

Edgar Filing: YP NET INC - Form 10KSB/A

YP NET INC  
Form 10KSB/A  
January 22, 2004

U.S. SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

AMENDMENT NO. 3  
TO  
FORM 10-KSB

(Mark one)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934  
For the fiscal year ended September 30, 2002

TRANSITION REPORT UNDER SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_  
Commission File Number: 0-24217

YP.NET, INC.  
(Name of Small Business Issuer in its Charter)

NEVADA  
(State or other jurisdiction of  
incorporation or organization)

85-0206668  
(IRS Employer  
Identification No.)

4840 EAST JASMINE STREET, SUITE 105  
MESA, ARIZONA  
(Address of principal executive offices)

85205  
(Zip Code)

(480) 654-9646  
(Issuer's telephone number)

Securities registered under Section 12(b) of the Exchange Act: NONE Securities  
registered under Section 12(g) of the Exchange Act:  
COMMON STOCK, \$.001 PAR VALUE  
(Title of Class)

Check whether the issuer (1) filed all reports required to be filed by Section  
13 or 15(d) of the Exchange Act during the past 12 months (or for such shorter  
period that the registrant was required to file such reports), and (2) has been  
subject to such filing requirements for the past 90 days. X Yes No .

Check if there is no disclosure of delinquent filers in response to Item 405 of  
Regulation S-B contained in this form, and no disclosure will be contained, to  
the best of registrant's knowledge, in definitive proxy or information  
statements incorporated by reference in Part III of this Form 10-KSB or any  
amendment to this Form 10-KSB

Registrant's revenues for its most recent fiscal year were \$13,232,743

The aggregate market value of the common stock held by non-affiliates computed  
based on the closing price of such stock on January 7, 2003 was approximately  
\$1,677,062.

The number of shares outstanding of the registrant's classes of common stock, as  
of January 7, 2003 was 43,963,222.

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### EXPLANATORY NOTE:

This Amendment No. 3 to the Annual Report on Form 10-KSB for YP.Net, Inc., for the fiscal year ended September 30, 2003, as filed with the Securities and Exchange Commission on January 14, 2003, and as amended previously on April 10, 2003 and July 8, 2003, is being filed solely for the purpose of making the amendments set forth herein.

This Form 10-KSB/A does not, unless indicated, reflect events occurring after the filing of the original Form 10-KSB, or modify or update the disclosures therein in any way other than as required to reflect the amendment set forth below. The filing of this Form 10-KSB/A shall not be deemed an admission that the original filing or the amendments made thereto, when made, included any untrue statement of a material fact or omitted to state a material fact necessary to make a statement not misleading.

### PART I

#### ITEM 3. LEGAL PROCEEDINGS

We are party to certain legal proceedings and other various claims and lawsuits in the normal course of our business, which, in the opinion of management, are not individually or collectively material to our business or financial condition.

The Federal Trade Commission ("FTC") has aggressively pursued what it perceives as deceptive practices related to direct mailer and other promotions involving the Internet and/or LEC billing type practices. We had been involved in a significant FTC enforcement action regarding these matters. On or about June 26th, 2000 the FTC filed suit, in separate actions, against not less than 10 Internet companies of which the Company was one. Almost immediately the Company reached a preliminary settlement with the FTC (on July 13th, 2000), which essentially allowed the Company to continue "business as before", pending a final resolution. However, the Board of Directors of the Company determined that since the matter in question related to the Company's direct mail solicitations that the Company would voluntarily not mail any solicitations until a final agreement was reached with the FTC.

With no findings of wrongdoing or admissions by us, on July 30, 2001 a Final settlement was reached. The Stipulated Final Judgment and Order for Permanent Injunction and other Equitable Relief (the "Order") was filed with the United States District Court wherein the FTC and the Company agreed to this stipulation, which states a claim upon which relief may be granted against the Company, should it be violated. The Order called for the following minor changes to our business practices; We have been restrained from using the word "rebate" on our solicitations and must state that the mailer is a solicitation of goods and services, We have voluntarily agreed not to use the "walking fingers" logo on our solicitation (unless accompanied by the language "not affiliated with any local or long distance phone company") and further have extended our refund policy to our new customers from 90 days to 120 days.

Once the settlement was reached the Company tested its solicitations using all

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of the changes required under the agreement and upon determining that they had no material impact upon the results, resumed regular mailings in October 2001. As of this date the Company has complied with all ongoing requirements under the settlement, including the provision that all management personnel read and acknowledge the Final Order to ensure compliance.

