration or qualification with, any court or governmental or regulatory body or agency is required in connection with the transactions contemplated by this Agreement except as have been made or obtained and except as may be required by and made with or obtained from state securities laws or regulations, or, with respect to filing the Final Prospectus with the Commission in accordance with Rule 424(b) under the Securities Act.

(n) Except as described in the Disclosure Package and the Final Prospectus, there is no action, suit or proceeding before or by any court, arbitrator or governmental or regulatory official, agency or body, domestic or foreign, pending against or affecting the Company or any of its subsidiaries, or any of their respective properties, that, if determined adversely, is reasonably expected to affect adversely the issuance of the Securities or in any manner draw into question the validity of this Agreement or the Securities or to result, singularly or when aggregated with other pending actions and actions known to be threatened that are not described in the Disclosure Package and the Final Prospectus, in a Material Adverse Effect, or that is reasonably expected to materially and adversely affect the consummation of this Agreement or the transactions contemplated hereby, and to the best of the Company's knowledge, no such proceedings are contemplated or threatened.

(o) None of the Company or any of the Subsidiaries is or after giving effect to the issuance of the Securities will be (i) in violation of its respective charter, bylaws or other organizational documents or (ii) in default in the performance of any bond, debenture, note or any other evidence of indebtedness or any indenture, mortgage, deed of trust or other contract, lease or other instrument to which the Company or any of the Subsidiaries is a party or by which any of them is bound, or to which any of the property or assets of the Company or any of the Subsidiaries is subject, other than such defaults that could not, singularly or in the aggregate, have a Material Adverse Effect.

(p) KPMG LLP, who have certified certain of the consolidated financial statements and supporting schedules of the Company included or incorporated by reference in the Disclosure Package and the Final Prospectus, are independent public accountants with respect to the Company and its subsidiaries, as required by the Securities Act. The consolidated historical statements and any pro forma information, together with related schedules and notes, if any, included or incorporated by reference in the Disclosure Package and the Final Prospectus comply as to form in all material respects with the requirements of the Securities Act. Such historical financial statements fairly present in all material respects the consolidated financial position of the Company and its subsidiaries at the respective dates indicated and the results of their operations and their cash flows for the respective periods indicated, in accordance with generally accepted accounting principles, except as otherwise expressly stated therein, as consistently applied throughout such periods. Such pro forma information has been prepared on a basis consistent with such historical financial statements, except for the pro forma adjustments specified therein, and gives effect to assumptions made on a reasonable basis and fairly presents in all material respects and gives effect to the transactions described therein pertaining to such pro forma information. The other financial and statistical information and data included in the Disclosure Package and the Final Prospectus, historical and pro forma, are, in all material respects, accurately presented and prepared on a basis consistent with such financial statements and the books and records of the Company.

(q) The consolidated historical financial statements of WilTel Communications Group LLC (“WilTel”), together with related schedules and notes, if any, included or incorporated by reference in the Disclosure Package and the Final Prospectus, comply as to form in all material respects with the requirements of the Securities Act. Such historical financial statements fairly present in all material respects the consolidated financial position of WilTel at the respective dates indicated and the results of their operations and their cash flows for the respective periods indicated, in accordance with generally accepted accounting principles, except as otherwise expressly stated therein, as consistently applied throughout such periods.

(r) Each of the Company and the Subsidiaries has all certificates, consents, exemptions, orders, permits, licenses, authorizations, or other approvals (each, an “Authorization”) of and from, and has made all declarations and filings with, all Federal, state, local and other governmental or regulatory bodies or agencies, and all courts and other tribunals, necessary or required to own, lease, license and use its properties and assets and to conduct its business as currently operated in the manner described in the Disclosure Package and the Final Prospectus, except to the extent that the failure to obtain or file any such Authorizations would not, singularly or in the aggregate, reasonably be expected to have a Material Adverse Effect. All such Authorizations are in full force and effect with respect to the Company and the Subsidiaries, and the Company and the Subsidiaries are in compliance in all material respects with the terms and conditions of all such Authorizations and with the rules and regulations of the regulatory authorities and governing bodies having jurisdiction with respect thereto.

(s) The Company and each of its subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability; (iii) access to material assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for material assets is compared on a periodic basis, which the Company believes are reasonable intervals, with the existing assets and appropriate action is taken with respect to any material differences. The Company and its executive officers have complied with Rule 13a-14 under the Exchange Act.

(t) Except as disclosed in the Disclosure Package and the Final Prospectus, no holder of any security of the Company has or will have any right to require the registration of such security by virtue of the offering and sale of the Securities under this Agreement other than (i) any such right that has been expressly waived in writing and (ii) any such right in respect of outstanding warrants to purchase shares of Common Stock of the Company that in the aggregate represent less than 1% of the shares of Common Stock of the Company outstanding on the date hereof. No holder of any of the outstanding shares of capital stock of the Company or any other person is entitled to preemptive or other rights to subscribe for the Securities.

(u) The Company has not taken nor will it take, directly or indirectly, any action prohibited by Regulation M under the Exchange Act, in connection with the offering of the Securities.

(v) Other than the Subsidiaries, there is no entity or other person (i) of which a majority of the voting equity securities or other interests is owned, directly or indirectly, by the Company and (ii) which held more than 5% of the total assets of the Company on a consolidated basis as of March 31, 2006, excluding inter-company balances.

(w) Prior to the date hereof, the Company has furnished to the Representatives letters, substantially in the form of Exhibit E hereto, duly executed by the executive officers and directors of the Company set forth on Schedule IV hereto and addressed to the Representatives.

(x) The Registration Statement is not the subject of a pending proceeding or examination under Section 8(d) or 8(e) of the Securities Act, and the Company is not the subject of a pending proceeding under Section 8A of the Securities Act in connection with the offering of the Securities.

Any certificate signed by any officer of the Company and delivered to the Representatives or counsel for the Underwriters in connection with the offering of the Securities shall be deemed a representation and warranty by the Company, as to matters covered thereby, to each Underwriter.

2. Purchase and Sale. (a) Subject to the terms and conditions and in reliance upon the representations and warranties set forth herein, the Company agrees to sell to each Underwriter, and each Underwriter agrees, severally and not jointly, to purchase from the Company, at the purchase price of \$4.3452 per share, the number of Underwritten Securities set forth opposite such Underwriter's name on Schedule I hereto.

(b) Subject to the terms and conditions and in reliance upon the representations and warranties set forth herein, the Company hereby grants an option to the several Underwriters to purchase, severally and not jointly, up to 18,750,000 Option Securities at the same purchase price per share as the Underwriters shall pay for the Underwritten Securities. Said option may be exercised only to cover over-allotments in the sale of the Underwritten Securities by the Underwriters. Said option may be exercised in whole or in part at any time on or before the 30th day after the date of the Final Prospectus upon written notice by the Representatives to the Company setting forth the number of Option Securities as to which the several Underwriters are exercising the option and the settlement date. Delivery of the Option Securities, and payment therefor, shall be made as provided in Section 3 hereof. The number of Option Securities to be purchased by each Underwriter shall be the same percentage of the total number of Option Securities to be purchased by the several Underwriters as such Underwriter is purchasing of the Underwritten Securities, subject to such adjustments as you in your absolute discretion shall make to eliminate any fractional shares.

3. Delivery and Payment. Delivery of and payment for the Underwritten Securities and the Option Securities (if the option provided for in Section 2(b) hereof shall have been exercised on or before the third Business Day prior to the Closing Date) shall be made at 10:00 AM, New York City time, on June 13, 2006, or at such time on such later date not more than three Business Days after the foregoing date as the Representatives shall designate, which date and time may be postponed by agreement among the Representatives and the Company or as provided in Section 9 hereof (such date and time of delivery and payment for the Securities being herein called the "Closing Date"). Delivery of the Securities shall be made to the Representatives for the respective accounts of the several Underwriters against payment by the several Underwriters through the Representatives of the purchase price thereof to or upon the order of the Company by wire transfer payable in same-day funds to an account specified by the Company. Delivery of the Underwritten Securities and the Option Securities shall be made through the facilities of The Depository Trust Company unless the Representatives shall otherwise instruct.

If the option provided for in Section 2(b) hereof is exercised after the third Business Day prior to the Closing Date, the Company will deliver the Option Securities (at the expense of the Company) to the Representatives, at 4 World Financial Center, New York, New York, on the date specified by the Representatives (which shall be within three Business Days after exercise of said option) for the respective accounts of the several Underwriters, against payment by the several Underwriters through the Representatives of the purchase price thereof to or upon the order of the Company by wire transfer payable in same-day funds to an account specified by the Company. If settlement for the Option Securities occurs after the Closing Date, the Company will deliver to the Representatives on the settlement date for the Option Securities, and the obligation of the Underwriters to purchase the Option Securities shall be conditioned



upon receipt of, supplemental opinions, certificates and letters confirming as of such date the opinions, certificates and letters delivered on the Closing Date pursuant to Section 6 hereof.

4. Offering by Underwriters. It is understood that the several Underwriters propose to offer the Securities for sale to the public as set forth in the Final Prospectus.

5. Agreements. The Company agrees with the several Underwriters that:

(a) Prior to the termination of the offering of the Securities, the Company will not file any amendment of the Registration Statement or supplement (including the Final Prospectus or any preliminary prospectus) to the Basic Prospectus or any Rule 462(b) Registration Statement unless the Company has furnished you a copy for your review prior to filing and will not file any such proposed amendment or supplement to which you reasonably object. The Company will cause the Final Prospectus, properly completed, and any supplement thereto to be filed in a form reasonably approved by the Representatives with the Commission pursuant to the applicable paragraph of Rule 424(b) within the time period prescribed and will provide evidence satisfactory to the Representatives of such timely filing. The Company will promptly advise the Representatives (1) when the Final Prospectus, and any supplement thereto, shall have been filed (if required) with the Commission pursuant to Rule 424(b) or when any Rule 462(b) Registration Statement shall have been filed with the Commission, (2) when, prior to termination of the offering of the Securities, any amendment to the Registration Statement shall have been filed or become effective, (3) of any request by the Commission or its staff for any amendment of the Registration Statement, or any Rule 462(b) Registration Statement, or for any supplement to the Final Prospectus or for any additional information, (4) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or the institution or threatening of any proceeding for that purpose and (5) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Securities for sale in any jurisdiction or the institution or threatening of any proceeding for such purpose. The Company will use its best efforts to prevent the issuance of any such stop order or the occurrence of any such suspension of the Registration Statement and, upon such issuance or occurrence, to obtain as soon as possible the withdrawal of such stop order or relief from such occurrence or prevention, including, if necessary, by filing an amendment to the Registration Statement or a new registration statement and using its best efforts to have such amendment or new registration statement declared effective as soon as practicable.

(b) To prepare a final term sheet, containing solely a description of the Securities and the concurrent 3.5% Convertible Senior Notes due 2012 offering, in a form approved by you and to file such term sheet pursuant to Rule 433(d) within the time required by such Rule.

(c) If there occurs an event or development as a result of which the Disclosure Package would include an untrue statement of a material fact or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances then prevailing, not misleading, the Company will notify promptly the

Representatives so that any use of the Disclosure Package may cease until it is amended or supplemented.

(d) If, at any time when a prospectus relating to the Securities is required to be delivered under the Securities Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172), any event occurs as a result of which the Final Prospectus as then supplemented would include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein in the light of the circumstances under which they were made not misleading, or if it shall be necessary to amend the Registration Statement, file a new registration statement or supplement the Final Prospectus to comply with the Securities Act or the Exchange Act or the respective rules thereunder, including in connection with use or delivery of the Final Prospectus, the Company promptly will (1) notify the Representatives of any such event, (2) prepare and file with the Commission, subject to the first sentence of paragraph (a) of this Section 5, an amendment or supplement or new registration statement which will correct such statement or omission or effect such compliance, (3) use its reasonable best efforts to have any amendment to the Registration Statement or new registration statement declared effective as soon as practicable in order to avoid any disruption in use of the Final Prospectus and (4) supply any supplemented Final Prospectus to you in such quantities as you may reasonably request.

(e) As soon as practicable, the Company will make generally available to its security holders an earnings statement or statements of the Company and its subsidiaries which will satisfy the provisions of Section 11(a) of the Securities Act and Rule 158.

(f) The Company will furnish to each of the Representatives and counsel for the Underwriters, without charge, a conformed copy of the Registration Statement (including exhibits thereto) and to each other Underwriter a copy of the Registration Statement (without exhibits thereto) and, so long as delivery of a prospectus by an Underwriter or dealer may be required by the Securities Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172), as many copies of each Preliminary Prospectus, the Final Prospectus and each Issuer Free Writing Prospectus and any supplement thereto as the Representatives may reasonably request. The Company will pay the expenses of printing or other production of all such documents.

(g) The Company will cooperate with the Representatives in arranging, at the Company's cost, for the qualification of the Securities for sale under the laws of such jurisdictions as the Representatives may designate and will maintain such qualifications in effect so long as required for the sale of the Securities; *provided, however*, that in connection therewith the Company shall not be required to qualify as a foreign corporation or to execute a general consent to service of process in any jurisdiction or subject itself to taxation in excess of a nominal dollar amount in any such jurisdiction where it is not then subject. The Company promptly will advise the Representatives of the receipt by it of any notification with respect to the suspension of the qualification of the Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose.

(h) The Company agrees that, unless it obtains the prior written consent of the Representatives, and each Underwriter, severally and not jointly, agrees with the Company that, unless it has obtained or will obtain, as the case may be, the prior written consent of the Company, it has not made and will not make any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a “free writing prospectus” (as defined in Rule 405) required to be filed by the Company with the Commission or retained by the Company under Rule 433, other than the final term sheet prepared and filed pursuant to Section 5(b) hereto; provided that the prior written consent of the parties hereto shall be deemed to have been given in respect of the Free Writing Prospectuses included in Schedule III hereto and any electronic or graphic road show. Any such free writing prospectus consented to by the Representatives or the Company is hereinafter referred to as a “Permitted Free Writing Prospectus.” The Company agrees that (x) it has treated and will treat, as the case may be, each Permitted Free Writing Prospectus as an Issuer Free Writing Prospectus and (y) it has complied and will comply, as the case may be, with the requirements of Rules 164 and 433 applicable to any Permitted Free Writing Prospectus, including in respect of timely filing with the Commission, legending and record keeping.

(i) The Company will not for a period of 90 days following the time of execution of this Agreement, without the prior written consent of Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”), offer, sell, contract to sell, pledge, or otherwise dispose of, (or enter into any transaction which is designed to result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise) by the Company or any majority controlled affiliate of the Company or any person in privity with the Company or any majority controlled affiliate of the Company) directly or indirectly, including the filing (or participation in the filing) of a registration statement with the Commission in respect of, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Exchange Act, any shares of capital stock or securities convertible into, or exchangeable for, shares of capital stock (other than the Securities) or publicly announce an intention to effect any such transaction, except for: (A) Common Stock issued pursuant to any employee benefit plan, stock ownership or stock option plan or dividend reinvestment plan in effect at the Applicable Time or options granted pursuant to any such plan in effect at the Applicable Time, provided that such options cannot be exercised for any remaining portion of such 90-day period, (B) Common Stock issued in connection with the exercise of any warrants or convertible securities outstanding at the Applicable Time, (C) Common Stock issued to prospective employees in connection with such employees being hired by the Company or any of its subsidiaries, (D) Common Stock to be issued in any acquisition as direct consideration to the sellers pursuant to any written acquisition agreement entered into prior to the Applicable Time, (E) Common Stock to be issued after the end of such 90-day period as direct consideration to the sellers in any acquisition and (F) the Securities, up to \$345,000,000 of 3.5% convertible senior notes due 2012 of the Company and shares of Common Stock issuable upon conversion of such convertible senior notes.

(j) The Company will not take, directly or indirectly, any action designed to or that would constitute or that might reasonably be expected to cause or result, under the

Exchange Act or otherwise, in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(k) The Company will apply the net proceeds from the sale of the Securities sold by it substantially in accordance with its statements under the caption "Use of Proceeds" in the Disclosure Package and the Final Prospectus.

6. Conditions to the Obligations of the Underwriters. The obligations of the Underwriters to purchase the Underwritten Securities and the Option Securities, as the case may be, shall be subject to the accuracy of the representations and warranties on the part of the Company contained herein as of the Applicable Time, the Closing Date and any settlement date pursuant to Section 3 hereof, to the accuracy of the statements of the Company made in any certificates pursuant to the provisions hereof, to the performance by the Company of its obligations hereunder and to the following additional conditions:

(a) The Final Prospectus, and any supplement thereto, have been filed in the manner and within the time period required by Rule 424(b); the final term sheet contemplated by Section 5(b) hereto, and any other material required to be filed by the Company pursuant to Rule 433(d) under the Act, shall have been filed with the Commission within the applicable time periods prescribed for such filings by Rule 433; and no stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been instituted or threatened.

(b) The Company shall have requested and caused Willkie Farr & Gallagher LLP, counsel for the Company, to have furnished to the Representatives their opinion, dated the Closing Date and addressed to the Representatives on behalf of the Underwriters, to the effect of Exhibit A.

(c) The Company shall have caused Bingham McCutchen LLP, regulatory counsel for the Company, to have furnished to the Representatives their opinion, dated the Closing Date and addressed to the Representatives on behalf of the Underwriters, to the effect of Exhibit B.

(d) The Company shall have caused internal counsel for the Company to have furnished to the Representatives its opinion as to Canadian regulatory matters, dated the Closing Date, and addressed to the Representatives on behalf of the Underwriters, to the effect of Exhibit C.

(e) The Company shall have furnished to the Representatives the opinion of Thomas C. Stortz, Executive Vice President, Chief Legal Officer and Secretary of the Company, or any Assistant General Counsel of the Company, dated the Closing Date and addressed to the Representatives on behalf of the Underwriters, to the effect of Exhibit D.

(f) The Representatives shall have received from Cravath, Swaine & Moore LLP, counsel for the Underwriters, such opinion or opinions, dated the Closing Date and addressed to the Representatives on behalf of the Underwriters, with respect to the issuance and sale of the Securities, the Registration Statement, the Disclosure Package, the Final Prospectus (together with any supplement thereto) and other related matters as

the Representatives may reasonably require, and the Company shall have furnished to such counsel such documents as they reasonably request for the purpose of enabling them to pass upon such matters.

(g) The Company shall have furnished to the Representatives a certificate of the Company, signed by the President and Chief Executive Officer and the Group Vice President and Chief Financial Officer of the Company, dated the Closing Date, to the effect that the signers of such certificate have carefully examined the Registration Statement, the Disclosure Package, the Final Prospectus, any supplements or amendments thereto and this Agreement and that:

(i) the representations and warranties of the Company in this Agreement that are qualified as to materiality are true and correct and all other representations and warranties of the Company in this Agreement are true and correct in all material respects on and as of the Closing Date with the same effect as if made on the Closing Date, and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date;

(ii) no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or, to the Company's knowledge, threatened; and

(iii) since the date of the most recent financial statements included or incorporated by reference in the Disclosure Package and the Final Prospectus (exclusive of any supplements thereto), there has not been, singularly or in the aggregate, any material adverse effect, in the properties, business, results of operations, financial condition, affairs or business prospects of the Company and its subsidiaries taken as a whole, whether or not arising from transactions in the ordinary course of business, except as set forth in or contemplated in the Disclosure Package and the Final Prospectus (exclusive of any supplement thereto).

