

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

YP NET INC  
Form 10KSB/A  
January 30, 2004

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

FORM 10-KSB/A

Amendment No. 1

(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, 2003

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 85205  
(Address of principal executive offices) (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. 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 .

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Registrant's revenues for its most recent fiscal year were \$30,767,444.

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The aggregate market value of the common stock held by non-affiliates computed based on the closing price of such stock on December 26, 2003 was approximately \$29,600,000.

The number of shares outstanding of the registrant's classes of common stock, as of December 26, 2003 was 48,560,802.

Transitional Small Business Disclosure Format: Yes [ ] No [X]

DOCUMENTS INCORPORATED BY REFERENCE: None.

### EXPLANATORY NOTE

This Amendment No. 1 on Form 10-KSB/A (this "Amendment") amends the Company's Annual Report on Form 10-KSB for the fiscal year ended September 30, 2003, originally filed on December 31, 2003 (the "Original Filing"). The Company is refiling a portion of Part III to include the information required by Items 9, 10, 11, and 12 to Part III because the Company's definitive proxy statement will not be filed within 120 days of the end of the Company's fiscal year ended September 30, 2003. In addition, in connection with the filing of this Amendment and pursuant to the rules of the Securities and Exchange Commission, the Company is including with this Amendment certain currently dated certifications.

Except as described above, no other changes have been made to the Original Filing. This Amendment continues to speak as of the date of the Original Filing, and the registrant has not updated the disclosures contained therein to reflect any events that occurred at a date subsequent to the filing of the Original Filing. The filing of this Form 10-KSB/A is not a representation that any statements contained in items of Form 10-KSB other than Part III Items 9 through 12 are true or complete as of any date subsequent to the date of the original filing of Form 10-KSB.

### PART III

#### ITEM 9. DIRECTORS AND EXECUTIVE OFFICERS

##### DIRECTORS

The Company's Board of Directors currently consists of five members with each member serving for a one year term. In connection with an Annual Meeting of Stockholders scheduled for April 2, 2004, we are asking our stockholders to approve a proposal that would create a classified board consisting of three different classes of directors serving for staggered terms. There are no arrangements or understandings between any of the directors or any other persons pursuant to which any of the directors have been selected as directors, other than as described below. There are no "family relationships" among the directors, as that term is defined by the Securities and Exchange Commission ("SEC"). Set forth below is our current Board of Directors, including their age and positions with the Company, each as of September 30, 2003, as well as the anticipated class in which they would serve and the length of their term should the proposal be approved by the stockholders.

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NAME OF NOMINEE	CLASS	TERM	AGE	TITLE
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Angelo Tullo	I	2007	47	Chairman of the Board of Directors, Chief Executive Officer and President
DeVal Johnson	I	2007	37	Director and Secretary
Peter Bergmann	II	2006	54	Director
Daniel L. Coury, Sr.	II	2006	49	Director
Gregory B. Crane	III	2005	39	Director

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. Mr. Tullo is the president of Sunbelt Financial Solutions, Inc., an investment banking and consulting firm in Scottsdale, Arizona. From January 1997 to December 1999, Mr. Tullo was President and a director of American Business Funding Corp., which was in the business of accounts receivable factoring for small and medium sized businesses. For over twenty years, Mr. Tullo has been active as a business consultant. Mr. Tullo has actively worked in the areas of 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 currently is a member and honorary Mesa Chairman of the Presidential Business Roundtable Committee and the Turnaround Management Association.

Mr. Tullo has been involved with a number of corporate turnaround situations in which the companies he was associated with faced difficult financial circumstances. He has been successful with most of these difficult situations. However, in February 2000, after Mr. Tullo had departed, 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 Corp. prior to the time of its bankruptcy filing. American Business Funding has successfully emerged from Chapter 11 bankruptcy with an approved plan that fully repays all creditors.

DEVAL JOHNSON. Mr. Johnson has served as a director since October 1999. Currently, Mr. Johnson serves as Corporate Secretary and Vice President. Prior to the acquisition of Telco Billing, Inc., our wholly owned subsidiary, Mr. Johnson was part of the team that created what is now the YP.Com concept. When Telco Billing was acquired in June 1999, Mr. Johnson left to create Simple.Net, an Internet service provider. In October 1999, Mr. Johnson was asked to return to serve as a Director of the Company, whereupon he was instrumental in refocusing the Company on its newly acquired business, which resulted in the corporate name change to YP.Net, Inc. Since that time, Mr. Johnson has been the art director responsible for the design of the in-house sales presentations, creation of the corporate logo(s) and image for YP.Net and directs the team that creates and manages our web presence. In 2001, Mr. Johnson consolidated his other business interests, GraffitiWorx, a graphic design firm and SiteForce, a web site design firm, into Advanced Internet Marketing, Inc. to provide design and marketing services to a variety of companies. Mr. Johnson continues to offer these services to the Company. Prior to 1997, Mr. Johnson created the PrintPro franchise concept for Design Concept Printing & Signs, Inc. and headed up their graphic design department. Mr. Johnson is actively involved with web site promotion, interactive design, Internet advertising and public relations. Mr. Johnson continues his business Simple.Net where he serves as an officer and director.