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Other than this one action, The Company and the United States Federal Trade Commission have had no other issues.

The Company is or was a Plaintiff in various legal actions:

The Company had initiated various legal actions to recover shares of stock that had been issued by former management to various consultants. In all of these cases, management has alleged that this stock was issued to these consultants for the promise of valuable services to be rendered that were never performed. The cases and their current status are summarized below;

-YP.Net v. Elrod Maricopa County Superior Court CV2000-021154 (154,284 shares of common stock) On July 28, 1999, Elrod was hired as a consultant to the Company relating to financial and strategic matters. He was a consultant at the time the shares were transferred to him. The Company believes that Elrod did not perform in accordance with the consulting agreement. Subsequently, Elrod transferred the shares to a third party. Proceedings in this case began on November 27, 2000. All parties have agreed to enter into a tri-partite agreement on May 8, 2002 whereby the shares would be returned to the Company. The shares have not yet been returned to the Company as Elrod is disputing the terms of the settlement agreement.

-YP.Net v. Eriksson Maricopa County Superior Court CV2000-021151 (132,500 shares of common stock) On or about July 8, 1999, Eriksson was hired as a consultant to the Company relating to financial and strategic matters. He was a consultant at the time the shares were transferred to him. The Company believes that Eriksson did not perform in accordance with the consulting agreement. Subsequently, Eriksson had transferred all of these shares to third parties. Proceedings in this case began on November 27, 2000. One of those third parties, Tiger Lewis, has returned the shares transferred to them (82,500 shares). McConkie, another third party recipient of 50,000 shares had sued the Company so that he can further transfer the shares. A tri-partite agreement has been reached whereby the shares would be returned to the Company upon payment of \$6,187.50. That payment, final settlement and return of shares to the Company occurred on or about December 12, 2002.

-YP.Net v. Wolfson Maricopa County Superior Court CV2000-021152 (385,716 shares of common stock) On July 28, 1999, Wolfson was hired as a consultant to the Company relating to financial and strategic matters. He was a consultant at the time the shares were transferred to him. The Company believes that Wolfson did not perform in accordance with the consulting agreement. After agreeing to return the shares and filing a settlement agreement in court, Wolfson transferred these shares to an undisclosed third party. Proceedings in this case began on November 27, 2000. Presently, in settlement negotiations, Wolfson has agreed to provide the name of the third party and to negotiate the return of the shares to the Company. The shares have not yet been returned.

-YP.Net v. Anderson Maricopa County Superior Court CV2000-021153 (250,000 shares of common stock) On July 28, 1999, Anderson was hired as a consultant to the Company relating to financial and strategic matters. She was a consultant at the time the shares were transferred to her. The Company believes that Anderson did not perform in accordance with the consulting agreement. Proceedings in this case began on November 27, 2000. On June 10, 2002, the Company obtained judgment in its favor rescinding the original contract and all of the shares have been awarded to the Company. The shares are in the process of being transferred by the transfer agent.

-YP.Net v. Pamela J. Thompson et al. Maricopa County Superior Court CV2002-010117 On May 29th, 2002 the Company filed suit against Pamela J. Thompson, former CFO and related parties ("Thompson") in the Superior Court of Arizona alleging, among other things, that Thompson removed Company property

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without authorization and misappropriated Company funds. On July 10th, 2002, the Court issued a Temporary Restraining Order against Thompson enjoining them from disclosing or disseminating the Company's trade secrets, financial or confidential information and interfering in the Company's contractual obligations or contracts of the Company. The Company is seeking the return of the misappropriated funds and the Company property removed without authorization as well as the repayment of loans outstanding to the Company. The Company is also seeking punitive damages, attorney fees and compensatory damages. Discovery in the case is ongoing. Currently, the Company is seeking approximately \$95,000 as restitution.

The Company had made a demand for arbitration against a former billing Company for the return of funds that the Company alleged was wrongfully withheld from payments by them to us. The matter was settled by payment to the Company by the billing company of \$200,000

The Company was named as a Defendant in a lawsuit filed by Joseph and Helen Van Sickle on May 24th, 2002 (CV2002-010296) demanding immediate repayment of a promissory note for monies loaned to the Company by The Van Sickles. The Van Sickles claimed the Company owed approximately \$500,000, which amount the Company disputed. A settlement was reached and the case was dismissed with payment by the Company of \$300,000 on October 17th, 2002.