(h) At the time of execution of this Agreement and at the Closing Date, the Company shall have requested and caused KPMG LLP to furnish to the Representatives letters, dated respectively as of the time of execution of this Agreement and as of the Closing Date, in form and substance satisfactory to the Representatives, confirming that they are independent registered accountants within the meaning of the Securities Act and the Exchange Act and the respective applicable rules and regulations adopted by the Commission thereunder and that they have performed a review of the unaudited interim financial information of the Company for the three-month period ended March 31, 2006, and as at March 31, 2006, in accordance with Statement on Auditing Standards No. 100, and stating in effect that:

(i) in their opinion the audited financial statements and financial statement schedules and pro forma financial statements included or incorporated by reference in the Registration Statement, the Preliminary Prospectus and the

Final Prospectus and reported on by them comply as to form in all material respects with the applicable accounting requirements of the Securities Act and the Exchange Act and the related rules and regulations adopted by the Commission;

(ii) on the basis of a reading of the latest unaudited financial statements made available by the Company and its subsidiaries; their limited review, in accordance with the standards established under Statement on Auditing Standards No. 100, of the unaudited interim financial information for the three-month period ended March 31, 2006, and as at March 31, 2006; carrying out certain specified procedures (but not an examination in accordance with generally accepted auditing standards) which would not necessarily reveal matters of significance with respect to the comments set forth in such letter; a reading of the minutes of the meetings of the stockholders, directors and audit and compensation committees of the Company and the Subsidiaries; and inquiries of certain officials of the Company who have responsibility for financial and accounting matters of the Company and its subsidiaries as to transactions and events subsequent to December 31, 2005, nothing came to their attention which caused them to believe that:

- (A) any unaudited financial statements included or incorporated by reference in the Registration Statement, the Preliminary Prospectus and the Final Prospectus do not comply as to form in all material respects with applicable accounting requirements of the Securities Act and with the related rules and regulations adopted by the Commission with respect to financial statements included or incorporated by reference in quarterly reports on Form 10-Q under the Exchange Act; and said unaudited financial statements are not in conformity with generally accepted accounting principles applied on a basis substantially consistent with that of the audited financial statements included or incorporated by reference in the Registration Statement, the Preliminary Prospectus and the Final Prospectus; or
- (B) with respect to the period subsequent to March 31, 2006, there were any changes, at a specified date not more than five days prior to the date of the letter, in the long-term debt of the Company and its subsidiaries or capital stock of the Company or decreases in the stockholders' equity of the Company as compared with the amounts shown on the March 31, 2006 consolidated balance sheet included or incorporated by reference in the Registration Statement, the Preliminary Prospectus and the Final Prospectus, or for the period from April 1, 2006 to such specified date there were any increases, as compared with the corresponding period in the preceding quarter, in net loss or loss from continuing operations before income taxes or in total or per share

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amounts of net income/loss of the Company and its subsidiaries, except in all instances for changes or increases set forth in such letter, in which case the letter shall be accompanied by an explanation by the Company as to the significance thereof unless said explanation is not deemed necessary by the Representatives; or

- (C) the information included or incorporated by reference in the Registration Statement, the Preliminary Prospectus and the Final Prospectus in response to Regulation S-K, Item 301 (Selected Financial Data), Item 302 (Supplementary Financial Information) and Item 402 (Executive Compensation) is not in conformity with the applicable disclosure requirements of Regulation S-K; and

(iii) they have performed certain other specified procedures as a result of which they determined that certain information of an accounting, financial or statistical nature (which is limited to accounting, financial or statistical information derived from the general accounting records of the Company and its subsidiaries) set forth in the Registration Statement, the Preliminary Prospectus and the Final Prospectus and in Exhibit 12 to the Registration Statement, including the information set forth under the captions “Summary” (other than with respect to financial information of TelCove, Inc. (“TelCove”)), “Risk Factors”, “Use of Proceeds”, “Capitalization”, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” (other than with respect to financial information of TelCove) and “Business” in the Final Prospectus, the information included or incorporated by reference in Items 1, 2, 6, 7, 11, 12 and 13 of the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2005 incorporated by reference in the Registration Statement, the Preliminary Prospectus and the Final Prospectus, and the information included in the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included or incorporated by reference in the Company’s Quarterly Report on Form 10-Q for the quarter ended March 31, 2006 incorporated by reference in the Registration Statement, the Preliminary Prospectus and the Final Prospectus agrees with the accounting records of the Company and its subsidiaries, excluding any questions of legal interpretation; and

(iv) they have read the unaudited pro forma financial statements included or incorporated by reference in the Registration Statement, the Preliminary Prospectus and the Final Prospectus (the “pro forma financial statements”); carried out certain specified procedures; inquiries of certain officials of the Company who have responsibility for financial and accounting matters; and proved the arithmetic accuracy of the application of the pro forma adjustments to the historical amounts in the pro forma financial statements, and the officials of the Company referred to above have stated, in response to such auditor’s inquiries, that all significant assumptions regarding the business combinations have been reflected in the pro forma adjustments and that the unaudited

condensed consolidated financial statements referred to herein comply as to form in all material respects with the applicable accounting requirements of Rule 11-02 of Regulation S-X.

All references in this Section 6(h) to the Registration Statement, the Preliminary Prospectus and the Final Prospectus shall be deemed to include any amendment or supplement thereto at the date of the applicable letter.

(i) At the time of execution of this Agreement, the Company shall have requested and caused PricewaterhouseCoopers LLP to furnish to the Representatives a letter, dated as of the time of execution of this Agreement, in form and substance reasonably satisfactory to the Representatives, confirming that they are independent certified accountants with respect to WilTel under Rule 101 of the Code of Professional Conduct of the American Institute of Certified Public Accountants and its rulings and interpretations, that they have performed a review of the unaudited interim financial information of WilTel for the nine-month period ended September 30, 2005, and as at September 30, 2005, in accordance with SAS No. 100, *Interim Financial Information*, and stating in effect that on the basis of a reading of the latest unaudited financial statements made available by WilTel and its subsidiaries; their limited review, in accordance with the standards established under SAS No. 100, *Interim Financial Information*, of the unaudited interim financial information for the nine-month period ended September 30, 2004, and as at September 30, 2005; and carrying out certain specified procedures (but not an examination in accordance with generally accepted auditing standards) which would not necessarily reveal matters of significance with respect to the comments set forth in such letter, except as noted therein, nothing came to their attention which caused them to believe that any unaudited financial statements included or incorporated by reference in the Preliminary Prospectus and the Final Prospectus are not in conformity with generally accepted accounting principles applied on a basis substantially consistent with that of the audited financial statements included or incorporated by reference in the Preliminary Prospectus and the Final Prospectus. All references in this Section 6 (i) to the Preliminary Prospectus and the Final Prospectus shall be deemed to include any amendment or supplement thereto at the date of the letter.

(j) Subsequent to the time of execution of this Agreement or, if earlier, the dates as of which information is given in the Registration Statement (exclusive of any amendment thereof), the Disclosure Package and the Final Prospectus (exclusive of any supplement thereto), there shall not have been (i) any increase, change or decrease specified in the letter or letters referred to in paragraph (h) of this Section 6 or (ii) any change, or any development involving a prospective change, in or affecting the properties, business, results of operations, financial condition, affairs or business prospects of the Company and its subsidiaries, taken as a whole, whether or not arising from transactions in the ordinary course of business, except as set forth in or contemplated in the Disclosure Package and the Final Prospectus (exclusive of any supplement thereto) the effect of which, in any case referred to in clause (i) or (ii) above, is, in the sole judgment of the Representatives, so material and adverse as to make it impractical or inadvisable to proceed with the offering or delivery of the Securities as contemplated by the Registration Statement (exclusive of any amendment thereof), the



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Disclosure Package and the Final Prospectus (in each case exclusive of any supplement thereto).

(k) Subsequent to the time of execution of this Agreement, there shall not have been (i) any decrease in the rating of any of the Company's debt securities by any "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the Securities Act) or (ii) any notice given of any intended or potential decrease in any such rating or that such organization has under surveillance or review (other than any such notice with positive implications of a possible upgrading) its rating of the Company's or any Subsidiary's debt securities.

(l) The Securities shall have been listed and admitted and authorized for trading, subject to official notice of issuance, on the Nasdaq National Market, and reasonably satisfactory evidence of such actions shall have been provided to the Representatives.

(m) Prior to the Closing Date, the Company shall have furnished to the Representatives such further information, certificates and documents as the Representatives may reasonably request.

If any of the conditions specified in this Section 6 shall not have been fulfilled in all material respects when and as provided in this Agreement, or if any of the opinions and certificates mentioned above or elsewhere in this Agreement shall not be in all material respects reasonably satisfactory in form and substance to the Representatives and counsel for the Underwriters, this Agreement and all obligations of the Underwriters hereunder may be canceled at, or at any time prior to, the Closing Date by the Representatives. Notice of such cancellation shall be given to the Company in writing or by telephone or facsimile confirmed in writing.

The documents required to be delivered by this Section 6 shall be delivered at the office of Cravath, Swaine & Moore LLP, counsel for the Underwriters, at 825 Eighth Avenue, New York, New York 10019, on the Closing Date.

7. Reimbursement of Underwriters' Expenses. If the sale of the Securities provided for herein is not consummated because any condition to the obligations of the Underwriters set forth in Section 6 hereof is not satisfied, because of any termination pursuant to Section 10 hereof or because of any refusal, inability or failure on the part of the Company to perform any agreement herein or comply with any provision hereof, in each case, other than by reason of a default by any of the Underwriters, the Company will reimburse the Underwriters severally through Merrill Lynch on demand for all reasonable out-of-pocket expenses (including reasonable fees and disbursements of counsel) that shall have been incurred by them in connection with the proposed purchase and sale of the Securities. Except as provided in the preceding sentence or elsewhere in this Agreement, the Underwriters shall be responsible for all costs and expenses incurred by them in connection with their purchase of the Securities hereunder and the resale of any of the Securities, including, without limitation, their own out-of-pocket lodging, meal and other "roadshow" expenses and fees and disbursements of counsel for the Underwriters and such other "roadshow" expenses as shall be agreed upon by the Company and the Representatives.

8. Indemnification and Contribution. (a) The Company agrees to indemnify and hold harmless each Underwriter, the directors, officers, employees and agents of each Underwriter and each person who controls any Underwriter within the meaning of either the Securities Act or the Exchange Act against any and all losses, claims, damages or liabilities, joint or several, to which they or any of them may become subject under the Securities Act, the Exchange Act or other Federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement for the registration of the Securities as originally filed or in any amendment thereof, or in the Basic Prospectus, any preliminary prospectus (including the Preliminary Prospectus), the Final Prospectus, any Issuer Free Writing Prospectus or the information contained in the final term sheet prepared and filed pursuant to Section 5(b) hereof, or in any amendment thereof or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and agrees to reimburse each such indemnified party, as incurred, for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; *provided, however*, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to the Company by or on behalf of any Underwriter through the Representatives specifically for inclusion therein. This indemnity agreement will be in addition to any liability which the Company may otherwise have.

(b) Each Underwriter severally and not jointly agrees to indemnify and hold harmless the Company, each of its directors, each of its officers who signs the Registration Statement, and each person who controls the Company within the meaning of either the Securities Act or the Exchange Act, to the same extent as the foregoing indemnity from the Company to each Underwriter, but only with reference to written information relating to such Underwriter furnished to the Company by or on behalf of such Underwriter through the Representatives specifically for inclusion in the documents referred to in the foregoing indemnity. This indemnity agreement will be in addition to any liability which any Underwriter may otherwise have. The Company acknowledges that (i) the list of Underwriters and their respective participation in the sale of the Securities, (ii) the sentences related to concessions, discounts and reallowances, (iii) the paragraphs related to stabilization, syndicate covering transactions and penalty bids, (iv) the representations relating to offerings in the European Union, including the United Kingdom, and (v) the paragraph related to electronic distributions of the prospectus supplement under the heading “Underwriting” in the Preliminary Prospectus and the Final Prospectus, constitute the only information furnished in writing by or on behalf of the several Underwriters for inclusion in any Preliminary Prospectus or the Final Prospectus.

(c) Promptly after receipt by an indemnified party under this Section 8 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 8, notify the indemnifying party in writing of the commencement thereof; but the failure so to notify the indemnifying party (i) will not relieve it from liability under paragraph (a) or (b) above unless and to the extent it did not otherwise learn of such action and such failure results in the forfeiture by the indemnifying party

of substantial rights and defenses and (ii) will not, in any event, relieve the indemnifying party from any obligations to any indemnified party other than the indemnification obligation provided in paragraph (a) or (b) above. The indemnifying party shall be entitled to appoint counsel of the indemnifying party's choice at the indemnifying party's expense to represent the indemnified party in any action for which indemnification is sought (in which case the indemnifying party shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the indemnified party or parties except as set forth below); *provided, however*, that such counsel shall be reasonably satisfactory to the indemnified party. Notwithstanding the indemnifying party's election to appoint counsel to represent the indemnified party in an action, the indemnified party shall have the right to employ separate counsel (including local counsel), and the indemnifying party shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest, (ii) the actual or potential defendants in, or targets of, any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, (iii) the indemnifying party shall not have employed counsel reasonably satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action or (iv) the indemnifying party shall authorize the indemnified party to employ separate counsel at the expense of the indemnifying party. An indemnifying party will not, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding. It is understood, however, that the Company shall, in connection with any one such action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the reasonable fees and expenses of only one separate firm of attorneys (in addition to any local counsel) at any time for all such Underwriters and controlling persons, which firm shall be designated in writing by Merrill Lynch. An indemnifying party shall not be liable under this Section 8 to any indemnified party regarding any settlement or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent is consented to by such indemnifying party, which consent shall not be unreasonably withheld.

(d) In the event that the indemnity provided in paragraph (a) or (b) of this Section 8 is unavailable to or insufficient to hold harmless an indemnified party for any reason, the Company and the Underwriters severally agree to contribute to the aggregate losses, claims, damages and liabilities (including legal or other expenses reasonably incurred in connection with investigating or defending same) (collectively "Losses") to which the Company and one or more of the Underwriters may be subject in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and by the Underwriters on the other from the offering of the Securities; *provided, however*, that in no case shall any Underwriter (except as

may be provided in any agreement among underwriters relating to the offering of the Securities) be responsible for any amount in excess of the underwriting discount or commission applicable to the Securities purchased by such Underwriter hereunder. If the allocation provided by the immediately preceding sentence is unavailable for any reason, the Company and the Underwriters severally shall contribute in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company on the one hand and of the Underwriters on the other in connection with the statements or omissions which resulted in such Losses as well as any other relevant equitable considerations. Benefits received by the Company shall be deemed to be equal to the total net proceeds from the offering of the Securities (before deducting expenses) received by it, and benefits received by the Underwriters shall be deemed to be equal to the total underwriting discounts and commissions, in each case as set forth on the cover page of the Final Prospectus. Relative fault shall be determined by reference to, among other things, whether any untrue or any alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information provided by the Company on the one hand or the Underwriters on the other, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The Company and the Underwriters agree that it would not be just and equitable if contribution were determined by pro rata allocation or any other method of allocation which does not take account of the equitable considerations referred to above. Notwithstanding the provisions of this paragraph (d), no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 8, each person who controls an Underwriter within the meaning of either the Securities Act or the Exchange Act and each director, officer, employee and agent of an Underwriter shall have the same rights to contribution as such Underwriter, and each person who controls the Company within the meaning of either the Securities Act or the Exchange Act, each officer of the Company who shall have signed the Registration Statement and each director of the Company shall have the same rights to contribution as the Company, subject in each case to the applicable terms and conditions of this paragraph (d).

9. Default by an Underwriter. If any one or more Underwriters shall fail to purchase and pay for any of the Securities agreed to be purchased by such Underwriter or Underwriters hereunder and such failure to purchase shall constitute a default in the performance of its or their obligations under this Agreement, the Representatives shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting Underwriters, or any other underwriters, to purchase all, but not less than all, of the Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase, in such amounts as may be agreed upon and upon the terms herein set forth; if, however, the Representatives shall not have completed such arrangements within such 24 hour period, then the remaining Underwriters shall be obligated severally to take up and pay for (in the respective proportions which the amount of Securities set forth opposite their names in Schedule I hereto bears to the aggregate amount of Securities set forth opposite the names of all the remaining Underwriters) the Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase; *provided, however*, that in the event that the aggregate amount of Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase shall exceed 10% of the aggregate amount of Securities set forth in Schedule I hereto, the remaining Underwriters shall have the right to purchase all, but shall not be under any obligation to purchase any, of the Securities, and if such

nondefaulting Underwriters do not purchase all the Securities, this Agreement will terminate without liability to any nondefaulting Underwriter or the Company, except as provided in Section 11 hereof. In the event of a default by any Underwriter as set forth in this Section 9, the Closing Date shall be postponed for such period, not exceeding seven Business Days, as the Representatives shall determine in order that the required changes in the Registration Statement and the Final Prospectus or in any other documents or arrangements may be effected. Nothing contained in this Agreement shall relieve any defaulting Underwriter of its liability, if any, to the Company and any nondefaulting Underwriter for damages occasioned by its default hereunder.

10. Termination. This Agreement shall be subject to termination in the absolute discretion of the Representatives, by notice given to the Company prior to delivery of and payment for the Securities, if at any time prior to such time (i) trading in any of the Company's securities shall have been suspended by the Commission or the Nasdaq National Market or trading in securities generally on the New York Stock Exchange or the Nasdaq National Market shall have been suspended or limited or minimum prices shall have been established on such Exchange or the Nasdaq National Market, (ii) a banking moratorium shall have been declared either by Federal or New York State authorities or (iii) there shall have occurred any outbreak or escalation of hostilities, declaration by the United States of a national emergency or war, or other calamity or crisis the effect of which on financial markets is such as to make it, in the sole judgment of the Representatives, impractical or inadvisable to proceed with the offering or delivery of the Securities as contemplated by the Final Prospectus (exclusive of any supplement thereto).

11. Representations and Indemnities to Survive. The respective agreements, representations, warranties, indemnities and other statements of the Company or its officers and of the Underwriters set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of any Underwriter or the Company or any of the officers, directors, employees, agents or controlling persons referred to in Section 8 hereof, and will survive delivery of and payment for the Securities. The provisions of Sections 7, 8 and 14 hereof shall survive the termination or cancellation of this Agreement.

12. Notices. All communications hereunder will be in writing and effective only on receipt, and, if sent to the Underwriters, will be mailed, delivered or sent by fax and confirmed to them, care of Merrill Lynch, Pierce, Fenner & Smith Incorporated, at Merrill Lynch World Headquarters, North Tower, World Financial Center, New York, New York 10281-1201; or, if sent to the Company, will be mailed, delivered or sent by fax and confirmed to it at 1025 Eldorado Boulevard, Broomfield, Colorado 80021, attention: General Counsel.

13. Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers, directors, employees, agents and controlling persons referred to in Section 8 hereof, and no other person will have any right or obligation hereunder.

14. No Advisory or Fiduciary Relationship. The Company acknowledges and agrees that (a) the purchase and sale of the Securities pursuant to this Agreement, including the determination of the public offering price of the Securities and any related discounts and commissions, is an arm's-length commercial transaction between the Company, on the one hand,

and the several Underwriters, on the other hand, (b) in connection with the offering contemplated hereby and the process leading to such transaction each Underwriter is and has been acting solely as a principal and is not the agent or fiduciary of the Company, or its stockholders, creditors, employees or any other party, (c) no Underwriter has assumed or will assume an advisory or fiduciary responsibility in favor of the Company with respect to the offering contemplated hereby or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Company on other matters) and no Underwriter has any obligation to the Company with respect to the offering contemplated hereby except the obligations expressly set forth in this Agreement, (d) the Underwriters and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company, and (e) the Underwriters have not provided any legal, accounting, regulatory or tax advice with respect to the offering contemplated hereby and the Company has consulted its own legal, accounting, regulatory and tax advisors to the extent it deemed appropriate.

15. Integration. This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Company and the Underwriters, or any of them, with respect to the subject matter hereof.

16. Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed within the State of New York (without regard to the conflict of law provisions thereof).

17. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

18. Headings. The section headings used herein are for convenience only and shall not affect the construction hereof.

19. Definitions. The terms which follow, when used in this Agreement, shall have the meanings indicated.

“Applicable Time” shall mean 6:05 PM (New York City time) on the date of this Agreement or such other time as agreed by the Company and the Representatives.

“Basic Prospectus” shall mean the prospectus referred to in Section 1(a) above contained in the Registration Statement at the Effective Date.

“Business Day” shall mean any day other than a Saturday, a Sunday or a legal holiday or a day on which banking institutions or trust companies are authorized or obligated by law to close in New York City.

“Commission” shall mean the Securities and Exchange Commission.

“Disclosure Package” shall mean (i) the Preliminary Prospectus, as amended and supplemented to the Applicable Time, (ii) the Issuer Free Writing Prospectuses, if any, identified in Schedule III hereto and (iii) any other Free Writing Prospectus that the

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parties hereto shall hereafter expressly agree in writing to treat as part of the Disclosure Package.

“Effective Date” shall mean each date and time that the Registration Statement, any post-effective amendment or amendments thereto and any Rule 462(b) Registration Statement became or become effective.

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

“Final Prospectus” shall mean the prospectus supplement relating to the Securities that was first filed pursuant to Rule 424(b) after the time of execution of this Agreement, together with the Basic Prospectus.

“Free Writing Prospectus” shall mean a free writing prospectus, as defined in Rule 405.

“Issuer Free Writing Prospectus” shall mean an issuer free writing prospectus, as defined in Rule 433.

“Preliminary Prospectus” shall mean the most recent preliminary prospectus supplement to the Basic Prospectus which is used prior to the filing of the Final Prospectus, together with the Basic Prospectus.