GREGORY B. CRANE. Mr. Crane has been a director of YP.Net since February 2000. He currently serves as Chief Operating Officer of Telco Billing, our wholly owned subsidiary and the entity out of which we conduct most of our operations. Mr. Crane served as the Company's Director of Operations from February 2000 to

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September 2000. Mr. Crane has served as President of Advertising Management and Consulting Services, Inc. ("AMCS") since January 29, 2001. AMCS provides marketing and administrative services, as well as personnel, to

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the Company. From mid-1997 to December 2002, Mr. Crane served as a marketing consultant to Business Executive Services, Inc. ("BESI"), a direct mail management and processing company. From September 1998 to June 1999, Mr. Crane was the General Manager of Telco Billing. Mr. Crane has owned and operated several businesses, including residential and commercial builders, multi-state mail order, and document-preparation companies, and also was the creator of the Yellow-Page.Net concept. Mr. Crane is a former member of the Young Entrepreneur's Organization.

In connection with a former business of Mr. Crane, which provided homestead declaration document preparation and filing services, Mr. Crane and that business were subject to injunctive actions brought by the state of Florida as a result of complaints relating to the presentation of solicitation mailers. Mr. Crane voluntarily entered into a consent order with the State of Florida that required him to supply a copy of the mailer to be printed within 14 days prior to its mailing, as well as the payment of civil penalties, restitution, and attorneys' fees if he were to violate the order in the future. The order was violated due to an error in type size made by a printing company hired by Mr. Crane's business. The printing company has admitted its responsibility for this error. Despite the printing company's admission, Mr. Crane was subject to a judgment, dated February 1998, in the amount of approximately \$1.4 million, plus accrued interest. However, because of the printing company's admission, the State of Florida took no action on this matter, which was finally vacated in June 2003.

Because Mr. Crane had been an employee of Telco Billing, Inc. prior to its acquisition by the Company, Mr. Crane was named in an action filed by the United States Federal Trade Commission ("FTC") against the Company in June 2000 concerning actions taken by prior management of the Company. None of the Company's current management was either present for or involved with the actions that were the basis for the FTC's complaint. The actions of the prior management involved the presentation of direct mail solicitations. Mr. Crane has been included in the Stipulated Preliminary Order entered into by the FTC and the Company 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 Billing, the Company and others (the "Order") places certain restrictions on the way mail solicitations will appear. The U.S. District Court has approved the Order and the matter is closed with no findings of wrong doing on the part of Mr. Crane, the Company, or its officers and directors.

DANIEL L. COURY, SR. Mr. Coury has served as a director of YP.Net since February 2000. For the last twelve years, Mr. Coury has served as President and Chairman of Mesa Cold Storage, Ltd., which owns and operates the largest cold storage facilities in Arizona. Between 1990 and the present, Mr. Coury has developed an additional 4.6 million cubic feet of modern, state of the art cold storage facilities in Mesa and Tolleson, Arizona. Before Mr. Coury purchased Mesa Cold Storage, he had experience in international trade, real estate development, real estate exchanges and serving as a consultant to the family businesses, which include five General Motors dealerships, numerous commercial and residential developments and mortuary services.

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., a television development and production company, which he founded. From 1994 to 1999, Mr. Bergmann was a member of the faculty at

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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. 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

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included line producer, division head, and 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.

### EXECUTIVE OFFICERS AND SIGNIFICANT EMPLOYEES

Our management consists of the following personnel, in addition to Angelo Tullo, our Chief Executive Officer and President and DeVal Johnson, our Secretary, both of whom are named above as Directors.

NAME	AGE	POSITION
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David J. Iannini	44	Chief Financial Officer
John Raven	39	Chief Technology Officer

DAVID J. IANNINI. Mr. Iannini has served as our Chief Financial Officer since August 2002. Mr. Iannini was employed as Treasurer and Vice President of Corporate Development of Viad Corp, a publicly held company with over \$1.5 billion in annual sales and over \$7 billion in assets, from July 1999 to June 2002. Viad Corp. is a diversified service business with operating companies involved in the financial services, convention, travel and other businesses. 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 certified public accountant. Mr. Iannini received his Bachelors of Science degree, Magna Cum Laude, in Accounting from Boston College in 1981.

