
**TRANSPACIFIC CABLE CONSTRUCTION
AND MAINTENANCE AGREEMENT**

Dated *Feb. 14, 1962*

**BETWEEN AND AMONG
AMERICAN TELEPHONE AND TELEGRAPH COMPANY
AND
KOKUSAI DENSHIN DENWA CO., LTD.
AND
HAWAIIAN TELEPHONE COMPANY**

**TRANSPACIFIC CABLE CONSTRUCTION
AND MAINTENANCE AGREEMENT**

THIS AGREEMENT, made and entered into this *fourteenth* day of *February*, 1962 between and among American Telephone and Telegraph Company, a corporation organized and existing under the laws of the State of New York in the United States of America and having its principal office at 195 Broadway in the City of New York (hereinafter called the "American Company" which expression shall include its successors) and Kokusai Denshin Denwa Co., Ltd., a corporation organized and existing under the laws of Japan and having its principal office at No. 5, 1-Chome, Otemachi, Chiyoda-ku, in the City of Tokyo (hereinafter called "KDD" which expression shall include its successors), and Hawaiian Telephone Company, a corporation organized under the laws of the Kingdom of Hawaii and existing under the laws of the State of Hawaii in the United States of America and having its principal office at 1130 Alakea Street, Honolulu, Hawaii (hereinafter called the "Hawaiian Company" which expression shall include its successors).

W I T N E S S E T H :

WHEREAS by means of transpacific radio facilities the American Company, the Hawaiian Company and KDD are providing telephone and other communication services between the United States of America (hereinafter called the "USA") and Japan, and

WHEREAS it is desired to provide a submarine cable system for transpacific telephone and other communication services between the USA and other countries on the east and Japan and other countries on the west, and

WHEREAS it is now desired to define the terms and conditions under which said cable system shall be provided, constructed, owned, operated and maintained,

Now, THEREFORE, the parties hereto, in consideration of the mutual covenants herein expressed, covenant and agree with each other as follows:

1. (a) In accordance with the arrangements contained in this Agreement, a cable system shall be provided, constructed, owned, operated and maintained

which, for the purposes of this Agreement, shall be regarded as consisting of the following components, to wit:

SEGMENT ONE: Land and buildings appropriate for the cable landing and for the cable station equipment on Honshu Island, Japan, and power equipment (other than power equipment associated solely with the cable provided for herein) at that location.

SEGMENT TWO: Submarine cable, equipped with intermediate cable repeaters, connecting Japan and Guam, together with associated cable station equipment in Japan and Guam.

SEGMENT THREE: Submarine cable, equipped with intermediate cable repeaters, connecting Guam and Oahu in the Hawaiian Islands, via Wake and Midway, together with associated cable station equipment on Guam, Wake, Midway and Oahu.

SEGMENT FOUR: Consisting of four parts:

SEGMENT FOUR A. Land and buildings appropriate for the cable landing and for the cable station equipment on Guam, and power equipment (other than power equipment associated solely with the cable provided for herein) at that location; also land and buildings appropriate for housing the personnel required to maintain and operate the cable station and cable station equipment at that location.

SEGMENT FOUR B. Land and buildings appropriate for the cable landing and for the cable station equipment on Wake, and power equipment (other than power equipment associated solely with the cable provided for herein) at that location; also land and buildings appropriate for housing the personnel required to maintain and operate the cable station and cable station equipment at that location.

SEGMENT FOUR C. Land and buildings appropriate for the cable landing and for the cable station equipment on Midway, and power equipment (other than power equipment associated solely with the cable provided for herein) at that location; also land and buildings appropriate for housing the personnel required to maintain and operate the cable station and cable station equipment at that location.

SEGMENT FOUR D. Land and buildings appropriate for the cable landing and for the cable station equipment on Oahu, and power equipment (other than power equipment associated solely with the cable provided for herein) at that location.

The term "submarine cable" includes any cable of the submarine type laid in water or on land; the term "cable station equipment" means terminal equipment (including power equipment associated solely with the cable provided for herein) and maintenance and testing apparatus associated with such terminal equipment and with submarine cable and submarine cable repeaters, but excludes the land and buildings in which such equipment and apparatus are located.

