

Evidence supporting an Ada County Board of Commissioner decision to deny WTF application 202102816-CU

Project: 202102816-CU Wireless Telecommunications Facility (WTF)

Address: Beacon Light Road

Applicant: Clark Wardle, LLP on behalf of Intermax, which a site developer, **not** a Wireless Telecommunications Carrier.

Date: September 6, 2022

Note: WTF = Wireless Telecommunications Facility, which is **not** a Wireless Information Service Facility; there is an important **distinction** between **regulated Telecommunications Service** (wireless phone calls) and **unregulated Information Service** (wireless broadband, internet, data streaming). Preemption for “significant gap in coverage” **only** applies to wireless phone calls.

Evidence That Justifies a Decision for Denial of WTF Application 202102816-CU

- **The applicant brought **insufficient verifiable hard data** to accurately establish the signal strengths of Verizon telecommunications frequencies **without** the current Verizon Water Tower antennas operating **because Verizon chose to NOT power off** these antennas for the analysis.**
- **That Verizon decision was fatal to the application and is a solid finding that the Board can make to deny the application.** Verizon's error means that signal strength measurements from any party are only "best guesses" and not substantial written evidence that can prove the existence of a significant gap in Verizon wireless telecommunications coverage in the target search ring.
- The evidence of signal strengths that **could be measured is** clear: **there is no significant gap** in Verizon wireless telecommunications coverage in the target search ring. The detailed measurements from Aug 28, 2022 prove that here: ([Link](#))

Evidence That Justifies a Decision for Denial of WTF Application 202102816-CU

- There is **insufficient substantial written evidence in the record to get past step one** (existence of significant gap in telecommunications service) to even consider step two (is WTF 202102816-CU the **least intrusive means** to close the alleged gap?).
- For completeness, in the slides that follow the appellant presents the following **substantial written evidence in the record that proves 202102816-CU is not the least intrusive means** to provide telecommunications service to the target area.
- The established harms from 202102816-CU have **not been adequately mitigated** and, therefore represent a “taking” of property from residents within 1500 feet of this proposed WTF; the harms are the greatest for those closest to the WTF.
- Appellant presents substantial written evidence of diminished property values, loss of farm customer interest and less public safety.
- Such harms can be mitigated by locating 202102816-CU on Bureau of Land Management Land that is 1-2 miles from the proposed Beacon Light Rd. location.

Evidence Against 202102816-CU

Impact to Property Values:

- **March 1, 2022:** (4 pages) [Link to](#) referencing Exhibit #21A of Ada County Project #201801311-A: that **Valbridge Property Advisors appraisal** shows an approximate 9% negative property value impact on adjacent properties. (\$1,160,000 before WTF, \$1,045,000 after WTF= **\$115,000 difference** / \$1,160,000 = 9%)
- **March 2, 2022:** (43 pages) – including IDAHO TITLE 67: State Government and State Affairs, [CHAPTER 65](#) Local Land Use Planning **67-6502. Purpose.** “The purpose of this act shall be to of the state of Idaho as follows:’ **promote the health, safety and general welfare of the people.**”
- **March 3, 2022:** (154 pages) – including Memorandum in Opposition prepared by the top telecom attorney in the USA (over 7000 cases litigated, 80+% wins)
- **NEW: Sept 2, 2022:** ([link](#)) **Licensed Real Estate Broker (Atova, Inc.)** “In my professional opinion, the presence of a cell tower near a residential property will **diminish the value of the property by 5% - 15%.** Properties with a view of a nearby cell tower suffer a visual blight which negatively affects the value of all properties subject to the blight.

From Memorandum in Opposition [here](#)

It is important to note that *Intermax* is a site developer, and does not provide personal wireless services. *Intermax* builds cell towers and leases space upon its cell towers to wireless carriers. A copy of the home page on *Intermax's* website is attached as Exhibit "A."

This Memorandum is submitted in opposition to *Intermax's* application.

As set forth below, *Intermax's* application should be denied because:

- (a) *Intermax* has failed to establish that granting the application would be consistent with the requirements of the Ada County Code ("ACC"), specifically, Title 8, Chapter 5;
- (b) granting the application violates both ACC, the Comprehensive Plan ("Comp. Plan") and the legislative intent of both;
- (c) the irresponsible placement of a ten-story tower at the proposed location would inflict upon the nearby homes and community the precise types of adverse impacts which the ACC and the Comp. Plan were intended to prevent;
- (d) there are far less intrusive alternative locations where the desired facility could be built, in greater conformity with the requirements of the ACC and the Comp. Plan; and

As such, we respectfully submit that *Intermax's* application be denied in a manner that does not violate the Telecommunications Act of 1996.

