

# Liability Issues Loom Over Abandoned Cable

By Robin Suttell

**T**aking an “out-of-sight, out-of-mind” approach with cabling that is no longer used for voice/data communications and other low-voltage signaling circuits in your building places a heavy liability burden on your shoulders – even if the cabling in question was installed by a tenant.

“You can never fully release yourself of liability,” says attorney Gerry Lederer of Miller & Van Eaton PLLC, Washington, D.C. “When all is said and done, it’s *your* building. You have the end responsibility for the building being up to code at all times. If it is not up to code, it falls on you to make it to code.”

Over the years, various types of cable (made from many different materials) have been installed in concealed commercial, industrial, institutional, and public spaces. As telecommunications technology advanced, so did cabling needs. Historically, old cable has been left in place while new infrastructure has been installed around it; that’s a problem.

While some of these cables were manufactured to resist high heat and flame spread, as well as avoid smoke generation, others were not – effectively increasing a building’s fuel load. Cables abandoned in ceilings, riser systems, and air-handling systems have always been a source for fueling fire and smoke. The abandoned cables can also affect HVAC airflow and make it difficult for new tenants to route their required wiring through plenum and riser spaces.

In 2002, both the *National Electrical Code*® (*NEC*) and several codes from the National Fire Protection Association (*NFPA*) were updated to address the growing abandoned cable issue. These code changes, as well as an *NEC* update in 2005, require that abandoned copper and fiber cable be removed from concealed spaces.

## KEY CONCEPTS

- Unused combustible, low-voltage cable must be removed from buildings in accordance with *NEC* and *NFPA* requirements.
- Building owners and managers have ultimate liability with respect to abandoned cabling.
- Clearly outline tenant responsibilities regarding cabling in leases.
- Don’t tag all unused cables “for future use” if you don’t plan to use them; they must be removed.

## At a Glance: Abandoned Cable Codes

The following codes address the removal of abandoned cable in buildings:

- *2002 NEC.*
- *2005 NEC.*
- *2002 NFPA 75: Standard for the Protection of Electronic Computer/ Data Processing Equipment.*
- *2002 NFPA 76: Recommended Practice for the Fire Protection of Telecommunications Facilities.*
- *2002 NFPA 90A: Standard for the Installation of Air-Conditioning and Ventilating Systems.*

While the requirements involving abandoned-cable removal do not have the effect of law, the majority of jurisdictions in the United States adopt *NEC* and *NFPA* standards into local building and fire codes; these codes are then enforced by the authority having jurisdiction. If your jurisdiction adopted either *2002* or *2005 NEC* or the corresponding *NFPA* codes addressing abandoned cabling, you need to be aware of the potential impact on your building, Lederer advises.

“Removing abandoned cable is not one of those optional things that you get around to as a way of enhancing revenue or enhancing the marketability of your building. It is a code obligation. It requires that you change your conduct,” he says.

## Addressing Liability

The biggest question surrounding abandoned cabling: Who pays for its removal? It depends on who put the cable there and how the lease is written.

“In a building, you have management, tenants, and telecom companies accessing these cables,” notes Karen W. Penafiel, assistant vice president of advocacy at BOMA Intl.,

**Many facilities have layers of old cabling that are 2- and 8-inches deep. Before leasing to a new tenant, survey your building and remove unused cable. New tenants cannot be expected to address existing cable issues.**



## Code Contradictions?

The literal interpretation of the codes between the *NEC (NFPA 70)* and *NFPA 90A* are harmonized: they both indicate that accessible portions of abandoned cable shall be removed or shall not be permitted to remain because of the excessive fire hazard they contribute to a building.

However, the practical interpretations of the *NEC* and *NFPA 90A* become a bit blurred since the *NEC* mentions the capability of having services loops or other cables that can be tagged "for future use"; there is no mention of this in *90A*. *NFPA 90A Section 4.3.10.2.7* says that the accessible portion of abandoned cable materials exposed to the airflow shall not be permitted to remain. (Various *NFPA* committees oversee the development of both the *NEC [NFPA 70]* and *NFPA 90A* standards.)

According to DuPont Cabling Solutions, Wilmington, DE, the interpretation of both comes down to the individual jurisdictions (oftentimes, the inspection representatives may be different from each): The *NEC* is usually enforced by the electrical inspectors, and the *NFPA 90A* is more often reviewed and enforced by fire marshals and inspectors.

