

universal service and other societal benefits, the rules of the market place did not apply to our dealings with their representatives. In fairness, many of the risks of a competitive environment were also lacking. For example, when wire management and ownership were in the hands of one provider there was little reason for building owners to be concerned about issues of access, security, and control -- issues with considerable liability consequences to owners of real property. The telephone company was a benign and complementary part of the building infrastructure. Everything in the phone closet belonged to them and was essentially their responsibility.

As the Commission is well aware, this picture has changed radically. Consequently, the market is now generating its own ground rules in response to a new breed of competitive telecommunications providers. These providers are not weighted down by the responsibilities imposed on monopoly carriers, nor do they provide one-stop shopping for building owners seeking services (and wire management) for their buildings. The efforts of competitive access providers (CAPs) to reach untapped (but extremely lucrative markets) for telecommunications services has imposed new risks but also new opportunities for building owners. An owner's failure to work within the new rules of the marketplace results not in monetary fines or sanctions but in the far graver prospect of losing market share in a highly competitive industry.

Three or four years ago, many owners had no experience whatsoever with these "CAPs." By today, however, it is not uncommon for commercial office building owners in major metropolitan markets to find themselves facing some variation of the following scenario:

*The owner of an office building is contacted during the same week by representatives from four different telecommunications service providers with news that each has just reached an agreement to provide telecom services (telephony, cable and wireless) to major ("anchor") tenants throughout the building. The building owner is advised that installation of the new systems on eleven floors must begin within the next few days and will require access to a variety of "common areas" throughout the building, including already crowded riser space.*

Though the building owner has received short notice of the work order -- and, in fact, only now learned of the contracts between the four service providers and building tenants -- the real estate owner fails to comply with these requests (and to sustain much of the associated costs and liabilities associated with such building access) at his or her own economic peril.

While an initial reaction to this kind of scenario may be nostalgia for the days of monopoly providers, building owners are recognizing opportunities in the face of these new risks and challenges. In reaction to (or in preparation for) situations like these, building owners have felt considerable pressure to manage their building's infrastructure to allow for maximum access to their buildings while, at the same time, retaining traditional control over the *terms* of entry and use of their real estate asset.

From the perspective of the building industry, these new telecom service providers are a "new" form of tenant service only in the sense that they are different in kind from monopoly providers of the past. In fundamental respects they are comparable to other service companies seeking access to the tenant/customer base in which the owner has invested thousands, if not millions, of dollars.<sup>5</sup> Like other merchants in a building complex, telecom companies seek access to markets within the building for a profit-driven enterprise. If the building is not or cannot be made a profit center for the telecom company, they will bring their services elsewhere. As is the case with such diverse services as restaurants, retailers, or even laundry services, they are attracted to a particular building only when there is a sizable, essentially captive customer base. These merchants recognize that but for the landowner's marketing and management success, this potential customer base would not have collected in large (and profitable) numbers in that building. Indeed, they might have sought office or residential space in a different urban center. The service providers -- including telecom providers -- are the witting beneficiaries of the owner's

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<sup>5/</sup> Attached as Attachment 2 are selected charts excerpted from the February 5, 1996, issue of Local Competition Report. These charts illustrate the tremendous growth in the deployment of fiber optic cable by competitive providers in the last two-to-three years. Of particular interest is the last chart, which shows that between 1994 and 1995 Teleport Communications Group increased the number of buildings it serves from 1,228 to 3,100, an increase of 250% in only one year. Clearly, building operators are not standing in the way of competition in telecommunications.

core business skills, including his or her ability to provide secure, well-managed office, retail or residential space.

2. Owners Act on Market Demand for Optimum Access.

Building owners are well aware of this market dynamic and they welcome the opportunities it presents. Indeed, owners and managers of America's real estate increasingly are focused on improving wire management within buildings and targeting investments in what is sometimes called "smart building" technology. The highly competitive office market demands no less of owners, who by nature are inclined to satisfy their tenants by providing ample access to the expansive array of telecommunications products and services needed to facilitate information flows. In acknowledgment of this investment prerequisite, a number of real estate owners have even devised systems on a building-specific basis that provide cabling (copper or fiber optic) that is accessible to any and all telecommunications providers; this approach is one of the most cost-effective means of ensuring that tenants have the widest possible access to the ever-proliferating number of service providers.

