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Mr Peter Bourton
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

March 2004

Dear Mr Bourton,

The Regulation of Electronic Programme Guides

ntl welcomes the opportunity to contribute to this consultation. Our position can be summarised as follows:

- We support the case for reviewing the Code of Conduct for Electronic Programme Guides, as EPGs are a constantly evolving navigation tool and the case for regulation may change.
- We operate our EPG on the basis of fair, non-discriminatory treatment of our content and channel providers.
- We continue to make our EPG as accessible as is reasonably possible to our users who have disabilities.
- ntl is committed to providing access terms to operators in a way that is objective and justifiable. In so far as is possible we make known our standard charges and methods for charging but, often at the discretion of our channels providers, such details are often built into the general carriage agreement for channels on our network and therefore commercially confidential.
- ntl is in the process of launching its next generation EPG which we believe will greatly enhance the viewer experience, promote ease of use and reflect improved access features.

Our submission contains some specific comments on the broad principles of this review and then provides answers to questions raised in the consultation paper.

The Annex contains details and images of ntl's EPGs as well as examples of customer awareness communications activities.

Yours sincerely,

Patricia Galvin
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ntl response to Ofcom Consultation on the Regulation of Electronic Programme Guides

1. Status of ntl EPG

ntl welcomes the opportunity to respond to this important consultation. As part of our digital service offering ntl has been operating an Electronic Programme Guide (EPG) since 1998.

ntl's digital TV service is currently being upgraded. In March 2004 we commenced the launch of our next generation EPG. This is being provided initially to customers on the part of our network, known as Langley, which reaches 610,000 customers. This upgrade should be completed in June. We currently have four variations of EPG on our network, which is a legacy of acquisition of several cable franchises. As part of our strategy to harmonise and consolidate our network systems over 2004, additional plans are in place to roll-out this new generation EPG to the rest of our network. (Please see Appendices for more details of our network).

Some of the key features of this next generation EPG include:

Settings:

- The method to personalise the channel order has been re-named 'Rearrange Channels', and is now easier than through traditional 'Favourites' route.
- Additional Parental Control Features - On Demand movies enables the PIN protection to be fixed in a variety of ways (e.g. permanently fixed for adult programmes, 18 rated events viewed before 10pm, 15 and 12 rated events viewed before 8pm). However the PIN can also be activated for all On Demand content.
- New Visual Settings – guide design is now possible with larger text and sharper colour contrast.
- Improved help button and ntl information channel.

Optimised Mini-Guide: (traditionally known as the now or next feature) allows for uninterrupted viewing and features improved listings and browse functions.

Guide:

All channels available from ntl are presented when you surf, though the channels the customer has subscribed to are distinguishable from those that are not. The customer can also choose to view those channels only available in the customer's pack.

2. Ofcom's Approach to Regulating EPGs

ntl supports the principles for regulating EPGs as set out in the paper. We agree with the objective that operators of EPGs should:

- Offer access to channel providers seeking access on terms that are fair, reasonable and not unduly discriminatory;
- Comply with a Code of Conduct which deals with appropriate prominence for public broadcasters and features to assist viewers and listeners with hearing and visual impairments; and
- Ensure fair and effective competition.

ntl welcomes Ofcom's decision to consult given its new powers and believe it is right that Ofcom explores the current status of EPGs to determine whether access and ease of use is adequate for the audience for which it is intended. However EPGs are an evolving navigation tool and will be likely to change considerably over the coming years as operators continue to research and develop the tools further. Equally viewers' use of the EPG as a navigation tool is also becoming more sophisticated.

In conducting this review it is important that Ofcom is not over-zealous in pre-empting possible obstacles and proposing overly prescriptive regulation. We believe it is right to maintain a light touch approach to regulating what is still an emerging navigation tool, and which Tim Sutter acknowledges is regarded as a success story, not a problem¹.

3. Principles of EPG Regulation

The Consultation addresses a range of issues concerning access to and the operation of an EPG. ntl has some initial comments on the broad principles and later in this document responds to specific questions.

3.1 Access Regulation

As Ofcom points out, operators of 'closed platforms', such as cable, are sufficiently incentivised to ensure that channels they have chosen to carry on those networks have access to the EPG.

