

PACIFICNET INC
Form S-1/A
November 20, 2006

As filed with the Securities and Exchange Commission on November 20, 2006

Registration No. 333-134127

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

**Amendment No. 3 to
Form S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

PacificNet Inc.

(Exact name of Registrant as specified in its charter)

Delaware

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

3669

*(Primary Standard Industrial
Classification Code Number)*

91-2118007

*(I.R.S. Employer
Identification Number)*

**23/F, Tower A, Timecourt, No.6 Shugang Xili
Chaoyang District, Beijing, China 100028**

*(Address, including zip code, and telephone number,
including area code, of Registrant's principal executive offices)*

**Tony Tong
Chief Executive Officer
PacificNet Inc.**

**23/F, Tower A, Timecourt, No.6 Shugang Xili
Chaoyang District, Beijing, China 100028
0086-10-59225000**

*(Name, address, including zip code, and telephone number,
including area code, of agent for service)*

Copies to:

**Mitchell S. Nussbaum, Esq.
Loeb & Loeb LLP
345 Park Avenue
New York, New York 10154**

Approximate date of commencement of proposed sale to the public: From time to time after this Registration

Statement becomes effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If delivery of the prospectus is expected to be made pursuant to Rule 434, check the following box.

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per share	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock, \$.0001 par value per share	800,000(1)(2)	\$ 10.00 (3)	\$ 8,000,000	\$ 856.00
Common Stock, \$.0001 par value per share	416,000(2)(4)	\$ 12.20 (5)	\$ 5,075,200	\$ 543.05
Common Stock, \$.0001 par value per share	104,000(6)	\$ 10.00 (7)	\$ 1,040,000	\$ 111.28
Common Stock, \$.0001 par value per share	26,000	\$ 7.49 (8)	\$ 194,740	\$ 20.84
Common Stock, \$.0001 par value per share	400,000(9)	\$ 10.00 (3)	\$ 4,000,000	\$ 428.00
Common Stock, \$.0001 par value per share	208,000(9)	\$ 12.20 (5)	\$ 2,537,600	\$ 271.52
Common Stock, \$.0001 par value per share	52,000(9)	\$ 10.00 (3)	\$ 520,000	\$ 55.64
TOTALS	2,006,000	\$	\$ 21,367,540	\$ 2,286.33(10)

(1) Represents the shares of our common stock issuable upon conversion of convertible debentures due March 13, 2009.

(2) Pursuant to Rule 416 of the Securities Act of 1933, as amended, the shares of common stock offered hereby also include such presently indeterminate number of shares of our common stock as shall be issued by us to the selling shareholders as a result of stock splits, stock dividends or similar transactions.

(3) Estimated solely for purposes of calculating the registration fee in accordance with Rule 457(g) under the Securities Act of 1933, as amended, based on the higher of (a) the conversion price of the convertible debentures, (b) the offering price of securities of the same class included in this Registration Statement, or (c) the price of securities of the same class as determined using the average of the high and low prices, as reported on The Nasdaq National Market, within five business days of the filing of this Registration Statement.

(4) Represents shares of our common stock issuable upon the exercise of outstanding warrants.

(5) Estimated solely for purposes of calculating the registration fee in accordance with Rule 457(g) under the Securities Act of 1933, as amended, based on the higher of (a) the exercise price of the warrants, (b) the offering price of securities of the same class included in this Registration Statement, or (c) the price of securities of the same class as determined using the average of the high and low prices, as reported on The Nasdaq National Market, within five business days of the filing of this Registration Statement.

(6) Represents shares of our common stock that may be issued in the form of the payment of interest on the convertible debentures due March 13, 2009.

(7) Assuming the debentures remain outstanding for three years and based upon the higher of (a) the highest conversion price at which shares issuable as interest on the convertible debentures will be issued, (b) the offering price of securities of the same class included in this Registration Statement, or (c) the price of securities of the same class as determined using the average of the high and low prices, as reported on The Nasdaq National Market, within five

business days of the filing of this Registration Statement.

(8) Estimated solely for purposes of calculating the registration fee in accordance with Rule 457(c) under the Securities Act of 1933, as amended based on the average of the high and low prices, as reported on The Nasdaq National Market, within five business days of the filing of this Registration Statement.