For example, the thirty-one-story, 400,000-square-foot office building located 55 Broad Street in lower Manhattan used to be a "hollow headstone for the Eighties" ("If you wire it, will they come?" *Metropolis*, October 1995 p. 35). It was vacant for more than five years following the bankruptcy of its anchor

tenant in the late 1980s. New York City's moribund downtown real estate market left little hope that the building could ever return to life again. ("Real Estate" *The New York Times*, Wednesday, January 10, 1996). That was before it was retrofitted by its owner (at a cost of more than fifteen million dollars) with fiber optic and high-speed copper wire as well as ISDN, T-1, and fractional T-1 lines to enable Internet, LAN and WAN connectivity; voice, video and data transmissions; and satellite accessibility. The building owner suggests that prospective tenants need only "plug in," and this message has been getting the attention of potential tenants as far away as the West Coast ("...high tech building a plug for downtown plan" *Crain's New York Business*, October 16-22, 1995).

Dubbing the building the New York Information Technology Center (ITC), the owner has highlighted a trend in technology investments by building owners aimed at attracting up and coming high tech companies. It is, in fact, part of a larger plan by the city to promote the lower Manhattan financial district as "silicon alley." ("Trendlines: Smart Buildings," *CIO*, January 1, 1996). Copies of articles demonstrating the high level of interest in this new breed of office building are attached hereto. Perhaps the most persuasive argument, that these kinds of investments will pay dividends, is the success the ITC's owner has had in renting space. According to the owner's Chief Operating Officer, six months earlier "you couldn't give this building away" ("'Silicon Alley' puts NYC atop cyber world",

*Boston Globe*, page 1). By January it was a "deal a week," and the owner expects the building to be fully leased by the end of the summer of 1996. (*The New York Times*, *supra*).

Building owners are developing showcase buildings for the high-end commercial market that will not only afford tenants access to the latest telecommunications technologies, but do so in an efficient, integrated manner. Other technologies that are being built into such buildings are videoconferencing facilities, speech recognition devices to enhance security, and software and electronics that allow tenants to reduce their costs through more efficient use of electrical and HVAC systems.

Of course, many other building owners prefer not to get into the business of owning or operating telecommunications facilities. But this does not mean they ignore the occupants' needs. The simple facts are that commercial tenants have considerable leverage when negotiating lease terms and that no commercial building owner will refuse a technically and financially feasible request from a tenant that conforms to the owner's business plan for the property. Even during the lease term, it is important for building owners and managers to keep their customers satisfied. Happy tenants are more likely to renew their leases and less likely to break them -- and building operators have a strong incentive to reduce the administrative costs and disruption that accompany high turnover rates.

Access to efficient telephone and cable systems is no less important to occupants of multi-unit residential buildings. Residents of coops, apartments buildings and condominiums not only demand these services for home entertainment; they demand these services as part of the trend toward telecommuting. Meeting these tenants needs is also a matter of financial survival for building owners and managers. Attachment 4 is a segment of a report funded by NMHC and NAA entitled "The Future of the Apartment Industry." This recent report notes the many changes that information technology is bringing to the apartment industry. For example, the report notes that some buildings already use cable television to allow residents to see who is buzzing them at the front door of the building. Buildings also offer internal medical or emergency alert lines so the front desk can take immediate action. The report also discusses the increase in the number of Americans who work at home and the implications this has for apartment owners. Ever larger numbers of apartment residents are operating fax machines and personal computers, requiring additional telecommunications capacity, even if they are not running businesses out of their apartments.

In sum, the industry is aware of the importance of telecommunications in the home and the office, and is already acting to address it out of its own self-interest. There is no evidence that mandating access or regulating the service packages provided by owners and operators of real property is necessary.

**B. Commission Regulation is Undesirable Because it Would Interfere with Effective On-the-Spot Management.**

Not only is government intervention unnecessary, since property owners are already taking steps to ensure that telecommunications service providers can serve their tenants and residents, but it is undesirable. Such intervention could have the unintended effect of interfering with effective, on-the-spot property management. Building owners and managers have a great many responsibilities that can only be met if their rights are preserved, including compliance with safety codes; ensuring the security of tenants, residents and visitors; coordination among tenants and service providers; and managing limited physical space. Needless regulation will not only harm our members' interests but those of tenants, residents, and the public at large.