DuPont experts note that these codes are most often interpreted by determining what is safe for practical purposes. For example, the key questions become "Is there a bulk of excessive cable creating a severe combustible load?" and "What is realistic in terms of 'future use'?" If a building has new cable servicing networks and old, outdated cable that is rarely used is tagged for future

use, inspectors may have reason to question.

John Michlovic, marketing and technical manager at HHRobertson Floor Systems/CENTRIA, Ambridge, PA, points out that *NFPA 90A* is the governing standard for plenum spaces. Thus, he notes, most – if not all – buildings have this code in place. Curious to hear *NFPA's* interpretation of this standard vs. the *NEC* codes relating to abandoned cabling, he asked *NFPA* for a clear-cut interpretation. "I asked which of these two standards we [were to] follow," he says. "[The *NFPA*] noted that, in a plenum space, *90A* is the governing standard. Therefore, you have to take it out, regardless of what is said in the *NEC*."

Washington, D.C. "If you have tenants moving out every 5 to 10 years and haven't properly addressed cables at that time, your building probably has wiring going back to three or four different tenants."

Building owners cannot expect new tenants to address existing cable issues. According to experts at DuPont Cabling Solutions in Wilmington, DE, many existing facilities have layers of old cable ranging between 2- and 8-inches deep. "If a building has multiple generations of cable that haven't been addressed, our advice to the building owner is to get a good understanding of what the current state of liability is and clean up that space before it is marketed to and occupied by a new tenant," says Lori Alzamora, marketing manager at DuPont Cabling Solutions. "From that point forward, your leases could include verbiage that requires the tenants to deal with future cabling."

That said, the building owner will still have liability issues if problems arise, or if a tenant vacates a space without removing the cabling used during the lease term.

"Yes, you can obligate the tenant to keep the property up to code all during tenancy but, if they fail to do that, it doesn't relieve you of your obligations," Lederer says. "You can never fully insulate yourself from your obligations. When you pull the wires, someone has got to pull them out."

In its official position on abandoned cable, adopted by its Board of Governors in June 2005, BOMA recommends that building owners and managers who have not addressed abandoned cable issues should immediately begin to survey their buildings to identify unused cable.

If such wires exist, BOMA then suggests identifying the wiring by its rating (i.e. riser-rated [CMR] or plenum-rated [CMP]) and its use (i.e. communications, alarm, security, etc.) and removing any cable that does not meet the permitted-use specifications.



**Abandoned cable needs to be removed since it increases the fuel load of a building's concealed spaces.**

### "Future Use" Not an Excuse

An issue that owners and managers need to better understand is the concept of tagging "for future use."

Paragraphs 800.2 and 770.2 of the *2002 NEC* define abandoned cable as "installed communications cable that is not terminated at both ends at a connector or other equipment and not identified 'for future use' with a tag."

"If you know it is combustible, label it for future use, and if it's not intended for future use, that's considered fraud and does not circumvent the requirement of the code," notes Darlene Pope, Sterling, VA-based managing partner of professional development and strategic services at

Carlsbad, CA-based Realcomm. "Technically, it does; legally, it doesn't. You can't find CAT-3 cable severed at both ends and reasonably tag it for future use. It doesn't show best practices or reasonable judgment from an attorney's point of view."

If you tag a cable for future use, you must use it only as long as it meets the permitted-use criteria specified for cable installation (such as the minimum number of riser-rated cables in the risers and plenum-rated cables in the plenum). Otherwise, it must be removed in compliance with *NEC* and *NFPA* codes.

With respect to *NFPA* codes – *2002 NFPA 90A: Standard for the Installation of Air-Conditioning and Ventilating Systems* in particular – any unused combustible cable cannot be tagged for future use; it must be removed. "If that cabling catches on fire (and, many cases, it does), in case after case after case of building fires, investigators have determined that fire spreads through plenum and riser," Pope says.

While removing unused wiring can be time-consuming and costly, the issues of life safety and liability – teamed with the fact that, once it's removed, you will be able to provide tenants with infrastructure for the best communications possible – make for an easy decision.

"Get that abandoned cable out and install high-quality, limited-combustible cable," Alzamora says. "The bottom line is that you'll have a safer, higher-performance building."

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