(9) Under the terms of the registration rights agreement, we are required to register 150% of the shares of common stock issuable upon conversion of the debentures, the warrants, and interest on the convertible debentures.

(10) Previously paid.

Pursuant to Rule 429 under the Securities Act of 1933, the prospectus included in this registration statement is a combined prospectus relating also to Registration Statement No. 333-121792 previously filed by the registrant on Form SB-2 and declared effective on February 4, 2005. This Registration Statement, upon effectiveness, also constitutes Post-Effective Amendment No. 1 to Registration Statement No. 333-121792, and such post-effective amendment shall hereafter become effective concurrently with the effectiveness of this Registration Statement and in accordance with Section 8(c) of the Securities Act of 1933.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with section 8(a) of the Securities Act of 1933, as amended, or until the registration statement shall become effective on such date as the Commission, acting pursuant to said section 8(a), may determine.

THE INFORMATION IN THIS PROSPECTUS IS NOT COMPLETE AND MAY BE CHANGED. THE SELLING STOCKHOLDERS MAY NOT SELL THESE SECURITIES PUBLICLY UNTIL THE REGISTRATION STATEMENT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION IS EFFECTIVE. THIS PROSPECTUS IS NOT AN OFFER TO SELL THESE SECURITIES AND IT IS NOT SOLICITING AN OFFER TO BUY THESE SECURITIES IN ANY STATE WHERE THE OFFER OR SALE IS NOT PERMITTED.

SUBJECT TO COMPLETION, DATED November 20, 2006

PROSPECTUS

PACIFICNET INC.

3,152,228 Shares of Common Stock

This prospectus relates to the resale of up to 3,152,228 shares of our common stock being offered by the selling stockholders. Of the shares covered by this prospectus, 602,310 shares have been issued, 800,000 shares are issuable upon the conversion of convertible debentures, 985,918 shares are issuable upon the exercise of warrants, 104,000 shares may be issued for the payment of interest on the convertible debentures and 660,000 shares have been registered pursuant to our obligation in our registration rights agreement to register 150% of the shares of common stock issuable upon conversion of the debentures, warrants and interest on the debentures. Of the shares of common stock included in this prospectus, 1,152,228 of the shares were previously registered. We will not receive any proceeds from the sale of the shares of common stock by the selling stockholders. Assuming that all of the warrants held by the selling stockholders are exercised for cash, we will realize proceeds of approximately \$10,606,647.

Our shares of common stock are traded on The Nasdaq Global Market under the symbol "PACT." The last reported sale price of our common stock on November 17, 2006, was \$6.20.

THIS INVESTMENT INVOLVES A HIGH DEGREE OF RISK. YOU SHOULD PURCHASE SHARES ONLY IF YOU CAN AFFORD A COMPLETE LOSS OF YOUR INVESTMENT. SEE "RISK FACTORS" BEGINNING ON PAGE 5 FOR A DISCUSSION OF RISKS APPLICABLE TO US AND AN INVESTMENT IN OUR COMMON STOCK.

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED THESE SECURITIES, OR DETERMINED IF THIS PROSPECTUS IS TRUTHFUL OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The date of this prospectus is November __, 2006.

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PROSPECTUS SUMMARY

This summary highlights selected information appearing elsewhere in this prospectus. While this summary highlights what we consider to be the most important information about us, you should carefully read this prospectus and the registration statement of which this prospectus is a part in their entirety before investing in our common stock, especially the risks of investing in our common stock, which we discuss later in “Risk Factors,” and our financial statements and related notes beginning on page F-1. Unless the context requires otherwise, the words “we,” “us” and “our” refer to PacificNet Inc.

About PacificNet Inc.