Each segment shall be regarded as including its related spare and standby components.

(b) If the land, buildings or housing included in Segments One and Four are by agreement of the parties hereto used in part for other than the purposes of this Agreement, only the portion of the land, buildings or housing, as appropriate, allocable to the purposes of this Agreement in accordance with use, shall be considered as included in Segments One and Four, respectively.

2. (a) KDD shall at its cost provide the land, design and construct, or cause to be designed and constructed, the buildings and install, or cause to be installed, the equipment, comprising Segment One, in agreement with the American Company and the Hawaiian Company so far as those parties may require.

(b) The American Company shall provide, construct, install and lay, or cause to be provided, constructed, installed and laid, Segments Two and Three. The provision, construction, installation and laying of Segments Two and Three by the American Company shall be done in agreement with all parties hereto.

(c) The American Company at its cost shall provide the land, design and construct, or cause to be designed and constructed, the buildings and install, or cause to be installed, the equipment, comprising Segment Four A, in agreement with KDD and the Hawaiian Company so far as those parties may require. The American Company, at the cost of the American Company and the Hawaiian Company, shall provide the land, design and construct, or cause to be designed and constructed, the buildings and install, or cause to be installed, the equipment, comprising Segments Four B and C, in agreement with KDD and the Hawaiian Company so far as those parties may require. The

American Company and the Hawaiian Company shall at their cost provide the land, design and construct, or cause to be designed and constructed, the buildings and install, or cause to be installed, the equipment, comprising Segment Four D, in agreement with KDD so far as that party may require.

3. (a) Segments Two and Three shall be of a design selected by the American Company and shall meet standards of performance which shall be determined by the American Company and approved by KDD and the Hawaiian Company.

(b) The American Company shall let, or cause to be let, the contracts for the supply of Segments Two and Three. Every such contract (except any as to which the parties hereto may otherwise agree) shall contain such terms as will insure:

(i) that the party letting the contract shall be responsible for the inspection and acceptance of the articles to be supplied and the services to be rendered under the contract;

(ii) the right of access by all parties to this Agreement to the records, vouchers and accounts of the contractor in so far as such records, vouchers and accounts are relevant to the said articles and services, or to the charges to be made therefor to the parties to this Agreement, including overhead costs;

(iii) the right of access by all parties to this Agreement to the factories and other places of business of such contractors for the purpose of observing the articles to be supplied and the services to be rendered under the contract, including raw materials, parts, manufacturing processes, testing procedures, and testing and inspection records relating to the manufacture, inspection and testing of such articles and services.

If KDD and the Hawaiian Company, or either of them, so request, the foregoing provisions of this subparagraph shall apply to any subcontract thereunder where the aggregate amount of the subcontract is more than \$7,500 (or the equivalent amount in Japanese currency, as appropriate), to the extent that agreement to such provisions by the subcontractor involved can be obtained and the American Company shall use its best endeavors to procure from such subcontractor the rights of access specified in subparagraph 3(b)(ii) and (iii).

KDD and the Hawaiian Company shall be entitled upon request to receive a copy of every contract to which this subparagraph refers.

4. (a) KDD will furnish and maintain, or cause to be furnished and maintained, in efficient working order circuit facilities within Japan suitable for handling communications over the circuits assigned to the American Company under subparagraph 10 (a) (4) (Guam-Japan Section) destined for or originating in countries other than Japan. For the use of such facilities the American Company will make reasonable payments to KDD in amounts to be agreed upon by said parties.

(b) The American Company on the Mainland of the USA and on Midway, Wake and Guam and/or the Hawaiian Company in the State of Hawaii will furnish and maintain, or cause to be furnished and maintained, in efficient working order circuit facilities suitable for handling communications over the circuits assigned to KDD under subparagraph 10 (a) (5) destined for or originating in countries other than the USA. For the use of such facilities KDD will make reasonable payments to the American Company and/or the Hawaiian Company in amounts to be agreed upon by said parties.