“Registration Statement” shall mean the Registration Statement referred to in Section 1(a) above, including exhibits and financial statements and any prospectus supplement relating to the Securities that is filed with the Commission pursuant to Rule 424(b) and deemed part of such registration statement pursuant to Rule 430B, as amended on each Effective Date and, in the event any post-effective amendment thereto or any Rule 462(b) Registration Statement becomes effective prior to the Closing Date, shall also mean such Registration Statement as so amended or such Rule 462(b) Registration Statement, as the case may be.

“Rule 158”, “Rule 164”, “Rule 172”, “Rule 405”, “Rule 415”, “Rule 424”, “Rule 430B”, “Rule 433” and “Rule 462” refer to such rules under the Securities Act.

“Securities Act” shall mean the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

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If the foregoing is in accordance with your understanding of our agreement, please sign and return to us the enclosed duplicate hereof, whereupon this letter and your acceptance shall represent a binding agreement among the Company and the several Underwriters.

Very truly yours,

LEVEL 3 COMMUNICATIONS, INC.

By: /s/ Thomas C. Stortz

Name: Thomas C. Stortz

Title: Executive Vice President



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CONFIRMED AND ACCEPTED, as of the date first above written:

MERRILL LYNCH & CO.

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By: MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By: /s/ Vikram Kaul

Name: Vikram Kaul

Title: Vice President

For themselves and as Representatives of the other Underwriters named in Schedule I hereto.

# SCHEDULE I

<b>Underwriters</b>	<b>Number of Underwritten Securities to be Purchased</b>
Merrill Lynch, Pierce, Fenner & Smith Incorporated	59,375,000
Credit Suisse Securities (USA) LLC	20,781,250
Morgan Stanley & Co. Incorporated	20,781,250
Bear, Stearns & Co. Inc.	5,937,500
J.P. Morgan Securities Inc.	5,937,500
UBS Securities LLC	5,937,500
CIBC World Markets Corp.	1,250,000
Citigroup Global Markets Inc.	1,250,000
Merriman Curhan Ford & Co.	1,250,000
Thomas Weisel Partners LLC	1,250,000
Wachovia Capital Markets, LLC	1,250,000
Total	125,000,000

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## SCHEDULE II

### Subsidiaries

Level 3 Financing, Inc.

Level 3 Holdings, Inc.

KCP, Inc.

Level 3 International, Inc.

Level 3 Communications, LLC

Software Spectrum, Inc.

BTE Equipment, LLC

Level 3 Holdings, B.V.

Level 3 Communications Limited (UK)

Level 3 Communications GmbH (Germany)

WilTel Communications Group, LLC

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### SCHEDULE III

Pricing term sheet dated June 7, 2006 (attached).

FREE WRITING PROSPECTUS DATED JUNE 7, 2006

This Free Writing Prospectus relates only to the securities described below and should be read together with the respective Preliminary Prospectus Supplement dated May 31, 2006 and the Prospectus dated January 31, 2001 relating to these securities.



**Level 3 Communications, Inc.**  
**(LVL/NASDAQ)**

**Common Stock Offering**

**Offering Size :** 125,000,000 Shares (100% Primary)

**Overallotment Option (15%):** 18,750,000 Shares (100% Primary)

**Public Offering Price per Share:** \$4.55

**Last Sale Price (6/7/06):** \$4.55

**Proceeds per Share, before expenses, to Level 3 :** \$4.3452

**Trade Date:** 6/7/2006

**Settlement Date:** 6/13/2006

**CUSIP:** 52729N 10 0

**Offering of SEC-Registered Convertible Senior Notes Due 2012**

**Issuer:** Level 3 Communications, Inc.

**Offering Size :** \$300,000,000

**Overallotment Option (15%):** \$45,000,000

**Issue Price :** 100% of principal amount

**Maturity :** June 15, 2012

**Interest Rate :** 3.5%

**Interest Payment Dates:** June 15 and December 15, beginning December 15, 2006

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**Conversion Premium :** 20%

**Conversion Price:** \$5.46

**Last Sale Price (6/7/06):** \$4.55

**Conversion Rate:** 183.1502

**Optional Redemption by Issuer :** Beginning June 15, 2010, at specified redemption prices set forth below, plus accrued and unpaid interest, if any, to the redemption date. The following prices are for notes redeemed during the 12-month period commencing on June 15 of the years set forth below, and are expressed as percentages of principal amount:

<u>Year</u>	<u>Redemption Price</u>
2010	101.17%
2011	100.58%

**Make Whole Premium upon Change of Control :** If certain changes in control occur as specified in the Preliminary Prospectus Supplement relating to the notes and the notes are converted in connection with such transaction, the conversion rate will be increased by the number of additional shares set forth in the table below for each \$1,000 principal amount of notes in the case of stock prices on the effective date of such change in control transaction between \$4.55 and \$50.00 (subject to adjustment upon certain events). The amount of the increase in the applicable conversion rate, if any, will be based on the date on which the change in control becomes effective and the price paid per share of common stock in the transaction constituting the change in control.

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Make Whole Premium Upon a Change of Control

Stock Price on Effective Date	Effective Date				
	6/13/06	6/15/07	6/15/08	6/15/09	6/15/10
\$4.55	36.6300	36.6300	36.6300	36.6300	36.6300
5.00	30.9107	27.6440	23.9440	19.5353	16.8498
6.00	22.7335	19.2489	15.1353	9.8467	0.0000
7.00	17.9817	14.6954	10.8424	6.0174	0.0000
8.00	14.9523	11.9736	8.5466	4.4408	0.0000
10.00	11.3823	8.9649	6.2974	3.2480	0.0000
15.00	7.4364	5.8279	4.0800	2.1505	0.0000
20.00	5.5807	4.3677	3.0595	1.6154	0.0000
25.00	4.4788	3.4979	2.4508	1.2943	0.0000
50.00	2.2854	1.7670	1.2325	0.6548	0.0000

If the stock price on the effective date of such change in control transaction is less than \$4.55 per share or greater than \$50.00 per share, no adjustment to the conversion rate will be made. Notwithstanding the foregoing, in no event will the conversion rate exceed 219.7802 per \$1,000 principal amount of notes.

**Proceeds per \$1,000 Principal Amount, before expenses, to Level 3: \$975**

**Trade Date:** 6/7/2006

**Settlement Date:** 6/13/2006

**CUSIP:** 52729N BK 5

**Sole-Bookrunner (both Common & Convert): Merrill Lynch & Co.**

**Joint Leads (both Common & Convert):** Credit Suisse & Morgan Stanley

**Co-Managers (Common only):** Bear Stearns & Co. Inc., JPMorgan & UBS Investment Bank

**Co-Managers (Convert only) :** Citigroup & JPMorgan

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The issuer has filed a registration statement (including a prospectus and prospectus supplements with respect to each offering) with the SEC for the offerings to which this communication relates. Before you invest, you should read the prospectus in that registration statement, the prospectus supplements and other documents the issuer has filed with the SEC for more complete information about the issuer and this offering. You may get these documents for free by visiting EDGAR on the SEC Web site at [www.sec.gov](http://www.sec.gov). Alternatively, the issuer, any underwriter or any dealer participating in the offering will arrange to send you the prospectus if you request it by calling toll-free 1-866-500-5408.

This announcement and any offer if made subsequently is directed only at persons in member states of the European Economic Area who are “qualified investors” within the meaning of Article 2(1)(e) of the Prospectus Directive (Directive 2003/71/EC) (“Qualified Investors”). Any person in the EEA who acquires the securities in any offer (an “investor”) or to whom any offer of the securities is made will be deemed to have represented and agreed that it is a Qualified Investor. Any investor will also be deemed to have represented and agreed that any securities acquired by it in the offer have not been acquired on behalf of persons in the EEA other than Qualified Investors or persons in the UK and other member states (where equivalent legislation exists) for whom the investor has authority to make decisions on a wholly discretionary basis, nor have the securities been acquired with a view to their offer or resale in the EEA to persons where this would result in a requirement for publication by the company, Merrill Lynch International (“MLI”) or any other manager of a prospectus pursuant to Article 3 of the Prospectus Directive. The company, MLI and their affiliates, and others will rely upon the truth and accuracy of the foregoing representations and agreements.

ANY DISCLAIMERS OR OTHER NOTICES THAT MAY APPEAR BELOW ARE NOT APPLICABLE TO THIS COMMUNICATION AND SHOULD BE DISREGARDED. SUCH DISCLAIMERS OR OTHER NOTICES WERE AUTOMATICALLY GENERATED AS A RESULT OF THIS COMMUNICATION BEING SENT VIA BLOOMBERG OR ANOTHER EMAIL SYSTEM.



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## SCHEDULE IV

Walter Scott, Jr.

James Q. Crowe

James O. Ellis Jr.

Richard R. Jaros

Robert E. Julian

Arun Netravali

John T. Reed

Michael B. Yanney

Albert C. Yates

Kevin J. O'Hara

Charles C. Miller

Thomas C. Stortz

Sunit Patel

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EXHIBIT A

Opinion of  
Willkie Farr & Gallagher LLP  
Counsel for the Company

1. Each of the Company and Level 3 Communications, LLC has been duly incorporated or formed and is validly existing as a corporation or limited liability company in good standing under the laws of the jurisdiction of its incorporation or formation, and has the requisite power and authority to carry on its business and own its properties as currently being conducted as described in the Disclosure Package and the Final Prospectus.

2. To such counsel's knowledge, all the outstanding equity interests of Level 3 Communications, LLC have been duly and validly authorized and are duly issued and are fully paid and nonassessable, and except as otherwise set forth in the Disclosure Package and the Final Prospectus, all outstanding equity interests of Level 3 Communications, LLC are owned by the Company either directly or through wholly owned subsidiaries, to the knowledge of such counsel, free and clear of any agreement providing for a security interest in such equity interests to secure any obligation and any stockholders' agreements, voting trusts, claims or other encumbrances (other than the pledge of the equity interests of Level 3 Communications, LLC pursuant to the agreements the Company and certain of its subsidiaries have entered into in connection with the senior secured term loan described in the Disclosure Package and the Final Prospectus).

3. (i) To the knowledge of such counsel, there is no pending or threatened action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its Subsidiaries listed on Annex I to this opinion letter or its or their property of a character required to be disclosed in the Registration Statement which is not adequately disclosed or incorporated by reference in the Disclosure Package and the Final Prospectus, and (ii) to the knowledge of such counsel, there is no contract or other document of a character required to be described in the Registration Statement, the Preliminary Prospectus or the Final Prospectus, or to be filed as an exhibit thereto, which is not described or filed as required; and (iii) the statements included in the Preliminary Prospectus and the Final Prospectus under the heading "Description of Capital Stock," insofar as such sections summarize the terms of the Securities, and under the heading "Material U.S. Federal Tax Considerations," insofar as such section summarizes matters of law, fairly summarize in all material respects the matters therein described.

4. The Registration Statement has become effective under the Securities Act; any required filing of the Basic Prospectus, any Preliminary Prospectus and the Final Prospectus and any supplements thereto, pursuant to Rule 424(b) has been made in the manner and within the time period required by Rule 424(b); to the knowledge of such counsel, no stop order suspending the effectiveness of the Registration Statement has been issued, no proceedings for that purpose have been instituted or threatened and the Registration Statement, the Preliminary Prospectus and the Final Prospectus (other than the financial statements and related schedules and other financial information contained therein or omitted therefrom, as to which such counsel need express no opinion) appear on their face to comply as to form in all material respects with the

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applicable requirements of the Securities Act and the Exchange Act and the respective rules thereunder.

5. The Company is not and, after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Final Prospectus, will not be an “investment company” as defined in the Investment Company Act of 1940, as amended.

6. To the knowledge of such counsel, no material consent, approval, authorization, license, certificate, permit or order of any court or governmental agency or body is required for the execution, delivery and performance of this Agreement and the Securities or for the consummation of the transactions contemplated hereby or thereby, except such as may be required by the Federal Communications Commission or similar state regulatory authorities or under the blue sky laws of any jurisdiction in connection with the purchase and distribution of the Securities by the Underwriters (as to which such counsel need not opine) and such other approvals (to be specified in such opinion) as have been obtained.

7. Neither the execution and delivery of this Agreement, the issue and sale of the Securities, nor the consummation of any other of the transactions herein contemplated nor the fulfillment of the terms thereof, will conflict with, result in a breach of, or constitute a default under the (x) certificate of incorporation, by-laws or other organizational documents of the Company or of any Subsidiary, (y) the terms of any agreement or instrument listed on Annex II hereto, or (z) any judgment, order or regulation known to such counsel to be applicable to the Company or any of its Subsidiaries of any court, regulatory body, administrative agency, governmental agency, authority or body or arbitrator having jurisdiction over the Company or any of its Subsidiaries, except orders or regulations of the Federal Communications Commission or similar state regulatory authorities or regulations of any state securities commission (as to which such counsel need not opine), except, in the case of clauses (y) and (z) for breaches or defaults that would not, individually or in the aggregate, have a Material Adverse Effect.

8. To the knowledge of such counsel, no holders of securities of the Company have rights to the registration of such securities in connection with or as a result of the offering and sale of the Securities under this Agreement.

9. The Company’s actual authorized equity capitalization is as set forth in the Disclosure Package and the Final Prospectus; the capital stock of the Company conforms in all material respects to the description thereof contained in the Disclosure Package and the Final Prospectus; the Securities have been duly and validly authorized, and, when issued and delivered to and paid for by the Underwriters pursuant to this Agreement, will be fully paid and nonassessable; and the holders of outstanding shares of capital stock of the Company are not entitled to preemptive or other rights to subscribe for the Securities under the certificate of incorporation and by-laws of the Company and the General Corporation Law of the State of Delaware.

10. The Company has full corporate right, power and authority to execute and deliver this Agreement and to perform its obligations hereunder, including the issuance of the Securities; and all corporate action required to be taken by the Company for the due and proper

authorization, execution and delivery of this Agreement and for the consummation of the transactions contemplated hereby has been duly and validly taken.

11. This Agreement has been duly authorized, validly executed and delivered by the Company.

In addition, such counsel shall state that they have participated in conferences with representatives of the Company, the Underwriters and their counsel, at which conferences the contents of the Disclosure Package and the Final Prospectus were discussed, and, although, except as otherwise described in paragraph 3(iii) above, such counsel has not independently checked or verified and does not pass upon and assumes no responsibility for the factual accuracy, completeness or fairness of the statements contained in the Registration Statement, the Disclosure Package or the Final Prospectus, no facts have come to such counsel's attention to cause them to believe that (i) at the Applicable Time the Registration Statement contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) at the Applicable Time the Disclosure Package contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (in each case, other than the financial statements and related schedules and other financial information contained therein or omitted therefrom and other than the sections entitled "Risk Factors—Level 3 is subject to significant regulation that could change in an adverse manner," "—Canadian law currently does not permit Level 3 to offer services in Canada" and "—Potential regulation of Internet service providers in the United States could adversely affect Level 3's operations," "Business—Regulation" included in the Disclosure Package and the Final Prospectus and comparable sections in the Company's Exchange Act reports incorporated in the Preliminary Prospectus by reference, as to which such counsel need not express a view) or (iii) the Final Prospectus as of its date or as of the Closing Date included or includes any untrue statement of a material fact or omitted or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (in each case, other than the financial statements and related schedules and other financial information contained therein or omitted therefrom and other than the sections entitled "Risk Factors—Level 3 is subject to significant regulation that could change in an adverse manner," "—Canadian law currently does not permit Level 3 to offer services in Canada" and "—Potential regulation of Internet service providers in the United States could adversely affect Level 3's operations," "Business—Regulation" included in the Final Prospectus and comparable sections in the Company's Exchange Act reports incorporated in the Preliminary Prospectus and the Final Prospectus by reference, as to which such counsel need not express a view).

Such opinion may be limited to the laws of the State of New York, the Federal laws of the United States of America and the General Corporation Law and the Limited Liability Company Act of the State of Delaware.

All references in this Exhibit A to the Final Prospectus shall be deemed to include any amendment or supplement thereto at the Closing Date. The opinion of such counsel shall be rendered to the Underwriters at the request of the Company and shall so state.

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## ANNEX I TO EXHIBIT A

### Subsidiaries

Level 3 Financing, Inc.  
Level 3 Holdings, Inc.  
KCP, Inc.  
Level 3 International, Inc.  
Level 3 Communications, LLC  
Software Spectrum, Inc.  
BTE Equipment, LLC  
WilTel Communications Group, LLC

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ANNEX II TO EXHIBIT A

1. Fiber Optic Cable License Agreement, dated December 23, 1998, between Norfolk Southern Railway Company, Central of Georgia Railroad Company, and Georgia Southern and Florida Railway Company and Level 3 Communications, LLC, as modified by the Letter Agreement, dated July 26, 1999, by Level 3 Communications, LLC, and as further modified by the Letter Agreement, dated September 8, 1999, by Level 3 Communications, LLC.
2. Agreement, dated November 19, 1998, between Worldwide Fibre Inc. and Level 3 Communications, LLC for construction and right of way.
3. Agreement, dated November 19, 1998, between Mi-Link LLC and Level 3 Communications, LLC for construction and right of way.
4. Assignment, dated December 19, 1998, by Level 3 Communications, LLC in favor of Level 3 Communications Canada Co. of certain rights under the Agreement, dated November 19, 1998 between Mi-Link LLC and Level 3 Communications, LLC.
5. Fiber Optic Survey Agreement between Level 3 Communications, LLC and Union Pacific Rail Road Company, dated March 31, 1998.
6. Fiber Optic Agreement between Level 3 Communications, LLC and Union Pacific Rail Road Company, dated 1998.
7. Agreement between Kiewit Coal Properties, Inc. and Kiewit Mining Group, Inc., dated January 8, 1992.
8. Separation Agreement by and among Peter Kiewit Sons', Inc., Kiewit Diversified Group, Inc., PKS Holdings, Inc., and Kiewit Construction Group, Inc., dated December 8, 1997.
9. Amendment to Separation Agreement by and among Peter Kiewit Sons', Inc., Level 3 Communications, Inc., PKS Holdings, Inc. and Kiewit Construction Group, Inc., dated March 18, 1998.
10. Tax Sharing Agreement by and between Peter Kiewit Sons', Inc. and PKS Holdings, Inc., dated March 26, 1998.
11. Promissory Note from Peter Kiewit Sons' Co. to Metropolitan Life Insurance Company, dated June 27, 1997.
12. Deed of Trust, Security Agreement and Fixture Filing by Peter Kiewit Sons' Co., to Metropolitan Life Insurance Company, dated June 27, 1997.
13. Master Right-of-Way Agreement among Level 3 Communications, LLC and The Burlington Northern and Santa Fe Railway Company, dated June 23, 1998.

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14. Cross Channel Cables Agreement among France Manche S.A., The Channel Tunnel Group Limited, Level 3 Communications Limited and Level 3 Communications S.A., dated June 22, 1999.
  15. Fiber Optic Cable System Contract between Level 3 Communications Limited, Level 3 Communications S.A. and Alcatel Submarine Networks S.A., dated May 14, 1999.
  16. Indenture, dated as of April 28, 1998, between Level 3 Communications, Inc. and IBJ Schroder Bank & Trust Company, as trustee.
  17. Indenture, dated as of December 2, 1998, between Level 3 Communications, Inc. and IBJ Schroder Bank & Trust Company, as trustee.
  18. Indenture, dated as of September 20, 1999, between Level 3 Communications, Inc. and IBJ Whitehall Bank & Trust Company, as trustee.
  19. First Supplemental Indenture, dated as of September 20, 1999, between Level 3 Communications, Inc. and IBJ Whitehall Bank & Trust Company, as trustee.
  20. Second Supplemental Indenture, dated as of February 29, 2000, between Level 3 Communications, Inc. and the Bank of New York (as successor to IBJ Whitehall Bank & Trust Company), as trustee.
  21. Third Supplemental Indenture, dated as of July 8, 2002, as amended, between Level 3 Communications, Inc. and the Bank of New York (as successor to IBJ Whitehall Bank & Trust Company), as trustee.
  22. First Supplemental Indenture dated as of July 8, 2003, between Level 3 Communications, Inc. and The Bank of New York, as trustee.
  23. Indenture dated as of October 1, 2003, among Level 3 Communications, Inc., Level 3 Financing, Inc. and The Bank of New York, as Trustee.
  24. Indenture dated as of October 24, 2003, among Level 3 Communications, Inc. and The Bank of New York, as trustee.
  25. Asset Purchase Agreement by and among Level 3 Communications, Inc., Level 3 Communications, LLC, Genuity Inc., and the subsidiaries of Genuity Inc. listed on the signature page thereto, dated as of November 27, 2002 (the "Genuity Agreement").
  26. Amendment, Consent and Waiver to the Genuity Agreement, dated as of December 30, 2002, effective as of November 27, 2002, by and among Parent, the Purchasers and the Sellers.
  27. Second Amendment and Waiver to the Genuity Agreement, dated as of January 24, 2003, by and among Parent, the Purchasers and the Sellers.