As Ofcom has also identified, both Satellite and DTT are 'open platforms' though the proposal is to impose access obligations only on Sky for the time being. The rationale for not imposing obligations on the DTT platform takes into account capacity constraints and the current obligation on multiplex operators to transmit data for services on their own multiplex as well as for services on other multiplexes. We believe it is right for Ofcom to keep this under review

3.2 Proposed provisions of the Code of Conduct:

a) Appropriate Prominence

¹ Westminster Media Forum, December 2003. Regulation of Electronic Programme Guide, comment from Tim Sutter Ofcom

ntl is generally committed to ensuring the Public Service Broadcasters are placed in a prominent position on our EPG and where possible we have ensured that regional variations are made available and easily accessible. However, decisions about what is appropriate may not be straightforward and opinion as to what is appropriate may vary with the relevant parties. For example with S4C, we have to take into account the views of our customers when reviewing 'appropriate prominence'. S4C is a PSB and is currently on channel 752 (in Wales only). S4C is entitled to occupy the fourth slot on the EPG in Wales, where we currently show Channel 4. We recently ran an email survey of our customers in Wales to ask about their preferred positioning of S4C. Over 50% of our customers responded:

- 82% of our customers said they watched Channel 4 more often, 13% said S4C and 5% said both the same.
- 91% said they would prefer to keep Channel 4 on channel number 104, 9% said they would prefer to see S4C there.
- 27% of customers said they knew which channel S4C was on. This is too low and we accept that the channel does need more prominence than it's current position.
- 48% of customers said they would like to see S4C in a higher position, and 52% said they wouldn't.

In summary, we recognise the need to give S4C more prominence on our EPG, and this is our intention as a part of any channel renumbering exercise. However, we do not believe that this channel should be on channel 104, given the strong views of our customers. Our coverage should be taken into account as S4C is a Welsh speaking channel and ntl's cable coverage is all along the South of Wales, which has a relatively low proportion of Welsh speakers.

ntl does not currently recoup the costs of carrying and providing appropriate prominence for these channels. We believe that our approach is objectively justifiable and as a default based on our customer feedback and expectations.

b) Allocating Listings

ntl believes that as the tools become more sophisticated and consumers become more comfortable with navigating through the guide, rather than simply following a linear presentation of channels, there will be greater reliance on the use of more personalised tools such as:

- the ability to move channels to the top and bottom of channel lists
- searching for a programme, rather than by channel genre.

The core objective of an EPG should be to provide clear information of the channels available and to enable the customer to take more control over their own viewing. This includes setting up the guide to suit their own needs (e.g. preferred channel line up etc.). If customers do not need to rearrange, the listings can still be accessed through a number of means: through the Guide, or through the Mini-Guide (now, next and browse), and via programme search.

The rationale behind ntl's channel numbering has changed as ntl's Digital TV service has matured. Initially, as two separate companies (ntl, Cable and Wireless), channel numbers were allocated on a "customer preference" basis. This meant that the operators broadly positioned the channels higher up the list according to their popularity. When the two companies came together a new policy of "unity across the two platforms" was adopted. It made sense from a technical and marketing perspective to launch new channels on the same number across both platforms. This guided the decision to allocate new channels the next available space at the bottom of both channel lists - almost a "first come, first served" basis. While this may not represent the most logical format from a customer's perspective if they chose to follow the linear numbering to select channels, it is fair, objective and non-discriminatory towards channels providers.

c) Fair Treatment

ntl simply provides access to the best content that we can acquire for our delivery platforms. ntl can be perceived as 'neutral' by content providers with access to an ever-increasing customer base. We have no reason to operate discriminatory numbering or to use any other means to disadvantage one particular service over another.

d) General principles of Access for Users

ntl recognises the importance of facilitating access for users with disability such as visually impaired, blind, hard of hearing or deaf. While digital television is essentially a visual and audio medium we recognise also the importance of television to society and the sense of exclusion which could result in denied access. We will endeavour to do what is reasonably possible to enhance the experience for users with disability.

ntl has made significant inroads in enhancing access features on the EPG and is continuously reviewing the additional adjustments which can be made. This year ntl will launch an upgraded EPG. Contained within the Mini-Guide (the now and next listings part of the service – which research shows is the most used part of our EPG) is a dedicated subtitles button so that for viewers who are hard of hearing they are one click away from access to the subtitled version of the programme. We have also made improvements to our font size and colour, which can now be adjusted, for those with slight visual impairments.