All other matters have been settled or dismissed and no other matters are pending.

### PART III

#### ITEM 9. DIRECTORS AND EXECUTIVE OFFICERS, PROMOTERS, AND CONTROL PERSONS; COMPLIANCE WITH SECTION 16(A) OF THE EXCHANGE ACT

##### DIRECTORS AND EXECUTIVE OFFICERS

The following biographical information is provided for each of the Company's Directors and Executive Officers:

ANGELO TULLO. Mr. Tullo has served as the Chairman of the Board of YP.Net since February 2000. Mr. Tullo was hired as Chief Executive Officer and President on September 10, 2000. Since December 1999, Mr. Tullo has also been the president of Sunbelt Financial Solutions, Inc., an investment banking and consultant firm in Scottsdale, Arizona. From January 1997 to December 1999, Mr. Tullo was an officer and director of American Business Funding Corp. Currently and for over twenty years, Mr. Tullo has been active as a business consultant. Mr. Tullo has actively worked with commercial financing and factoring for the past ten years. He has owned and operated factoring companies, leasing companies, consulting companies, wholesale companies, professional employment organizations, insurance agencies, heating and air-conditioning contractors, retail oil companies, real estate companies and restaurants. He is a former member of the CEO Club in New York, and current a member of the Presidential Business Roundtable Committee.

In February 2000, American Business Funding Corp. filed for protection under Chapter 11 of the Bankruptcy Code in the Federal District Court of Arizona. Mr. Tullo had previously been a director, officer and shareholder of American Business Funding prior to the time of its bankruptcy filing.

GREGORY B. CRANE. Mr. Crane has been a director of YP.Net since February, 2000 and also served as its Director of Operations from February 2000 to September 2000. Mr. Crane is the President of AMCS. He has been employed by AMCS since January 29, 2001. AMCS provides marketing and administrative services as well as personnel to the Company. From mid 1997 to December 2002, he was a

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marketing consultant to BESI, a related party to the Company (See "Certain Relationships and Related Transactions"). From September 1998 to June 1999, Mr. Crane was the General Manager of Telco Billing, Inc. ("Telco"). Mr. Crane has also owned and/or operated several businesses, including residential and commercial builders, multi-state mail order, and document-preparation companies (including State Recording Services, Inc.), and was also the creator of the Yellow-Page.Net concept. Mr. Crane is a former member of the Young Entrepreneur's Organization ("YEO").

In connection with providing homestead declaration document preparation and filing services, Mr. Crane (personally) and one of these businesses (State Recording Services, Inc.) have been subject to injunctive actions brought by the states of Arizona, Florida, Texas and Washington. Mr. Crane was the President and a significant shareholder of State Recording Services, Inc. These actions generally raised legal questions concerning mailer solicitations for document preparation services. Mr. Crane and various of the state plaintiffs have entered into consent orders in connection with these actions that required the modification of mailers and the payment of civil penalties, restitution, and attorneys' fees. Regarding each injunctive action, the use of the mail solicitation for document preparation services was prohibited in the State of Washington and Mr. Crane satisfied a judgment rendered in December 1994 of \$500,000. Mr. Crane voluntarily entered into an agreement with the State of Florida in connection with these matters and due to an error in type size made by the printing company; Mr. Crane technically violated that order. In connection with that violation of the Florida order, Mr. Crane was subject to a judgment, dated February 1998, in the amount of approximately \$1.4 million, plus accrued interest. As of February 2003, this judgment has expired and is no longer binding on Mr. Crane under Florida law and is in the process of being vacated. The injunctive actions in Arizona and Texas were both satisfied in April 1995 for primarily attorneys fees and refund offers to customers.

Mr. Crane was also named in the action filed by the Federal Trade Commission ("FTC") against the Company and has been included in the stipulated preliminary order entered into by the FTC and us and approved by the FTC. The Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief by and between the FTC, Mr. Crane, Telco, us and others (the "Order") places certain restrictions on the way mail solicitations will appear. The Order has been approved by the U.S. District Court Judge and the matter is closed with no findings of wrong doing on the part of the company, its officers and directors or Mr. Crane.

DANIEL L. COURY. Mr. Coury has served as a director of YP.Net since February 2000. For the last twelve years, Mr. Coury's principal business has been Mesa Cold Storage, Inc., which owns and operates the largest cold storage facilities in Arizona. He is also involved in the ownership and operation of various real estate interests and business ventures.