We were incorporated in the state of Delaware in 1987. We are a leading provider of customer relationship management (CRM) and telecom services, e-commerce and gaming technology in China. Our business consists of three groups, all of which operate within the outsourcing and telecommunications industries in Asia, primarily greater China, which includes the People's Republic of China (PRC), or mainland China, Hong Kong Special Administrative Region (HKSAR), Macau Special Administrative Region, and Taiwan, and one group that focuses on primarily administrative and corporate related matters. Through our subsidiaries we provide outsourcing services, telecom (VAS) services, and products (telecom & gaming) services. Our business process outsourcing (BPO) services include call centers providing CRM and telemarketing services, and our information technology outsourcing (ITO) includes software programming and development. We are value-added resellers and providers of telecom VAS, which comprises interactive voice response (IVR) systems, call center management systems, and VOIP, as well as mobile phone VAS, such as short messaging services (SMS) and multimedia messaging services (MMS). In 2004, we commenced our communication products distribution service, through wholesale and, to a lesser extent, retail sale and distribution of mobile phones, software and hardware, mobile accessories, and calling cards in Hong Kong and China. In 2005, we invested in Take1Technologies (formerly known as Cheer Era), a company that designs, manufactures, and distributes multimedia interactive self-service kiosks, bingo and gaming machines for the casino and slot machine operators Europe and Asia.

In August 2006, PacificNet Games Limited (PacGames) completed the acquisition of 100% of Able Entertainment Technology Ltd, a leading provider of Asian multi-player electronic gaming machines, gaming technology solutions and gaming related maintenance, IT and distribution services for the leading hotel, casino and slot hall operators based in Macau, China and other Asian gaming markets. Macau is expected to surpass Las Vegas in total revenues by 2006. Currently, table games make up the bulk of Macau casino revenues, which is in sharp contrast to other areas such as Las Vegas. With this acquisition, PacGames is a leading developer of electronic versions of these popular table games which are less expensive to run resulting in higher casino profits with great appeal to the mass market players. Further, the growing market in Macau is for Asian table games such as Baccarat, Roulette, Fan Tan, Fish-Prawn-Crab and Sic-Bo Cussec as these games have wider acceptance in the Asian market than Western games such as poker or slots. The development, manufacturing, maintenance, and service of electronic Asian table games are underserved areas which are predicted to grow considerably as Macau's gaming market matures. PacGames products include multi-play electronic gaming machines such as Baccarat, Fish-Prawn-Crab, Sib-Bo Cussec, Roulette, and Video Lottery Terminals (VLT) such as Keno and Bingo, as well as other traditional slot machines. We intend to continue to grow our business by acquiring and managing growing technology and network communications businesses with established products and customers in Asia.

Our BPO services generate revenue from call center services, call center management software sales, and training and consulting. We invoice our call center clients monthly at per seat monthly rates, a base price plus commission per call, or a per hour charge rate, depending on the client's preference. Our call center software clients pay per license, for which there is usually a one-time charge on sale of the software and annual maintenance fees for service. We charge per project for our consulting and training services and for our telecom VAS, which are invoiced throughout the project. Our telecom VAS often includes a post-sale service contract for systems integration and consulting services for which we bill separately. Our communication products such as calling cards, kiosks and cell phones are sold

cash-on-delivery. Our gaming center operations generate revenue through the sale of gaming machines to casinos, or through resellers who sell to casinos.

Our clients include the leading telecom operators, banks, insurance, travel, marketing, and service companies, as well as telecom consumers, in Greater China. Clients include China Telecom, China Netcom, China Mobile, China Unicom, PCCW, Hutchison Telecom, CSL, SmarTone, Sunday, Swire Travel, Coca-Cola, SONY, Samsung, Motorola, Nokia, TNT Express, Huawei, TCL, Dun & Bradstreet, American Express, Bank of China, DBS, Hong Kong Government, and Hongkong Post. PacificNet employs over 2,300 staff in our various subsidiaries in China with offices in Hong Kong, Beijing, Shanghai, Shenzhen, and Guangzhou.

PacificNet's operations include the following four groups:

- (1) Outsourcing Services: including BPO, call center, IT Outsourcing (ITO) and software development services.
- (2) Telecom Value-added Services: including Content Providing (CP), IVR, Platform Providing (PP) and Service Providing (SP).
- (3) Products (Telecom & Gaming): including communication and gaming products, GSM/CDMA/3G Products and Multimedia Communication Kiosks.
- (4) Other Business: including internal administrative matters, other related corporate items, and other businesses.