It is important to point out here however that the objectives of the EPG operator are perhaps narrower than those of the regulator. We believe we have a primary duty to serve our customers first and foremost while Ofcom needs also to be mindful of the wider public interest and the needs of the citizen and not just the consumer. As a commercial company however we are guided by the expectation of those customers who pay for our services.

Much broader questions about the nature and regulation of an EPG would have to be explored if they were understood to be less of a customer service feature and more of a public access tool.

We attach comments and some answers to the questions outlined in the consultation document.

Section 5: Questions for Stakeholders

Access regulation

Question 49.

(a) Ofcom would welcome stakeholders' views on the following questions concerning the regulation of access to EPGs: Do you agree with Ofcom's proposals to impose the access conditions set out in Annex A to this document?

We agree with the proposal outlined.

(b) Do you agree that the conditions proposed are objectively justifiable, do not unduly discriminate, are proportionate and transparent?

We understand Ofcom's reasoning behind making an exception in applying access regulation to the second open platform (DTT), and agree that the proposal should be reviewed in the near future.

Code of Conduct

Appropriate prominence

Question 50

As regards appropriate prominence for public service channels, Ofcom would welcome views on the following issues:

(a) the general proposition in the draft code at Annex C that the requirement for appropriate prominence should permit due discrimination between public service and other television channels, but should not mandate one particular approach over another;

We support this approach. To describe how 'due prominence' may be facilitated would imply judgements about the way in which viewers access the channel and also pre-judge the design look and feel of each EPG. As both elements are constantly evolving it is prudent to work by the principle rather than the specific way in which prominence can be achieved.

(c) whether Ofcom should have regard to the interests of citizens and the expectations of consumers in considering whether a particular approach to listings public service channels constitutes appropriate prominence;

As a neutral provider of digital content services to customers, who pay for our service, our natural 'default' has to lie with our customers' expectations and requirements. Our contract is with these customers. Where there is potential

conflict between what may be best for a citizen versus what consumers want we regularly conduct surveys to keep in touch with the interests and preferences of our customers who use the EPG (as demonstrated by the S4C debate). We recognise that Ofcom has a duty to take account of citizen's interests as well as consumers.

We hope that the right balance can be struck between regulatory obligations with this objective and a clear recognition that an EPG is essentially a commercial marketing and navigation tool reflecting the relationship between a service provider and its customer

(d) whether, in giving appropriate prominence to PSB channels, whether EPGs should enable viewers in particular regions to select the appropriate regional versions of those channels through the primary listings for those channels

Yes where feasible, but the decisions should be based around the preferences of our customers. All the channels, including those with regional variations that we carry, will be accessible through the Guide and the Mini-Guide and programme search. Moreover the customer may rearrange the channels to suit their own viewing preferences.

Assistance to disabled people

51. In relation to the code's provisions on assistance to people with impairments affecting their hearing or sight, Ofcom would welcome views on:

(a) whether EPG providers should be required to produce an annual statement of the steps they plan to take to facilitate the use of their EPGs by disabled people;

We understand and support the principle but believe that there is a risk with this approach that operators and content providers may work to separate plans and objectives and therefore not optimise the benefits to users with disability. We believe there is a real need for co-ordination between EPG Providers, Broadcasters' plans and agreement on the appropriate standards which best reflect the needs and requirements of disability groups in advance of any investment which needs to be made by individual parties. The disability groups need to agree and clearly specify what it is require for the people they represent. Operators such as ntl would then be better placed to make appropriate decision and necessary investment.

We believe that if operators are to be expected to declare on an annual basis the steps they plan to take, this has to be in response to an agreed plan signed up to by all parties. In the meantime our priority is to maintain a safe customer experience. There may be certain commercial sensitivities around producing an annual statement and specifying a road map. That said, ntl is happy to work with disability groups and consider their needs and requirements.

