

TOUSA INC
Form 10-K/A
January 07, 2009

Table of Contents

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
Form 10-K/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 December 31, 2007
or

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to
Commission file number: 001-32322
TOUSA, Inc.
(Exact Name of Registrant as Specified in Its Charter)

Delaware
*(State or Other Jurisdiction of
Incorporation or Organization)*

76-0460831
*(I.R.S. Employer
Identification No.)*

4000 Hollywood Boulevard, Suite 500 North
Hollywood, Florida
(Address of Principal Executive Offices)

33021
(Zip Code)

Registrant's telephone number, including area code:
(954) 364-4000

Securities registered pursuant to Section 12(b) of the Act:
None

Securities registered pursuant to Section 12(g) of the Act:
Title of Each Class

Common Stock, \$.01 par value
9% Senior Notes due 2010 (CUSIP No. 872962 AA3)
9% Senior Notes due 2010 (CUSIP No. 872962 AB1)
103/8% Senior Subordinated Notes due 2012 (CUSIP No. 872962 AD7)
71/2% Senior Subordinated Notes due 2011 (CUSIP No. 872962 AC9)
71/2% Senior Subordinated Notes due 2015 (CUSIP No. 872962 AE5)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 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

Edgar Filing: TOUSA INC - Form 10-K/A

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not 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-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).
Yes No

The aggregate market value of common stock held by non-affiliates of the Registrant was approximately \$82.6 million as of June 30, 2007.

As of August 6, 2008, there were 59,604,169 shares of the Registrant's common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

None.

TABLE OF CONTENTS

| | Page |
|--|-------------|
| <u>EXPLANATORY NOTE</u> | 3 |
| <u>PART II</u> | |
| <u>ITEM 9A. CONTROLS AND PROCEDURES</u> | 3 |
| <u>PART IV</u> | |
| <u>ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES</u> | 3 |
| <u>SIGNATURES</u> | 4 |
| <u>EX-31.1</u> | |
| <u>EX-31.2</u> | |

Table of Contents

EXPLANATORY NOTE

This Amendment No. 1 on Form 10-K/A (the Amendment) amends Item 9A of the Annual Report on Form 10-K (the Original Annual Report) for the year ended December 31, 2007, which was originally filed with the Securities and Exchange Commission (the SEC) on August 12, 2008. We have modified Part II Item 9A, Controls and Procedures, in this Amendment in response to a comment letter received from the SEC to modify our disclosure in the Original Annual Report regarding management s conclusion of the effectiveness of disclosure controls and procedures. In addition, we are also including current Exhibits 31.1 and 31.2, the certifications of our Chief Executive Officer and Chief Financial Officer required by Item 601(b)(31)(i) of Regulation S-K as of the date of this Amendment.

Except as described above, we have not modified or updated other disclosures presented in the Original Annual Report. This Amendment does not reflect events occurring after the filing of the Original Annual Report or modify or update those disclosures, including the exhibits to the Original Annual Report. Accordingly, this Amendment should be read in conjunction with our filings with the SEC subsequent to the filing of the Original Annual Report.

PART II

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

To ensure that the information we must disclose in our filings with the Securities and Exchange Commission is recorded, processed, summarized, and reported on a timely basis, we have formalized our disclosure controls and procedures. Our principal executive officer and principal financial officer have reviewed and evaluated the effectiveness of our disclosure controls and procedures, as defined in Exchange Act Rules 13a-15(e) and 15d-15(e), as of December 31, 2007. Based on such evaluation, such officers have concluded that, as of December 31, 2007, our disclosure controls and procedures were not effective solely due to our failure to file our Annual Report on Form 10-K on a timely basis. This failure was the result of our Chapter 11 bankruptcy process and our reorganization plans which have required substantial effort from our limited finance, accounting and management personnel. We continue to apply controls and procedures consistent with prior periods. There has been no change in our internal control over financial reporting during the quarter ended December 31, 2007 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Management s Report on Internal Control Over Financial Reporting

Management s Report on Internal Control over Financial Reporting was included on page F-2 of our Original Annual Report. Our management s assessment of the effectiveness of our internal control over financial reporting as of December 31, 2007 was audited by Ernst & Young LLP, an independent registered public accounting firm, as stated in their attestation report which was included on page F-3 of our Original Annual Report.

PART IV

ITEM 15. EXHIBITS

| Exhibit Number | Description |
|-----------------------|---|
| 31.1 | Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |
| 31.2 | Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |

Table of Contents

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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.

TOUSA, Inc.

Date: January 7, 2009

By: /s/ Tommy L. McAden

Name: Tommy L. McAden

Title: Executive Vice President, Director
and Chief Financial Officer

Date: January 7, 2009

By: /s/ Angela F. Valdes

Name: Angela F. Valdes

Title: Vice President and Chief Accounting
Officer