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INTER TEL INC
 Form S-8
 July 08, 2003

As filed with the Securities and Exchange Commission on July 8, 2003
 Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION
 Washington, D.C. 20549

 FORM S-8
 REGISTRATION STATEMENT
 UNDER
 THE SECURITIES ACT OF 1933

INTER-TEL, INCORPORATED
 (Exact name of Registrant as specified in its charter)

| | | |
|---------------------------------|---------------------|------------------------|
| Arizona | 1615 S. 52nd Street | 86-0220994 |
| (State or other jurisdiction of | Tempe, AZ 85281 | (I.R.S. Employer |
| incorporation or organization) | executive offices) | Identification Number) |

Inter-Tel, Incorporated Tax Deferred Savings Plan and Retirement Trust
 (Full title of the plan)

Steven G. Mihaylo
 Chairman of the Board of Directors and Chief Executive Officer

INTER-TEL, INCORPORATED
 1615 S. 52nd Street
 Tempe, AZ

(Name and address of agent for service)

(480) 449-8900
 (Telephone number, including area code, of agent for service)

COPIES TO:

Robert G. Day, Esq.
 Caine T. Moss, Esq.
 Wilson Sonsini Goodrich & Rosati
 Professional Corporation
 650 Page Mill Road
 Palo Alto, CA 94304
 (650) 493-9300

CALCULATION OF REGISTRATION FEE

| Title of Securities to be Registered | Amount to be Registered | Proposed Maximum Offering Price Per Share | Proposed M Aggregate O Pric |
|--|-------------------------|---|-----------------------------------|
| Common Stock, \$.0001 par value, available for issuance under the Inter-Tel, Incorporated Tax Deferred Savings Plan and Retirement Trust... | 2,000,000 (1) | \$21.17 (2) | \$42,340 |
| TOTAL..... | 2,000,000 | | |

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- (1) Pursuant to Rule 416(c) under the Securities Act of 1933, as amended this registration statement covers an indeterminate amount of interests to be offered or sold pursuant to the Inter-Tel, Incorporated Tax Deferred Savings Plan and Retirement Trust described herein.
 - (2) Estimated in accordance with Rule 457(h) solely for the purpose of calculating the registration fee, based on the average of the high and low price per share of the common stock as reported on the Nasdaq National Market on July 1, 2003.
- =====

INTER-TEL, INCORPORATED

REGISTRATION STATEMENT ON FORM S-8

PART I

INFORMATION REQUIRED IN THE PROSPECTUS

ITEM 1. PLAN INFORMATION

Omitted pursuant to the instructions and provisions of Form S-8.

ITEM 2. REGISTRATION INFORMATION AND ANNUAL EMPLOYEE INFORMATION

Omitted pursuant to the instructions and provisions of Form S-8.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE

Inter-Tel, Incorporated (the "Registrant") and the Inter-Tel, Incorporated Tax Deferred Savings Plan and Retirement Trust (the "Plan") hereby incorporate by reference into this Registration Statement the following documents and information heretofore filed with the Securities and Exchange Commission (the "SEC"):

(a) The Registrant's Annual Report on Form 10-K filed with the SEC for the year ended December 31, 2002.

(b) The Registrant's Quarterly Report on Form 10-Q filed with the SEC for the three months ended March 31, 2003 and the Registrant's reports on Form 8-K filed with the SEC on April 7, 2003 and April 22, 2003.

(c) The description of the Registrant's Common Stock contained in the Registrant's Registration Statement on Form 8-A dated February 26, 1982, filed pursuant to Section 12 of the Securities Exchange Act of 1934, as amended, including any amendment or report filed for the purpose of updating such description. All documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of this registration statement and prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be part hereof from the date of filing such documents.

ITEM 4. DESCRIPTION OF SECURITIES.

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Not applicable.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL

Not applicable.