Private Placement of Convertible Debentures and Warrants

On March 13, 2006, we completed a private placement in which we sold \$8,000,000 in convertible debentures and issued warrants to purchase up to an aggregate of 400,000 shares of common stock. The debentures are convertible at any time into shares of our common stock at an initial fixed conversion price of \$10.00 per share, subject to adjustments for certain dilutive events. The debentures are due March 13, 2009. The warrants are exercisable for a period of five years at an exercise price of \$12.20 per share. At the closing of the private placement, we prepaid the first year's interest on debentures equal to 5% of the aggregate principal amount of debentures. We will pay interest in cash or shares, provided that certain conditions are met, at the rate of 6% for the second year the debentures are outstanding and then 7% for the third. Beginning January 1, 2007, we are obligated to redeem up to \$320,000 every month, plus accrued, but unpaid interest, liquidated damages and penalties. We also have the option to prepay the debentures at any time, provided that certain conditions have been met, after the 12 month anniversary of the effective date of the registration statement of which this prospectus is part, some or all of the outstanding debentures for cash in an amount equal to 120% of the principal amount outstanding, plus accrued, but unpaid interest, liquidated damages and penalties outstanding. At any time after the six month anniversary of the effective date, we may force the holders to convert up to 50% of the then outstanding principal amount of the debentures, subject to certain trading conditions being met. If any event of default occurs under the debentures or other related documents, the holders may elect to accelerate the payment of the outstanding principal amount of the debenture, plus accrued, but unpaid interest, liquidated damages and penalties, which shall become immediately due and payable.

Under the terms of the registration rights agreement, dated February 28, 2006, entered into among the Company and the holders, we are obligated to register for resale 150% of the shares of common stock issuable upon conversion of the debentures and the warrants, and interest on the convertible debentures. We are currently in default under the private placement transaction documents for the untimely filing of the registration statement, of which this prospectus is part, and for the failure to have the registration statement declared effective prior to the effectiveness date set forth in the registration rights agreement. As of November 1, 2006, we could be liable for liquidated damages of approximately \$800,000 as a result of the foregoing. As of the date of this prospectus, we have paid \$35,000 in liquidated damages to one holder. As of the date of this prospectus the holders have not elected to accelerate the payment of the outstanding principal and interest owing on the debenture.

Also in connection with the private placement, Messrs. Tony Tong, Victor Tong and Shaojian Wang and Sino Mart Management Ltd., and its sole officer and director, Mr. Cho Sam Tong, entered into lock-up agreements restricting the disposition of shares of our common stock beneficially owned by them until the earlier of 30 days from the effective date of the registration statement, or February 28, 2008.

Messrs. Tony and Victor Tong, Wang and Sino Mart Management Ltd. each executed letter agreements to the holders of the convertible debentures and warrants, in which they each agreed to vote all of the shares of the Company over which they have voting control in favor of any resolutions presented to the stockholders of the Company to approve the issuance, in the aggregate, of more than 19.999% of the number of shares of common stock of the Company outstanding on the closing date of the private placement. They executed each letter agreement in consideration of, and as a condition to the consummation of the private placement.

C.E. Unterberg, Towbin L.L.C. acted as Placement Agent and received a cash fee in the amount of \$449,500 and a warrant to purchase up to 16,000 shares. Maxim Group also acted as Placement Agent and received a cash fee in the amount of \$50,000.

SUMMARY CONSOLIDATED FINANCIAL DATA

The following table summarizes the relevant financial data for our business and should be read with our financial statements, which appear elsewhere in this prospectus.

CONSOLIDATED STATEMENT OF OPERATIONS DATA

	Nine months ended		Year Ended December 31,				
	September 30,	2005(unaudited)	2005	2004	2003	2002	2001
	2006(unaudited)	(as restated)	(as restated)		(as restated)		
Statement of Operations Data:							
			(in thousands, except per share data)				
Revenues	\$ 47,239	\$ 32,539	\$ 44,341	\$ 29,709	\$ 1,217	\$ 2,319	\$ 961
Cost of revenues	(33,352)	(25,979)	(33,439)	(24,074)	(698)	(1,787)	(803)