5. The American Company, KDD and the Hawaiian Company, each at its own expense, on or before the completion of the cable system shall do or cause to be done all such acts and things as may be necessary to provide suitable connection of the cable system with internal communication systems within the following areas: the American Company on the Mainland of the USA and on Midway, Wake and Guam; KDD in Japan; and the Hawaiian Company in the State of Hawaii.

The American Company and the Hawaiian Company may under separate agreement jointly provide, maintain and operate a submarine cable connecting Segment Four D and the cable station of the existing Hawaii-Mainland cable located at Hanauma Bay.

6. Each party responsible for the provision and construction of components of the cable system and of the various connecting facilities associated therewith, as provided for herein, will use its best endeavors to complete the cable system and connecting facilities and to place them in operation not later than July 1, 1964.

7. (a) The cable system shall be owned as follows:

	<i>American Company</i>	<i>Hawaiian Company</i>	<i>KDD</i>
Segment One (Land and buildings on Honshu Island as described in para- graph 1)	0	0	100%
Segment Two, in common in un- divided shares (Submarine cable, repeaters and station equipment connecting Japan and Guam as described in paragraph 1)	50%	0	50%
Segment Three, in common in un- divided shares (Submarine cable, repeaters and station equipment connecting Guam, Wake, Midway and Oahu as described in para- graph 1)	86.328%	13.672%	0
Segment Four A (Land and buildings on Guam as described in paragraph 1)	100%	0	0
Segments Four B, C and D, in common in undivided shares . . . (Land and buildings on Wake, Midway and Oahu as de- scribed in paragraph 1)	86.328%	13.672%	0

(b) All the rights constituting the ownership of Segment Two and all decisions made or acts done in the exercise thereof shall, except as otherwise provided in this Agreement, be exercised, made or done by the American Company and KDD acting together by mutual agreement. All the rights constituting the ownership of Segments Three and Four B, C and D, and all decisions made or acts done in the exercise thereof shall, except as otherwise provided in this Agreement, be exercised, made or done by the American Company and the Hawaiian Company acting together by mutual agreement.

(c) The rights constituting the ownership of Segments One, Two, Three and Four and all decisions made or acts done in the exercise thereof shall not be exercised, made or done in a manner which will diminish the rights granted to any party under this Agreement.

(d) The cost of providing, constructing, installing and laying Segments Two, Three and Four B, C and D shall be shared by the parties having ownership interests in those segments in the proportions in which they share such ownership under subparagraph 7 (a). The American Company will, as it provides, constructs, installs and lays, or causes to be provided, constructed, installed and laid, Segments Two, Three and Four B, C and D, bill KDD and the Hawaiian Company, as appropriate, and those companies will pay upon receipt of such bills, their shares of the costs incurred. If the Hawaiian Company participates in the provision, construction and installation of Segment Four D, it will, as it incurs costs in connection therewith, bill the American Company and the latter will upon receipt of such bills pay its share of such costs. Adjustment will be made for any applicable credits for amounts due to the billed party under paragraph 11. Promptly after the final settlement, the parties shall execute such documents and do all such things as they or any of them may reasonably require for the purpose of vesting title in common in the undivided shares stated in subparagraph 7 (a) and any expenses incurred shall be borne by the parties concerned in the same proportions.

(e) If subsequent to the completion of the cable system provided for herein additional property is incorporated in Segments One and Four A, or either of them, by agreement of the parties hereto, the owners of the respective segments shall pay the capital cost thereof and shall own such additional property. If additional property is incorporated in Segments Two, Three and Four

B, C and D, or any of them, by agreement of the parties having ownership interests in those respective segments, the said parties shall pay their appropriate shares of the capital cost thereof in the proportions applicable under subparagraph 7 (a) and shall thereupon own the additional property in those proportions. The provisions of subparagraph 7 (d) with respect to the execution of documents to evidence title shall apply to this subparagraph. In this Agreement, references to any segment, however expressed, shall include references to additional property incorporated therein, unless the context otherwise requires.

