

**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): December 16, 2014

FIVE9, INC.

(Exact name of Registrant as specified in its charter)

Delaware
**(State or other jurisdiction
of incorporation)**

001-36383
**(Commission
File No.)**

94-3394123
**(I.R.S. Employer
Identification No.)**

Bishop Ranch 8
4000 Executive Parkway, Suite 400
San Ramon, California 94583
(Address of principal executive offices and Zip Code)

Registrant's telephone number, including area code: (925) 201-2000

Not Applicable
(Former name or former address if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

Item 1.01 Entry Into a Material Definitive Agreement.

On December 16, 2014, Five9, Inc. (the "Company") and City National Bank (the "Bank") entered into a third amendment (the "Third Amendment") to their Loan and Security Agreement, dated as of March 8, 2013 (the "CNB Agreement"), as amended by that certain First Amendment to Loan and Security Agreement, dated as of October 18, 2013, and that certain Consent and Second Amendment to Loan and Security Agreement, dated as of February 20, 2014. The Third Amendment amends the Company's revolving line of credit (the "Revolving Credit Facility") under the CNB Agreement to, among other things, (A) increase the revolving credit commitment from \$12,500,000 to \$20,000,000, (B) extend the March 2015 maturity date to December 1, 2016 and (C) reduce the interest rate on borrowings by 0.75%, such that the per annum interest rate on outstanding borrowings will be the prime rate plus 0.50%. The Third Amendment also increases the required cash deposit with the Bank by \$2,000,000 to \$7,500,000.

On December 16, 2014, the Company, its subsidiary, Five9 Acquisition LLC, Fifth Street Finance Corp. and Fifth Street Mezzanine Partners V, L.P. entered into a first amendment (the "First Amendment") to their Loan and Security Agreement, dated as of February 20, 2014 (the "Fifth Street Agreement"), that increases the amount of senior debt permitted thereunder to account for the increase to the Revolving Credit Facility.

Except as noted above, the material terms of the CNB Agreement and the Fifth Street Agreement remain substantially unchanged.

The foregoing descriptions of the Third Amendment and the First Amendment do not purport to be complete and are qualified in their entirety by reference to the full text of the Third Amendment and First Amendment, copies of which are filed as Exhibits 10.1 and 10.2, respectively, to this Current Report on Form 8-K.

Relationships

City National Bank, Fifth Street Finance Corp. and Fifth Street Mezzanine Partners V, L.P. are entitled to registration rights under the Company's Eighth Amended and Restated Stockholders' Agreement, dated as of October 28, 2013, as amended.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement of a Registrant.

The information set forth in Item 1.01 of this Report is incorporated by reference herein.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
10.1	Third Amendment to Loan and Security Agreement, dated December 16, 2014, by and between Five9, Inc. and City National Bank.
10.2	First Amendment to Loan and Security Agreement, dated December 16, 2014, by and between Five9, Inc., Five9 Acquisition LLC, Fifth Street Finance Corp. and Fifth Street Mezzanine Partners V, L.P..

SIGNATURES

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

FIVE9, INC.

Date: December 18, 2014

By: /s/ Barry Zwarenstein

Barry Zwarenstein

Chief Financial Officer

INDEX TO EXHIBITS

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**THIRD AMENDMENT
TO LOAN AND SECURITY AGREEMENT**

This Third Amendment to Loan and Security Agreement is entered into as of December 16, 2014 (this "**Amendment**"), by and between CITY NATIONAL BANK ("**Bank**") and FIVE9, INC., a Delaware corporation ("**Borrower**").

RECITALS

Borrower and Bank are parties to that certain Loan and Security Agreement dated as of March 8, 2013, as amended by that certain First Amendment to Loan and Security Agreement dated as of October 18, 2013 and that certain Consent and Second Amendment to Loan and Security Agreement dated as of February 20, 2014 (as the same may from time to time be further amended, modified, supplemented or restated, the "**Agreement**").

The parties desire to amend the Agreement in accordance with the terms of this Amendment.

NOW, THEREFORE, the parties agree as follows:

1. The following terms are added to Section 1.1 or amended, as follows:

"Revolving Line" means a credit extension of up to Twenty Million Dollars (\$20,000,000).

"Revolving Maturity Date" means December 1, 2016.

"Third Amendment Date" means December 16, 2014.

2. Section 2.3(a) is amended to read as follows:

(a) Interest Rates. Except as set forth in Section 2.3(b), (i) the Advances shall bear interest, on the outstanding Daily Balance thereof, at a rate per annum equal to one half of one percent (0.50%) above the Prime Rate and (ii) the Term Advance shall bear interest, on the outstanding Daily Balance thereof, at a rate per annum equal to one and one half percent (1.50%) above the Prime Rate.

3. Section 6.9 is amended to read as follows:

6.9 Accounts. Borrower shall at all times maintain (a) a majority of its cash and cash equivalents in the United States with Bank and (b) a balance of unrestricted cash with Bank of at least Seven Million Five Hundred Thousand Dollars (\$7,500,000). Borrower may maintain deposit accounts in countries outside the United States, provided the aggregate balance maintained in such accounts does not exceed more than five percent (5.0%) of the aggregate amounts paid to support Borrower's operations in the ordinary course of business in those countries.

4. Borrower shall pay Bank a fee of Thirty Thousand Dollars (\$30,000) on the first anniversary of the Third Amendment Date.

5. Exhibit C (Borrowing Base Certificate) attached to the Agreement is replaced with Exhibit C (Borrowing Base Certificate) attached hereto.

6. Exhibit D (Compliance Certificate) attached to the Agreement is replaced with Exhibit D (Compliance Certificate) attached hereto.

7. Unless otherwise defined, all initially capitalized terms in this Amendment shall be as defined in the Agreement. The Agreement, as amended hereby, shall be and remain in full force and effect in accordance with its respective terms and hereby is ratified and confirmed in all respects. Except as expressly set forth herein, the execution, delivery, and performance of this Amendment shall not operate as a waiver of, or as an amendment of, any right, power, or remedy of Bank under the Agreement, as in effect prior to the date hereof. Borrower ratifies and reaffirms the continuing effectiveness of all agreements entered into in connection with the Agreement.

8. Borrower represents and warrants that the representations and warranties contained in the Agreement are true and correct in all material respects as of the date of this Amendment (except to the extent such representations or warranties relate to a specific date), and that no Event of Default has occurred and is continuing.

9. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

10. As a condition to the effectiveness of this Amendment, Bank shall have received, in form and substance reasonably satisfactory to Bank, the following:

- (a) this Amendment;
- (b) a First Amendment to Subordination Agreement;
- (c) a certificate of the Secretary of Borrower with respect to incumbency and resolutions authorizing the execution and delivery of this Amendment;
- (d) an Affirmation of Guaranty;
- (e) payment of a fee of Thirty Thousand Dollars (\$30,000), plus payment of all Bank Expenses incurred through the date of this Amendment; and
- (f) such other documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the first date above written.

"Borrower"

FIVE9, INC.

By: /s/ Barry Zwarenstein

Name: Barry Zwarenstein

Title: CFO

"Bank"

CITY NATIONAL BANK

By: /s/ Larry Sherman

Name: Larry Sherman

Title: Vice President

Exhibit C

BORROWING BASE CERTIFICATE

Borrower: FIVE 9, INC.
Commitment Amount: \$20,000,000

Lender: City National Bank

MONTHLY RECURRING REVENUE

1. Monthly Recurring Revenue (three months)	\$ _____
2. Average dollar based retention rate (trailing 12 months)	_____ %
3. Product of No. 1 times No. 2	\$ _____
4. Less: USF Reserve	\$ _____
5. Availability after USF Reserve (#3 minus #4)	\$ _____

BALANCES

6. Maximum Loan Amount	\$20,000,000
7. Total Funds Available [Lesser of #5 or #6]	\$ _____
8. Present balance owing on Line of Credit	\$ _____
9. Availability (#7 minus #8)	\$ _____

The undersigned represents and warrants that the foregoing is true, complete and correct, and that the information reflected in this Borrowing Base Certificate complies with the representations and warranties set forth in the Loan and Security Agreement between the undersigned and City National Bank.

FIVE 9, INC.

By: _____
Authorized Signer

Exhibit D

COMPLIANCE CERTIFICATE

TO: CITY NATIONAL BANK
 FROM: FIVE 9, INC.

The undersigned authorized officer of FIVE 9, INC. hereby certifies that in accordance with the terms and conditions of the Loan and Security Agreement between Borrower and Bank (the "Agreement"), (i) Borrower is in complete compliance for the period ending _____ with all required covenants except as noted below and (ii) all representations and warranties of Borrower stated in the Agreement are true and correct in all material respects as of the date hereof (except to the extent that such representations and warranties expressly relate to an earlier specified date, in which case such representations and warranties shall have been true and correct in all material respects as of the date when made). Attached herewith are the required documents supporting the above certification. The Officer further certifies that these are prepared in accordance with Generally Accepted Accounting Principles (GAAP) and are consistently applied from one period to the next except as explained in an accompanying letter or footnotes.

Please indicate compliance status by circling Yes/No under "Complies" column.

<u>Reporting Covenant</u>	<u>Required</u>	<u>Complies</u>	
Monthly Recurring Revenue Report/BBC	Monthly within 30 days	Yes	No
Monthly financial statements + Compliance Cert.	Monthly within 30 days	Yes	No
Annual financial statements (draft)	FYE within 180 days	Yes	No
Annual financial statements (CPA Audited)	FYE within 240 days	Yes	No
Cash balance in CNB Accounts	Majority/\$7,500,000 minimum	Yes	No
Financial projections	Within 45 days of fiscal year beginning	Yes	No
IP Report	Annual	Yes	No

<u>Financial Covenant</u>	<u>Required</u>	<u>Actual</u>	<u>Complies</u>
None.			

Comments Regarding Exceptions: See Attached.

Sincerely,

SIGNATURE

TITLE

DATE

BANK USE ONLY		
Received by:	_____	
	AUTHORIZED SIGNER	
Date:	_____	
Verified:	_____	
	AUTHORIZED SIGNER	
Date:	_____	
Compliance Status	Yes	No

FIRST AMENDMENT TO LOAN AND SECURITY AGREEMENT

This First Amendment to Loan and Security Agreement (the “Amendment”) is dated as of December 16, 2014, by and among (i) FIVE9, INC., a Delaware corporation and FIVE9 ACQUISITION LLC, a Delaware limited liability company (collectively, “Borrower”), (ii) FIFTH STREET FINANCE CORP., a Delaware corporation, as the administrative agent for the Lenders (in such capacity, “Agent”), and (iii) the lenders identified on the signature pages hereof (collectively, “Lenders”).

RECITALS

A. Pursuant to that certain Loan and Security Agreement dated as of February 20, 2014, by and among Borrower, Agent and Lenders (the “Loan and Security Agreement”), Borrower has received a Loan from Lenders in the maximum original principal amount of Thirty Million Dollars (\$30,000,000), as evidenced by certain Notes executed by Borrower in favor of Lenders dated as of February 20, 2014.

B. Borrower has requested, and Agent and Lenders have agreed, to modify the Loan and Security Agreement, as set forth herein, subject to the terms and conditions set forth herein below. All capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in the Loan and Security Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises set forth above and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to the following:

1. Modification of Loan and Security Agreement. Section 8.24 of the Loan and Security Agreement is deleted in its entirety and replaced with the following:

“ 8.24 Permitted Senior Debt. The Agent and Lenders acknowledge and agree that Borrower entered into the Loan and Security Agreement dated as of March 8, 2013, as amended by that certain First Amendment to Loan and Security Agreement dated as of October 18, 2013, that certain Consent and Second Amendment to Loan and Security Agreement dated as of February 20, 2014, and that certain Third Amendment to Loan and Security Agreement dated as of December 16, 2014 (as may be further amended or otherwise modified), between Lead Borrower and City National Bank (as such Person may be replaced, the “Senior Lender”), pursuant to which Borrower incurred a secured senior revolving facility, ACH line facility and term loan (as such revolving facility, ACH line facility and term loan may be extended, modified, refinanced or renewed, the “Senior Debt”) in an amount not to exceed Twenty-Seven Million Two Hundred Thousand Dollars \$27,200,000 (\$20,000,000 of which is the revolving facility), which Senior Debt is subject to a certain Subordination Agreement dated February 20, 2014, by and between the Senior Lender and Agent, as amended by that certain First Amendment to Subordination Agreement dated December 16, 2014 (as further amended from time to time, the “Intercreditor Agreement”). Such Senior Debt shall be secured only by the “Collateral” as such term is defined and used in the Intercreditor Agreement.”

2. Ratification of Loan Documents and Collateral. Borrower hereby ratifies and affirms each of the Loan Documents, as amended hereby, and agrees to perform each obligation set forth in each of the Loan Documents, as amended hereby. Except as specifically modified and amended herein, all terms,

warranties, representations, conditions and covenants contained in the Loan and Security Agreement and the other Loan Documents shall remain in full force and effect. Any property or rights to or interests in property granted as security in the Loan Documents shall remain as security for the Loan and the obligations of Borrower in the Loan Documents.

3. Borrower Representations and Warranties. Borrower represents and warrants to Agent and Lenders as of the date hereof that:

(a) The representations, warranties, certifications and agreements contained in the Loan Documents are true, complete and accurate in all material respects as of the date hereof provided, however, that those representations and warranties expressly referring to another date shall be true, correct and complete in all material respects as of such date.