JOHN RAVEN. Mr. Raven was appointed Chief Technology Officer for YP.Net, Inc. in September 2003. Mr. Raven has over ten years experience in the technology arena and 16 years of overall leadership experience working with companies such as Perot Systems (PER) where he managed 640 staff members and a \$170 million annual IT budget, Read-Rite Corp (RDRT) where he oversaw a \$30 million dollars IT budget with operations throughout Asia, as well as Cap Gemini Ernst & Young (CAPMF) where he managed accounts for this division of a Big 5 auditing firm maintaining \$4.8 million in revenue. Mr. Raven also served as Director of Information Technology at Viacom's ENG Network division. Most recently, as a member of senior account management for Perot Systems he directed the development of information security strategy for its client Catholic Healthcare West. Mr. Raven has experience in software engineering, data and process architecture, systems development, and database management systems. At NASA's Jet Propulsion Laboratory, Mr. Raven was a team member and information systems engineer for the historic 1997 mission to Mars conducted with the Pathfinder space vehicle and the Sojourner surface rover. Mr. Raven received his Bachelors

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of Science in Computer Science from the California Institute of Technology in 1991. His certifications include; Cisco Internetwork Engineer, Project Management from the Project Management Institute, Certified Project Manager from Perot Management Methodology Institute, Microsoft Certified System Engineer, Certified Novel Engineer and others.

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

Section 16(a) of the Securities Exchange Act of 1934, as amended, requires our executive officers, directors, and persons who own more than ten percent of a registered class of our equity securities to file reports of ownership and changes in ownership with the Securities and Exchange Commission ("SEC"). Executive officers, directors, and greater than ten percent stockholders are required by SEC regulation to furnish us with copies of all Section 16(a) forms they file. Based solely on our review of the copies of such forms received by it during the year ended September 30, 2003, we believe that, during such year our executive officers, directors and ten percent stockholders complied with all such filing requirements except that Mr. Bergmann filed a late Form 4 relating to the purchase of 1,000 shares of the Company's common stock and the receipt of 150,000 shares of restricted stock

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pursuant to the 2003 Stock Plan and Mr. Coury filed a late Form 4 relating to the receipt of 150,000 shares of restricted stock pursuant to the 2003 Stock Plan. The required filings were eventually filed to reflect these transactions.

### CODE OF ETHICS

We have not yet adopted a corporate code of ethics. Our board of directors is considering, over the next year, establishing a code of ethics to deter wrongdoing and promote honest and ethical conduct; provide full, fair, accurate, timely and understandable disclosure in public reports; comply with applicable laws; ensure prompt internal reporting of code violations; and provide accountability for adherence to the code

### ITEM 10. EXECUTIVE COMPENSATION

#### Executive Compensation Summary

The following table sets forth the total compensation for the fiscal years ended September 30, 2003, 2002 and 2001 paid to or accrued for our chief executive officer and our four other executive officers who provided services to us at September 30, 2003, excluding executive officers paid less than \$100,000 annually. These executive officers are collectively referred to as the "Named Executive Officers."

NAME AND PRINCIPAL ----- POSITION -----	YEAR ----	ANNUAL COMPENSATION -----			OTHER ANNUAL COMPENSATION (\$) -----	RESTRICTED STOCK AWARDS (\$) -----	LONG COMPEN -----
		SALARY (\$) -----	BONUS (\$) -----	(\$) -----	(\$) -----	(\$) -----	
Angelo Tullo (1)	2003	612,000	300,000		100,844		303,75

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Chairman, Chief Executive Officer, President	2002	282,000	208,000	-	
	2001	218,000	48,000	-	
David J. Iannini (2)	2003	199,808	43,750	-	607,500
Chief Financial Officer	2002	11,538	-	-	
	2001	-	-	-	
DeVal Johnson (3)	2003	269,750	95,000	-	405,000
Director, Secretary and Subsidiary Officer	2002	125,800	20,000	-	
	2001	8,000	5,618	-	
Gregory Crane (4)	2003	442,000	110,000	-	405,000
Director and Subsidiary Officer	2002	249,000	35,000	-	
	2001	122,000	-	-	
John Raven (5)	2003	8,654	-	-	150,000
Chief Technology Officer of Subsidiary	2002	-	-	-	
	2001	-	-	-	

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