8. Costs, or capital cost, as used herein with reference to providing, constructing, installing and laying the facilities comprising Segments One, Two, Three and Four shall embrace all expenditures incurred which shall be agreed by the parties hereto to be fair and reasonable in amount and either to have been directly and reasonably incurred for the purpose of, or to be properly chargeable in respect of, such provision, construction, installation and laying, including, but not limited to, ocean survey costs, the purchase price and purchase costs of land, building costs, amounts incurred for development, engineering, design, materials, manufacturing, procurement and inspection, testing associated with laying or installation, customs duties, taxes (except income tax imposed upon the net income of a party hereto), interest during construction, supervision, overheads and insurance or a reasonable allowance in lieu of insurance if any party elects to carry a risk itself, being a risk which is similar to one against which another party hereto has insured or against which insurance is usual or recognized or would have been reasonable.

9. The cable system will be designed to provide the equivalent of one hundred and twenty-eight (128) voice grade circuits, each having a nominal bandwidth of three kilocycles (3 kcs).

10. (a) The equivalent voice grade circuits in the cable system shall be assigned for use as follows:

<i>Assigned to:</i>	<i>Number of Circuits</i>	
	<i>Hawaii-Guam Section</i>	<i>Guam-Japan Section</i>
(1) <i>The American Company and KDD Jointly</i> For communication services between points on the Mainland of the USA and points in Japan and between points on Midway, Wake and Guam and points in Japan.	37	76
(2) <i>The American Company, KDD and the Hawaiian Company Jointly</i> For communication services between points in the State of Hawaii and points in Japan.	13	20
(3) <i>The American Company and the Hawaiian Company Jointly</i> For communication services between points in the State of Hawaii and points on Midway, Wake and Guam.	24	0
(4) <i>The American Company</i> For communication services between points on the Mainland of the USA, Midway, Wake and Guam and points other than points in the State of Hawaii and Japan; and between and among Midway, Wake and Guam.	46	16
(5) <i>KDD</i> For communication services between points in Japan and points other than points in the USA, its territories and possessions.	8	16
Total	128	128

Circuits assigned for use for services originating or terminating in a country or island may be used for services transiting the country or island upon mutual agreement by the parties to whom the circuits involved are assigned and the carriers participating in such services who are not parties to this Agreement.

(b) The parties hereto agree to review the assignment of circuits provided in subparagraph 10 (a) at the end of three years from the time the cable system is placed in service and to reassign the circuits not then in use to conform with the then expected ultimate usage.

If, after the initial reassignment of circuits as provided in the next preceding paragraph, substantially all of the circuits assigned to one or more of the parties hereto are in use in advance of those assigned to one or more of the other parties, all parties hereto agree to again review the circuit assignments and to make such further reassignments as all the parties may mutually agree upon.

Circuit reassignments made pursuant to this subparagraph 10 (b) shall be made upon such terms and conditions as the parties concerned may agree.

(c) The types of service to be furnished jointly by parties to this Agreement by means of circuits in the cable system assigned for such joint use in accordance with the provisions of subparagraph 10 (a), and the terms and conditions upon which such services shall be rendered, shall be subject to agreement by the parties participating in the joint service.

(d) The American Company, or the American Company and the Hawaiian Company jointly, as appropriate, may make their right of use of circuits assigned in subparagraphs 10 (a) (1), (2) and (3) available to international telegraph carriers of the USA for their use in furnishing common carrier communication services either individually or jointly with KDD or other international telegraph carriers to whom KDD may make available its right of use of circuits assigned in subparagraphs 10 (a) (1) and (2). Services which may be furnished over circuits thus obtained shall include message telegraph service, teleprinter exchange service, leased telegraph circuits (i.e., private line telegraph service) and such other services as may be agreed upon by the American Company, or by the American Company and the Hawaiian Company jointly, as appropriate, and the international telegraph carrier concerned.

(e) The American Company, or the American Company and the Hawaiian Company jointly, as appropriate, and KDD may subsequently agree to make available to carriers other than the international telegraph carriers of the USA referred to in subparagraph 10 (d), for use in the conduct of their common carrier business, their right of use of circuits assigned in subparagraphs 10 (a) (1), (2) and (3).