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28. Third Amendment and Waiver to the Genuity Agreement, dated as of January 31, 2003, by and among Parent, the Purchasers and the Sellers.
  29. Transition Services Agreement, dated February 4, 2003, by and among the Purchasers and the Sellers.
  30. Network Services Agreement by and between American Online, Inc. and Genuity Solutions, Inc. (f/k/a BBN Corporation), as amended by the First Amendment dated as of January 8, 2002, and the Second Amendment, dated as of November 20, 2002.
  31. Master Service Agreement, dated October 24, 2002, between Level 3 Communications, LLC and Verizon Global Solutions, Inc.
  32. Trans-oceanic Capacity IRU Agreement, dated December 12, 2001, between Level 3 Communications, LLC and America Online, Inc.
  33. Metro IRU Agreement, dated February 5, 2003, between Level 3 Communications, LLC and America Online Inc.
  34. Indenture dated as of December 2, 2004 among Level 3 Communications, Inc. and The Bank of New York, as Trustee.
  35. Purchase Agreement dated as of October 30, 2005 among Leucadia National Corporation, Baldwin Enterprises, Inc., Level 3 Communications, LLC and Level 3 Communications, Inc.
  36. Indentures dated as of February 29, 2000 among Level 3 Communications, Inc. and The Bank of New York, as Trustee (relating to Level 3 Communications, Inc.'s 11% Senior Notes due 2008, 11 1/4% Senior Notes due 2010, 12 7/8% Senior Notes due 2010, 10 3/4% Senior Euro Notes due 2008 and 11 1/4% Senior Euro Notes due 2010).
  37. Amended and Restated Indenture dated as of July 8, 2003 among Level 3 Communications, Inc. and The Bank of New York, as Trustee.
  38. First Supplemental Indenture dated as of February 7, 2005 among Level 3 Communications, Inc. and The Bank of New York, as Trustee.
  39. Supplemental Indentures dated as of October 20, 2004 among Level 3 Financing, Inc. and The Bank of New York, as Trustee (relating to Level 3 Financing, Inc.'s 10.75% Senior Notes due 2014 and 10.75% Senior Notes due 2011).
  40. Supplemental Indenture dated as of December 1, 2004 among Level 3 Communications, Inc., Level 3 Financing, Inc., Level 3 Communications, LLC and The Bank of New York, as Trustee.
  41. Credit Agreement dated as of December 1, 2004 among Level 3 Communications, Inc., Level 3 Financing, Inc. and the lenders party thereto and Merrill Lynch Capital Corporation.



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42. Second Supplemental Indenture dated as of April 4, 2005 between Level 3 Communications, Inc. and The Bank of New York, as Trustee.
  43. Master Services Agreement among WilTel Communications, LLC, WilTel Local Network LLC, SBC Services, Inc. and SBC Communications Inc. dated June 15, 2005.
  44. Amendment No. 1 to Master Services Agreement among WilTel Communications, LLC, WilTel Local Network, LLC, SBC Services, Inc. and SBC Communications, Inc. dated July 29, 2005.
  45. Amendment No. 2 to Master Services Agreement among WilTel Communications, LLC, WilTel Local Network, LLC, SBC Services, Inc. and SBC Communications, Inc. dated August 11, 2005.
  46. Amendment No. 3 to Master Services Agreement among WilTel Communications, LLC, WilTel Local Network, LLC, SBC Services, Inc. and SBC Communications, Inc. dated October 5, 2005.
  47. Indenture dated as of March 14, 2006, among Level 3 Communications, Inc., Level 3 Financing, Inc. and The Bank of New York, as Trustee, relating to Level 3 Financing, Inc.'s Floating Rate Senior Notes due 2011.
  48. Indenture dated as of March 14, 2006, among Level 3 Communications, Inc., Level 3 Financing, Inc. and The Bank of New York, as Trustee, relating to Level 3 Financing, Inc.'s 12.25% Senior Notes due 2013.
  49. Agreement and Plan of Merger among Level 3 Communications, Inc., Eldorado Acquisition Three, LLC and TelCove, Inc. dated April 30, 2006.
  50. Agreement and Plan of Merger among Level 3 Communications, Inc., Eldorado Acquisition One, Inc., Looking Glass Networks Holding Co., Inc. and Cheshire Holding Corp. as Agent of the Securityholders of Looking Glass Networks Holding Co., Inc. dated June 2, 2006.

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EXHIBIT B

Opinion of  
Bingham McCutchen LLP  
Regulatory Counsel for the Company

1. The licenses, permits and authorizations set forth in Attachment A of the Officer's Certificate delivered in connection with such opinion constitute all of the material licenses, permits and authorizations required by the Federal Communications Commission ("FCC") and the State Regulatory Agencies (as defined below) for the provision of telecommunications services by the Company and the Subsidiaries as such counsel understands those services currently to be provided based solely on the Officer's Certificate, where the failure to obtain or hold such license, permit or authorization would materially adversely affect the ability of the Company or the Subsidiaries to provide such services, and, to the knowledge of counsel, none of the Company or any Subsidiary has received any notice of proceedings relating to the revocation or modification of any such license, permit or authorization which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a material adverse affect on the Company or such Subsidiary, in connection with the provision of such services as counsel understands those services to be provided based solely on the Officer's Certificate.

2. To the knowledge of such counsel, after reasonable inquiry with the FCC and relevant State Regulatory Agencies, neither the Company nor any of the Subsidiaries is subject to any pending or threatened proceeding, complaint or investigation before the FCC or any State Regulatory Agency based on any alleged violation by the Company or its Subsidiaries in connection with the provision of or failure to provide telecommunications services, of a character that would be required to be disclosed or incorporated by reference in the Registration Statement, the Preliminary Prospectus Supplement and the Final Prospectus Supplement, which is not adequately disclosed in the Registration Statement, the Preliminary Prospectus Supplement and the Final Prospectus Supplement.

3. The statements included in the Preliminary Prospectus Supplement and the Final Prospectus Supplement under the headings "Risk Factors—We are subject to significant regulation that could change in an adverse manner" and "—Potential regulation of Internet service providers in the United States could adversely affect our operations", "Business—Regulation—Federal Regulation", "—State Regulation", "—Local Regulation" and "—Regulation of Voice over Internet Protocol (VoIP) —Federal and State" (collectively, the "Applicable Sections"), fairly summarize in all material respects the matters of law therein described.

4. No consent, approval, authorization, license, certificate, permit or order of the FCC or any State Regulatory Agency is required for the consummation of the transactions contemplated by the Purchase Agreement.

5. Neither the execution and delivery of the Purchase Agreement, nor the issue and sale of the Securities contemplated thereby will conflict with or result in a violation by the Company or the Subsidiaries of the Communications Act or, to such counsel's knowledge, a

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material violation of any order, license, certificate, permit, authorization, regulation, rule, or published decision of the FCC or any State Regulatory Agency applicable to the Company or any of the Subsidiaries, the conflict with or the violation of which would have a material adverse effect on the business of the Company or its Subsidiaries, taken as a whole, or result in the suspension, revocation, impairment, forfeiture, nonrenewal or termination of any FCC license or other authorization of the FCC.

Such counsel has not itself determined the accuracy or completeness of, or otherwise verified, the factual information furnished with respect to the Applicable Sections in the Registration Statement, the Disclosure Package and the Final Prospectus Supplement, including any amendments or supplements thereto as of the date hereof. Such counsel has generally reviewed and discussed with representatives of and counsel for the Underwriters and with certain officers and employees of, and counsel for, the Company the information furnished in the Applicable Sections. Although such counsel has not independently checked or verified and is neither passing upon nor assuming any responsibility for the factual accuracy, completeness or fairness of the statements contained in the Applicable Sections, nothing has become known to the attorneys who have been engaged in the review and discussion of the information furnished in the Preliminary Prospectus Supplement and the Final Prospectus Supplement in the course of such review and discussion which would cause counsel to believe that the statements contained in or incorporated by reference in the Registration Statement, the Preliminary Prospectus Supplement and the Final Prospectus Supplement, including any amendments or supplements thereto as of the date hereof, in the Applicable Sections, at the Effective Date, the Applicable Time, on the date of the Final Prospectus Supplement or on the Closing Date contained or contain an untrue statement of material fact or omitted or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. Such counsel expresses no opinion as to the statements contained under any other heading of the Registration Statement, the Preliminary Prospectus Supplement or the Final Prospectus Supplement, including any amendments or supplements thereto as of the date hereof. Counsel expresses no belief with respect to the financial statements (and notes and schedules thereto) and other statistical, financial or accounting data therein included.

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EXHIBIT C

Opinion of  
Internal Counsel for the Company Covering Canadian Regulatory Issues

1. The statements in the Preliminary Prospectus and the Final Prospectus under the captions “Risk Factors—Canadian law currently does not permit us to offer services in Canada” and “Canadian Regulation” insofar as such statements describe or summarize matters of law or constitute legal conclusions, fairly describe or summarize all matters referred to therein.

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EXHIBIT D

Opinion of  
Thomas C. Stortz, Executive Vice President,  
Chief Legal Officer and Secretary of the Company

1. Each of the Subsidiaries, other than Level 3 Communications, LLC, as to which such counsel need not opine, has been duly incorporated or formed and is validly existing and in good standing in the jurisdiction of its incorporation or formation, and has the requisite corporate power and authority to carry on its business and own its properties as currently being conducted and as described in the Disclosure Package and the Final Prospectus.

2. All the outstanding shares of capital stock or other equity interests of each Subsidiary, other than Level 3 Communications, LLC, as to which such counsel need not opine, have been duly and validly authorized and are duly issued and are fully paid and nonassessable, and have not been issued and are not owned or held in violation of any statutory preemptive right of stockholders; to the knowledge of such counsel after due inquiry, such shares or other equity interests are not held in violation of any other preemptive right of stockholders, and except as otherwise set forth in the Disclosure Package and the Final Prospectus, all outstanding shares of capital stock or other equity interests of the Subsidiaries are owned by the Company either directly or through wholly owned Subsidiaries, to the knowledge of such counsel, after due inquiry, free and clear of any agreement providing for a security interest in such shares or equity interests to secure any obligation and any stockholders' agreements, voting trusts, claims or other encumbrances (other than the pledge of such shares or equity interests pursuant to the agreements the Company and certain of its subsidiaries have entered into in connection with the senior secured credit facility described in the Disclosure Package and the Final Prospectus).

3. Neither the execution and delivery of this Agreement, the issue and sale of the Securities, nor the consummation of any other of the transactions herein contemplated nor the fulfillment of the terms thereof, including the issuance of the Common Stock, will conflict with, result in a breach of, or constitute a default under the terms of any indenture or other agreement or instrument actually known to such counsel, after due inquiry (which does not include (i) a review of all the agreements or instruments in the Company's files or of agreements or instruments such counsel has not been involved with or (ii) a canvassing of the Company's employees), and to which the Company or any Subsidiary is a party or bound or its property is subject.

4. The information included or incorporated by reference in the Preliminary Prospectus and the Final Prospectus under the headings "Risk Factors—Environmental liabilities from our historical operations could be material" and "Legal Proceedings", insofar as such headings summarize matters of law, fairly summarize the matters therein described.

Such opinion may be limited to the laws of the State of Nebraska, the Federal laws of the United States of America and the General Corporation Law and the Limited Liability Company Act of the State of Delaware.

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All references in this Exhibit D to the Final Prospectus shall be deemed to include any amendment or supplement thereto at the Closing Date. The opinion of such counsel shall be rendered to the Underwriters at the request of the Company and shall so state.

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EXHIBIT E

Dated:

Merrill Lynch, Pierce, Fenner & Smith  
Incorporated as Representative of the several Underwriters  
c/o Merrill Lynch, Pierce, Fenner & Smith Incorporated  
4 World Financial Center  
New York, New York 10080

Ladies and Gentlemen:

This letter is being delivered to you in connection with a proposed Purchase Agreement (the "Purchase Agreement") between Level 3 Communications, Inc., a Delaware corporation (the "Company") and the Representatives of the several Underwriters named in Schedule I thereto, whereby the Underwriters have agreed to purchase 125,000,000 shares (the "Securities") of common stock, par value \$0.01 per share ("Common Stock"), of the Company pursuant to the Purchase Agreement.

In order to induce you to purchase the Securities pursuant to the Purchase Agreement, the undersigned will not, without the prior written consent of Merrill Lynch, Pierce, Fenner & Smith Incorporated, offer, sell, contract to sell, pledge or otherwise dispose of, or file (or participate in the filing of) a registration statement with the U.S. Securities and Exchange Commission in respect of, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Securities Exchange Act of 1934, as amended, and the rules and regulations of the U.S. Securities and Exchange Commission promulgated thereunder with respect to, any shares of capital stock of the Company or any securities convertible or exercisable or exchangeable for such capital stock, or publicly announce an intention to effect any such transaction, for a period of 90 days after the date of the Purchase Agreement, other than (i) shares of Common Stock disposed of as bona fide gifts, (ii) transfers incident to estate planning matters, including transfers of shares of Common Stock to one or more trusts for the benefit of the undersigned or members of the undersigned's family and (iii) testamentary transfers and other transfers of shares of Common Stock made pursuant to the laws of descent and distribution, provided, however, that in the case of any transfer, distribution or disposition pursuant to clause (i), (ii) or (iii) each donee, distributee or disposition recipient shall agree to be bound by the foregoing restrictions.

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If for any reason the Purchase Agreement shall be terminated prior to the Closing Date (as defined in the Purchase Agreement), the agreement set forth above shall likewise be terminated.

Very truly yours,

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Name:

Address:



LEVEL 3 COMMUNICATIONS, INC.

\$300,000,000

3.5% Convertible Senior Notes due 2012

**PURCHASE AGREEMENT**

New York, New York  
June 7, 2006

**MERRILL LYNCH & CO.**

Merrill Lynch, Pierce, Fenner & Smith  
Incorporated  
as Representatives of the several Underwriters  
c/o Merrill Lynch & Co.  
Merrill Lynch, Pierce, Fenner & Smith  
Incorporated  
4 World Financial Center  
New York, New York 10080

Ladies and Gentlemen:

Level 3 Communications, Inc., a corporation organized under the laws of Delaware (the "Company"), proposes to sell to the several underwriters named in Schedule I hereto (the "Underwriters"), for whom you (the "Representatives") are acting as representatives, \$300,000,000 aggregate principal amount of its 3.5% Convertible Senior Notes due 2012 (the "Underwritten Securities"). The Company also proposes to grant to the Underwriters an option to purchase up to \$45,000,000 additional principal amount of such Convertible Senior Notes to cover over-allotments, if any (the "Option Securities"; and together with the Underwritten Securities, the "Securities"). The Securities are convertible into shares of Common Stock, par value \$0.01 per share (the "Common Stock"), of the Company at the conversion price set forth in the Final Prospectus. The Securities are to be issued under an amended and restated indenture dated as of July 8, 2003 (the "Base Indenture"), between the Company and The Bank of New York, as trustee (the "Trustee"), as supplemented by a supplemental indenture (the "Supplemental Indenture" and, together with the Base Indenture, the "Indenture"), to be dated as of June 13, 2006. To the extent there are no additional Underwriters listed on Schedule I other than you, the term Representatives as used herein shall mean you, as Underwriters, and the terms Representatives and Underwriters shall mean either the singular or plural as the context requires. Any reference herein to the Registration Statement, the Basic Prospectus, any Preliminary Prospectus or the Final Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 which were filed under the Exchange Act on or before the Effective Date of the Registration Statement or the issue date of the Basic Prospectus, any Preliminary Prospectus or the Final Prospectus, as the case may be; and any reference herein to the terms "amend", "amendment" or "supplement" with respect to the Registration Statement, the Basic Prospectus, any Preliminary Prospectus or the Final Prospectus shall be deemed to refer to and include the filing of any document under the Exchange Act after the Effective Date of the Registration Statement, or the issue date of the

Basic Prospectus, any Preliminary Prospectus or the Final Prospectus, as the case may be, deemed to be incorporated therein by reference. Certain terms used herein are defined in Section 19 hereof.

1. Representations and Warranties. The Company represents and warrants to, and agrees with, each Underwriter as set forth below in this Section 1.

(a) The Company meets the requirements for use of Form S-3 under the Securities Act and has prepared and filed with the Commission a registration statement (file number 333-53914) on Form S-3, including a related basic prospectus, for registration under the Securities Act of the offering and sale of the Securities. Such Registration Statement, including any amendments thereto filed prior to the Applicable Time, has become effective. The Company may have filed with the Commission, as part of an amendment to the Registration Statement or pursuant to Rule 424(b), the Preliminary Prospectus, which has previously been furnished to you. The Company will file with the Commission a final prospectus supplement relating to the Securities in accordance with Rule 424(b). As filed, such final prospectus supplement shall contain all information required by the Securities Act and the rules thereunder, and, except to the extent the Representatives shall agree in writing to a modification, shall be in all substantive respects in the form furnished to you prior to the Applicable Time or, to the extent not completed at the Applicable Time, shall contain only such specific additional information and other changes (beyond that contained in the Basic Prospectus and the Preliminary Prospectus) as the Company has advised you, prior to the Applicable Time, will be included or made therein. At the Applicable Time, the Company was eligible to use the Registration Statement for an offering pursuant to Rule 415(a)(1)(x).

(b) On the Effective Date, the Registration Statement did, and when the Final Prospectus is first filed in accordance with Rule 424 (b) and on the Closing Date (as defined herein) and on any date on which Option Securities are purchased, if such date is not the Closing Date (a “settlement date”), the Final Prospectus (and any supplement thereto) will, comply in all material respects with the applicable requirements of the Securities Act and the Exchange Act and the respective rules thereunder; on the Effective Date and at the Applicable Time, the Registration Statement did not or will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading; and, on the date of any filing pursuant to Rule 424(b) and on the Closing Date and any settlement date, the Final Prospectus (together with any supplement thereto) will not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided, however*, that the Company makes no representations or warranties as to the information contained in or omitted from the Registration Statement or the Final Prospectus (or any supplement thereto) in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of any Underwriter through the Representatives specifically for inclusion in the Registration Statement or the Final Prospectus (or any supplement thereto), it being understood and agreed that the only such information furnished by or on behalf of any Underwriters consists of the information described as such in Section 8 hereof.

(c) At the Applicable Time, the Disclosure Package does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from the Disclosure Package based upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives specifically for use therein, it being understood and agreed that the only such information furnished by or on behalf of any Underwriter consists of the information described as such in Section 8 hereof.

(d) (i) At the earliest time after the filing of the Registration Statement that the Company or another offering participant made a *bona fide* offer (within the meaning of Rule 164(h)(2)) of the Securities and (ii) as of the Applicable Time (with such date being used as the determination date for purposes of this clause (ii)), the Company was not and is not an Ineligible Issuer (as defined in Rule 405), without taking account of any determination by the Commission pursuant to Rule 405 that it is not necessary that the Company be considered an Ineligible Issuer.

(e) Each Issuer Free Writing Prospectus does not include any information that conflicts with the information contained in the Registration Statement, including any document incorporated therein and any prospectus supplement deemed to be a part thereof that has not been superseded or modified. The foregoing sentence does not apply to statements in or omissions from the Disclosure Package based upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives specifically for use therein, it being understood and agreed that the only such information furnished by or on behalf of any Underwriter consists of the information described as such in Section 8 hereof.

(f) Subsequent to the respective dates as of which information is given in the Disclosure Package and the Final Prospectus, except as set forth or contemplated in the Disclosure Package and the Final Prospectus, neither the Company nor any of its subsidiaries has incurred any liabilities or obligations, direct or contingent, which are material to the Company and its subsidiaries taken as a whole, nor entered into any transaction not in the ordinary course of business that is material to the Company and its subsidiaries taken as a whole, and there has not been, singularly or in the aggregate, any material adverse effect in the properties, business, results of operations, financial condition, affairs or business prospects of the Company and its subsidiaries taken as a whole (a "Material Adverse Effect"). Without limiting the foregoing, neither the Company nor any of its subsidiaries has sustained since the respective dates as of which information is given in the Disclosure Package and the Final Prospectus any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental or regulatory action, order or decree, constituting a Material Adverse Effect, otherwise than as set forth or contemplated in the Disclosure Package and the Final Prospectus.