1. Safety considerations; code compliance.

Building owners are the frontline in the enforcement of fire and safety codes, but they cannot ensure compliance with code requirements if they cannot control who does what work in their buildings, or when and where they do it. For the Commission to limit their control would unfairly increase the industry's exposure to liability and would adversely affect public safety.

For example, building and fire codes require that certain elements of a building, including walls, floors, and shafts, provide specified levels of fire resistance based on a variety of

factors, including type of construction, occupancy classification, and building height and area. See Declaration of Lawrence G. Perry, AIA, Attachment 5 hereto. In addition, areas of greater hazard (such as storage rooms) and critical portions of the egress system (such as exit access corridors and exit stairways) must meet higher fire resistance standards than other portions of a building. The required level of fire-resistance typically ranges between twenty minutes and four hours, depending on the specific application. These "fire resistance assemblies" must be tested and shown to be capable of resisting the passage of floor and smoke for the specified time.

Over the past ten years, penetrations of fire-resistance assemblies have been a matter of great concern, as such breaches have been shown to be a frequent contributor to the spreading of smoke and fire during incidents. The problem arises because fire-resistance assemblies are routinely penetrated by a wide variety of materials, such as pipes, conduits, cables, wires, and ducts. An entire industry has been built around the wide variety of approaches that must be used to maintain the required rating at a penetration. It is not a simple issue of just filling up the hole -- the level of fire resistance required, the type of materials of which the assembly is constructed, the specific size and type of material penetrating the assembly, and the size of the space between the penetrating item and the assembly are all factors in determining the appropriate fire-stopping method.

Mandating access to buildings, without adequate supervision and control by a building's owner or manager, would allow people unfamiliar with a building the opportunity to significantly compromise the integrity of fire-resistance-rated assemblies. Telecommunications service personnel are not trained to recognize the importance of such elements in a building's construction, much less to accurately assess the types of assemblies they are penetrating or assuming any responsibility as to code compliance. Thus, while perfectly competent to drill holes and run wire, they would be unable to determine the appropriate hourly rating of a particular wall, floor or shaft, and would not know how to properly fill any resulting holes or recognize those areas that they should not penetrate at all.

In fact, it is unlikely that a person punching holes and pulling cables would even consider patching the holes after they pulled their cables through. Many of these penetrations are made above suspended ceilings or in equipment rooms where there is little or no aesthetic concern.

Maintaining the integrity of fire-resistance-rated assemblies is already a challenge for building managers because of the large number of people and different types of service providers that may be working a building. Nevertheless, currently a building operator can restrict access to qualified companies and can seek recourse, by withholding payment

or denying future access, if the work is not done correctly. If building operators were forced to allow unlimited access to alternative service providers, or were prohibited from restricting such access, the level of building fire safety could be significantly jeopardized. It is essential that building owners and managers be able to continue to ensure in the future that those personnel performing work in a building do so in a manner that does not compromise other essential systems, including fire protection features; this has not been a generic problem in the past, where building owners and managers have retained control. We emphasize that these are not merely theoretical dangers -- we have received reports of actual breaches of firewalls from our members. The only way fire safety can be assured in the future is by allowing building owners and managers to determine who is permitted to perform work on their property.

The same applies to all other codes with which a building owner must comply. See, e.g., Article 800 (Communications Circuits) of the National Fire Protection Association's National Electrical Code (1993 ed.), specifying insulating characteristics, firestopping installation, grounding clearances, proximity to other cables, and conduit and duct fill ratios. Technicians of any single telecommunications service do not have all the responsibilities of a building owner and cannot be expected to meet those responsibilities. Yet the building owner is ultimately responsible for any code violations. Commission

regulation in this area could thus have severe unintended consequences for the public safety.

While the Commission presently requires telephone companies to comply with local building and electrical codes, see Section 68.215(d)(4) of the rules, 47 C.F.R. § 68.215(d)(4), it could not practically enforce the codes, particularly where competing providers would have unrestricted access to common space.

## 2. Occupant security.

Building operators are also concerned about the security of their buildings and their tenants and residents, and in certain circumstances may be found legally liable for failing to protect people in their buildings. Telecommunications service providers, however, have no such obligations. Service technicians may violate security policies by leaving doors open or admitting unauthorized visitors; they may even commit illegal or dangerous acts themselves. Of course, these possibilities exist today, but at least building operators have the right to take whatever steps they consider warranted. The commenting associations' concern is that in requiring building operators to allow any service provider physical access to a building, the Commission may specifically grant -- or be interpreted as granting -- an uncontrolled right of access by service personnel.