(f) If, subsequent to the original assignment of circuits pursuant to this paragraph, the number of equivalent voice grade circuits in the cable system is increased, the additional circuits shall, upon payment by the parties to this Agreement of their respective shares of any capital cost relating thereto in the proportions then applicable under subparagraph 7 (a) and of any appropriate payment under paragraph 11, be assigned for use by the parties in the same proportions in which the original 128 circuits are then assigned in accordance with subparagraphs (a) and (b) of this paragraph, unless the parties shall otherwise agree.

11. (a) The American Company shall have the indefeasible right for the duration of this Agreement to have Segment One, and any necessary additions thereto, used as a cable station for the cable system provided for herein by payment to KDD of a sum equal to 50% of the capital cost of Segment One and of any additions thereto associated with said cable system.

(b) KDD will, as it provides and constructs, or causes to be provided and constructed, Segment One bill the American Company, and the American Company will pay upon receipt of such bills, its proportionate share of the cost incurred as specified in subparagraph 11 (a).

(c) KDD shall have the indefeasible right for the duration of this Agreement to have Segments Three and Four, and any necessary additions thereto, used as cable facilities and cable stations for the cable system provided for herein by payments as follows:

(i) To the American Company: 28.859% of the capital cost of Segments Three and Four B, C and D; 50% of the capital cost of that portion of Segment Four A allocable to the Guam-Japan Section; and 32.414% of the capital cost of that portion of Segment Four A allocable to the Hawaii-Guam Section.

(ii) To the Hawaiian Company: 3.555% of the capital cost of Segments Three and Four B, C and D.

For the purposes of this subparagraph the capital cost of a segment shall include the capital cost of any additions to the segment associated with the cable system. In addition, for the purposes of this subparagraph and subparagraphs 11 (e) and 13 (c) the capital cost and maintenance costs of Segment Four A shall be allocated between the Guam-Japan Section and the Guam-Hawaii Section of the cable system, on the basis of use in accordance with procedures to be agreed upon by the parties hereto.

(d) The American Company will as it provides, constructs, installs and lays, or causes to be provided, constructed, installed and laid, Segment Three and provides and constructs, or causes to be provided and constructed, Segment Four, on its own behalf and on behalf of the Hawaiian Company bill KDD, and KDD will pay upon receipt of such bills, its proportionate share of the cost incurred as specified in subparagraph 11 (c). Portions of such payments due the Hawaiian Company will be transmitted to said party by the American Company. If the Hawaiian Company participates in the provision and construction of Segment Four D, it will as it incurs costs in connection therewith, on its own behalf and on behalf of the American Company bill KDD, and KDD will pay upon receipt of such bills, its proportionate share of the cost incurred as specified in subparagraph 11 (c). Portions of such payments due the American Company will be transmitted to said party by the Hawaiian Company.

(e) The Hawaiian Company shall have the indefeasible right for the duration of this Agreement to have Segments One, Two and Four A, and any necessary additions thereto, used as cable facilities and cable stations for the cable system provided for herein by payment to the American Company of sums equal to the following proportions of the capital cost of the respective segments, and of any additions thereto associated with the cable system:

5.469% of Segments One, Two and that portion of Segment Four A allocable to the Guam-Japan Section.

10.117% of that portion of Segment Four A allocable to the Hawaii-Guam Section.

(f) The American Company will, as it provides, constructs, lays and installs, or causes to be provided, constructed, laid and installed, Segment Two, and provides and constructs, or causes to be provided and constructed, Segment Four A, bill the Hawaiian Company, and the Hawaiian Company will pay

upon receipt of such bills, its proportionate share of the cost incurred as specified in subparagraph 11 (e). Upon receipt of bills from KDD for payments with respect to Segment One in accordance with subparagraphs 11 (a) and (b), the American Company will bill the Hawaiian Company, and the Hawaiian Company will pay upon receipt of such bills, its proportionate share thereof as specified in subparagraph 11 (e).

(g) Payments in connection with additions to segments shall be made upon receipt of bills for such additions.

12. (a) KDD shall use its best endeavors to maintain in efficient working order and operate, or cause to be so maintained and operated, Segment One and the portion of Segment Two consisting of the cable station equipment at the cable station in Honshu Island.

(b) The American Company and KDD shall jointly use their best endeavors to maintain, or cause to be maintained, the cable portion of Segment Two in efficient working order in accordance with procedures to be agreed upon by said parties hereafter and designed with the objective of achieving speedy and effective repairs.