(g) Each of the Company and the Subsidiaries (x) has been duly organized and is validly existing as a corporation or other business organization under the laws of its

jurisdiction of organization and is in good standing under the laws of such jurisdiction, (y) has the requisite corporate power and authority to carry on its business as it is currently being conducted and as described in the Disclosure Package and the Final Prospectus, and to own, lease and operate its properties and (z) is duly qualified and is authorized to do business and is in good standing in each jurisdiction where the operation, ownership or leasing of property or the conduct of its business requires such qualification, except where any failure to be so qualified would not, singularly or when aggregated with failures to be qualified elsewhere, have a Material Adverse Effect. The Company has the requisite corporate power and authority to execute, deliver and perform this Agreement and the Supplemental Indenture and to issue, sell and deliver the Securities. As of the date of its execution, the Company had the requisite corporate power and authority to execute, deliver and perform the Base Indenture. The term "Subsidiary" means each entity listed on Schedule II hereto.

(h) The Company has an authorized equity capitalization of 2,260,000,000 shares, consisting of 2,250,000,000 shares of Common Stock, par value \$0.01 per share, and 10,000,000 shares of Preferred Stock, par value \$0.01 per share. All of the issued shares of capital stock of the Company have been duly and validly authorized and are fully paid and non-assessable and conform in all material respects to the descriptions thereof contained in the Disclosure Package and the Final Prospectus. The shares of Common Stock initially issuable upon conversion of the Securities have been duly and validly authorized and, when issued upon conversion of the Securities against payment of the conversion price and in accordance with the terms of the Indenture, will be validly issued, fully paid and nonassessable; the Board of Directors of the Company or a duly constituted committee thereof has duly and validly adopted resolutions reserving such shares of Common Stock for issuance upon conversion of the Securities; the holders of outstanding shares of capital stock of the Company are not entitled to preemptive or other rights to subscribe for the Securities or the shares of Common Stock issuable upon conversion thereof; and, except as set forth in the Disclosure Package and the Final Prospectus and except for outstanding warrants and options to purchase shares of Common Stock that in the aggregate represent less than 1% of the Common Stock outstanding on the date hereof, no options, warrants or other rights to purchase, agreements or other obligations to issue, or rights to convert any obligations into or exchange any securities for, shares of capital stock of or ownership interests in the Company are outstanding. All of the issued and outstanding shares of capital stock or equity interests of each of the Subsidiaries have been duly and validly authorized and issued, are fully paid and non-assessable and, except as set forth or contemplated in the Disclosure Package and the Final Prospectus, are owned, directly or through subsidiaries, by the Company, free and clear of any lien or other claim or encumbrance (other than the pledge of such shares or equity interests pursuant to the agreements the Company and certain of its subsidiaries have entered into in connection with the senior secured term loan described in the Disclosure Package and the Final Prospectus).

(i) The Securities have been duly authorized, and, when executed by the Company and authenticated by the Trustee in accordance with the terms of the Indenture and delivered to and duly paid for by the Underwriters in accordance with the terms of this Agreement, will constitute valid and legally binding obligations of the Company

entitled to the benefits provided by the Indenture and will be convertible into Common Stock in accordance with their terms. The Indenture has been duly authorized and duly qualified under the Trust Indenture Act and, when executed and delivered by the Company and the Trustee, will constitute a valid and legally binding obligation of the Company, enforceable in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general applicability relating to or affecting creditors' rights and to general equity principles. The Securities and the Indenture will conform to the description thereof in the Disclosure Package and the Final Prospectus.

(j) There is no franchise, contract or other document of a character required to be described in the Disclosure Package or the Final Prospectus, or to be filed as an exhibit thereto, which is not described or filed as required; and the statements (i) incorporated by reference in the Disclosure Package and the Final Prospectus from the Company's Annual Report on Form 10-K for the year ended December 31, 2005, under the heading "Legal Proceedings", as supplemented by the Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2006, and (ii) in the Preliminary Prospectus and the Final Prospectus under the heading "Business—Regulation", in each case fairly summarize the matters therein described.

(k) This Agreement has been duly authorized, executed and delivered by the Company.

(l) The Company is not and, after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Disclosure Package and the Final Prospectus, will not be an "investment company" as defined in the Investment Company Act of 1940, as amended.

(m) The execution and delivery of this Agreement and the Indenture, the issuance and sale of the Securities hereunder, the issuance of Common Stock upon conversion of the Securities, the performance by the Company of this Agreement and the Indenture and the consummation of the other transactions herein and therein contemplated will not (x) conflict with or result in a breach or violation of any of the respective charters, by-laws or other organizational documents of the Company or any of the Subsidiaries, (y) violate or conflict with any statute, rule or regulation applicable to the Company or any Subsidiary or any order or decree of any governmental or regulatory agency or body or any court having jurisdiction over the Company or any Subsidiary or any of their respective properties or (z) after giving effect to the waivers and consents obtained on or prior to the date hereof, if any, conflict with or result in a breach or violation of any term or provision of, constitute a default or cause an acceleration of any obligation under, or result in the imposition or creation of (or the obligation to create or impose) a lien or other claim or encumbrance with respect to, any bond, note, debenture or other evidence of indebtedness or any indenture, mortgage or deed of trust or any other agreement or instrument to which the Company or any of the Subsidiaries, is a party or by which it or any of them is bound, or to which any properties of the Company or any of the Subsidiaries is or may be subject, except, in the case of clauses (y) and (z) for violations, conflicts, breaches, defaults, accelerations of obligations or liens that would not,

individually or in the aggregate, have a Material Adverse Effect. No material authorization, approval or consent or order of, or filing, registration or qualification with, any court or governmental or regulatory body or agency is required in connection with the transactions contemplated by this Agreement or the Indenture except as have been made or obtained and except as may be required by and made with or obtained from state securities laws or regulations, or, with respect to filing the Final Prospectus with the Commission in accordance with Rule 424(b) under the Securities Act.

(n) Except as described in the Disclosure Package and the Final Prospectus, there is no action, suit or proceeding before or by any court, arbitrator or governmental or regulatory official, agency or body, domestic or foreign, pending against or affecting the Company or any of its subsidiaries, or any of their respective properties, that, if determined adversely, is reasonably expected to affect adversely the issuance of the Securities or in any manner draw into question the validity of this Agreement, the Indenture or the Securities or to result, singularly or when aggregated with other pending actions and actions known to be threatened that are not described in the Disclosure Package and the Final Prospectus, in a Material Adverse Effect, or that is reasonably expected to materially and adversely affect the consummation of this Agreement or the Indenture or the transactions contemplated hereby or thereby, and to the best of the Company's knowledge, no such proceedings are contemplated or threatened.

(o) None of the Company or any of the Subsidiaries is or after giving effect to the issuance of the Securities will be (i) in violation of its respective charter, bylaws or other organizational documents or (ii) in default in the performance of any bond, debenture, note or any other evidence of indebtedness or any indenture, mortgage, deed of trust or other contract, lease or other instrument to which the Company or any of the Subsidiaries is a party or by which any of them is bound, or to which any of the property or assets of the Company or any of the Subsidiaries is subject, other than such defaults that could not, singularly or in the aggregate, have a Material Adverse Effect.

(p) KPMG LLP, who have certified certain of the consolidated financial statements and supporting schedules of the Company included or incorporated by reference in the Disclosure Package and the Final Prospectus, are independent public accountants with respect to the Company and its subsidiaries, as required by the Securities Act. The consolidated historical statements and any pro forma information, together with related schedules and notes, if any, included or incorporated by reference in the Disclosure Package and the Final Prospectus comply as to form in all material respects with the requirements of the Securities Act. Such historical financial statements fairly present in all material respects the consolidated financial position of the Company and its subsidiaries at the respective dates indicated and the results of their operations and their cash flows for the respective periods indicated, in accordance with generally accepted accounting principles, except as otherwise expressly stated therein, as consistently applied throughout such periods. Such pro forma information has been prepared on a basis consistent with such historical financial statements, except for the pro forma adjustments specified therein, and gives effect to assumptions made on a reasonable basis and fairly presents in all material respects and gives effect to the transactions described therein pertaining to such pro forma information. The other

financial and statistical information and data included in the Disclosure Package and the Final Prospectus, historical and pro forma, are, in all material respects, accurately presented and prepared on a basis consistent with such financial statements and the books and records of the Company.

(q) The consolidated historical financial statements of WilTel Communications Group LLC (“WilTel”), together with related schedules and notes, if any, included or incorporated by reference in the Disclosure Package and the Final Prospectus, comply as to form in all material respects with the requirements of the Securities Act. Such historical financial statements fairly present in all material respects the consolidated financial position of WilTel at the respective dates indicated and the results of their operations and their cash flows for the respective periods indicated, in accordance with generally accepted accounting principles, except as otherwise expressly stated therein, as consistently applied throughout such periods.

(r) Each of the Company and the Subsidiaries has all certificates, consents, exemptions, orders, permits, licenses, authorizations, or other approvals (each, an “Authorization”) of and from, and has made all declarations and filings with, all Federal, state, local and other governmental or regulatory bodies or agencies, and all courts and other tribunals, necessary or required to own, lease, license and use its properties and assets and to conduct its business as currently operated in the manner described in the Disclosure Package and the Final Prospectus, except to the extent that the failure to obtain or file any such Authorizations would not, singularly or in the aggregate, reasonably be expected to have a Material Adverse Effect. All such Authorizations are in full force and effect with respect to the Company and the Subsidiaries, and the Company and the Subsidiaries are in compliance in all material respects with the terms and conditions of all such Authorizations and with the rules and regulations of the regulatory authorities and governing bodies having jurisdiction with respect thereto.

(s) The Company and each of its subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management’s general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability; (iii) access to material assets is permitted only in accordance with management’s general or specific authorization; and (iv) the recorded accountability for material assets is compared on a periodic basis, which the Company believes are reasonable intervals, with the existing assets and appropriate action is taken with respect to any material differences. The Company and its executive officers have complied with Rule 13a-14 under the Exchange Act.

(t) Except as disclosed in the Disclosure Package and the Final Prospectus, no holder of any security of the Company has or will have any right to require the registration of such security by virtue of the offering and sale of the Securities under this Agreement other than (i) any such right that has been expressly waived in writing and (ii) any such right in respect of outstanding warrants to purchase shares of Common Stock of the Company that in the aggregate represent less than 1% of the shares of

Common Stock of the Company outstanding on the date hereof. No holder of any of the outstanding shares of capital stock of the Company or any other person is entitled to preemptive or other rights to subscribe for the Securities.

(u) The Company has not taken nor will it take, directly or indirectly, any action prohibited by Regulation M under the Exchange Act, in connection with the offering of the Securities.

(v) Other than the Subsidiaries, there is no entity or other person (i) of which a majority of the voting equity securities or other interests is owned, directly or indirectly, by the Company and (ii) which held more than 5% of the total assets of the Company on a consolidated basis as of March 31, 2006, excluding inter-company balances.

(w) Prior to the date hereof, the Company has furnished to the Representatives letters, substantially in the form of Exhibit E hereto, duly executed by the executive officers and directors of the Company set forth on Schedule IV hereto and addressed to the Representatives.

(x) The Registration Statement is not the subject of a pending proceeding or examination under Section 8(d) or 8(e) of the Securities Act, and the Company is not the subject of a pending proceeding under Section 8A of the Securities Act in connection with the offering of the Securities.

Any certificate signed by any officer of the Company and delivered to the Representatives or counsel for the Underwriters in connection with the offering of the Securities shall be deemed a representation and warranty by the Company, as to matters covered thereby, to each Underwriter.

2. Purchase and Sale. (a) Subject to the terms and conditions and in reliance upon the representations and warranties set forth herein, the Company agrees to sell to each Underwriter, and each Underwriter agrees, severally and not jointly, to purchase from the Company, at the purchase price of 97.5% of the principal amount thereof, plus accrued interest, if any, from June 13, 2006 to the Closing Date, the principal amount of Underwritten Securities set forth opposite such Underwriter's name on Schedule I hereto.

(b) Subject to the terms and conditions and in reliance upon the representations and warranties set forth herein, the Company hereby grants an option to the several Underwriters to purchase, severally and not jointly, the Option Securities at the same purchase price as the Underwriters shall pay for the Underwritten Securities, plus accrued interest, if any, from June 13, 2006 to the settlement date for the Option Securities. Said option may be exercised only to cover over-allotments in the sale of the Underwritten Securities by the Underwriters. Said option may be exercised in whole or in part at any time on or before the 30th day after the date of the Final Prospectus upon written notice by the Representatives to the Company setting forth the principal amount of Option Securities as to which the several Underwriters are exercising the option and the settlement date. Delivery of the Option Securities, and payment therefor, shall be made as provided in Section 3 hereof. The principal amount of Option Securities to be purchased by each Underwriter shall be the same percentage of the total



principal amount of Option Securities to be purchased by the several Underwriters as such Underwriter is purchasing of the Underwritten Securities, subject to such adjustments as you in your absolute discretion shall make to eliminate any fractional Securities.

3. Delivery and Payment. Delivery of and payment for the Underwritten Securities and the Option Securities (if the option provided for in Section 2(b) hereof shall have been exercised on or before the third Business Day prior to the Closing Date) shall be made at 10:00 AM, New York City time, on June 13, 2006, or at such time on such later date not more than three Business Days after the foregoing date as the Representatives shall designate, which date and time may be postponed by agreement among the Representatives and the Company or as provided in Section 9 hereof (such date and time of delivery and payment for the Securities being herein called the "Closing Date"). Delivery of the Securities shall be made to the Representatives for the respective accounts of the several Underwriters against payment by the several Underwriters through the Representatives of the purchase price thereof to or upon the order of the Company by wire transfer payable in same-day funds to an account specified by the Company. Delivery of the Underwritten Securities and the Option Securities shall be made through the facilities of The Depository Trust Company unless the Representatives shall otherwise instruct.

If the option provided for in Section 2(b) hereof is exercised after the third Business Day prior to the Closing Date, the Company will deliver the Option Securities (at the expense of the Company) to the Representatives, at 4 World Financial Center, New York, New York, on the date specified by the Representatives (which shall be within three Business Days after exercise of said option) for the respective accounts of the several Underwriters, against payment by the several Underwriters through the Representatives of the purchase price thereof to or upon the order of the Company by wire transfer payable in same-day funds to an account specified by the Company. If settlement for the Option Securities occurs after the Closing Date, the Company will deliver to the Representatives on the settlement date for the Option Securities, and the obligation of the Underwriters to purchase the Option Securities shall be conditioned upon receipt of, supplemental opinions, certificates and letters confirming as of such date the opinions, certificates and letters delivered on the Closing Date pursuant to Section 6 hereof.

4. Offering by Underwriters. It is understood that the several Underwriters propose to offer the Securities for sale to the public as set forth in the Final Prospectus.

5. Agreements. The Company agrees with the several Underwriters that:

(a) Prior to the termination of the offering of the Securities, the Company will not file any amendment of the Registration Statement or supplement (including the Final Prospectus or any preliminary prospectus) to the Basic Prospectus or any Rule 462(b) Registration Statement unless the Company has furnished you a copy for your review prior to filing and will not file any such proposed amendment or supplement to which you reasonably object. The Company will cause the Final Prospectus, properly completed, and any supplement thereto to be filed in a form reasonably approved by the Representatives with the Commission pursuant to the applicable paragraph of Rule 424(b) within the time period prescribed and will provide evidence satisfactory to

the Representatives of such timely filing. The Company will promptly advise the Representatives (1) when the Final Prospectus, and any supplement thereto, shall have been filed (if required) with the Commission pursuant to Rule 424(b) or when any Rule 462(b) Registration Statement shall have been filed with the Commission, (2) when, prior to termination of the offering of the Securities, any amendment to the Registration Statement shall have been filed or become effective, (3) of any request by the Commission or its staff for any amendment of the Registration Statement, or any Rule 462(b) Registration Statement, or for any supplement to the Final Prospectus or for any additional information, (4) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or the institution or threatening of any proceeding for that purpose and (5) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Securities for sale in any jurisdiction or the institution or threatening of any proceeding for such purpose. The Company will use its best efforts to prevent the issuance of any such stop order or the occurrence of any such suspension of the Registration Statement and, upon such issuance or occurrence, to obtain as soon as possible the withdrawal of such stop order or relief from such occurrence or prevention, including, if necessary, by filing an amendment to the Registration Statement or a new registration statement and using its best efforts to have such amendment or new registration statement declared effective as soon as practicable.

(b) To prepare a final term sheet, containing solely a description of the Securities and the concurrent Common Stock offering, in a form approved by you and to file such term sheet pursuant to Rule 433(d) within the time required by such Rule.

(c) If there occurs an event or development as a result of which the Disclosure Package would include an untrue statement of a material fact or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances then prevailing, not misleading, the Company will notify promptly the Representatives so that any use of the Disclosure Package may cease until it is amended or supplemented.

(d) If, at any time when a prospectus relating to the Securities is required to be delivered under the Securities Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172), any event occurs as a result of which the Final Prospectus as then supplemented would include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein in the light of the circumstances under which they were made not misleading, or if it shall be necessary to amend the Registration Statement, file a new registration statement or supplement the Final Prospectus to comply with the Securities Act or the Exchange Act or the respective rules thereunder, including in connection with use or delivery of the Final Prospectus, the Company promptly will (1) notify the Representatives of any such event, (2) prepare and file with the Commission, subject to the first sentence of paragraph (a) of this Section 5, an amendment or supplement or new registration statement which will correct such statement or omission or effect such compliance, (3) use its reasonable best efforts to have any amendment to the Registration Statement or new registration statement declared effective as soon as practicable in order to avoid any disruption in use of the Final

Prospectus and (4) supply any supplemented Final Prospectus to you in such quantities as you may reasonably request.

(e) As soon as practicable, the Company will make generally available to its security holders an earnings statement or statements of the Company and its subsidiaries which will satisfy the provisions of Section 11(a) of the Securities Act and Rule 158.

(f) The Company will furnish to each of the Representatives and counsel for the Underwriters, without charge, a conformed copy of the Registration Statement (including exhibits thereto) and to each other Underwriter a copy of the Registration Statement (without exhibits thereto) and, so long as delivery of a prospectus by an Underwriter or dealer may be required by the Securities Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172), as many copies of each Preliminary Prospectus, the Final Prospectus and each Issuer Free Writing Prospectus and any supplement thereto as the Representatives may reasonably request. The Company will pay the expenses of printing or other production of all such documents.

(g) The Company will cooperate with the Representatives in arranging, at the Company's cost, for the qualification of the Securities for sale under the laws of such jurisdictions as the Representatives may designate and will maintain such qualifications in effect so long as required for the sale of the Securities; *provided, however*, that in connection therewith the Company shall not be required to qualify as a foreign corporation or to execute a general consent to service of process in any jurisdiction or subject itself to taxation in excess of a nominal dollar amount in any such jurisdiction where it is not then subject. The Company promptly will advise the Representatives of the receipt by it of any notification with respect to the suspension of the qualification of the Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose.

(h) The Company agrees that, unless it obtains the prior written consent of the Representatives, and each Underwriter, severally and not jointly, agrees with the Company that, unless it has obtained or will obtain, as the case may be, the prior written consent of the Company, it has not made and will not make any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a "free writing prospectus" (as defined in Rule 405) required to be filed by the Company with the Commission or retained by the Company under Rule 433, other than the final term sheet prepared and filed pursuant to Section 5(b) hereto; provided that the prior written consent of the parties hereto shall be deemed to have been given in respect of the Free Writing Prospectuses included in Schedule III hereto and any electronic or graphic road show. Any such free writing prospectus consented to by the Representatives or the Company is hereinafter referred to as a "Permitted Free Writing Prospectus." The Company agrees that (x) it has treated and will treat, as the case may be, each Permitted Free Writing Prospectus as an Issuer Free Writing Prospectus and (y) it has complied and will comply, as the case may be, with the requirements of Rules 164 and 433 applicable to any Permitted Free Writing Prospectus, including in respect of timely filing with the Commission, legending and record keeping.

(i) The Company will not for a period of 90 days following the time of execution of this Agreement, without the prior written consent of Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”), offer, sell, contract to sell, pledge, or otherwise dispose of, (or enter into any transaction which is designed to result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise) by the Company or any majority controlled affiliate of the Company or any person in privity with the Company or any majority controlled affiliate of the Company) directly or indirectly, including the filing (or participation in the filing) of a registration statement with the Commission in respect of, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Exchange Act, any shares of capital stock or securities convertible into, or exchangeable for, shares of capital stock (other than the Securities) or publicly announce an intention to effect any such transaction, except for: (A) Common Stock issued pursuant to any employee benefit plan, stock ownership or stock option plan or dividend reinvestment plan in effect at the Applicable Time or options granted pursuant to any such plan in effect at the Applicable Time, provided that such options cannot be exercised for any remaining portion of such 90-day period, (B) Common Stock issued in connection with the exercise of any warrants or convertible securities outstanding at the Applicable Time, (C) Common Stock issued to prospective employees in connection with such employees being hired by the Company or any of its subsidiaries, (D) Common Stock to be issued in any acquisition as direct consideration to the sellers pursuant to any written acquisition agreement entered into prior to the Applicable Time, (E) Common Stock to be issued after the end of such 90-day period as direct consideration to the sellers in any acquisition and (F) the Securities, the shares of Common Stock issuable upon conversion of the Securities and up to 143,750,000 shares of Common Stock issued pursuant to the concurrent offering of Common Stock by the Company.