From Memorandum in Opposition [here](#)

- **Exhibit A:** Intermax Towers Marketing Communications
- **Exhibit B:** Opposition Letters from Eagle Idaho residents: Brian & Leslie Decker, Michael & Suzie Dustin, Jordan Miller, Thomas Smith, Chris & Cyndi Fagan, Brad & Allie Bentley
- **Exhibit C:** WTFs Lower Property Values: Letter from John Poole. Atova & Property Appraisal from Valbridge Property Advisors
- **Exhibit D:** WTF Harms to Land Development
- **Exhibit E:** Wireless Coverage Maps: Garbage In . . . Garbage Out: Wireless Coverage Maps published by Wireless Carriers & FCC GN Docket No. 19-367 re: Mobility Fund Phase II Coverage Maps Investigation **concluding that wireless carrier-projected/calculated coverage maps are not reliable**

Photo simulations are to scale, but focal length matters . . .

Appellant photo sim: taken from front porch of 5600 W Beacon Light Road, with ~50mm “normal” lens, which makes objects appear life-size



Don't get bamboozled by this common wireless industry trick to **not** provide accurate **photo sims** **from nearby homes.**

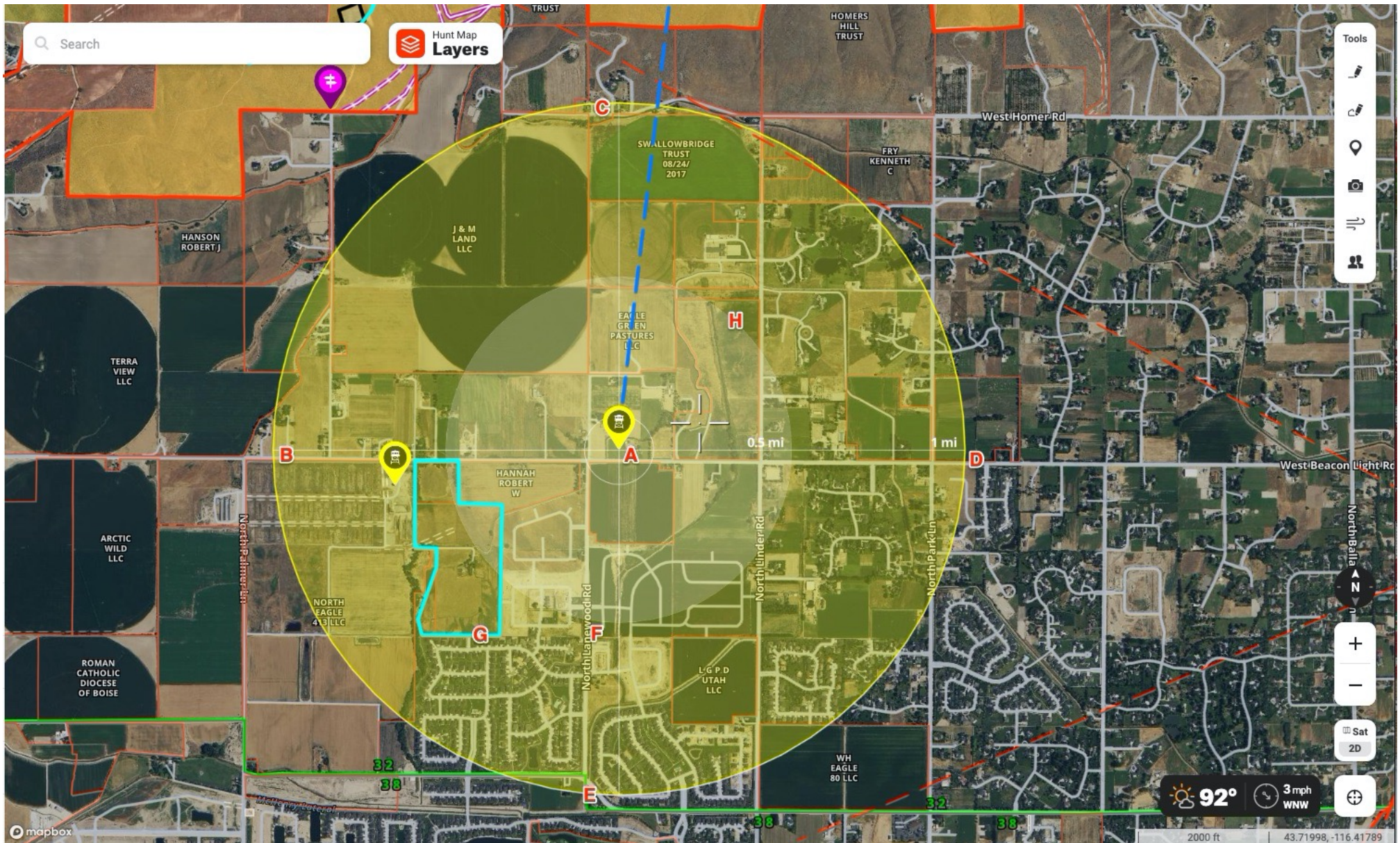
Taken from front porch of “Good Life Farms”

