

# ADTRAN INC

## FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 6/30/1997

Address	901 EXPLORER BLVD HUNTSVILLE, Alabama 35806
Telephone	256-963-8000
CIK	0000926282
Industry	Communications Equipment
Sector	Technology
Fiscal Year	12/31

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

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

**ADTRAN, INC**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction  
of incorporation or organization)

63-0918200  
(I.R.S. Employer  
Identification No.)

901 Explorer Boulevard, Huntsville, Alabama 35806-2807  
(Address of principal executive offices, including zip code)

**ADTRAN, Inc. 401(k) Employee Savings Plan**  
(Full title of the plan)

Mark C. Smith  
Chairman of the Board and Chief Executive Officer  
ADTRAN, Inc.  
901 Explorer Boulevard

Copy to:  
Thomas Wardell, Esq.  
Long Aldridge Norman LLP

Huntsville, Alabama 35806-2807 One Peachtree Center, Suite 5300  
(Name and address of agent for service) 303 Peachtree Street  
(205) 971-8000 Atlanta, Georgia 30308  
(Telephone number, including area code, (404) 527-4000  
of agent for service)

## CALCULATION OF REGISTRATION FEE

Title of securities to be	Amount to be	Proposed maximum offering price	Proposed maximum aggregate	Amount of registration
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registered registered (1) per share (2) offering price (2) fee (2)

Common Stock, \$.01 par value	per share 70,103 (1)	\$24.25	\$1,699,997.75	\$515.15
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Interests in Indeterminate (1) 0 the Plan

(1) The shares of Common Stock being registered represent the estimated maximum number of shares purchasable on the open market, from time to time, by the Trustee for the Common Stock Fund being established under the ADTRAN, Inc. 401(k) Employee Savings Plan (the "Plan") for the first three years of operation commencing July 1, 1997. In addition, pursuant to Rule 416(c) under the Securities Act of 1933, this registration statement also covers an indeterminate amount of interests to be offered or sold pursuant to the employee benefit plan described herein.

(2) The shares will be purchased by the Plan Trustee from time to time; therefore, the offering price of the 70,103 shares which may be acquired pursuant to the Plan is not presently determinable. The offering price for such shares is estimated pursuant to Rule 457(c) and (h) solely for the purpose of calculating the registration fee and is based upon the average of the high and low prices of the Registrant's Common Stock on June 23, 1997 as quoted on The Nasdaq National Market.

**PART II**  
**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference**

The following documents heretofore filed by ADTRAN, Inc. (the "Company" or the "Registrant") and where applicable, the ADTRAN, Inc. 401(k) Employee Savings Plan (the "Plan"), with the Securities and Exchange Commission (the "Commission") hereby are incorporated herein by reference as of their respective dates:

- (1) The Company's Annual Report on Form 10-K for the year ended on December 31, 1996. The Plan has not been a reporting plan to date. The Plan is instituting a Company Stock Purchase feature on July 1, 1997 and it anticipates that its first report will be filed in connection with the Plan year ending December 31, 1997;
- (2) The Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 1997; and
- (3) The description of the Company's Common Stock as contained in the Company's Registration Statement on Form 8-A (Registration No. 0-24612) as declared effective by the Commission on August 9, 1994.

In addition, all reports and documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the "1934 Act") subsequent to the date hereof and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and made a part hereof from the date of the filing of such documents.

**Item 6. Indemnification of Directors and Officers**

Article Eleventh of the Company's Certificate of Incorporation provides for the elimination of personal monetary liabilities of directors of the Company for breaches of their fiduciary duties as directors, except that, as provided by Section 102(b)(7) of the General Corporation Law of Delaware (the "GCL"), such personal monetary liability of a director may not be eliminated with regard to any breach of the duty of loyalty, failing to act in good faith, intentional misconduct or knowing violation of law, payment of an unlawful dividend, approval of an illegal stock repurchase, or obtainment of an improper personal benefit. Such a provision has no effect on the availability of equitable remedies, such as an injunction or rescission, for breach of fiduciary duty.