It is simply impracticable for the Commission to develop any set of rules that will adequately address all the different

situations that arise every day in hundreds of thousands of building across the country. Consequently, any maintenance and installation activities must be conducted within the rules established by a building's manager, and the manager must have the ability to supervise those activities. Given the public's justifiable concerns about personal safety, building operators simply cannot allow service personnel to go anywhere they please without the operator's knowledge, and the Commission should respect that authority.

3. Effective coordination of occupants' needs.

A building owner must have control over the space occupied by telephone lines and facilities, especially in a multi-occupant building, because only the landlord can coordinate the conflicting needs of multiple tenants or residents and multiple service providers. Although this has traditionally been more of an issue for commercial properties, such coordination may become increasingly important in the residential area as well. Large-scale changes in society -- everything from increased telecommuting to implementation of the new telecommunications law -- are leading to a proliferation of services, service providers, and residential telecommunications needs. With such changes, the role of the landlord or manager and the importance of preserving control over riser and conduit space is likely to grow.

Therefore, the commenting associations submit that the best approach to the issues raised in the NPRM is to allow building

owners to retain maximum flexibility over the control of inside wiring of all kinds. If a building operator chooses to retain complete ownership and control over its property -- including inside wiring -- it should have that right. Presumably, if this proves to be a good business practice, the market will reward building owners who decide to retain control over coordinating such issues.

On the other hand, other building operators may find that their tenants' needs require less hands-on management and control by the operator. There may be a market for buildings in which tenants and service providers work these issues out themselves. If there is, property owners will respond by letting the market grow on its own, simply because it is in their interests to serve their tenants as efficiently as possible.

Indeed, it is likely that there is demand for both approaches to managing a building. If so, any Commission action is likely to distort the market and interfere with the efficient operation of the real estate industry. Thus, to serve tenants' needs most effectively, building owners should be allowed to make their own decisions regarding the most efficient way to coordinate the activities of multiple service providers and tenants.

4. Effective management of property.

A building has a finite amount of physical space in which telecommunications facilities can be installed. Even if that space can be expanded, it cannot be expanded beyond certain limits, and it can certainly not be expanded without significant expense. Installation and maintenance of such facilities involves disruptions in the activities of tenants and residents and damage to the physical fabric of a building. Telecommunications service providers have little incentive to consider such factors because they will not be responsible for any ill effects.

As with the discussion of fire and building codes above, telecommunications service technicians are also unlikely to take adequate steps to correct all the damage they may cause in the course of their work. They are paid to provide telecommunications service, and as long as the tenant has that service they are likely to see their job as done. Since they do not work for the building operator, he has little control over their activities. If building management cannot take reasonable steps in that regard, building operators and tenants will suffer financial losses and increased disruption of their activities.

In one instance reported by a member, a cable operator installed an outlet at the request of a tenant but without notifying building management. To do so, the operator drilled a hole in newly-installed vinyl siding and strung the cable across the front of the building. Not only was this unsightly

(affecting the marketability of the property), but the hole in the siding created a structural defect that allowed water to collect behind the siding. The building owner was able to resolve the matter under the terms of its carefully-negotiated agreement with the operator. If the Commission grants operators the right of access, however, building owners may find that they cannot rely on such agreements any longer.

5. Physical and electrical interference between competing providers.

Allowing a large number of competing providers access to a building raises the concern that service providers may damage the facilities of tenants and of other providers in the course of installation and maintenance. It also poses a significant threat to the quality of signals carried by wiring within the building. Competitive pressures may induce service providers to ignore shielding and signal leakage requirements, to the detriment of other service providers and tenants in the building, or they may accidentally cut or abrade wiring installed by other service providers or occupants.

The building operator is the only person with the incentive to protect the interests of all occupants in a building. Individual occupants are only concerned with the quality of their own service, and service providers are only concerned with the quality of service delivered to their own customers. The Commission cannot possibly police all of these issues

effectively. Consequently, building operators must retain a free hand to deal with service providers as they see fit. If one company consistently performs sloppy work that adversely affects others in the building, the building owner should have the right to prohibit that company from serving the building. Otherwise, the building owner will be unable to respond to occupant complaints and will face the threat of lost revenue because of matters over which it has little control.

