

COTELLIGENT INC
Form 10-K/A
November 15, 2004

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

**FORM 10-K/A
(Amendment No. 2)**

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

For The Fiscal Year Ended December 31, 2003

**o 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 0-27412

COTELLIGENT, INC.

Delaware
(State of incorporation)

94-3173918
(I.R.S. ID)

**655 Montgomery Street, Suite 1000, San Francisco, CA 94111
(415) 477-9900**

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

Securities registered pursuant to Section 12(g) of the Act:
Common Stock (\$.01 par value)

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 ý No

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. o

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act). YES o NO ý

The aggregate market value of the voting stock held by non-affiliates of the registrant was approximately \$3,380,496 based on the closing price of \$0.24 of the registrant's Common Stock as reported on the OTC Bulletin Board on June 30, 2003.

The number of shares of the registrant Common Stock outstanding as of March 25, 2004 was 24,861,625. .

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DOCUMENTS INCORPORATED BY REFERENCE

None.

Exhibit 31.1

PART II

Item 9A of the Form 10-K filed by the Company on April 14, 2004 is hereby amended and restated as follows.

Item 9A. *Controls and Procedures*

Evaluation of Disclosure Controls and Procedures

The Company's management, with the participation of the Company's Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of the Company's disclosure controls and procedures as of the end of the period covered by this report. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures as of the end of the period covered by this report were not designed nor were functioning effectively to provide reasonable assurance that the information required to be disclosed by the Company in reports filed under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. The weakness in internal control over financial reporting and in the disclosure controls is described below under the heading Change in Internal Control over Financial Reporting.

Change in Internal Control over Financial Reporting

In connection with the audit for the fiscal year ended December 31, 2003, the Company's independent auditors, KPMG LLP, identified a reportable condition in internal control that KPMG LLP considered to be a material weakness under standards established by the American Institute of Certified Public Accountants. The material weakness noted by KPMG occurred in the year ended December 31, 2003 and was the reason why KPMG identified an audit adjustment that reduced an accrual for income taxes by \$2,549.

The Company reflected in its financial statements included in annual reports on Form 10-K for prior years the \$2,618 accrual for income taxes related to certain income tax contingencies. The Company continued to maintain the accrual for income taxes while the statute of limitations for the tax years of the respective contingencies remained open.

In connection with its 2003 audit, KPMG concluded that the income tax accrual should be reduced by \$2,549 because the Company had sufficient net operating losses available to apply against the tax contingencies. KPMG pointed to the fact that the Company continued to have operating losses in years subsequent to the years related to the tax contingencies and to the more recent change in tax law allowing operating losses to be carried back five years.

The Company understands that KPMG determined that the accounting adjustment had not been identified by the Company because the Company failed to monitor business activities and changing circumstances to identify events that necessitate a more in-depth written and contemporaneous analysis or revaluation of prior management judgments and accounting estimates.

The Company addressed KPMG's comment regarding its failure to monitor business activities and changing circumstance in order to identify events that necessitate a more in-depth written and contemporaneous analysis or revaluation of prior management judgments and accounting estimates. Within one month after receiving KPMG's comment, the Company modified its internal control to require a written analysis prior to the filing of each quarter's Form 10-Q and the Form 10-K that identifies changes in the Company's business activities and changing circumstances and considers potential revaluation of prior management judgments and accounting estimates. This analysis is applied to those areas of accounting identified under Critical Accounting Estimates on Form 10-K.

In addition, immediately after receiving KPMG's comment, the Company prepared a written analysis to support the \$2,549 reduction to the accrual for income taxes prior to the filing of Form 10-K for the year ended December 31, 2003.

Exhibit 31.1

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, in the City of San Francisco, State of California on the 12th day of November 2004.

COTELLIGENT, INC.

By: /s/ James R. Lavelle
 James R. Lavelle
 Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1934, this report has been signed below by the following persons in the capacities indicated on behalf of Cotelligent, Inc. this 12th day of November 2004.

<u>Signature</u>	<u>Capacity</u>	<u>Date</u>
<u>/s/ James R. Lavelle</u>		
James R. Lavelle	Chairman of the Board of Directors, Director and Chief Executive Officer (Principal Executive Officer)	November 12, 2004
<u>/s/ Curtis J. Parker</u>		
Curtis J. Parker	Executive Vice President, Chief Financial Officer (Principal Financial and Accounting Officer)	November 12, 2004
*		
<u>Debra J. Richardson</u>		
Debra J. Richardson	Director	
*		
<u>Tony C. Vickers</u>		
Tony C. Vickers	Director	
<u>Harlan P. Kleiman</u>		
Harlan P. Kleiman	Director	
<u>/s/ James R. Lavelle</u>		
James R. Lavelle	Attorney-in-Fact*	

Exhibit 31.1

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>
24.1	Power of attorney (included on signature page of original Form 10-K filed on March 29, 2004)
31.1	Certification of the Chief Executive Officer pursuant to Rule 13a-14(a) of the Exchange Act**

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>
31.2	Certification of the Chief Financial Officer pursuant to Rule 13a-14(a) of the Exchange Act**
32.1	Certification of the Chief Executive Officer pursuant to Rule 13a-14(b) of the Exchange Act and 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002*
32.2	Certification of the Chief Financial Officer pursuant to Rule 13a-14(b) of the Exchange Act and 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**
**	Filed herewith.

Exhibit 31.1

Certifications

I, James R. Lavelle, certify that:

1. I have reviewed this annual report on Form 10-K/A (Amendment No. 2) of Cotelligent, Inc.;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of Cotelligent, Inc. as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and we have:
 - a) designed such disclosure controls and procedures or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
 - b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this annual report based on such evaluation; and
 - c) disclosed in this annual report any change in the registrant's internal controls over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

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b) any fraud, whether of not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: November 12, 2004

/s/ James R. Lavelle

James. R. Lavelle
Chairman of the Board and Chief Executive Officer

Exhibit 31.2

Certifications

I, Curtis J. Parker, certify that:

1. I have reviewed this annual report on Form 10-K/A (Amendment No. 2) of Cotelligent, Inc.;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of Cotelligent, Inc. as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and we have:
 - a) designed such disclosure controls and procedures or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
 - b) evaluated the effectiveness of the registrant's disclosure controls and procedures presented in the annual report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this annual report based on such evaluation; and
 - c) disclosed in this annual report any change in the registrant's internal controls over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether of not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: November 12, 2004

/s/ Curtis J. Parker

Curtis J. Parker
Executive Vice President and Chief Financial Officer

CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, James R. Lavelle, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge, Cotelligent, Inc.'s Annual Report on Form 10-K/A (Amendment No. 2) for the fiscal year ended December 31, 2003 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Annual Report on Form 10-K/A (Amendment No. 2) fairly presents, in all material respects, the financial condition and results of operations of Cotelligent, Inc.

Date: November 12, 2004

By: /s/ James R. Lavelle

James R. Lavelle
Chairman of the Board and Chief Executive Officer

Exhibit 32.2

CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Curtis J. Parker, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge, Cotelligent, Inc.'s Annual Report on Form 10-K/A (Amendment No. 2) for the fiscal year ended December 31, 2003 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Annual Report on Form 10-K/A (Amendment No. 2) fairly presents, in all material respects, the financial condition and results of operations of Cotelligent, Inc.

Date: November 12, 2004

By: /s/ Curtis J. Parker

Curtis J. Parker
Executive Vice President and Chief Financial Officer