(j) The Company will not take, directly or indirectly, any action designed to or that would constitute or that might reasonably be expected to cause or result, under the Exchange Act or otherwise, in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(k) The Company will apply the net proceeds from the sale of the Securities sold by it substantially in accordance with its statements under the caption “Use of Proceeds” in the Disclosure Package and the Final Prospectus.

(l) The Company will reserve and keep available at all times, free of preemptive rights, the full number of shares of Common Stock issuable upon conversion of the Securities.

(m) Between the Applicable Time and the Closing Date, the Company will not do or authorize any act or thing that would result in an adjustment of the Conversion Price, as defined in the Indenture.

6. Conditions to the Obligations of the Underwriters. The obligations of the Underwriters to purchase the Underwritten Securities and the Option Securities, as the case may be, shall be subject to the accuracy of the representations and warranties on the part of the

Company contained herein as of the Applicable Time, the Closing Date and any settlement date pursuant to Section 3 hereof, to the accuracy of the statements of the Company made in any certificates pursuant to the provisions hereof, to the performance by the Company of its obligations hereunder and to the following additional conditions:

- (a) The Final Prospectus, and any supplement thereto, have been filed in the manner and within the time period required by Rule 424(b); the final term sheet contemplated by Section 5(b) hereto, and any other material required to be filed by the Company pursuant to Rule 433(d) under the Act, shall have been filed with the Commission within the applicable time periods prescribed for such filings by Rule 433; and no stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been instituted or threatened.
- (b) The Company shall have requested and caused Willkie Farr & Gallagher LLP, counsel for the Company, to have furnished to the Representatives their opinion, dated the Closing Date and addressed to the Representatives on behalf of the Underwriters, to the effect of Exhibit A.
- (c) The Company shall have caused Bingham McCutchen LLP, regulatory counsel for the Company, to have furnished to the Representatives their opinion, dated the Closing Date and addressed to the Representatives on behalf of the Underwriters, to the effect of Exhibit B.
- (d) The Company shall have caused internal counsel for the Company to have furnished to the Representatives its opinion as to Canadian regulatory matters, dated the Closing Date, and addressed to the Representatives on behalf of the Underwriters, to the effect of Exhibit C.
- (e) The Company shall have furnished to the Representatives the opinion of Thomas C. Stortz, Executive Vice President, Chief Legal Officer and Secretary of the Company, or any Assistant General Counsel of the Company, dated the Closing Date and addressed to the Representatives on behalf of the Underwriters, to the effect of Exhibit D.
- (f) The Representatives shall have received from Cravath, Swaine & Moore LLP, counsel for the Underwriters, such opinion or opinions, dated the Closing Date and addressed to the Representatives on behalf of the Underwriters, with respect to the issuance and sale of the Securities, the Registration Statement, the Disclosure Package, the Final Prospectus (together with any supplement thereto) and other related matters as the Representatives may reasonably require, and the Company shall have furnished to such counsel such documents as they reasonably request for the purpose of enabling them to pass upon such matters.
- (g) The Company shall have furnished to the Representatives a certificate of the Company, signed by the President and Chief Executive Officer and the Group Vice President and Chief Financial Officer of the Company, dated the Closing Date, to the effect that the signers of such certificate have carefully examined the Registration

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Statement, the Disclosure Package, the Final Prospectus, any supplements or amendments thereto and this Agreement and that:

(i) the representations and warranties of the Company in this Agreement that are qualified as to materiality are true and correct and all other representations and warranties of the Company in this Agreement are true and correct in all material respects on and as of the Closing Date with the same effect as if made on the Closing Date, and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date;

(ii) no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or, to the Company's knowledge, threatened; and

(iii) since the date of the most recent financial statements included or incorporated by reference in the Disclosure Package and the Final Prospectus (exclusive of any supplements thereto), there has not been, singularly or in the aggregate, any material adverse effect, in the properties, business, results of operations, financial condition, affairs or business prospects of the Company and its subsidiaries taken as a whole, whether or not arising from transactions in the ordinary course of business, except as set forth in or contemplated in the Disclosure Package and the Final Prospectus (exclusive of any supplement thereto).

(h) At the time of execution of this Agreement and at the Closing Date, the Company shall have requested and caused KPMG LLP to furnish to the Representatives letters, dated respectively as of the time of execution of this Agreement and as of the Closing Date, in form and substance satisfactory to the Representatives, confirming that they are independent registered accountants within the meaning of the Securities Act and the Exchange Act and the respective applicable rules and regulations adopted by the Commission thereunder and that they have performed a review of the unaudited interim financial information of the Company for the three-month period ended March 31, 2006, and as at March 31, 2006, in accordance with Statement on Auditing Standards No. 100, and stating in effect that:

(i) in their opinion the audited financial statements and financial statement schedules and pro forma financial statements included or incorporated by reference in the Registration Statement, the Preliminary Prospectus and the Final Prospectus and reported on by them comply as to form in all material respects with the applicable accounting requirements of the Securities Act and the Exchange Act and the related rules and regulations adopted by the Commission;

(ii) on the basis of a reading of the latest unaudited financial statements made available by the Company and its subsidiaries; their limited review, in accordance with the standards established under Statement on Auditing Standards No. 100, of the unaudited interim financial information for the three-month period

ended March 31, 2006, and as at March 31, 2006; carrying out certain specified procedures (but not an examination in accordance with generally accepted auditing standards) which would not necessarily reveal matters of significance with respect to the comments set forth in such letter; a reading of the minutes of the meetings of the stockholders, directors and audit and compensation committees of the Company and the Subsidiaries; and inquiries of certain officials of the Company who have responsibility for financial and accounting matters of the Company and its subsidiaries as to transactions and events subsequent to December 31, 2005, nothing came to their attention which caused them to believe that:

- (A) any unaudited financial statements included or incorporated by reference in the Registration Statement, the Preliminary Prospectus and the Final Prospectus do not comply as to form in all material respects with applicable accounting requirements of the Securities Act and with the related rules and regulations adopted by the Commission with respect to financial statements included or incorporated by reference in quarterly reports on Form 10-Q under the Exchange Act; and said unaudited financial statements are not in conformity with generally accepted accounting principles applied on a basis substantially consistent with that of the audited financial statements included or incorporated by reference in the Registration Statement, the Preliminary Prospectus and the Final Prospectus; or
- (B) with respect to the period subsequent to March 31, 2006, there were any changes, at a specified date not more than five days prior to the date of the letter, in the long-term debt of the Company and its subsidiaries or capital stock of the Company or decreases in the stockholders' equity of the Company as compared with the amounts shown on the March 31, 2006 consolidated balance sheet included or incorporated by reference in the Registration Statement, the Preliminary Prospectus and the Final Prospectus, or for the period from April 1, 2006 to such specified date there were any increases, as compared with the corresponding period in the preceding quarter, in net loss or loss from continuing operations before income taxes or in total or per share amounts of net income/loss of the Company and its subsidiaries, except in all instances for changes or increases set forth in such letter, in which case the letter shall be accompanied by an explanation by the Company as to the significance thereof unless said explanation is not deemed necessary by the Representatives; or

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- (C) the information included or incorporated by reference in the Registration Statement, the Preliminary Prospectus and the Final Prospectus in response to Regulation S-K, Item 301 (Selected Financial Data), Item 302 (Supplementary Financial Information), Item 402 (Executive Compensation) and Item 503(d) (Ratio of Earnings to Fixed Charges) is not in conformity with the applicable disclosure requirements of Regulation S-K; and

(iii) they have performed certain other specified procedures as a result of which they determined that certain information of an accounting, financial or statistical nature (which is limited to accounting, financial or statistical information derived from the general accounting records of the Company and its subsidiaries) set forth in the Registration Statement, the Preliminary Prospectus and the Final Prospectus and in Exhibit 12 to the Registration Statement, including the information set forth under the captions “Summary” (other than with respect to financial information of TelCove, Inc. (“TelCove”)), “Risk Factors”, “Use of Proceeds”, “Capitalization”, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” (other than with respect to financial information of TelCove), “Business” and “Description of the Notes” in the Final Prospectus, the information included or incorporated by reference in Items 1, 2, 6, 7, 11, 12 and 13 of the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2005 incorporated by reference in the Registration Statement, the Preliminary Prospectus and the Final Prospectus, and the information included in the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included or incorporated by reference in the Company’s Quarterly Report on Form 10-Q for the quarter ended March 31, 2006 incorporated by reference in the Registration Statement, the Preliminary Prospectus and the Final Prospectus agrees with the accounting records of the Company and its subsidiaries, excluding any questions of legal interpretation; and

(iv) they have read the unaudited pro forma financial statements included or incorporated by reference in the Registration Statement, the Preliminary Prospectus and the Final Prospectus (the “pro forma financial statements”); carried out certain specified procedures; inquiries of certain officials of the Company who have responsibility for financial and accounting matters; and proved the arithmetic accuracy of the application of the pro forma adjustments to the historical amounts in the pro forma financial statements, and the officials of the Company referred to above have stated, in response to such auditor’s inquiries, that all significant assumptions regarding the business combinations have been reflected in the pro forma adjustments and that the unaudited condensed consolidated financial statements referred to herein comply as to form in all material respects with the applicable accounting requirements of Rule 11-02 of Regulation S-X.



All references in this Section 6(h) to the Registration Statement, the Preliminary Prospectus and the Final Prospectus shall be deemed to include any amendment or supplement thereto at the date of the applicable letter.

(i) At the time of execution of this Agreement, the Company shall have requested and caused PricewaterhouseCoopers LLP to furnish to the Representatives a letter, dated as of the time of execution of this Agreement, in form and substance reasonably satisfactory to the Representatives, confirming that they are independent certified accountants with respect to WilTel under Rule 101 of the Code of Professional Conduct of the American Institute of Certified Public Accountants and its rulings and interpretations, that they have performed a review of the unaudited interim financial information of WilTel for the nine-month period ended September 30, 2005, and as at September 30, 2005, in accordance with SAS No. 100, *Interim Financial Information*, and stating in effect that on the basis of a reading of the latest unaudited financial statements made available by WilTel and its subsidiaries; their limited review, in accordance with the standards established under SAS No. 100, *Interim Financial Information*, of the unaudited interim financial information for the nine-month period ended September 30, 2004, and as at September 30, 2005; and carrying out certain specified procedures (but not an examination in accordance with generally accepted auditing standards) which would not necessarily reveal matters of significance with respect to the comments set forth in such letter, except as noted therein, nothing came to their attention which caused them to believe that any unaudited financial statements included or incorporated by reference in the Preliminary Prospectus and the Final Prospectus are not in conformity with generally accepted accounting principles applied on a basis substantially consistent with that of the audited financial statements included or incorporated by reference in the Preliminary Prospectus and the Final Prospectus. All references in this Section 6 (i) to the Preliminary Prospectus and the Final Prospectus shall be deemed to include any amendment or supplement thereto at the date of the letter.

(j) Subsequent to the time of execution of this Agreement or, if earlier, the dates as of which information is given in the Registration Statement (exclusive of any amendment thereof), the Disclosure Package and the Final Prospectus (exclusive of any supplement thereto), there shall not have been (i) any increase, change or decrease specified in the letter or letters referred to in paragraph (h) of this Section 6 or (ii) any change, or any development involving a prospective change, in or affecting the properties, business, results of operations, financial condition, affairs or business prospects of the Company and its subsidiaries, taken as a whole, whether or not arising from transactions in the ordinary course of business, except as set forth in or contemplated in the Disclosure Package and the Final Prospectus (exclusive of any supplement thereto) the effect of which, in any case referred to in clause (i) or (ii) above, is, in the sole judgment of the Representatives, so material and adverse as to make it impractical or inadvisable to proceed with the offering or delivery of the Securities as contemplated by the Registration Statement (exclusive of any amendment thereof), the Disclosure Package and the Final Prospectus (in each case exclusive of any supplement thereto).

(k) Subsequent to the time of execution of this Agreement, there shall not have been (i) any decrease in the rating of any of the Company's debt securities by any "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the Securities Act) or (ii) any notice given of any intended or potential decrease in any such rating or that such organization has under surveillance or review (other than any such notice with positive implications of a possible upgrading) its rating of the Company's or any Subsidiary's debt securities.

(l) The shares of Common Stock initially issuable upon conversion of the Securities shall have been listed and admitted and authorized for trading, subject to official notice of issuance, on the Nasdaq National Market, and reasonably satisfactory evidence of such actions shall have been provided to the Representatives.

(m) Prior to the Closing Date, the Company shall have furnished to the Representatives such further information, certificates and documents as the Representatives may reasonably request.

If any of the conditions specified in this Section 6 shall not have been fulfilled in all material respects when and as provided in this Agreement, or if any of the opinions and certificates mentioned above or elsewhere in this Agreement shall not be in all material respects reasonably satisfactory in form and substance to the Representatives and counsel for the Underwriters, this Agreement and all obligations of the Underwriters hereunder may be canceled at, or at any time prior to, the Closing Date by the Representatives. Notice of such cancellation shall be given to the Company in writing or by telephone or facsimile confirmed in writing.

The documents required to be delivered by this Section 6 shall be delivered at the office of Cravath, Swaine & Moore LLP, counsel for the Underwriters, at 825 Eighth Avenue, New York, New York 10019, on the Closing Date.

**7. Reimbursement of Underwriters' Expenses.** If the sale of the Securities provided for herein is not consummated because any condition to the obligations of the Underwriters set forth in Section 6 hereof is not satisfied, because of any termination pursuant to Section 10 hereof or because of any refusal, inability or failure on the part of the Company to perform any agreement herein or comply with any provision hereof, in each case, other than by reason of a default by any of the Underwriters, the Company will reimburse the Underwriters severally through Merrill Lynch on demand for all reasonable out-of-pocket expenses (including reasonable fees and disbursements of counsel) that shall have been incurred by them in connection with the proposed purchase and sale of the Securities. Except as provided in the preceding sentence or elsewhere in this Agreement, the Underwriters shall be responsible for all costs and expenses incurred by them in connection with their purchase of the Securities hereunder and the resale of any of the Securities, including, without limitation, their own out-of-pocket lodging, meal and other "roadshow" expenses and fees and disbursements of counsel for the Underwriters and such other "roadshow" expenses as shall be agreed upon by the Company and the Representatives.

**8. Indemnification and Contribution.** (a) The Company agrees to indemnify and hold harmless each Underwriter, the directors, officers, employees and agents of each

Underwriter and each person who controls any Underwriter within the meaning of either the Securities Act or the Exchange Act against any and all losses, claims, damages or liabilities, joint or several, to which they or any of them may become subject under the Securities Act, the Exchange Act or other Federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement for the registration of the Securities as originally filed or in any amendment thereof, or in the Basic Prospectus, any preliminary prospectus (including the Preliminary Prospectus), the Final Prospectus, any Issuer Free Writing Prospectus or the information contained in the final term sheet prepared and filed pursuant to Section 5(b) hereof, or in any amendment thereof or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and agrees to reimburse each such indemnified party, as incurred, for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; *provided, however*, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to the Company by or on behalf of any Underwriter through the Representatives specifically for inclusion therein. This indemnity agreement will be in addition to any liability which the Company may otherwise have.

(b) Each Underwriter severally and not jointly agrees to indemnify and hold harmless the Company, each of its directors, each of its officers who signs the Registration Statement, and each person who controls the Company within the meaning of either the Securities Act or the Exchange Act, to the same extent as the foregoing indemnity from the Company to each Underwriter, but only with reference to written information relating to such Underwriter furnished to the Company by or on behalf of such Underwriter through the Representatives specifically for inclusion in the documents referred to in the foregoing indemnity. This indemnity agreement will be in addition to any liability which any Underwriter may otherwise have. The Company acknowledges that (i) the list of Underwriters and their respective participation in the sale of the Securities, (ii) the sentences related to concessions, discounts and reallowances, (iii) the paragraphs related to stabilization, syndicate covering transactions and penalty bids, (iv) the representations relating to offerings in the European Union, including the United Kingdom, and (v) the paragraph related to electronic distributions of the prospectus supplement under the heading "Underwriting" in the Preliminary Prospectus and the Final Prospectus, constitute the only information furnished in writing by or on behalf of the several Underwriters for inclusion in any Preliminary Prospectus or the Final Prospectus.

(c) Promptly after receipt by an indemnified party under this Section 8 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 8, notify the indemnifying party in writing of the commencement thereof; but the failure so to notify the indemnifying party (i) will not relieve it from liability under paragraph (a) or (b) above unless and to the extent it did not otherwise learn of such action and such failure results in the forfeiture by the indemnifying party of substantial rights and defenses and (ii) will not, in any event, relieve the indemnifying party from any obligations to any indemnified party other than the indemnification obligation provided

in paragraph (a) or (b) above. The indemnifying party shall be entitled to appoint counsel of the indemnifying party's choice at the indemnifying party's expense to represent the indemnified party in any action for which indemnification is sought (in which case the indemnifying party shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the indemnified party or parties except as set forth below); *provided, however*, that such counsel shall be reasonably satisfactory to the indemnified party. Notwithstanding the indemnifying party's election to appoint counsel to represent the indemnified party in an action, the indemnified party shall have the right to employ separate counsel (including local counsel), and the indemnifying party shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest, (ii) the actual or potential defendants in, or targets of, any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, (iii) the indemnifying party shall not have employed counsel reasonably satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action or (iv) the indemnifying party shall authorize the indemnified party to employ separate counsel at the expense of the indemnifying party. An indemnifying party will not, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding. It is understood, however, that the Company shall, in connection with any one such action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the reasonable fees and expenses of only one separate firm of attorneys (in addition to any local counsel) at any time for all such Underwriters and controlling persons, which firm shall be designated in writing by Merrill Lynch. An indemnifying party shall not be liable under this Section 8 to any indemnified party regarding any settlement or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent is consented to by such indemnifying party, which consent shall not be unreasonably withheld.

(d) In the event that the indemnity provided in paragraph (a) or (b) of this Section 8 is unavailable to or insufficient to hold harmless an indemnified party for any reason, the Company and the Underwriters severally agree to contribute to the aggregate losses, claims, damages and liabilities (including legal or other expenses reasonably incurred in connection with investigating or defending same) (collectively "Losses") to which the Company and one or more of the Underwriters may be subject in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and by the Underwriters on the other from the offering of the Securities; *provided, however*, that in no case shall any Underwriter (except as may be provided in any agreement among underwriters relating to the offering of the Securities) be responsible for any amount in excess of the underwriting discount or commission applicable

to the Securities purchased by such Underwriter hereunder. If the allocation provided by the immediately preceding sentence is unavailable for any reason, the Company and the Underwriters severally shall contribute in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company on the one hand and of the Underwriters on the other in connection with the statements or omissions which resulted in such Losses as well as any other relevant equitable considerations. Benefits received by the Company shall be deemed to be equal to the total net proceeds from the offering of the Securities (before deducting expenses) received by it, and benefits received by the Underwriters shall be deemed to be equal to the total underwriting discounts and commissions, in each case as set forth on the cover page of the Final Prospectus. Relative fault shall be determined by reference to, among other things, whether any untrue or any alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information provided by the Company on the one hand or the Underwriters on the other, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The Company and the Underwriters agree that it would not be just and equitable if contribution were determined by pro rata allocation or any other method of allocation which does not take account of the equitable considerations referred to above. Notwithstanding the provisions of this paragraph (d), no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 8, each person who controls an Underwriter within the meaning of either the Securities Act or the Exchange Act and each director, officer, employee and agent of an Underwriter shall have the same rights to contribution as such Underwriter, and each person who controls the Company within the meaning of either the Securities Act or the Exchange Act, each officer of the Company who shall have signed the Registration Statement and each director of the Company shall have the same rights to contribution as the Company, subject in each case to the applicable terms and conditions of this paragraph (d).