(b) the nature of the information which should be provided in relation to programmes with assistance, and how that information should be presented;

It is essential that the information provided to facilitate the use by users with disability must be clear and intuitive. Ideally the appropriate symbols indicating access facilities (such as subtitles) should be agreed by all parties and then applied to all content and listings. However the stages of development of digital interactive services has been disparate across different platforms and by channel providers that many have gone ahead with their own best assessment of what information is appropriate. In the absence of any 'official' symbol already agreed within the industry, ntl conducted customer research to find the symbol that would be immediately intuitive on screen. We had a short term need to find a symbol for a service that was already available through the EPG for viewers. We accept that the RNIB has a broader objective to create something that becomes widely used and understood, but their process will take much longer.

(c) how EPG providers should be required to publicise the availability of information and functions on the EPG intended to facilitate their use by disabled people.

One approach operators and disability group representatives could consider is rather than operators making an annual statement of plans, instead have an annual discussion with all parties concerned to explore the real needs of users with disability. Operators need feedback and an opportunity to discuss the relevant information, symbols, functions and standards which are deemed the most appropriate for these users. One of the outcomes of such an annual meeting could be to move forward with agreement on the type of information and facts about access facilities and some agreed (standard) symbols.

As it stands there is little clarity or unity in the way in which access facilities are being developed (different standards used on different platforms). Let us look more closely here at the three main areas of access facility and what impact decisions about standards or symbols has on an operator.

Some background comments on access facilities:

Subtitles

Subtitling is a relatively straightforward mechanism to provide within the broadcast stream, whether it is traditional analogue subtitles using VBI (Vertical Blanking Interval) or digital (DVB) subtitles. There is however a very real cost in implementing these systems in the ntl infrastructure. All channels providing subtitles are supported by ntl and accessible to our viewers. Currently 61 channels have subtitles on Langley and 58 channels have subtitles on Bromley (see annex for detail on these network areas).

DVB subtitles are decoded by the STB, and are turned on and off via the ntl subtitles setting, whereas traditional subtitles are viewed by pressing the 'TEXT' button on the TV remote control, then pressing '888'. Some operators have developed their own (proprietary) software to convert to the VBI subtitles to digital. The fact that this is not an agreed standard however means that another platform carrying this content may not be able to use that converted format (as the standard was developed to suit a particular platform). If ntl were to consider creating a system, specifically suited to the cable platform so all subtitles are delivered digitally and can be turned on and off in the same way it will cost us between £50-100k. By the time of analogue switchover this investment would be obsolete.

ntl's new remote control was designed with accessibility issues in mind: such as the raised 'bump' on button 5, volume and channel change keys are moulded, and in different material.

Audio description

We have some concerns about developments and requirements for audio description. We believe it would be appropriate for the broadcasters, the RNIB and platform operators to agree on a single system for audio description. NTL could realistically only contemplate operating and investing in one. BSkyB has adopted a headend-mixed solution (open system) now being used by Channel 5, whilst the BBC and ITV have adopted RNIB preferred receiver-mixed solution (closed system for individual use with separate volume control). Naturally there are costs attached to deploying either of the systems on our platform and development work is required for both. The RNIB and Broadcasters closed system requires a common interface slot on the STB which is not present on satellite or cable STBs. While the Headend mix requires additional equipment to be developed and deployed to transcode BBC or ITV AD services. This demands additional bandwidth (possibly up to 7%) and a further stereo audio track.

The challenge for broadcasters and EPG operators who have not opted for one or other system is which will be the most favoured system in the long term.

Signing

There is no technical standard agreed for a specific signing technology. Current research work may be 2 years from completion. Again ntl would require certainty of a single technology solution before embarking on any deployment. We accept that this is a difficult solution to develop as there are also many differing dialects of signing. There would be significant development costs as it is likely that there would be complications in ensuring compatibility with our ntl Digital STBs.

Consultation with disability groups

We will endeavour to have regular contact with disability groups to have an open exchange about the concerns and requirements and to explain the impact of these requirements for ntl.

Additional comments

Regulatory Impact Option 2: Clause 62

The consultation paper says EPG providers should incur some costs in making adjustments to their EPGs to facilitate use by people with hearing and or visual impairments. But these costs would be relatively modest, given that current technological constraints would prevent adjustments. We disagree with this. If development costs are treated alone, then yes, they may be relatively modest. But to release an improvement to our customers requires a much larger investment from ntl (in money, resource and time). Development is only the first stage, we then have to test and trial the changes. We then have to train our entire business (including call centres, fault centres, engineers, installers, sales, marketing etc). And the download of new software to our customers' boxes naturally creates additional queries and calls concerning faults which carries additional costs.