In short, the associations' members are fully capable of meeting their obligations to their tenants and residents. As keen competitors in the marketplace, they will continue to make sure they have the services they need. It is unnecessary for the government to interject itself in this field, and any action by the government is likely to prove counterproductive.

**V. THE COMMISSION'S COMBINED RULES ON DEMARCATION POINTS AND RELATED ISSUES SHOULD REFLECT THE REALITIES OF THE OPERATION OF MULTI-TENANT BUILDINGS.**

As the joint commenters noted at the outset, the Commission has needlessly complicated the matter by tying the question of a common demarcation point so closely to the issue of access. Beyond the Commission's concerns about a cable company's abandonment of its wiring, or about what is tariffed or not tariffed or put on a telephone company's books or unbundled, the location of the demarcation point is not particularly significant. Nevertheless, the Commission is correct in believing that there are concerns of more immediate and practical

importance that do need to be addressed, not just regarding the demarcation point, but regarding the related issues raised in the NPRM as well.

**A. Demarcation Point.**

In considering questions relating to the demarcation point, the commenters urge the Commission to look at the matter from a different perspective than it has in the past or than it did in the NPRM. We agree that it would be logical and beneficial to have a single demarcation point for both telephone and cable wiring, even without technological convergence. But the commenters also believe that the Commission must consider not just technological issues but must also consider the nature of the property in question. Commercial and residential buildings have different telecommunications needs and will likely continue to do so. Furthermore, they are designed and constructed differently, serve different needs and functions, and conform to different ownership and use patterns.

Thus, the commenters suggest the following:

- o There should be a uniform demarcation point for all commercial properties, and a different demarcation point for residential properties.

- o In the case of commercial buildings, the demarcation point should be inside the premises, preferably at the telephone vault or frame room.
- o For condominiums, the demarcation point should be located outside each resident's premises.
- o For high- and mid-rise apartments, there should be a single demarcation point located outside the building if there is no on-site management, or inside the building if there is on-site management. Building owners should have the right to provide other arrangements, if they determine it is in the best interests of their tenants.
- o Garden apartments and other apartment complexes present a different set of problems than urban high- and mid-rise buildings. Therefore, for apartment complexes the demarcation point should be outside the building, at the complex owner's property line.
- o Mixed-use buildings illustrate the difficulty of this problem; there should probably be at least two demarcation points, one inside the commercial portion of the building, and the other for the

residential portion. If the residential portion is a condominium, then each unit should have its own demarcation point. If the residential portion is an apartment building, however, it may be possible to have a single demarcation point for the entire building, but this depends on the design of the building.

Commercial buildings generally are owned by a single entity and serve a number of different tenants, each of which occupies a different proportion of the building's floor space and each of which has its own peculiar telecommunications needs. Commercial tenants generally retain ownership and control over wiring within their demised premises, subject to the terms of their lease. And commercial buildings are usually designed to permit relatively fast and inexpensive remodeling and rearranging of interior space as tenant's needs change or new tenants move in. Under these circumstances, it would not be practical to establish a separate demarcation point for each tenant. Consequently, there must be a single demarcation point for the building, and it should be located inside the premises, at a location designed for that purpose, such as a telephone vault or frame room.

Residential buildings, however, are very different. Although apartment buildings and cooperatives have a single owner, condominiums do not. Furthermore, the internal structure of a residential building is relatively fixed and not subject to

change. For those reasons, it is more practical to establish demarcation points within a building than it is in the commercial context. This is certainly the preferred model for a condominium, in which each unit owner holds title to his premises.

In the case of an apartment building, however, the matter is more complicated. There the building owner holds title to the entire building. In addition, apartment buildings may or may not have on-site management. Consequently, the logical demarcation point in the apartment context may vary. In the case of a large high- or mid-rise building with on-site management, the demarcation point should be inside the building, as in the commercial context. If there is no on-site management, the owner's need to maintain control over the property would generally dictate that the demarcation point be on the outside of the building.