9. Default by an Underwriter. If any one or more Underwriters shall fail to purchase and pay for any of the Securities agreed to be purchased by such Underwriter or Underwriters hereunder and such failure to purchase shall constitute a default in the performance of its or their obligations under this Agreement, the Representatives shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting Underwriters, or any other underwriters, to purchase all, but not less than all, of the Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase, in such amounts as may be agreed upon and upon the terms herein set forth; if, however, the Representatives shall not have completed such arrangements within such 24 hour period, then the remaining Underwriters shall be obligated severally to take up and pay for (in the respective proportions which the amount of Securities set forth opposite their names in Schedule I hereto bears to the aggregate amount of Securities set forth opposite the names of all the remaining Underwriters) the Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase; *provided, however*, that in the event that the aggregate amount of Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase shall exceed 10% of the aggregate amount of Securities set forth in Schedule I hereto, the remaining Underwriters shall have the right to purchase all, but shall not be under any obligation to purchase any, of the Securities, and if such nondefaulting Underwriters do not purchase all the Securities, this Agreement will terminate without liability to any nondefaulting Underwriter or the Company, except as provided in

Section 11 hereof. In the event of a default by any Underwriter as set forth in this Section 9, the Closing Date shall be postponed for such period, not exceeding seven Business Days, as the Representatives shall determine in order that the required changes in the Registration Statement and the Final Prospectus or in any other documents or arrangements may be effected. Nothing contained in this Agreement shall relieve any defaulting Underwriter of its liability, if any, to the Company and any nondefaulting Underwriter for damages occasioned by its default hereunder.

10. Termination. This Agreement shall be subject to termination in the absolute discretion of the Representatives, by notice given to the Company prior to delivery of and payment for the Securities, if at any time prior to such time (i) trading in any of the Company's securities shall have been suspended by the Commission or the Nasdaq National Market or trading in securities generally on the New York Stock Exchange or the Nasdaq National Market shall have been suspended or limited or minimum prices shall have been established on such Exchange or the Nasdaq National Market, (ii) a banking moratorium shall have been declared either by Federal or New York State authorities or (iii) there shall have occurred any outbreak or escalation of hostilities, declaration by the United States of a national emergency or war, or other calamity or crisis the effect of which on financial markets is such as to make it, in the sole judgment of the Representatives, impractical or inadvisable to proceed with the offering or delivery of the Securities as contemplated by the Final Prospectus (exclusive of any supplement thereto).

11. Representations and Indemnities to Survive. The respective agreements, representations, warranties, indemnities and other statements of the Company or its officers and of the Underwriters set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of any Underwriter or the Company or any of the officers, directors, employees, agents or controlling persons referred to in Section 8 hereof, and will survive delivery of and payment for the Securities. The provisions of Sections 7, 8 and 14 hereof shall survive the termination or cancelation of this Agreement.

12. Notices. All communications hereunder will be in writing and effective only on receipt, and, if sent to the Underwriters, will be mailed, delivered or sent by fax and confirmed to them, care of Merrill Lynch, Pierce, Fenner & Smith Incorporated, at Merrill Lynch World Headquarters, North Tower, World Financial Center, New York, New York 10281-1201; or, if sent to the Company, will be mailed, delivered or sent by fax and confirmed to it at 1025 Eldorado Boulevard, Broomfield, Colorado 80021, attention: General Counsel.

13. Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers, directors, employees, agents and controlling persons referred to in Section 8 hereof, and no other person will have any right or obligation hereunder.

14. No Advisory or Fiduciary Relationship. The Company acknowledges and agrees that (a) the purchase and sale of the Securities pursuant to this Agreement, including the determination of the public offering price of the Securities and any related discounts and commissions, is an arm's-length commercial transaction between the Company, on the one hand, and the several Underwriters, on the other hand, (b) in connection with the offering contemplated hereby and the process leading to such transaction each Underwriter is and has been acting solely

as a principal and is not the agent or fiduciary of the Company, or its stockholders, creditors, employees or any other party, (c) no Underwriter has assumed or will assume an advisory or fiduciary responsibility in favor of the Company with respect to the offering contemplated hereby or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Company on other matters) and no Underwriter has any obligation to the Company with respect to the offering contemplated hereby except the obligations expressly set forth in this Agreement, (d) the Underwriters and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company, and (e) the Underwriters have not provided any legal, accounting, regulatory or tax advice with respect to the offering contemplated hereby and the Company has consulted its own legal, accounting, regulatory and tax advisors to the extent it deemed appropriate.

15. Integration. This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Company and the Underwriters, or any of them, with respect to the subject matter hereof.

16. Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed within the State of New York (without regard to the conflict of law provisions thereof).

17. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

18. Headings. The section headings used herein are for convenience only and shall not affect the construction hereof.

19. Definitions. The terms which follow, when used in this Agreement, shall have the meanings indicated.

“Applicable Time” shall mean 6:05 PM (New York City time) on the date of this Agreement or such other time as agreed by the Company and the Representatives.

“Basic Prospectus” shall mean the prospectus referred to in Section 1(a) above contained in the Registration Statement at the Effective Date.

“Business Day” shall mean any day other than a Saturday, a Sunday or a legal holiday or a day on which banking institutions or trust companies are authorized or obligated by law to close in New York City.

“Commission” shall mean the Securities and Exchange Commission.

“Disclosure Package” shall mean (i) the Preliminary Prospectus, as amended and supplemented to the Applicable Time, (ii) the Issuer Free Writing Prospectuses, if any, identified in Schedule III hereto and (iii) any other Free Writing Prospectus that the parties hereto shall hereafter expressly agree in writing to treat as part of the Disclosure Package.

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“Effective Date” shall mean each date and time that the Registration Statement, any post-effective amendment or amendments thereto and any Rule 462(b) Registration Statement became or become effective.

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

“Final Prospectus” shall mean the prospectus supplement relating to the Securities that was first filed pursuant to Rule 424(b) after the time of execution of this Agreement, together with the Basic Prospectus.

“Free Writing Prospectus” shall mean a free writing prospectus, as defined in Rule 405.

“Issuer Free Writing Prospectus” shall mean an issuer free writing prospectus, as defined in Rule 433.

“Preliminary Prospectus” shall mean the most recent preliminary prospectus supplement to the Basic Prospectus which is used prior to the filing of the Final Prospectus, together with the Basic Prospectus.

“Registration Statement” shall mean the Registration Statement referred to in Section 1(a) above, including exhibits and financial statements and any prospectus supplement relating to the Securities that is filed with the Commission pursuant to Rule 424(b) and deemed part of such registration statement pursuant to Rule 430B, as amended on each Effective Date and, in the event any post-effective amendment thereto or any Rule 462(b) Registration Statement becomes effective prior to the Closing Date, shall also mean such Registration Statement as so amended or such Rule 462(b) Registration Statement, as the case may be.

“Rule 158”, “Rule 164”, “Rule 172”, “Rule 405”, “Rule 415”, “Rule 424”, “Rule 430B”, “Rule 433” and “Rule 462” refer to such rules under the Securities Act.

“Securities Act” shall mean the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.



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If the foregoing is in accordance with your understanding of our agreement, please sign and return to us the enclosed duplicate hereof, whereupon this letter and your acceptance shall represent a binding agreement among the Company and the several Underwriters.

Very truly yours,

LEVEL 3 COMMUNICATIONS, INC.

By: /s/ Thomas C. Stortz

Name: Thomas C. Stortz

Title: Executive Vice President

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CONFIRMED AND ACCEPTED,  
as of the date first above written:

MERRILL LYNCH & CO.  
MERRILL LYNCH, PIERCE, FENNER & SMITH  
INCORPORATED

By: MERRILL LYNCH, PIERCE, FENNER & SMITH  
INCORPORATED

By: /s/ Vikram Kaul  
Name: Vikram Kaul  
Title: Vice President

For themselves and as Representatives of the other Underwriters named in Schedule I hereto.

# SCHEDULE I

<b>Underwriters</b>	<b>Principal Amount of Underwritten Securities to be Purchased</b>
Merrill Lynch, Pierce, Fenner & Smith Incorporated	135,000,000
Credit Suisse Securities (USA) LLC	52,500,000
Morgan Stanley & Co. Incorporated	52,500,000
Citigroup Global Markets Inc.	30,000,000
J.P. Morgan Securities Inc.	30,000,000
Total	<u>\$ 300,000,000</u>

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## SCHEDULE II

### Subsidiaries

Level 3 Financing, Inc.

Level 3 Holdings, Inc.

KCP, Inc.

Level 3 International, Inc.

Level 3 Communications, LLC

Software Spectrum, Inc.

BTE Equipment, LLC

Level 3 Holdings, B.V.

Level 3 Communications Limited (UK)

Level 3 Communications GmbH (Germany)

WilTel Communications Group, LLC

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### SCHEDULE III

1. Pricing term sheet dated June 7, 2006 (attached).

FREE WRITING PROSPECTUS DATED JUNE 7, 2006

This Free Writing Prospectus relates only to the securities described below and should be read together with the respective Preliminary Prospectus Supplement dated May 31, 2006 and the Prospectus dated January 31, 2001 relating to these securities.



**Level 3 Communications, Inc.**  
**(LVLT/NASDAQ)**

**Common Stock Offering**

**Offering Size :** 125,000,000 Shares (100% Primary)

**Overallotment Option (15%):** 18,750,000 Shares (100% Primary)

**Public Offering Price per Share:** \$4.55

**Last Sale Price (6/7/06):** \$4.55

**Proceeds per Share, before expenses, to Level 3 :** \$4.3452

**Trade Date:** 6/7/2006

**Settlement Date:** 6/13/2006

**CUSIP:** 52729N 10 0

**Offering of SEC-Registered Convertible Senior Notes Due 2012**

**Issuer:** Level 3 Communications, Inc.

**Offering Size :** \$300,000,000

**Overallotment Option (15%):** \$45,000,000

**Issue Price :** 100% of principal amount

**Maturity :** June 15, 2012

**Interest Rate :** 3.5%

**Interest Payment Dates:** June 15 and December 15, beginning December 15, 2006

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**Conversion Premium : 20%**

**Conversion Price: \$5.46**

**Last Sale Price (6/7/06): \$4.55**

**Conversion Rate: 183.1502**

**Optional Redemption by Issuer :** Beginning June 15, 2010, at specified redemption prices set forth below, plus accrued and unpaid interest, if any, to the redemption date. The following prices are for notes redeemed during the 12-month period commencing on June 15 of the years set forth below, and are expressed as percentages of principal amount:

<u>Year</u>	<u>Redemption Price</u>
2010	101.17%
2011	100.58%

**Make Whole Premium upon Change of Control :** If certain changes in control occur as specified in the Preliminary Prospectus Supplement relating to the notes and the notes are converted in connection with such transaction, the conversion rate will be increased by the number of additional shares set forth in the table below for each \$1,000 principal amount of notes in the case of stock prices on the effective date of such change in control transaction between \$4.55 and \$50.00 (subject to adjustment upon certain events). The amount of the increase in the applicable conversion rate, if any, will be based on the date on which the change in control becomes effective and the price paid per share of common stock in the transaction constituting the change in control.

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Make Whole Premium Upon a Change of Control

Stock Price on Effective Date	Effective Date				
	6/13/06	6/15/07	6/15/08	6/15/09	6/15/10
\$4.55	36.6300	36.6300	36.6300	36.6300	36.6300
5.00	30.9107	27.6440	23.9440	19.5353	16.8498
6.00	22.7335	19.2489	15.1353	9.8467	0.0000
7.00	17.9817	14.6954	10.8424	6.0174	0.0000
8.00	14.9523	11.9736	8.5466	4.4408	0.0000
10.00	11.3823	8.9649	6.2974	3.2480	0.0000
15.00	7.4364	5.8279	4.0800	2.1505	0.0000
20.00	5.5807	4.3677	3.0595	1.6154	0.0000
25.00	4.4788	3.4979	2.4508	1.2943	0.0000
50.00	2.2854	1.7670	1.2325	0.6548	0.0000

If the stock price on the effective date of such change in control transaction is less than \$4.55 per share or greater than \$50.00 per share, no adjustment to the conversion rate will be made. Notwithstanding the foregoing, in no event will the conversion rate exceed 219.7802 per \$1,000 principal amount of notes.

**Proceeds per \$1,000 Principal Amount, before expenses, to Level 3: \$975**

**Trade Date:** 6/7/2006

**Settlement Date:** 6/13/2006

**CUSIP:** 52729N BK 5

**Sole-Bookrunner (both Common & Convert): Merrill Lynch & Co.**

**Joint Leads (both Common & Convert):** Credit Suisse & Morgan Stanley

**Co-Managers (Common only):** Bear Stearns & Co. Inc., JPMorgan & UBS Investment Bank

**Co-Managers (Convert only) :** Citigroup & JPMorgan



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The issuer has filed a registration statement (including a prospectus and prospectus supplements with respect to each offering) with the SEC for the offerings to which this communication relates. Before you invest, you should read the prospectus in that registration statement, the prospectus supplements and other documents the issuer has filed with the SEC for more complete information about the issuer and this offering. You may get these documents for free by visiting EDGAR on the SEC Web site at [www.sec.gov](http://www.sec.gov). Alternatively, the issuer, any underwriter or any dealer participating in the offering will arrange to send you the prospectus if you request it by calling toll-free 1-866-500-5408.

This announcement and any offer if made subsequently is directed only at persons in member states of the European Economic Area who are “qualified investors” within the meaning of Article 2(1)(e) of the Prospectus Directive (Directive 2003/71/EC) (“Qualified Investors”). Any person in the EEA who acquires the securities in any offer (an “investor”) or to whom any offer of the securities is made will be deemed to have represented and agreed that it is a Qualified Investor. Any investor will also be deemed to have represented and agreed that any securities acquired by it in the offer have not been acquired on behalf of persons in the EEA other than Qualified Investors or persons in the UK and other member states (where equivalent legislation exists) for whom the investor has authority to make decisions on a wholly discretionary basis, nor have the securities been acquired with a view to their offer or resale in the EEA to persons where this would result in a requirement for publication by the company, Merrill Lynch International (“MLI”) or any other manager of a prospectus pursuant to Article 3 of the Prospectus Directive. The company, MLI and their affiliates, and others will rely upon the truth and accuracy of the foregoing representations and agreements.

ANY DISCLAIMERS OR OTHER NOTICES THAT MAY APPEAR BELOW ARE NOT APPLICABLE TO THIS COMMUNICATION AND SHOULD BE DISREGARDED. SUCH DISCLAIMERS OR OTHER NOTICES WERE AUTOMATICALLY GENERATED AS A RESULT OF THIS COMMUNICATION BEING SENT VIA BLOOMBERG OR ANOTHER EMAIL SYSTEM.

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## SCHEDULE IV

Walter Scott, Jr.

James Q. Crowe

James O. Ellis Jr.

Richard R. Jaros

Robert E. Julian

Arun Netravali

John T. Reed

Michael B. Yanney

Albert C. Yates

Kevin J. O'Hara

Charles C. Miller

Thomas C. Stortz

Sunit Patel

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EXHIBIT A

Opinion of  
Willkie Farr & Gallagher LLP  
Counsel for the Company

1. Each of the Company and Level 3 Communications, LLC has been duly incorporated or formed and is validly existing as a corporation or limited liability company in good standing under the laws of the jurisdiction of its incorporation or formation, and has the requisite power and authority to carry on its business and own its properties as currently being conducted as described in the Disclosure Package and the Final Prospectus.

2. To such counsel's knowledge, all the outstanding equity interests of Level 3 Communications, LLC have been duly and validly authorized and are duly issued and are fully paid and nonassessable, and except as otherwise set forth in the Disclosure Package and the Final Prospectus, all outstanding equity interests of Level 3 Communications, LLC are owned by the Company either directly or through wholly owned subsidiaries, to the knowledge of such counsel, free and clear of any agreement providing for a security interest in such equity interests to secure any obligation and any stockholders' agreements, voting trusts, claims or other encumbrances (other than the pledge of the equity interests of Level 3 Communications, LLC pursuant to the agreements the Company and certain of its subsidiaries have entered into in connection with the senior secured term loan described in the Disclosure Package and the Final Prospectus).

3. (i) To the knowledge of such counsel, there is no pending or threatened action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its Subsidiaries listed on Annex I to this opinion letter or its or their property of a character required to be disclosed in the Registration Statement which is not adequately disclosed or incorporated by reference in the Disclosure Package and the Final Prospectus, and (ii) to the knowledge of such counsel, there is no contract or other document of a character required to be described in the Registration Statement, the Preliminary Prospectus or the Final Prospectus, or to be filed as an exhibit thereto, which is not described or filed as required; and (iii) the statements included in the Preliminary Prospectus and the Final Prospectus under the heading "Description of the Notes" and "Description of Capital Stock," insofar as such sections summarize the terms of the Securities, the Common Stock and the Indenture and under the heading "Material U.S. Federal Tax Considerations," insofar as such section summarizes matters of law, fairly summarize in all material respects the matters therein described.

4. The Registration Statement has become effective under the Securities Act; any required filing of the Basic Prospectus, any Preliminary Prospectus and the Final Prospectus and any supplements thereto, pursuant to Rule 424(b) has been made in the manner and within the time period required by Rule 424(b); to the knowledge of such counsel, no stop order suspending the effectiveness of the Registration Statement has been issued, no proceedings for that purpose have been instituted or threatened and the Registration Statement, the Preliminary Prospectus and the Final Prospectus (other than the financial statements and related schedules and other financial information contained therein or omitted therefrom, as to which such counsel need

express no opinion) appear on their face to comply as to form in all material respects with the applicable requirements of the Securities Act and the Exchange Act and the respective rules thereunder.

5. The Company is not and, after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Final Prospectus, will not be an “investment company” as defined in the Investment Company Act of 1940, as amended.

6. To the knowledge of such counsel, no material consent, approval, authorization, license, certificate, permit or order of any court or governmental agency or body is required for the execution, delivery and performance of this Agreement, the Indenture and the Securities or for the consummation of the transactions contemplated hereby or thereby, except such as may be required by the Federal Communications Commission or similar state regulatory authorities or under the blue sky laws of any jurisdiction in connection with the purchase and distribution of the Securities by the Underwriters (as to which such counsel need not opine) and such other approvals (to be specified in such opinion) as have been obtained.

7. Neither the execution and delivery of this Agreement or the Indenture, the issue and sale of the Securities, nor the consummation of any other of the transactions herein contemplated nor the fulfillment of the terms thereof, including the issuance of the Common Stock upon conversion of the Securities, will conflict with, result in a breach of, or constitute a default under the (x) certificate of incorporation, by-laws or other organizational documents of the Company or of any Subsidiary, (y) the terms of any agreement or instrument listed on Annex II hereto, or (z) any judgment, order or regulation known to such counsel to be applicable to the Company or any of its Subsidiaries of any court, regulatory body, administrative agency, governmental agency, authority or body or arbitrator having jurisdiction over the Company or any of its Subsidiaries, except orders or regulations of the Federal Communications Commission or similar state regulatory authorities or regulations of any state securities commission (as to which such counsel need not opine), except, in the case of clauses (y) and (z) for breaches or defaults that would not, individually or in the aggregate, have a Material Adverse Effect.

8. To the knowledge of such counsel, no holders of securities of the Company have rights to the registration of such securities in connection with or as a result of the offering and sale of the Securities under this Agreement.

9. The Company’s actual authorized equity capitalization is as set forth in the Disclosure Package and the Final Prospectus; the capital stock of the Company conforms in all material respects to the description thereof contained in the Disclosure Package and the Final Prospectus; the shares of Common Stock initially issuable upon conversion of the Securities have been duly and validly authorized, and, when issued upon conversion in accordance with the terms of the Indenture, will be validly issued, fully paid and nonassessable; the Board of Directors of the Company or a duly constituted committee thereof has duly and validly adopted resolutions reserving such shares of Common Stock for issuance upon conversion; and the holders of outstanding shares of capital stock of the Company are not entitled to preemptive or other rights to subscribe for the Securities under the certificate of incorporation and by-laws of the Company and the General Corporation Law of the State of Delaware.

10. The Securities have been duly authorized and, when executed and authenticated in accordance with the provisions of the Indenture and delivered to and paid for by the Underwriters in accordance with the terms of this Agreement, will constitute valid and legally binding obligations of the Company entitled to the benefits of the Indenture, subject, as to enforcement, to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general applicability relating to or affecting creditors' rights and to general equity principles.

11. The Indenture has been duly authorized, executed and delivered by the Company and constitutes a valid and legally binding obligation of the Company, enforceable in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general applicability relating to or affecting creditors' rights and to general equity principles; and the Indenture has been duly qualified under the Trust Indenture Act.

12. The Company has full corporate right, power and authority to execute and deliver this Agreement and the Supplemental Indenture and to perform its obligations hereunder or thereunder, including the issuance of the Securities; as of the date of its execution, the Company had full corporate right, power and authority to execute and deliver the Base Indenture and to perform its obligations thereunder, including the issuance of the Securities; and all corporate action required to be taken by the Company for the due and proper authorization, execution and delivery of this Agreement and the Indenture and for the consummation of the transactions contemplated hereby or thereby has been duly and validly taken.