Fair, reasonable and non-discriminatory treatment

52. In relation to the proposal that EPG providers should accord fair and non-discriminatory treatment for the purpose of ensuring fair and effective competition, Ofcom would welcome views:

(a) on whether it is appropriate to set ex ante rules requiring EPG providers to give fair, reasonable and non-discriminatory treatment to channels featured on their EPGs;

We accept that the principle of fair, reasonable, non-discriminatory treatment, which has broadly been in place through the Code of Practice for some years now, provides a useful 'guide' for both content providers and EPG providers. We would be happy to continue to work with such ex ante rules.

All decisions regarding EPG positioning is based on research into ease of use and customer preferences. As ntl does not own or have an interest in content we are simply guided by customer preferences and 'logic' when it comes to positioning. We have no ambition to launch commercial negotiations for EPG positions. The suggestion that we base our decision on an action or alphabetical order are not being considered as this criteria is too narrow and not relevant to customer preferences or ease of use.

Part 2: The Conditions

Comments on Financial Accounting Requirements

As we have outlined, the obligation to publish charges may not be appropriate for operators of a closed network (i.e. cable). We have a concern about the requirement to publish a notice 'specifying the charges or the method that is to be adopted for determining the charges'. We currently account for all such standard EPG charges internally but as they are under the confidence of commercial agreements we have not published them though they are widely known within the industry.

Similarly with the requirement to maintain separate financial accounts. We do, for internal purposes, keep separate accounts between EPG accounts and other aspects of carriage on our TV network but for commercial confidentiality reasons cannot easily make these available except with appropriate permission and on specific instruction from Ofcom we could make these available.

Appendices

- I. Overview of ntl Digital Service and EPGs
- II. Example of Optimised Mini guide
- III. Example of Customer Education: Using subtitles
- IV. Example of Customer Education: Help
- V. Example of Customer Education: channel ntl

I. Overview of ntl Digital TV service

The ntl Digital TV service has two platforms - Langley (old ntl franchises) and Bromley (old CWC franchises). They both look and function differently. Bromley currently has the most up-to-date software (referred to as CR3) although some Bromley customers in London require network upgrades and are therefore on an old version (referred to as CR1). Langley customers are in the process of being migrated from CR2 to CR3.

The table below sets out what stage the two platforms are at now and the broad functionality available:

	CR1	CR2	CR3
Launched	Bromley: Jul 99 Langley: Mar 00	Bromley : Feb 00 Langley : Nov 00	Bromley : Jul 02 (v1) Langley : Q1 04 (v2)
Customers	Bromley : c.100k Langley : 0	Bromley : 0 Langley : c.610k (although migrating to CR3 from 03/04)	Bromley : c.620k Langley : Currently migrating from CR2
Functionality	Basic DTV	DTV with initial Interactivity	DTV with full Red Button enhanced TV

EPG status

ntl currently support 4 different EPGs. This will become 3 when Langley CR2 customers have all been upgraded to Langley CR3.

	CR1	CR2	CR3
Bromley		an	
Langley	na		

II. Example of Optimised Mini guide

ntl customer research shows that the most popular part of the EPG is the Mini guide. ntl therefore created an optimised Mini guide display for this part of the EPG – which uses a larger text size and a sharper colour contrast to assist visually impaired viewers.

	Default Mini guide	Optimised Mini guide
Langley CR3 EPG		

Note: the optimised Mini guide is available within the existing Bromley CR3 EPG, and the Langley CR3 EPG

III. Example of customer education: Using subtitles

To promote the availability of both traditional and digital subtitles, ntl has placed the following message on the back of customer's monthly bill.

**Subtitles aren't just for the hard of hearing
Are you making the most of them?**

Do you sometimes watch TV with the subtitles turned on? For many of our hard of hearing customers, subtitles are an essential service. But you don't have to have a hearing difficulty to find subtitles useful.

"I can watch TV and keep chatting on the phone!"

We want you to get the most from the subtitled services available on your Digital TV channels, which is why we've produced this guide.

"They're great for not waking the baby"

There are two types of subtitle available on your Digital TV service – Digital and Traditional. Some channels broadcast digital subtitles, and others broadcast traditional subtitles. The chart below shows all the channels that currently provide digital or traditional subtitles*.

[*the availability of subtitles can vary on our network the list below refers to Bromley Network as of December '03)

"English is my second language – and I can understand TV much better now"

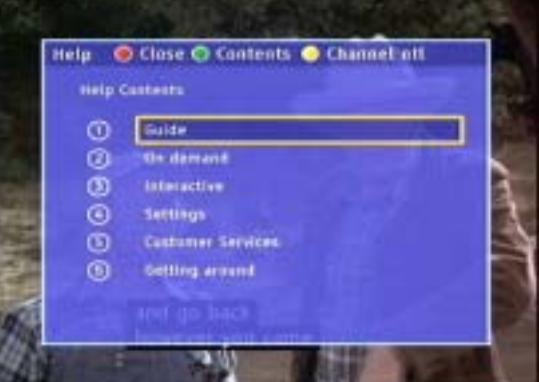
Channels with DIGITAL subtitles	Channels with TRADITIONAL subtitles			
BBC One	BBC Parliament	Film Four	Sky Movies 1	Sky Sports 3
BBC Two	Boomerang	Film Four Weekly	Sky Movies 2	Sky Travel
BBC Three	Bravo	Film Four+1	Sky Movies 3	Trouble
BBC Four	Bravo +1	Ftn	Sky Movies 4	TV5
ITV1	Cartoon Network	LivingTV	Sky Movies 5	UK Bright Ideas
ITV2	Cartoon Network Plus	LivingTV +1	Sky Movies 6	UK Drama
Channel 4	Challenge TV	Nick Jr	Sky Movies 7	UK Food
Five	CNN	Nick Toons TV	Sky Movies 8	UK Gold
BBC News 24	Disney Channel	Nickleodeon	Sky Movies 9	UK Gold +1
ITV News Channel	Disney Channel+1	Nickleodeon Replay	Sky News	UK History
CBBC	Disney Playhouse	Paramount Comedy	Sky One	UK Horizons
Cbeebies	Disney Toon	Plus	Sky One Mix	UK Horizons +1
	E4	Sky Cinema 1	Sky Sports 1	UK Style
	E4+1	Sky Cinema 2	Sky Sports 2	UK Style +
				UKG2

Using subtitles is easy – although digital and traditional subtitles are turned on and off in different ways. Just follow the simple instructions below:

To turn on DIGITAL subtitles	To turn on TRADITIONAL subtitles
<p>When I press the GUIDE button on my ntl remote control, the menu I see is BLUE</p>	<p>Using your ntl remote control:</p> <ol style="list-style-type: none"> 1. Press GUIDE 2. Select Options (option 4) 3. Select Subtitle Settings (option 5) <p>When you return to watching TV the subtitles will be displayed over the TV picture</p>
<p>When I press the GUIDE button on my ntl remote control, the menu I see is PURPLE</p>	<p>Using your ntl remote control</p> <ol style="list-style-type: none"> 1. Press GUIDE 2. Select Settings (option 5) 3. Select Further Settings (option 5) <p>Note: remember to save changes</p> <p>When you return to watching TV the subtitles will be displayed over the TV picture</p>

IV. Example of Customer Education: Help

ntl has a dedicated remote control button called HELP. When HELP is pressed, the information presented to a customer is related to the activity they were just doing, for example, if they are in the On demand feature then the HELP content is about On demand. Customers can navigate to the full HELP contents, but research showed that customers found it useful to be immediately taken to information about their current activity as it was likely that this was the information they were looking for anyway, and it saved them having to search through a menu to find it.

<p>Langley CR3 EPG</p>	<p>Help - menu</p> 	<p>An example of the Help pages</p>  <p>The option "1. Mini guide with optimised text and colour" should be turned to "on" if you wish to increase the size of the text, and change the colour scheme for maximum contrast.</p> <p>The option "2. Subtitles" should be turned to "on" if you wish to view subtitles for all programmes that have them.</p>
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V. Example of Customer education: channel ntl

ntl has a 24x7 education video – called channel ntl. It is shown on channel 9 (Bromley) and channel 120 (Langley). Langley and Bromley CR3 customers can also press the Red Button on this channel, and see additional information to help them use their Digital TV service.

	Viewing channel ntl – Red Button prompt	Viewing channel ntl – the additional information
Langley CR3 EPG		