Article Twelfth of the Company's Certificate of Incorporation provides for indemnification of directors and officers of the Company to the extent permitted by the GCL. Section 145 of the GCL provides for indemnification of directors and officers from and against expenses (including attorney's fees), judgments, fines and amounts paid in settlement reasonably incurred by them in connection with any civil, criminal, administrative or investigative claim or proceeding (including civil actions brought as derivative actions by or in the right of the corporation but only to the extent of expenses reasonably incurred in defending or settling such action) in which they may become involved by reason of being a director or officer of the corporation if the director or officer acted in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the corporation and, in addition, in criminal actions, if he had no reasonable cause to believe his conduct to be unlawful. If, in an action brought by or in the right of the corporation, the director or officer is adjudged to be liable for negligence or misconduct in the performance of his duty, he will only be entitled to such indemnity as the court finds to be proper. Persons who are successful in defense of any claim against them are entitled to indemnification as of right against expenses actually and reasonably incurred in connection therewith. In all other cases, indemnification shall be made (unless otherwise ordered by a court) only if the board of directors, acting by a majority vote of a quorum of disinterested directors, independent legal counsel or holders of a majority of the shares entitled to vote determines that the applicable standard of conduct has been met. Section 145 also provides such indemnity for directors and officers of a corporation who, at the request of the corporation, act as directors, officers, employees or agents of other corporations, partnerships or other enterprises.

Article VI of the Company's Bylaws provides as follows:

Section 6.1. Indemnification. The Corporation shall indemnify and advance expenses to any officer, director, employee or agent to the full extent permitted by its Certificate of Incorporation, these bylaws or by law.

The Company maintains directors and officers liability insurance which will insure against liabilities that directors or officers of the Company may incur in such capacities.

Item 8. Exhibits

Exhibit Number	Description
5	Copy of Internal Revenue Service Determination Letter with respect to the Plan
23(a)	Consent of Coopers & Lybrand L.L.P.
24	Powers of Attorney.

## **Item 9. Undertakings**

### **A. Rule 415 Offering.**

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 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.
- (2) That, for the purpose of determining any liability under the Securities Act of 1933, as amended (the "1933 Act"), 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. Subsequent Documents Incorporated by Reference.**

The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the 1933 Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the 1934 Act and each filing of the Plan's annual report pursuant to Section 15(d) of the 1934 Act 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. Indemnification of Officers, Directors and Controlling Persons.**

Insofar as indemnification for liabilities arising under the 1933 Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the provisions described under Item 6 above, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the 1933 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 1933 Act and will be governed by the final adjudication of such issue.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, 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 Huntsville, State of Alabama, on June 30, 1997.

### ADTRAN, INC.

By: /s/ Mark C. Smith\*  
Mark C. Smith  
Chairman of the Board and  
Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities indicated as of June 30, 1997.

<i>Signatures</i>	<i>Title</i>
/s/ Mark C. Smith* Mark C. Smith	Chairman of the Board, Chief Executive Executive Officer and Director (Principal Executive Officer)
/s/ Howard A. Thrailkill Howard A. Thrailkill	President, Chief Operating Officer and Director
/s/ Lonnie S. McMillian* Lonnie S. McMillian	Senior Vice President, Secretary and Director
O. Gene Gabbard* O. Gene Gabbard	Director
William L. Marks* William L. Marks	Director
Roy J. Nichols* Roy J. Nichols	Director
James L. North* James L. North	Director
/s/ John R. Cooper John R. Cooper	Vice President-Finance and Chief Financial Officer
*By: /s/ Howard A. Thrailkill Howard A. Thrailkill, as Attorney-in-Fact	

Pursuant to the requirements of the Securities Act of 1933, the persons who administer the Plan have duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Huntsville, State of Alabama, on June 30, 1997.

ADTRAN, Inc. 401(k) Employee Savings Plan

By: ADTRAN, Inc., Plan Administrator

By: /s/ Mark C. Smith\*  
Mark C. Smith  
Chairman of the Board and  
Chief Executive Officer

\*By: /s/ Howard A. Thrailkill  
Howard A. Thrailkill  
as Attorney-in-Fact

## EXHIBIT INDEX

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**INTERNAL REVENUE SERVICE  
DISTRICT DIRECTOR DEPARTMENT OF THE TREASURY  
P. O. BOX 1055  
ATLANTA, GA 30370**

JUNE 8, 1995

ADTRAN, INC.  
901 EXPLORER BLVD.  
HUNTSVILLE, AL 35806

Employer Identification Number:  
63-0918200  
File Folder Number  
630008205  
Person to Contact:  
KSHAMA KAKADE  
Contact Telephone Number:  
(404-331-0909)  
Plan Name:  
ADTRAN, INC. 401 (K) EMPLOYEE  
SAVINGS PLAN  
Plan Number: 001

Dear Applicant:

We have made a favorable determination on your plan, identified above, based on the information supplied. Please keep this letter in your permanent records.