13. This Agreement has been duly authorized, validly executed and delivered by the Company.

In addition, such counsel shall state that they have participated in conferences with representatives of the Company, the Underwriters and their counsel, at which conferences the contents of the Disclosure Package and the Final Prospectus were discussed, and, although, except as otherwise described in paragraph 3(iii) above, such counsel has not independently checked or verified and does not pass upon and assumes no responsibility for the factual accuracy, completeness or fairness of the statements contained in the Registration Statement, the Disclosure Package or the Final Prospectus, no facts have come to such counsel's attention to cause them to believe that (i) at the Applicable Time the Registration Statement contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) at the Applicable Time the Disclosure Package contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading (in each case, other than the financial statements and related schedules and other financial information contained therein or omitted therefrom and other than the sections entitled "Risk Factors—Level 3 is subject to significant regulation that could change in an adverse manner," "—Canadian law currently does not permit Level 3 to offer services in Canada" and "—Potential regulation of Internet service providers in the United States could adversely affect Level 3's operations," "Business—Regulation" included in the Disclosure Package and the Final Prospectus and comparable sections in the Company's Exchange Act reports incorporated in the Preliminary Prospectus by reference, as to which such counsel need

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not express a view) or (iii) the Final Prospectus as of its date or as of the Closing Date included or includes any untrue statement of a material fact or omitted or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (in each case, other than the financial statements and related schedules and other financial information contained therein or omitted therefrom and other than the sections entitled “Risk Factors—Level 3 is subject to significant regulation that could change in an adverse manner,” “—Canadian law currently does not permit Level 3 to offer services in Canada” and “—Potential regulation of Internet service providers in the United States could adversely affect Level 3’s operations,” “Business—Regulation” included in the Final Prospectus and comparable sections in the Company’s Exchange Act reports incorporated in the Preliminary Prospectus and the Final Prospectus by reference, as to which such counsel need not express a view).

Such opinion may be limited to the laws of the State of New York, the Federal laws of the United States of America and the General Corporation Law and the Limited Liability Company Act of the State of Delaware.

All references in this Exhibit A to the Final Prospectus shall be deemed to include any amendment or supplement thereto at the Closing Date. The opinion of such counsel shall be rendered to the Underwriters at the request of the Company and shall so state.

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## ANNEX I TO EXHIBIT A

### Subsidiaries

Level 3 Financing, Inc.

Level 3 Holdings, Inc.

KCP, Inc.

Level 3 International, Inc.

Level 3 Communications, LLC

Software Spectrum, Inc.

BTE Equipment, LLC

WilTel Communications Group, LLC

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## ANNEX II TO EXHIBIT A

1. Fiber Optic Cable License Agreement, dated December 23, 1998, between Norfolk Southern Railway Company, Central of Georgia Railroad Company, and Georgia Southern and Florida Railway Company and Level 3 Communications, LLC, as modified by the Letter Agreement, dated July 26, 1999, by Level 3 Communications, LLC, and as further modified by the Letter Agreement, dated September 8, 1999, by Level 3 Communications, LLC.
2. Agreement, dated November 19, 1998, between Worldwide Fibre Inc. and Level 3 Communications, LLC for construction and right of way.
3. Agreement, dated November 19, 1998, between Mi-Link LLC and Level 3 Communications, LLC for construction and right of way.
4. Assignment, dated December 19, 1998, by Level 3 Communications, LLC in favor of Level 3 Communications Canada Co. of certain rights under the Agreement, dated November 19, 1998 between Mi-Link LLC and Level 3 Communications, LLC.
5. Fiber Optic Survey Agreement between Level 3 Communications, LLC and Union Pacific Rail Road Company, dated March 31, 1998.
6. Fiber Optic Agreement between Level 3 Communications, LLC and Union Pacific Rail Road Company, dated 1998.
7. Agreement between Kiewit Coal Properties, Inc. and Kiewit Mining Group, Inc., dated January 8, 1992.
8. Separation Agreement by and among Peter Kiewit Sons', Inc., Kiewit Diversified Group, Inc., PKS Holdings, Inc., and Kiewit Construction Group, Inc., dated December 8, 1997.
9. Amendment to Separation Agreement by and among Peter Kiewit Sons', Inc., Level 3 Communications, Inc., PKS Holdings, Inc. and Kiewit Construction Group, Inc., dated March 18, 1998.
10. Tax Sharing Agreement by and between Peter Kiewit Sons', Inc. and PKS Holdings, Inc., dated March 26, 1998.
11. Promissory Note from Peter Kiewit Sons' Co. to Metropolitan Life Insurance Company, dated June 27, 1997.
12. Deed of Trust, Security Agreement and Fixture Filing by Peter Kiewit Sons' Co., to Metropolitan Life Insurance Company, dated June 27, 1997.
13. Master Right-of-Way Agreement among Level 3 Communications, LLC and The Burlington Northern and Santa Fe Railway Company, dated June 23, 1998.



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14. Cross Channel Cables Agreement among France Manche S.A., The Channel Tunnel Group Limited, Level 3 Communications Limited and Level 3 Communications S.A., dated June 22, 1999.
  15. Fiber Optic Cable System Contract between Level 3 Communications Limited, Level 3 Communications S.A. and Alcatel Submarine Networks S.A., dated May 14, 1999.
  16. Indenture, dated as of April 28, 1998, between Level 3 Communications, Inc. and IBJ Schroder Bank & Trust Company, as trustee.
  17. Indenture, dated as of December 2, 1998, between Level 3 Communications, Inc. and IBJ Schroder Bank & Trust Company, as trustee.
  18. Indenture, dated as of September 20, 1999, between Level 3 Communications, Inc. and IBJ Whitehall Bank & Trust Company, as trustee.
  19. First Supplemental Indenture, dated as of September 20, 1999, between Level 3 Communications, Inc. and IBJ Whitehall Bank & Trust Company, as trustee.
  20. Second Supplemental Indenture, dated as of February 29, 2000, between Level 3 Communications, Inc. and the Bank of New York (as successor to IBJ Whitehall Bank & Trust Company), as trustee.
  21. Third Supplemental Indenture, dated as of July 8, 2002, as amended, between Level 3 Communications, Inc. and the Bank of New York (as successor to IBJ Whitehall Bank & Trust Company), as trustee.
  22. First Supplemental Indenture dated as of July 8, 2003, between Level 3 Communications, Inc. and The Bank of New York, as trustee.
  23. Indenture dated as of October 1, 2003, among Level 3 Communications, Inc., Level 3 Financing, Inc. and The Bank of New York, as Trustee.
  24. Indenture dated as of October 24, 2003, among Level 3 Communications, Inc. and The Bank of New York, as trustee.
  25. Asset Purchase Agreement by and among Level 3 Communications, Inc., Level 3 Communications, LLC, Genuity Inc., and the subsidiaries of Genuity Inc. listed on the signature page thereto, dated as of November 27, 2002 (the “Genuity Agreement”).
  26. Amendment, Consent and Waiver to the Genuity Agreement, dated as of December 30, 2002, effective as of November 27, 2002, by and among Parent, the Purchasers and the Sellers.
  27. Second Amendment and Waiver to the Genuity Agreement, dated as of January 24, 2003, by and among Parent, the Purchasers and the Sellers.

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28. Third Amendment and Waiver to the Genuity Agreement, dated as of January 31, 2003, by and among Parent, the Purchasers and the Sellers.
  29. Transition Services Agreement, dated February 4, 2003, by and among the Purchasers and the Sellers.
  30. Network Services Agreement by and between American Online, Inc. and Genuity Solutions, Inc. (f/k/a BBN Corporation), as amended by the First Amendment dated as of January 8, 2002, and the Second Amendment, dated as of November 20, 2002.
  31. Master Service Agreement, dated October 24, 2002, between Level 3 Communications, LLC and Verizon Global Solutions, Inc.
  32. Trans-oceanic Capacity IRU Agreement, dated December 12, 2001, between Level 3 Communications, LLC and America Online, Inc.
  33. Metro IRU Agreement, dated February 5, 2003, between Level 3 Communications, LLC and America Online Inc.
  34. Indenture dated as of December 2, 2004 among Level 3 Communications, Inc. and The Bank of New York, as Trustee.
  35. Purchase Agreement dated as of October 30, 2005 among Leucadia National Corporation, Baldwin Enterprises, Inc., Level 3 Communications, LLC and Level 3 Communications, Inc.
  36. Indentures dated as of February 29, 2000 among Level 3 Communications, Inc. and The Bank of New York, as Trustee (relating to Level 3 Communications, Inc.'s 11% Senior Notes due 2008, 11 1/4% Senior Notes due 2010, 12 7/8% Senior Notes due 2010, 10 3/4% Senior Euro Notes due 2008 and 11 1/4% Senior Euro Notes due 2010).
  37. Amended and Restated Indenture dated as of July 8, 2003 among Level 3 Communications, Inc. and The Bank of New York, as Trustee.
  38. First Supplemental Indenture dated as of February 7, 2005 among Level 3 Communications, Inc. and The Bank of New York, as Trustee.
  39. Supplemental Indentures dated as of October 20, 2004 among Level 3 Financing, Inc. and The Bank of New York, as Trustee (relating to Level 3 Financing, Inc.'s 10.75% Senior Notes due 2014 and 10.75% Senior Notes due 2011).
  40. Supplemental Indenture dated as of December 1, 2004 among Level 3 Communications, Inc., Level 3 Financing, Inc., Level 3 Communications, LLC and The Bank of New York, as Trustee.
  41. Credit Agreement dated as of December 1, 2004 among Level 3 Communications, Inc., Level 3 Financing, Inc. and the lenders party thereto and Merrill Lynch Capital Corporation.

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42. Second Supplemental Indenture dated as of April 4, 2005 between Level 3 Communications, Inc. and The Bank of New York, as Trustee.
  43. Master Services Agreement among WilTel Communications, LLC, WilTel Local Network LLC, SBC Services, Inc. and SBC Communications Inc. dated June 15, 2005.
  44. Amendment No. 1 to Master Services Agreement among WilTel Communications, LLC, WilTel Local Network, LLC, SBC Services, Inc. and SBC Communications, Inc. dated July 29, 2005.
  45. Amendment No. 2 to Master Services Agreement among WilTel Communications, LLC, WilTel Local Network, LLC, SBC Services, Inc. and SBC Communications, Inc. dated August 11, 2005.
  46. Amendment No. 3 to Master Services Agreement among WilTel Communications, LLC, WilTel Local Network, LLC, SBC Services, Inc. and SBC Communications, Inc. dated October 5, 2005.
  47. Indenture dated as of March 14, 2006, among Level 3 Communications, Inc., Level 3 Financing, Inc. and The Bank of New York, as Trustee, relating to Level 3 Financing, Inc.'s Floating Rate Senior Notes due 2011.
  48. Indenture dated as of March 14, 2006, among Level 3 Communications, Inc., Level 3 Financing, Inc. and The Bank of New York, as Trustee, relating to Level 3 Financing, Inc.'s 12.25% Senior Notes due 2013.
  49. Agreement and Plan of Merger among Level 3 Communications, Inc., Eldorado Acquisition Three, LLC and TelCove, Inc. dated April 30, 2006.
  50. Agreement and Plan of Merger among Level 3 Communications, Inc., Eldorado Acquisition One, Inc., Looking Glass Networks Holding Co., Inc. and Cheshire Holding Corp. as Agent of the Securityholders of Looking Glass Networks Holding Co., Inc. dated June 2, 2006.

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EXHIBIT B

Opinion of  
Bingham McCutchen LLP  
Regulatory Counsel for the Company

1. The licenses, permits and authorizations set forth in Attachment A of the Officer's Certificate delivered in connection with such opinion constitute all of the material licenses, permits and authorizations required by the Federal Communications Commission ("FCC") and the State Regulatory Agencies (as defined below) for the provision of telecommunications services by the Company and the Subsidiaries as such counsel understands those services currently to be provided based solely on the Officer's Certificate, where the failure to obtain or hold such license, permit or authorization would materially adversely affect the ability of the Company or the Subsidiaries to provide such services, and, to the knowledge of counsel, none of the Company or any Subsidiary has received any notice of proceedings relating to the revocation or modification of any such license, permit or authorization which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a material adverse affect on the Company or such Subsidiary, in connection with the provision of such services as counsel understands those services to be provided based solely on the Officer's Certificate.

2. To the knowledge of such counsel, after reasonable inquiry with the FCC and relevant State Regulatory Agencies, neither the Company nor any of the Subsidiaries is subject to any pending or threatened proceeding, complaint or investigation before the FCC or any State Regulatory Agency based on any alleged violation by the Company or its Subsidiaries in connection with the provision of or failure to provide telecommunications services, of a character that would be required to be disclosed or incorporated by reference in the Registration Statement, the Preliminary Prospectus Supplement and the Final Prospectus Supplement, which is not adequately disclosed in the Registration Statement, the Preliminary Prospectus Supplement and the Final Prospectus Supplement.

3. The statements included in the Preliminary Prospectus Supplement and the Final Prospectus Supplement under the headings "Risk Factors—We are subject to significant regulation that could change in an adverse manner" and "—Potential regulation of Internet service providers in the United States could adversely affect our operations", "Business—Regulation—Federal Regulation", "—State Regulation", "—Local Regulation" and "—Regulation of Voice over Internet Protocol (VoIP) —Federal and State" (collectively, the "Applicable Sections"), fairly summarize in all material respects the matters of law therein described.

4. No consent, approval, authorization, license, certificate, permit or order of the FCC or any State Regulatory Agency is required for the consummation of the transactions contemplated by the Purchase Agreement.

5. Neither the execution and delivery of the Purchase Agreement or the Supplemental Indenture, nor the issue and sale of the Securities contemplated thereby will conflict with or result in a violation by the Company or the Subsidiaries of the Communications

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Act or, to such counsel's knowledge, a material violation of any order, license, certificate, permit, authorization, regulation, rule, or published decision of the FCC or any State Regulatory Agency applicable to the Company or any of the Subsidiaries, the conflict with or the violation of which would have a material adverse effect on the business of the Company or its Subsidiaries, taken as a whole, or result in the suspension, revocation, impairment, forfeiture, nonrenewal or termination of any FCC license or other authorization of the FCC.

Such counsel has not itself determined the accuracy or completeness of, or otherwise verified, the factual information furnished with respect to the Applicable Sections in the Registration Statement, the Disclosure Package and the Final Prospectus Supplement, including any amendments or supplements thereto as of the date hereof. Such counsel has generally reviewed and discussed with representatives of and counsel for the Underwriters and with certain officers and employees of, and counsel for, the Company the information furnished in the Applicable Sections. Although such counsel has not independently checked or verified and is neither passing upon nor assuming any responsibility for the factual accuracy, completeness or fairness of the statements contained in the Applicable Sections, nothing has become known to the attorneys who have been engaged in the review and discussion of the information furnished in the Preliminary Prospectus Supplement and the Final Prospectus Supplement in the course of such review and discussion which would cause counsel to believe that the statements contained in or incorporated by reference in the Registration Statement, the Preliminary Prospectus Supplement and the Final Prospectus Supplement, including any amendments or supplements thereto as of the date hereof, in the Applicable Sections, at the Effective Date, the Applicable Time, on the date of the Final Prospectus Supplement or on the Closing Date contained or contain an untrue statement of material fact or omitted or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. Such counsel expresses no opinion as to the statements contained under any other heading of the Registration Statement, the Preliminary Prospectus Supplement or the Final Prospectus Supplement, including any amendments or supplements thereto as of the date hereof. Counsel expresses no belief with respect to the financial statements (and notes and schedules thereto) and other statistical, financial or accounting data therein included.

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EXHIBIT C

Opinion of  
Internal Counsel for the Company Covering Canadian Regulatory Issues

1. The statements in the Preliminary Prospectus and the Final Prospectus under the captions “Risk Factors—Canadian law currently does not permit us to offer services in Canada” and “Canadian Regulation” insofar as such statements describe or summarize matters of law or constitute legal conclusions, fairly describe or summarize all matters referred to therein.

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EXHIBIT D

Opinion of  
Thomas C. Stortz, Executive Vice President,  
Chief Legal Officer and Secretary of the Company

1. Each of the Subsidiaries, other than Level 3 Communications, LLC, as to which such counsel need not opine, has been duly incorporated or formed and is validly existing and in good standing in the jurisdiction of its incorporation or formation, and has the requisite corporate power and authority to carry on its business and own its properties as currently being conducted and as described in the Disclosure Package and the Final Prospectus.

2. All the outstanding shares of capital stock or other equity interests of each Subsidiary, other than Level 3 Communications, LLC, as to which such counsel need not opine, have been duly and validly authorized and are duly issued and are fully paid and nonassessable, and have not been issued and are not owned or held in violation of any statutory preemptive right of stockholders; to the knowledge of such counsel after due inquiry, such shares or other equity interests are not held in violation of any other preemptive right of stockholders, and except as otherwise set forth in the Disclosure Package and the Final Prospectus, all outstanding shares of capital stock or other equity interests of the Subsidiaries are owned by the Company either directly or through wholly owned Subsidiaries, to the knowledge of such counsel, after due inquiry, free and clear of any agreement providing for a security interest in such shares or equity interests to secure any obligation and any stockholders' agreements, voting trusts, claims or other encumbrances (other than the pledge of such shares or equity interests pursuant to the agreements the Company and certain of its subsidiaries have entered into in connection with the senior secured credit facility described in the Disclosure Package and the Final Prospectus).

3. Neither the execution and delivery of this Agreement or the Indenture, the issue and sale of the Securities, nor the consummation of any other of the transactions herein or therein contemplated nor the fulfillment of the terms thereof, including the issuance of the Common Stock upon conversion of the Securities, will conflict with, result in a breach of, or constitute a default under the terms of any indenture or other agreement or instrument actually known to such counsel, after due inquiry (which does not include (i) a review of all the agreements or instruments in the Company's files or of agreements or instruments such counsel has not been involved with or (ii) a canvassing of the Company's employees), and to which the Company or any Subsidiary is a party or bound or its property is subject.

4. The information included or incorporated by reference in the Preliminary Prospectus and the Final Prospectus under the headings "Risk Factors—Environmental liabilities from our historical operations could be material" and "Legal Proceedings", insofar as such headings summarize matters of law, fairly summarize the matters therein described.

Such opinion may be limited to the laws of the State of Nebraska, the Federal laws of the United States of America and the General Corporation Law and the Limited Liability Company Act of the State of Delaware.

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All references in this Exhibit D to the Final Prospectus shall be deemed to include any amendment or supplement thereto at the Closing Date. The opinion of such counsel shall be rendered to the Underwriters at the request of the Company and shall so state.



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EXHIBIT E

Dated:

Merrill Lynch, Pierce, Fenner & Smith Incorporated  
as Representative of the several Underwriters  
c/o Merrill Lynch, Pierce, Fenner & Smith Incorporated  
4 World Financial Center  
New York, New York 10080

Ladies and Gentlemen:

This letter is being delivered to you in connection with a proposed Purchase Agreement (the "Purchase Agreement") between Level 3 Communications, Inc., a Delaware corporation (the "Company") and the Representatives of the several Underwriters named in Schedule I thereto, whereby the Underwriters have agreed to purchase \$300,000,000 aggregate principal amount of the Company's Convertible Senior Notes due 2012 (the "Securities"), which are convertible into shares of common stock, par value \$0.01 per share ("Common Stock"), of the Company pursuant to the Purchase Agreement.

In order to induce you to purchase the Securities pursuant to the Purchase Agreement, the undersigned will not, without the prior written consent of Merrill Lynch, Pierce, Fenner & Smith Incorporated, offer, sell, contract to sell, pledge or otherwise dispose of, or file (or participate in the filing of) a registration statement with the U.S. Securities and Exchange Commission in respect of, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Securities Exchange Act of 1934, as amended, and the rules and regulations of the U.S. Securities and Exchange Commission promulgated thereunder with respect to, any shares of capital stock of the Company or any securities convertible or exercisable or exchangeable for such capital stock, or publicly announce an intention to effect any such transaction, for a period of 90 days after the date of the Purchase Agreement, other than (i) shares of Common Stock disposed of as bona fide gifts, (ii) transfers incident to estate planning matters, including transfers of shares of Common Stock to one or more trusts for the benefit of the undersigned or members of the undersigned's family and (iii) testamentary transfers and other transfers of shares of Common Stock made pursuant to the laws of descent and distribution, provided, however, that in the case of any transfer, distribution or disposition pursuant to clause (i), (ii) or (iii) each donee, distributee or disposition recipient shall agree to be bound by the foregoing restrictions.

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If for any reason the Purchase Agreement shall be terminated prior to the Closing Date (as defined in the Purchase Agreement), the agreement set forth above shall likewise be terminated.

Very truly yours,

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Name:

Address: