

LATITUDE COMMUNICATIONS INC
Form SC 13D
November 21, 2003

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 13D

(Rule 13d-101)

Under the Securities Exchange Act of 1934

(Amendment No. _____)*

LATITUDE COMMUNICATIONS, INC.

(Name of Issuer)

Common Stock, \$0.001 par value

(Title of Class of Securities)

518292107

(CUSIP Number)

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Daniel Scheinman

Fenwick & West LLP

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275 Battery Street

Cisco Systems, Inc.

San Francisco, CA 94111

170 West Tasman Drive

(415) 875-2300

San Jose, CA 95134

(408) 526-4000

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

November 11, 2003

(Date of Event Which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(e), 13d-1(f) or 13d-1(g), check the following box "

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See §240.13d-7 for other parties to whom copies are to be sent.

* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be filed for the purpose of Section 18 of the Securities Exchange Act of 1934 (Act) or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

SCHEDULE 13D

CUSIP No. 518292107

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1. Name of Reporting Person S.S. or I.R.S. Identification No. of above person (Entities only)

Cisco Systems, Inc., I.R.S. Identification No. 77-0059951

2. Check the Appropriate Box if a Member of a Group (See Instructions)

(a) ..

(b) ..

Not applicable.

3. SEC Use Only

4. Source of Funds (See Instructions)

WC

5. Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e) ..

6. Citizenship or Place of Organization

State of California

NUMBER OF 7. Sole Voting Power

SHARES

BENEFICIALLY None

OWNED BY 8. Shared Voting Power

EACH

REPORTING 1,669,920 shares of common stock¹

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PERSON 9. Sole Dispositive Power

WITH

None

10. Shared Dispositive Power

None

11. Aggregate Amount Beneficially Owned by Each Reporting Person

1,669,920 shares of common stock¹

12. Check Box if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)

x

13. Percent of Class Represented by Amount in Row (11)

8.5% of common stock²

14. Type of Reporting Person (See Instructions)

CO

¹ Represents the aggregate number of shares of the issuer's common stock held by executive officers and directors and their affiliates, if applicable, of the issuer, each of whom entered into a voting agreement dated November 11, 2003 with Cisco Systems, Inc. (**Cisco**) obligating the holder to vote such shares in favor of the proposed acquisition of the issuer by Cisco and related matters, and with respect to which such persons granted Cisco a proxy granting Cisco the right to vote on each such person's behalf in favor of such matters. Cisco expressly disclaims beneficial ownership of any of the shares of the issuer's common stock subject to the voting agreements and proxies.

² Based on 19,687,229 shares of the issuer's common stock outstanding as of November 11, 2003, as represented by the issuer in the Agreement and Plan of Merger discussed in Items 3 and 4 below.

SCHEDULE 13D

Item 1. Security and Issuer.

The class of equity securities to which this statement relates is common stock, par value \$0.001 of Latitude Communications, Inc., a Delaware corporation (*Latitude*). The principal executive offices of Latitude are located at 2121 Tasman Drive, Santa Clara, California 95054.

Item 2. Identity and Background.

(a) The name of the corporation filing this statement is Cisco Systems, Inc., a California corporation, hereinafter sometimes referred to herein as *Cisco*.

(b) The address of Cisco's principal office is 170 West Tasman Drive, San Jose, California 95134.

(c) Cisco manufactures and sells networking and communications products and provides services associated with that equipment and its use.

(d) Neither Cisco nor, to Cisco's knowledge, any person named on Schedule A attached hereto during the last five years, has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors).

(e) Neither Cisco nor, to Cisco's knowledge, any person named on Schedule A attached hereto during the last five years, was a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree, or final order enjoining future violations of, or prohibiting or mandating activities subject to, Federal or state securities laws or finding any violation with respect to such laws.

(f) To Cisco's knowledge, each of the individuals identified on Schedule A attached hereto is a citizen of the United States.

Set forth on Schedule A is the name, and principal occupation or employment, and the name, principal business and address of any corporation or other organization in which such employment is conducted, of each of the directors and executive officers of Cisco as of the date hereof.

Item 3. Source and Amount of Funds or Other Consideration.

Latitude entered into an Agreement and Plan of Merger, dated as of November 11, 2003, a copy of which is attached hereto as Exhibit 1 (the *Merger Agreement*), with Cisco that provides for the acquisition of Latitude by Cisco by means of a merger of a wholly-owned subsidiary of

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Cisco (***Merger Sub***) with and into Latitude. As a result of the merger, Latitude would become a wholly-owned subsidiary of Cisco. As an inducement for Cisco to enter into the Merger Agreement and in consideration thereof, each executive officer and director and certain of their affiliates of Latitude, as identified on Schedule B (collectively the ***Securityholders***), entered into a separate Voting Agreement with Cisco, dated November 11, 2003, the form of which is attached hereto as Exhibit 2 and more fully described in Item 4, whereby each Securityholder agreed to vote all of the shares of Latitude common stock currently beneficially owned by such Securityholder or acquired by such Securityholder after such date (including by means of exercise of stock options) in favor of the merger and related matters. Each of these Securityholders also granted Cisco an irrevocable proxy granting Cisco the right to vote such shares in favor of such matters (the voting agreements

and proxies together are referred to herein as the *Voting Agreements*). Cisco did not pay additional consideration to the Securityholders in exchange for the Voting Agreements.

References to, and descriptions of, the merger, the Merger Agreement and the Voting Agreements throughout this Schedule 13D are qualified in their entirety by reference to the Merger Agreement included as Exhibit 1 to this Schedule 13D and the Voting Agreement included as Exhibit 2 to this Schedule 13D, respectively. These agreements are incorporated into this Schedule 13D where such references and descriptions appear.

Item 4. Purpose of Transaction.

(a) (b) As described in Item 3 above, this Schedule 13D relates to the proposed acquisition of Latitude by Cisco pursuant to the terms of the Merger Agreement. To induce Cisco to enter into the Merger Agreement, the Securityholders entered into the Voting Agreements. The purpose of the Voting Agreements is to facilitate the consummation of the merger.

The Merger Agreement provides that, at the effective time of the merger, each outstanding share of Latitude common stock will be converted into the right to receive \$3.95 in cash, without interest. In addition, Cisco will issue new Cisco stock options in replacement of Latitude stock options held by persons who are employed by Cisco following the merger. The number of new Cisco stock options to be issued will equal the number of shares subject to each relevant Latitude stock option, multiplied by \$3.95, divided by the 10-day trailing average trading price of Cisco common stock leading up to the closing of the merger. Latitude employees who are not employed by Cisco following the merger will receive, in exchange for each stock option held by each such person, an amount of cash equal to the product of (i) the number of shares of Latitude common stock subject to such stock option that are vested immediately prior to the closing, and (ii) \$3.95 less the exercise price of that stock option; *provided, that*, if the exercise price exceeds \$3.95, no cash shall be received in exchange for such option.

By executing the Voting Agreements, the Securityholders have (i) agreed to vote all of the shares of Latitude common stock currently beneficially owned by them or acquired prior to the expiration of the Voting Agreement, including by means of exercise of stock options, in favor of the adoption of the Merger Agreement and any other matter that could reasonably be expected to facilitate the merger, and against any Acquisition Proposal (as defined in Section 5.3(a) of the Merger Agreement) and any other matter that might reasonably be expected to impede, delay or materially and adversely affect the merger, and (ii) granted irrevocable proxies to Cisco granting Cisco the right to vote such shares as specified in clause (i). The Securityholders may vote such shares on all other matters submitted to the Latitude stockholders for their approval. The Voting Agreements terminate upon the earlier to occur of (i) termination of the Merger Agreement, and (ii) the effectiveness of the merger.

(c) Not applicable.

(d) It is anticipated that upon consummation of the merger, the officers and directors of Merger Sub shall become the officers and directors of Latitude (the surviving corporation in the merger), until their respective successors are duly elected or appointed and qualified.

(e) Other than as a result of the merger described in Item 3 and above in this Item 4, not applicable.

(f) Not applicable.

(g) Upon consummation of the merger, the Certificate of Incorporation of Latitude shall be amended and restated in its entirety to be identical to the Certificate of Incorporation of Merger Sub, except that the name of the surviving corporation shall be Latitude Communications, Inc. Upon consummation of the merger, the Bylaws of Latitude shall be amended and restated in their entirety to be identical to the Bylaws of Merger Sub.

(h) (i) If the Merger is consummated as planned, Latitude common stock will cease to be quoted on The Nasdaq Stock Market, Inc.'s National Market System and will become eligible for termination of registration pursuant to Section 12(g)(4) of the Securities Exchange Act of 1934, as amended.

(j) Not applicable.

Item 5. Interest in Securities of the Issuer.

(a) (b) As a result of the Voting Agreements, Cisco may be deemed to be the beneficial owner of 1,669,920 shares of Latitude common stock. This number of shares represents approximately 8.5% of the issued and outstanding shares of Latitude common stock based on the number of shares outstanding as of November 11, 2003 (as represented by Latitude in the Merger Agreement). Cisco disclaims any beneficial ownership of such shares, and nothing herein shall be deemed to be an admission by Cisco as to the beneficial ownership of such shares.

To Cisco's knowledge, no shares of Latitude common stock are beneficially owned by any of the persons identified in Schedule A to this Schedule 13D.

(b) Cisco may be deemed to have shared voting power of the 1,669,920 shares of Latitude common stock held by Securityholders who entered into the Voting Agreements due to Cisco's right under the Voting Agreements to direct the voting of such shares with respect to the matters specified therein (and to vote such shares in accordance with the proxies). However, Cisco does not control the voting of such shares with respect to other matters, and does not possess any other rights as a Latitude stockholder with respect to such shares.

Information required by Item 2 (a)-(c) with respect to each Securityholder who entered into a Voting Agreement with Cisco is set forth on Schedule B. To Cisco's knowledge, none of the Securityholders (i) has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) during the last five years, or (ii) was a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree, or final order enjoining future violations of, or prohibiting or mandating activities subject to, Federal or state securities laws or finding any violation with respect to such laws during the last five years. To Cisco's knowledge, each of the individuals identified on Schedule B is a citizen of the United States, except Klaus-Dieter Laidig, who is a citizen of Germany.

(c) To Cisco's knowledge, no transactions in Latitude common stock have been effected during the past sixty days by any person named pursuant to Item 2.

(d) To Cisco's knowledge, no person other than the Securityholders identified on Schedule B has the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, such shares.

(e) Not applicable.

Item 6. Contracts, Arrangements, Understandings or Relationships With Respect to Securities of the Issuer.

The Voting Agreements also apply to any shares of Latitude common stock acquired by the parties to such agreements after the date of the Voting Agreements, including by means of exercise of stock options. An employment agreement entered into between Cisco and one of the executive officers of Latitude obligates the executive officer to exercise his Latitude stock options with respect to a specified number of shares prior to the closing (however, such person is not specifically required to exercise these stock options prior to the record date for the vote on the merger). The number of shares that Cisco may be deemed to beneficially own as of the date of filing of this Schedule 13D, as reported herein, does not include the shares issuable upon exercise of the stock option referred to in the preceding sentence, nor any other shares issuable upon the exercise of stock options held by the parties to the Voting Agreements, and Cisco disclaims beneficial ownership of all such shares.

Item 7. Materials to be Filed as Exhibits.

The following documents are filed as exhibits:

| Exhibit | |
|----------------|--|
| No. | Title |
| 1 | Agreement and Plan of Merger, dated as of November 11, 2003, by and among Cisco Systems, Inc., Los Angeles Acquisition Corp. and Latitude Communications, Inc. |
| 2 | Form of Voting Agreement, dated November 11, 2003, by and among Cisco Systems, Inc. and certain securityholders of Latitude Communications, Inc. |

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: November 19, 2003

CISCO SYSTEMS, INC.

By:

/s/ Daniel Scheinman

Daniel Scheinman

Senior Vice President,

Corporate Development

Attention: Intentional misstatements or omissions of fact constitute Federal criminal violations (See 18 U.S.C. 1001)

Schedule A

Directors and Executive Officers of Cisco Systems, Inc.

The following table sets forth the name, business address and present principal occupation or employment of each director and executive officer of Cisco Systems, Inc. Except as indicated below, the business address of each person is c/o Cisco Systems, Inc., 170 West Tasman Drive, San Jose, California 95134-1706.

BOARD OF DIRECTORS

Carol Bartz

Chairman and CEO, Autodesk, Inc.

111 McInnis Parkway

San Rafael, California 94903

M. Michele Burns

Executive Vice President and Chief Financial

Officer, Delta Airlines, Inc.

760 Doug Davis Drive

Atlanta, Georgia 30354

Larry R. Carter

Senior Vice President, Office of the President,

Cisco Systems, Inc.

John T. Chambers

President and CEO, Cisco Systems, Inc.

James F. Gibbons, Ph.D.

Professor (Research) of Electrical

Rod McGearry

Previously, Chairman and Chief Executive Officer of

Brience, Inc.

James C. Morgan

Chairman, Applied Materials, Inc.

3050 Bowers Avenue

Santa Clara, California 95054

John P. Morgridge

Chairman of the Board, Cisco Systems, Inc.

Donald T. Valentine

Partner and Founder, Sequoia Capital

3000 Sand Hill Road

Bldg. 4, Suite 180

Menlo Park, California 94025

Steven M. West

Previously, COO, nCUBE Corp.

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Engineering, Stanford University

110 Marsh Dr

Stanford University

Foster City, California 94404

Stanford, California 94305

John L. Hennessy

Jerry Yang

President, Stanford University

Co-founder, Yahoo! Inc

Stanford University

701 First Avenue

Stanford, California 94305

Sunnyvale, California 94089

EXECUTIVE OFFICERS

Name

Title

Larry R. Carter

Senior Vice President, Office of the President

John T. Chambers

President and CEO

Mark Chandler

Vice President, Legal Services, General Counsel and Secretary

Richard J. Justice

Senior Vice President, Worldwide Field Operations

Mario Mazzola

Senior Vice President, Chief Development Officer

Randy Pond

Senior Vice President, Operations, Systems and Processes

Dennis D. Powell

Senior Vice President and CFO

Betsy Rafael

Vice President, Corporate Controller and Principal Accounting Officer

James Richardson

Senior Vice President, Chief Marketing Officer

Schedule B**Parties to Voting Agreements with Cisco System, Inc.**

The following table sets forth the name and principal occupation or employment of each securityholder of Latitude that has entered into a Voting Agreement with Cisco in connection with the Merger Agreement, and the aggregate number of shares of Latitude common stock held by each such securityholder as of November 11, 2003. Except as otherwise indicated below, the business address of each securityholder set forth on this Schedule B is: c/o Latitude Communications, Inc., 2121 Tasman Drive, Santa Clara, CA 95054.

| <u>Name</u> | Shares Held as of November 11, 2003 |
|---|--|
| Klaus-Dieter Laidig (Partner, Laidig Business Consulting GmbH) | |
| Dave Bieselin (Vice President, Development of Latitude Communications, Inc.) | 63,993 |
| Luis Buhler (Chief Financial Officer, Latitude Communications, Inc.) | 2,000 |
| Robert Finocchio (Retired) | 97,500 |
| John M. Marcone (Vice President, Worldwide Sales, Latitude Communications, Inc.) | 7,643 |
| Rick McConnell (Chief Executive Officer, Latitude Communications, Inc.) | 15,983 |
| William Odell (Vice President, Worldwide Marketing, Latitude Communications, Inc.) | 26,600 |
| James L. Patterson (Independent Consultant) | 185,550 |
| Jan A. Praisner (Chief Financial Officer of Clarify, Inc.) | |
| R. Dixon Speas, Jr. (Vice President, Worldwide Support, Latitude Communications, Inc.) | 82,955 |

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Edward D. Tracy

(Vice President, Operations, Latitude Communications, Inc.)

196,296

Emil and Patricia Wang Trust

936,500

Emil C.W. Wang as Custodian for Brian F. Wang under the Uniform Gift to Minor Act

18,300

Emil C.W. Wang as Custodian for Kevin E. Wang under the Uniform Gift to Minor Act

18,300

Emil C.W. Wang as Custodian for Katherine E. Wang under the Uniform Gift to Minor Act

18,300

EXHIBIT INDEX

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