Continued qualification of the plan under its present form will depend on its effect in operation. (See section 1.401-1(b) (3) of the Income Tax Regulations.) We will review the status of the plan in operation periodically.

The enclosed document explains the significance of this favorable determination letter, points out some features that may affect the qualified status of your employee retirement plan, and provides information on the reporting requirements for your plan. It also describes some events that automatically nullify it. It is very important that you read the publication.

This letter relates only to the status of your plan under the Internal Revenue Code. It is not a determination regarding the effect of other federal or local statutes.

This determination letter is applicable for the amendment(s) adopted on June 16, 1994.

This plan has been mandatorily disaggregated, permissively aggregated, or restructured to satisfy the nondiscrimination requirements.

This plan satisfies the nondiscrimination in amount requirement of section 1.401(a)(4)-1(b) (2) of the regulations on the basis of a design-based safe harbor described in the regulations.

This letter is issued under Rev.Proc.93-39 and considers the amendments required by the Tax Reform Act of 1986 except as otherwise specified in this letter.

This plan satisfies the nondiscriminatory current availability requirements of section 1.401 (a) (4)-4(b) of the regulations with respect to those benefits, rights, and features that are currently available to all employees in the plan's coverage group. For this purpose, the plan's, coverage group consists of those employees treated as currently benefiting for purposes of demonstrating that the plan satisfies the minimum coverage requirements of section 410(b) of the Code.

This letter may not be relied upon with respect to whether the plan satisfies the qualification requirements as amended by the Uruguay Round Agreements Act, Pub. L. 103-465.

We have sent a copy of this letter to your representative as indicated in the power of attorney.

If you have questions concerning this matter, please contact the person whose name and telephone number are shown above.

Sincerely yours,

*/s/ Nelson A. Brooke  
Nelson A. Brooke  
District Director*

Enclosures:  
Publication 794  
Reporting & Disclosure Guide  
for Employee Benefit Plans

## **CONSENT OF INDEPENDENT ACCOUNTANTS**

We consent to the incorporation by reference in this registration statement of ADTRAN, Inc. on Form S-8 of our reports dated January 14, 1997, on our audits of the financial statements and the financial statement schedule of ADTRAN, Inc. as of December 31, 1996 and 1995, and for the years ended December 31, 1996, 1995, and 1994, which reports are incorporated by reference in the Annual Report on Form 10-K.

**COOPERS & LYBRAND L.L.P.**

Birmingham, Alabama  
June 30, 1997

## POWERS OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that the undersigned constitutes and appoints James L. North, Howard A. Thrailkill and John R. Cooper, and each of them, his true and lawful attorneys-in-fact and agents, with full power of substitution, for him and in his name, place and stead, in any and all capacities, to sign the Registration Statement on Form S-8 under the provisions of the Securities Act of 1933, as amended, for the registration of 70,103 shares of Common Stock of ADTRAN, Inc. (the "Company") and an indeterminate number of interests in the ADTRAN, Inc. 401(k) Employee Savings Plan (the "Plan") which may be acquired pursuant to the Plan and to sign any and all amendments (including post-effective amendments) thereto, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite or necessary to be done, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

**This 28th day of June, 1997.**

*/s/ Mark C. Smith*  
Mark C. Smith

*/s/ Howard A Thrailkill*  
Howard A. Thrailkill

*/s/ Lonnie S. McMillian*  
Lonnie S. McMillian

*/s/ O. Gene Gabbard*  
O. Gene Gabbard

*/s/ William L. Marks*  
William L. Marks

*/s/ Roy J. Nichols*  
Roy J. Nichols

*/s/James L. North*  
James L. North

*/s/ John R. Cooper*  
John R. Cooper

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