(c) The American Company shall use its best endeavors to maintain in efficient working order and operate, or cause to be so maintained and operated, the portion of Segment Two consisting of the cable station equipment at the cable station in Guam Island, and Segments Three and Four.

(d) Each party shall give full information relating to the maintenance and operation of equipment of that party's design used in Segments One, Two, Three and Four to any other party by whom that equipment, by reason of the provisions of this paragraph, is to be maintained and operated. Each party to this Agreement may from time to time or continuously attend and inspect the operation and maintenance of any portion of Segments One, Two, Three and Four in which circuits are assigned to the said party.

(e) None of the parties shall be liable to the other parties for any loss or damage sustained by reason of failure of the facilities or any interruption of service, whatsoever shall be the cause of such failure or interruption, and however long it shall last, but if the party responsible for maintaining and operating the facilities as specified in subparagraphs (a), (b) and (c) of this paragraph, or any part thereof, fails to maintain those facilities in efficient working order and

operation after having been called upon to do so by any other party to this Agreement, such other party may place, or cause to be placed, the said facilities in efficient working order and the other parties shall pay their appropriate shares of the cost, as provided in subparagraphs 13 (a) and (b), reasonably incurred in so doing.

13. (a) The costs of maintaining and operating Segments One, Two and that portion of Segment Four A allocable to the Guam-Japan Section shall be shared by the parties hereto as follows: KDD 50%, the American Company 44.531% and the Hawaiian Company 5.469%.

(b) The costs of maintaining and operating Segments Three, Four B, Four C and Four D and that portion of Segment Four A allocable to the Guam-Hawaii Section shall be shared by the parties hereto as follows: KDD 32.414%, the American Company 57.469% and the Hawaiian Company 10.117%.

(c) The total costs of maintaining Segment Four A will be allocated between the Guam-Japan Section and the Guam-Hawaii Section of the cable system in the same proportions in which the capital cost of Segment Four A is allocated between said sections in accordance with subparagraph 11(c).

(d) The maintenance and operating costs to which paragraph 13 refers are the costs reasonably incurred in maintaining and operating the facilities involved, including, but not limited to, the cost of attendance, testing, adjustment, repairs and replacements, customs duties, taxes (except income tax imposed upon the net income of a party hereto) paid in respect of the said facilities, and costs and expenses reasonably incurred on account of claims made by or against other persons in respect of such facilities or any part thereof and damages or compensation payable by the parties concerned on account of such claims. Costs and expenses and damages or compensation payable to the parties on account of such claims shall be shared by them in the same proportions as specified in subparagraphs 13(a) and (b). Each party shall render to the other parties monthly accounts of the expenditures and receipts to which reference is made herein. Payments for net amounts due shall be made upon receipt of the monthly accounts from the other parties. Each party shall from time to time furnish such further details as the other parties reasonably may require.

(e) The terms "operate" and "operating" as used in this Agreement refer to the technical preparation and supervision of equipment and circuit facilities.

14. (a) The proportionate payments of the American Company and KDD provided for in subparagraphs 11 (c) and 13 (b) may be modified by agreement between the said parties. The American Company and KDD will notify the Hawaiian Company in writing of such modification as soon as practicable after the modification is agreed upon by the American Company and KDD.

(b) Payments due under this Agreement from one party to another shall be made at the principal office of the payee and in the currency of the country in which such office is located. It is the intention of the parties that, in making payments and settlements in the performance of this Agreement, they will endeavor, in so far as is practicable, to avoid the exchange of the currency of one country into the currency of the other country.

(c) It is the intent of the parties hereto that bills submitted by one party to another pursuant to provisions of paragraphs 7 and 11 shall be payable not later than the end of the calendar month following that in which the bills are received. If, however, for any reason bills are not fully paid within this period, the unpaid portion shall thereafter bear interest at the rate of 6% until payment is received by the billing party. Procedures for making the payments referred to in this subparagraph will be developed by consultation among the parties.