(b) Borrower and, to Borrower's knowledge, Agent and Lenders have performed all of their respective obligations under the Loan Documents and Borrower has no knowledge of the occurrence of any event which with the giving of notice, the passage of time or both would constitute a Default or an Event of Default under the Loan Documents.

(c) Borrower has no claim against Agent or Lenders and no offset or defense to the payment or performance of the Obligations or any counterclaim or right to rescission to enforcement of any of the terms of the Loan Documents.

(d) No voluntary actions or, to Borrower's knowledge, involuntary actions are pending against Borrower under the bankruptcy or insolvency laws of the United States or any state thereof.

(e) The Loan Documents, as any of the same have been modified, amended and restated, are the valid, legal and binding obligation of Borrower.

4. Covenants of Borrower. Borrower covenants to Agent and Lenders as follows:

(a) Borrower shall cause to be executed, delivered, and performed such additional agreements, documents, and instruments as reasonably required by Agent to effectuate the intent of this Amendment.

(b) Borrower fully, finally, and forever releases and discharges Agent and Lenders, together with their respective successors, assigns, directors, officers, employees, agents, and representatives from any and all actions, causes of action, claims, debts, demands, liabilities, obligations, and suits, of whatever kind or nature, in law or in equity (collectively, the "Claim"), that Borrower has or in the future may have, whether known or unknown, but only with respect to those Claims for which both of the following are true: (i) the Claim is in respect to the Loan, the Loan Documents, or the actions or omissions of Agent or Lenders in respect to the Loan or the Loan Documents, and (ii) the Claim arises from events occurring prior to the date of this Amendment. It is the intention of Borrower that the above release shall be effective as a full and final release of each and every matter specifically and generally referred to above.

5. Costs and Expenses. In accordance with Section 1.3(c) of the Loan and Security Agreement, Borrower agrees to promptly pay all reasonable and out-of-pocket fees, charges, costs and expenses (including reasonable attorneys' fees and expenses, accounting, consulting, brokerage or other similar professional fees and expenses and travel expenses) incurred by the Agent and/or any Lender in connection with any matters contemplated by or arising out of the Loan Documents, including in connection with the examination, review, due diligence investigation, documentation, negotiation, closing of the transactions contemplated therein and in connection with the continued administration of the Loan Documents including any amendments, modifications, subordination or intercreditor agreements, consents and waivers. All fees, charges, costs and expenses for which Borrower is responsible pursuant hereto shall be deemed part of the Obligations when incurred, payable upon demand and secured by the Collateral.

6. Conditions Precedent. Agent and Lenders shall not be bound by this Amendment unless and until Agent has received (i) fully executed copies of this Amendment, (ii) an amendment fee, for the ratable account of the Lenders, in an amount equal to \$25,000, and (iii) all reasonable costs and expenses of Agent and Lenders in connection with this Amendment have been paid.

7. Miscellaneous.

(a) The Loan Documents as modified herein contain the entire understanding and agreement of Borrower, Agent and Lenders with respect to the Loan and supersede all prior representations, warranties, agreements, arrangements, and understandings. No provision of the Loan Documents as modified may be changed, discharged, supplemented, terminated, or waived except in a writing signed by Agent, Lenders and Borrower.

(b) All references in the Loan Documents to the Loan and Security Agreement shall mean the Loan and Security Agreement as hereby modified and amended. This Amendment shall also constitute a Loan Document and all terms and conditions of the Loan and Security Agreement (as modified herein) including, without limitation, events of default, maturity dates and the miscellaneous provisions set forth therein, including without limitation, consent to jurisdiction, applicable law, and waiver of jury are incorporated herein as though set forth in full and Agent and Lenders shall be entitled to the benefits thereof with respect to this Amendment.

(c) This Amendment may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart.

[SIGNATURE PAGES FOLLOW]

AGENT:

FIFTH STREET FINANCE CORP.,
a Delaware corporation

By: Fifth Street Management LLC,
a Delaware limited liability company,
its Agent

By: /s/ Ivelin M. Dimitrov
Ivelin M. Dimitrov, Chief Investment Officer

LENDERS:

FIFTH STREET FINANCE CORP.,
a Delaware corporation

By: Fifth Street Management LLC,
a Delaware limited liability company,
its Agent

By: /s/ Ivelin M. Dimitrov
Ivelin M. Dimitrov, Chief Investment Officer

FIFTH STREET MEZZANINE PARTNERS V, L.P.,
a Delaware limited partnership

By: FSMP V GP, LLC,
a Delaware limited liability company,
its General Partner

By: /s/ Bernard D. Berman
Bernard D. Berman, Manager