Garden apartments and other apartment complexes present another set of issues. Because they consist of multiple buildings set on, in many cases, several acres of land, the property owner is responsible for much more than just what happens inside the building. The location of wires crossing the property raises safety and aesthetic concerns just as much as the location of wires inside the building. The need to retain control over the land surrounding the buildings as well as the

buildings themselves thus dictates that the demarcation point be set at the property line, and not at a building.

Nevertheless, a building owner may find that its tenants are better-served if they have greater control over their own wiring, as in the case of commercial tenants. If so, the building owner should be permitted to allow the establishment of individual demarcation points outside each individual unit. Cooperatives are particularly likely to fall into this category, but many apartment buildings may as well.

In short, the demarcation point should be set in a way that respects the ownership rights of the property owner and offers maximum flexibility for the efficient and effective management of the property.

Finally, in setting the demarcation point for cable television cabling, the Commission should take due account of the signal leakage limitations of Sections 76.605(a)(13) and 76.610-.617 of its rules, 47 C.F.R. §§ 76.605(a)(13), 76.610-.617. This concern was explicitly recognized in H.Rpt.102-628 to accompany H.R. 4850 at 118-19 (1992) in connection with Section 624(i) of the 1992 Cable Act, 47 U.S.C. § 544(i).

**B. No Commission Action Is Required Regarding Connections.**

The NPRM asks whether the Commission should issue technical standards for connections. The commenters believe that government action in this regard is unnecessary. As the

Commission noted at paragraph 29 of the NPRM, the telecommunications industry has already established standards that are widely followed, and the commenters believe that it is in the interests of the companies and their customers that they continue to be followed.

**C. Regulation of Wiring.**

The NPRM requests comment on whether the convergence of cable and telephone technologies means that the current approaches to regulating inside wiring for the two technologies should be revised to reflect that convergence. This is largely a technical issue, but it also raises several nontechnical concerns.

Technically, the physical characteristics of wiring are changing so rapidly that any kind of specification by the Commission that excluded new or more economical types of wiring or wireless connection would stand in the way of natural evolution of the technology. Anyone who is familiar with the variation of wiring for local area networks (LANs) will recognize that there is no "one size that fits all." Section 7 of the Act provides that anyone opposing a variation on existing technology has "the burden to demonstrate that such proposal is consistent with the public interest." Section 7(a), 47 U.S.C. § 157(a).

From a non-technical standpoint, the industry is concerned that any such rules might impose new obligations on building

owners by requiring them to take over ownership and control of inside wiring. Some building owners would welcome such an opportunity, but others have no desire to enter into a new line of business. Building owners will make these decisions on a case-by-case basis as they consider the needs of their tenants and the most efficient ways of accommodating those needs. As discussed in the following section, ownership of inside wiring should be a matter of private contract and state property law.

The commenters are also concerned that the Commission might impose a huge new expense on telecommunications service providers and building owners by requiring retrofitting of existing buildings. The commenters believe such matters should be left to the ongoing discussions regarding amendments to the Model Building Code. Except where safety is involved, amendments to the building and electrical codes are seldom retroactive.

Furthermore, as discussed earlier in the context of the demarcation point, there are substantial differences between residential and commercial buildings. While it may make sense to account for the convergence in technologies, it probably does not make sense to adopt uniform rules for all kinds of property.

Finally, the commenters note that the NPRM treats residential and commercial buildings as distinct entities. Mixed-use buildings, however, are becoming increasingly common and must be considered in any regulatory scheme.

#### **D. Customer Access to Wiring.**

The NPRM asks a number of questions regarding who should own inside wiring, who should have the right to acquire it, and under what circumstances. As discussed above in other contests in these comments, the answer to those questions lies in the ownership of the property over which the wires run. Commenters have no objection in principle to permitting a customer to install or maintain its own wiring or buy the wiring from a service provider for use in the demised premises, provided that the rights of the owner of the building and fellow-occupants are taken into account.

Under no circumstances, however, should a tenant's rights in wiring extend beyond the limits of the demised premises, and a tenant must be precluded from interfering with wiring installed to serve other parties that happens to cross the tenant's premises. In addition, the landlord must retain the right to obtain access to the wiring and control the type and placement of such wiring. This is essential to address the safety and management concerns discussed earlier; otherwise, for example, the landlord would be unable to correct a fire code violation for improper installation of a cable, even though the landlord could be found liable.

Furthermore, the owner of the premises should have by