

## New code on old cabling: Something to untangle

Remove a commercial building ceiling tile, and you are likely to find a spaghetti-like mass of fiber optic and communications cabling — some of which may be flammable and toxic.

The events of Sept. 11, 2001, heightened concerns about such cabling installed in building areas where air circulates, such as above ceiling tiles, underneath flooring and behind walls.

Not surprisingly, when the National Fire Protection Association prepared its update to the National Electrical Code (NEC) in 2002, it amended the code to require removal of certain abandoned cabling. These new cabling removal requirements were adopted recently in several counties in Maryland and are expected to become law throughout Maryland as well as in the District of Columbia and Virginia in the near future.

With the force of law behind or soon to be behind the new standards, the time is right to address the issues they raise for commercial lease negotiations.

Updated every three years, the NEC is advisory unless adopted by state or local statute. Although most every state has adopted the NEC, many states are one or two cycles behind the 2002 version, using the 1999 or 1996 versions.

Virginia localities are governed by its Uniform Statewide Building Code, which incorporates the 1999 NEC.

In Maryland, each locality determines which cycle of the NEC it will use; the metro-area counties of Frederick, Prince George's, Anne Arundel and Baltimore have adopted the 2002 NEC (other counties, including Montgomery, remain two cycles behind).

D.C. uses the 1996 NEC, along with the District's Construction Code Supplement regulations, which do not contain a provision similar to the 2002 NEC cabling removal requirements. Officials in local jurisdictions that do not currently use the 2002 NEC plan to adopt the new version in the near future.

### EVERYTHING GOES

So no matter where you're located, you'll soon be required to remove cabling. But what sort of cabling is required to be removed? In short, most of it.

If it's not earmarked for future use, it's likely subject to the NEC's new removal requirements. The 2002 NEC provides that the "accessible" portion of "abandoned" optical fiber cable and communications cable is "not permitted to remain" in a building whenever changes to existing electrical installations (or new installations) are

made, regardless of where such installations are located.

The NEC defines "abandoned" cabling as fiber-optic cabling (commonly used for computer networks and telephones) that is not terminated at equipment other than a connector and as



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communications cabling (any nonfiber optic cabling used in communications circuits, such as for telephones, fire alarms and security systems) not terminated at both ends at a connector or other equipment.

Coupled with a broad definition of what is "accessible" (equipment for which close approach is not unduly impeded and wiring methods that are capable of being removed or exposed without damaging the building), the removal requirements are far reaching.

The NEC removal requirements do not apply to existing installations that are not otherwise being added to, altered or repaired — unless a local authority finds that an existing installation poses an "imminent danger" to occupants, in which case compliance can be forced. Even if changes to existing electrical installations or new installations would otherwise signal the applicability of the removal requirements, they may be avoided if the cabling is genuinely identified for future use with a tag.

In local jurisdictions, penalties for failure to comply with the NEC include fines up to \$5,000 and imprisonment up to 10 days in Virginia, fines up to \$500 or imprisonment up to six months in Maryland, and fines not to exceed \$300 and/or imprisonment not to exceed 10 days per violation in D.C.

It remains to be seen, however, whether there will be diligent enforcement of the requirements.

### WHO'S PICKING UP THE CHECK?

Removal of existing cabling may be costly, so

determining who pays for it will be hotly negotiated.

The NEC does not allocate responsibility for the removal or costs to any particular party. Although it is the owner's asset that ultimately must conform to the requirements, each tenant's cabling requirements are unique, and the responsibility for cabling typically is borne by the tenant outside the scope of the landlord's buildout.

The new NEC provisions likely will be addressed as new leases are negotiated and at the expiration of existing leases, as landlords look for ways to get vacating tenants to bear cabling-removal costs.

Although leverage and economics will determine how the parties ultimately allocate responsibility, certain issues are ripe for consideration, including:

- Allocation of costs incurred in the cabling removal;
- The degree of the landlord's control over performance of the cabling removal;
- Special/increased security deposits to protect against a tenant's failure to perform cabling-removal obligations;
- Whether permits are necessary to conduct cabling removal and whether the issuance of such permits will delay delivery of space to a tenant;
- Requirements for drawings from a tenant specifying the location and character of its cabling;
- Whether damages arising from tenant cabling are covered under the lease indemnity from tenant to landlord;
- The tenant's privacy concerns if cabling removal for another user requires access to such tenant's premises;
- Whether the lease-surrender provisions provide a basis for a landlord to demand that a tenant remove, at the tenant's cost, all cabling installed on the tenant's behalf.

The 2002 NEC cabling removal provisions provide an opportunity for landlords and tenants to address growing concerns about the proliferation of cabling. Taking steps in lease negotiations to allocate landlord and tenant responsibility now may help prevent entanglements in the future as the local jurisdictions begin to adopt and enforce the new rules.

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