DEVAL JOHNSON. Mr. Johnson has served as a director since October 1999. Mr. Johnson was the graphics designer and director of Telco Billing from September 1998 until June 1999 when the Company acquired it. Since that time, Mr. Johnson has been responsible for the design of the in-house sales presentations and creation of the corporate logo(s) and image for YP.Net. In 2001, Mr Johnson formed his own company called Advanced Internet Marketing, Inc. to provide design and marketing services to a variety of companies and has continued to offer these services to YP.Net. In 2002, Mr. Johnson accepted the position of Vice President of Corporate Image for YP.Net. From 1995 through 1998, Mr. Johnson was a graphics designer for Print Pro, Inc. Mr. Johnson is actively involved with Website promotion, interactive design and Internet advertising. Mr. Johnson also serves as an officer and board member and is the beneficial owner of Simple.Net a national Internet service provider, a related party. See "Certain Relationships and Related Transactions".

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PETER BERGMANN. Mr. Bergmann has served as a director of the Company since May 2002. Since January 1999, Mr. Bergmann has served as the President of Perfect Timing Media, Inc. ("Perfect Timing"), a television development and production company which he founded. Perfect Timing focuses primarily on family fare programming. From 1994 to 1999, Mr. Bergmann was a member of the faculty at Fairleigh Dickinson University where he inaugurated the Electronic Filmmaking and Digital Video Design program which is a distinctive program in video and computer-generated graphics technologies offering students an opportunity to study commerce and art. In 1988, Mr. Bergmann joined Major Arts, Inc., a division of Paramount Communications, Inc., as the head of its television division where he was responsible for developing projects for television production. In 1987, Mr. Bergmann served as the President of Odyssey Entertainment, Inc. where he engineered the purchase of Coast Productions, Inc., which subsequently became Odyssey Filmmakers, Inc. where he served as President. From 1984 through 1987, Mr. Bergmann served as President of The Film Company where he had directorial and production responsibilities for theatrical releases and projects for television. During the 14 years prior to 1984, Mr. Bergmann was employed in various capacities by the American Broadcasting Company. These positions included line producer, division head, assistant to the President, Executive Vice President and Special Assistant to the Chairman of the Board. Mr. Bergmann received his PhD from New York University.

David J. Iannini. Mr. Iannini has served as the Chief Financial Officer since August 2002. Mr. Iannini was employed by Viad Corp from July 1999 to June 2002. He was Viad Corp Treasurer and Vice President of Corporate Development. Viad Corp. is a diversified service business with operating companies involved in the financial services, convention, travel and other businesses. Viad Corp. is an SEC Reporting company. Mr. Iannini was an investment banker from August 1986 to July 1999, primarily with Salomon Brothers, Inc. Mr. Iannini received his Masters in Business Administration, Summa Cum Laude, from the Anderson Graduate School of Management at U.C.L.A. Prior to his graduate studies, he worked with a Big Five accounting firm and is a C.P.A. Mr. Iannini received his Bachelors of Science degree, Magna Cum Laude, in Accounting from Boston College in 1981.

### SECTION 16(A) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Based solely on review of reports under Section 16(a) of the Securities Exchange Act of 1934, as amended, that were filed by executive officers and directors and beneficial owners of 10% or more of our common stock during the fiscal year ended September 2002, to the best of the Company's knowledge, except as follows, all 16(a) filing requirements have been made through the fiscal year ended September 30, 2001, and September 30, 2002. This information is based on a review of Section 16(a) reports furnished to us and other information.

Name	# of Reports
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Angelo Tullo	4
Greg Crane	5
DeVal Johnson	3
Dan Coury	1
Peter Bergmann	1
David Iannini	1

### ITEM 10. EXECUTIVE COMPENSATION

#### DIRECTORS AND EXECUTIVE OFFICERS

The directors and executive officers of YP.Net, their ages and positions are as follows:

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NAME	AGE	POSITIONS HELD(1)
Angelo Tullo	47	Chairman of the Board, Director, Chief Executive Officer and President
Gregory B. Crane	38	Vice President and Director
DeVal Johnson	36	Vice President, Secretary and Director
David J. Iannini,	43	Chief Financial Officer
Daniel L. Coury, Sr.	48	Director
Peter Bergmann	54	Director