15. Each party shall keep and maintain such records, vouchers and accounts of all of its costs with respect to the provision, construction, installation, laying, maintenance and operation of facilities in the cable system provided for herein as may be appropriate to support its billing of any such costs to the other parties and shall at all reasonable times make them available for the inspection of the other parties.

16. Each party shall grant, and secure that its subsidiaries shall grant, to each of the other parties hereto nonexclusive unrestricted licenses free of any royalty or other payment, to make or have made, and to use, lease or sell by themselves or by their agents coaxial type submarine cable, submarine repeaters utilizing thermionic tubes (thermionic valves) as the amplifying function element, and terminal equipment, power equipment and maintenance and testing equipment associated with such cable or repeaters and cable laying equipment, under patents for inventions made, between the date hereof and

the end of one year from the date on which the cable system begins to operate, by employees of said party or its subsidiaries or jointly by said employees and the employees of any other party hereto or its subsidiaries, in the performance of work undertaken specifically for the purpose of this Agreement. The grant to a party shall include the right to grant sublicenses to its subsidiaries. Such licenses shall continue for the lives of such patents. In the case of any invention jointly made by an employee of a party or its subsidiaries and by an employee of another party or its subsidiaries, the parties concerned shall consult as to the country in which any application for Letters Patent in respect thereof shall first be filed before making such application. This paragraph and any matter or thing falling therein in relation to any Letters Patent or patent application shall be construed and determined according to the laws of the country in which such Letters Patent or patent application are granted or filed.

17. The relationship between or among the parties hereto shall not be that of partners and nothing herein contained shall be deemed to constitute a partnership between them, and the common enterprise among the parties shall be limited to the express provisions of this Agreement.

18. (a) This Agreement shall become effective on the day and year first above written and shall continue in effect for an initial period of twenty-five (25) years from the date of the completion of the cable system (which date shall, at the appropriate time, be agreed in writing among the parties) and, unless terminated by any party by giving not less than two years' notice in writing to the other parties prior to the termination of such initial period, shall continue in effect thereafter until terminated by any party by not less than two years' notice in writing to the other parties. Termination of this Agreement shall not terminate subparagraphs (b) and (c) of this paragraph or prejudice the operation or effect thereof.

(b) The interests of the parties in any part of the cable system which come to an end by reason of the termination of this Agreement shall be deemed to continue for as long as is necessary for effectuating the purposes of subparagraph (c) of this paragraph, and the parts of the cable system in which such interests existed shall accordingly thereafter be held as respects such interests upon the appropriate trusts by the parties who are the owners thereof.

(c) Upon termination of this Agreement the parties shall use their best endeavors to liquidate every part of the cable system within a reasonable time by sale or other disposition among the parties or any of them or by sale to other bodies or persons, but no sale or disposition shall be effected except

by agreement among the parties who have or are deemed to have interests in the subject thereof. The net proceeds of every sale or disposition shall be divided among the parties who had or were deemed to have interests in the subject thereof (other than the parties or party, if any, paying the proceeds) in the proportions in which the parties receiving the net proceeds contributed to the capital cost of the subject of said sale or disposition. For this purpose the contribution of a party shall be the net total of payments made less payments received, pursuant to the provisions of subparagraphs 7 (a), (d) and (e), plus any payments made pursuant to the provisions of paragraph 11 less any such payments received. The provisions of subparagraph 7 (d) with respect to the execution of documents to evidence title shall apply to this subparagraph.

19. The performance of this Agreement by the parties is contingent upon the obtaining and continuance of such approvals, consents, governmental authorizations, including, but not limited to, authorizations relative to construction and financing, licenses and permits as may be required or be deemed necessary by the parties and be satisfactory to them and the parties shall use their best endeavors to obtain and continue such approvals, consents, authorizations, licenses and permits. A party applying for any such approval, consent, authorization, license or permit in respect of any part of the cable system shall permit and afford every facility to any other party that has or will have an ownership share in that part under paragraph 7 to join in the application and become a joint recipient of the grant.

20. The interests of the Hawaiian Company under this Agreement are subject to the lien and operation of the First Mortgage Indenture dated January 15, 1941 between the Hawaiian Company and Hawaiian Trust Company, Limited, Trustee, as amended, recorded in the Bureau of Conveyances of the State of Hawaii in Book 1613 at pages 310-392, and in Book 3207 at pages 311-315.