ITEM 6. INDEMNIFICATION OF OFFICERS AND DIRECTORS

The Company's Restated Articles of Incorporation limit, to the maximum extent permitted by Arizona law, the personal liability of directors for monetary damages for breach of their fiduciary duties as a director. The Company's Restated Articles of Incorporation provide that the Company shall indemnify its officers and directors to the fullest extent permitted by law, subject to certain exceptions. The Company has entered into indemnification agreements with its officers and directors containing provisions which are in some respects broader than the specific indemnification provisions contained in the Arizona Revised Statutes. The indemnification agreements may require the Company, among other things, to indemnify such officers and directors against certain liabilities that may arise by reason of their status or service as directors or officers (other than liabilities arising from willful misconduct of a culpable nature), to advance their expenses incurred as a result of any proceeding against them as to which they could be indemnified, and to obtain directors' and officers' insurance, if available on reasonable terms. The Company believes that these agreements are necessary to attract and retain qualified persons as directors and officers.

At present, there is no pending litigation or proceeding involving any director, officer, employee or agent of the Company where indemnification will be required or permitted. The Company is not aware of any threatened litigation or proceeding which may result in a claim or such indemnification.

The Company currently maintains directors' and officers' liability insurance.

ITEM 8. EXHIBITS.

Exhibit
Number

| | |
|------|--|
| 4.1 | Inter-Tel, Incorporated Tax Deferred Savings Plan and Retirement Trust, as amended |
| 5.1 | Opinion of John L. Gardner |
| 23.1 | Consent of Independent Auditors |
| 23.2 | Consent of Counsel (contained in Exhibit 5.1) |
| 25.1 | Power of Attorney (included on the signature page to this Registration Statement) |

ITEM 9. UNDERTAKINGS.

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of

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securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

-2-

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

PROVIDED, HOWEVER, that paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the registration statement is on Form S-3, Form S-8 or Form F-3, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

-3-

SIGNATURES

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Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Tempe, State of Arizona, on this 30th day of June, 2003.

INTER-TEL, INCORPORATED

By: /s/ Kurt R. Kneip

Kurt R. Kneip

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Kurt R. Kneip and John L. Gardner, and each of them acting individually, as his or her attorney-in-fact, each with full power of substitution, for him or her in any and all capacities, to sign any and all amendments to this Registration Statement on Form S-8, and to file the same, with exhibits thereto and other documents in connection therewith, with the SEC, hereby ratifying and confirming all that each of said attorneys-in-fact, or any substitute, may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated:

| SIGNATURE ----- | TITLE ----- | DATE ----- |
|---|--|---------------|
| /s/ Steven G. Mihaylo ----- Steven G. Mihaylo | Chairman of the Board, President and Chief Executive Officer (Principal Executive Officer) | June 30, 2003 |
| /s/ Norman Stout ----- Norman Stout | Executive Vice President and Chief Administrative Officer | June 30, 2003 |
| /s/ Craig W. Rauchle ----- Craig W. Rauchle | Executive Vice President and Chief Operating Officer | June 30, 2003 |
| /s/ Kurt R. Kneip ----- Kurt R. Kneip | Chief Financial Officer | June 30, 2003 |
| /s/ J. Robert Anderson ----- J. Robert Anderson | Director | June 30, 2003 |
| /s/ Jerry W. Chapman ----- Jerry W. Chapman | Director | June 30, 2003 |

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/s/ Gary Edens

Director

June 30, 2003

Gary Edens

/s/ C. Roland Haden

Director

June 30, 2003

C. Roland Haden

Pursuant to the requirements of the Securities Act, the trustees (or other persons who administer the employee benefit plan) have duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Tempe, State of Arizona, on July 8, 2003

Inter-Tel, Incorporated Tax Deferred Savings Plan and Retirement Trust

By: /s/ Kurt R. Kneip

Kurt R. Kneip
Plan Administrator
July 8, 2003

INDEX TO EXHIBITS

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