21. This Agreement shall be executed in three counterparts in English, and each part thereof when so executed and delivered shall be an original; and such parts shall together (as well as separately) constitute one and the same instrument.

22. This Agreement and any of the provisions hereof may be altered or added to by any other agreement in writing signed by a duly authorized person on behalf of each party.

IN WITNESS WHEREOF the parties hereto have severally subscribed these presents or caused them to be subscribed in their names and behalf by their respective officers thereunto duly authorized.

AMERICAN TELEPHONE AND TELEGRAPH
COMPANY

By H. S. Livingston
Vice President

Attest:

A. W. Barry
Secretary

KOKUSAI DENSHIN DENWA Co., LTD.

By Keizo Shibusawa
President

Attest:

Tetsuo Yoneda
Secretary

HAWAIIAN TELEPHONE COMPANY

By A. G. Guild
President

and John J. Jaquette
Secretary

ADDENDUM
TO THE FOREGOING
TRANSPACIFIC CABLE CONSTRUCTION AND
MAINTENANCE AGREEMENT (THE AGREEMENT)
Dated _____, 1962, **BETWEEN AND AMONG**
AMERICAN TELEPHONE AND TELEGRAPH COMPANY
(THE AMERICAN COMPANY), KOKUSAI
DENSHIN DENWA CO., LTD. (KDD),
AND HAWAIIAN TELEPHONE COMPANY
(THE HAWAIIAN COMPANY).

WHEREAS subparagraph 7 (a) of the Agreement provides that Segment Two of the cable system therein provided for shall be owned in common in undivided shares by the American Company and KDD, and subparagraph 18 (a) of the Agreement provides that the Agreement shall continue in effect for an initial period of twenty-five (25) years from the date of the completion of such cable system; and

WHEREAS Article 256 of the Japanese Civil Code provides that co-owners may agree not to partition a thing jointly owned for a period not exceeding five (5) years, and the American Company and KDD desire to take cognizance of the provisions of said Article for the purposes of the Agreement, in so far as it relates to that part of Segment Two located in Japan (including its territorial waters);

Now, THEREFORE, in consideration of the premises and the covenants of the American Company and KDD, and for the purpose of clarifying the Agreement and giving it its proper effect, the American Company and KDD hereby agree as follows:

1. Notwithstanding the effective period of the Agreement provided for in subparagraph 18 (a) thereof, the agreement not to partition (that is, the provision for ownership in common in undivided shares) that part of Segment Two located in Japan (including its territorial waters) which is contained in subparagraph 7 (a) of the Agreement shall remain in force for a period of five (5) years from the date of the Agreement, and thereafter such agreement shall be automatically renewed for successive additional periods of five (5) years each (unless otherwise requested in writing by the American Company or KDD to the other co-owner at the end of the original period or any additional period of

five (5) years); provided, however, that, in the event of any such election, subject to any necessary governmental authorizations, the electing party shall sell to the other co-owner, and the other co-owner shall purchase, the electing party's undivided interest in the part of Segment Two of such cable system located within Japan (including its territorial waters), the consideration for said purchase and sale to be the granting by the purchasing party to the electing party of the indefeasible right of user of said part of the cable system for the purposes of the Agreement, all without prejudice to the other provisions of the Agreement.

2. The American Company and KDD hereby declare their mutual intention that partition of said part of Segment Two is not desirable and would be incompatible with the rationale and intent of the Agreement.

3. This Addendum is being executed and delivered simultaneously with the execution and delivery of the Agreement and shall be construed as a part thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be signed by their duly authorized representatives.

Dated: Feb. 14, 1962.

AMERICAN TELEPHONE AND TELEGRAPH
COMPANY

By

H. J. Cunningham
Vice President

Attest:

A. Barry
Secretary

KOKUSAI DENSHIN DENWA Co., LTD.

By

Keizo Shibusawa
President

Attest:

Teruo Yoneda
Secretary

HAWAIIAN TELEPHONE COMPANY

By

W. G. Guild
President

and

John J. Jazette
Secretary