Applicant photo sim: used wide-angle ~25mm(?) lens, which makes distant items appear smaller



Evidence of No Significant Gap for Verizon

Substantial Written Evidence of **No Significant Gap** in Verizon Wireless Telecommunications Service:
Signal Strength Readings (dBm) on Verizon's network at **all eight (8) locations** surrounding the
proposed WTF **202102816-CU**



This is substantial written evidence proving there is
No Significant Gap in Verizon's Wireless Telecommunications
Service in area served by proposed Verizon WTF 202102816-CU
([Link to](#) spreadsheet of dBm readings)

- **Location A**— <https://youtu.be/PgTYRiyYzho?t=9> Verizon and T-Mobile calls made at wireless call made at proposed WTF site on Beacon Light Rd. in Eagle, ID
- **Location B** — <https://youtu.be/PgTYRiyYzho?t=123> Verizon and T-Mobile calls made wireless call made at No. Palmer and Beacon Light Rd. in Eagle, ID
- **Location C** — <https://youtu.be/PgTYRiyYzho?t=195> Verizon and T-Mobile calls made wireless call made at No. Hawkcrest Lane and Homer Rd. in Eagle, ID
- **Location D** — <https://youtu.be/PgTYRiyYzho?t=271> Verizon and T-Mobile calls made wireless call made at No. Park Lane and Beacon Light Rd. in Eagle, ID

This is substantial written evidence proving there is
No Significant Gap in Verizon's Wireless Telecommunications
Service in area served by proposed Verizon WTF 202102816-CU

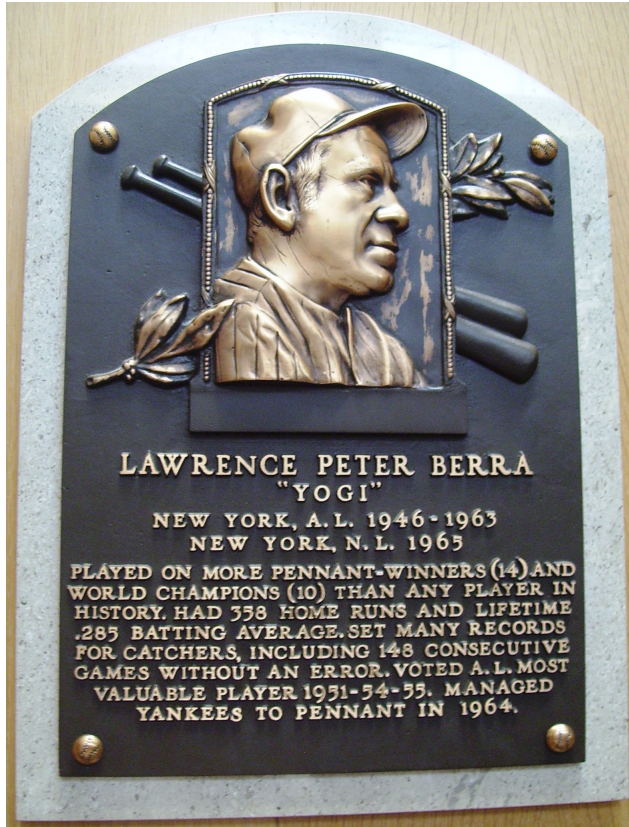
([Link to](#) spreadsheet of dBm readings)

- **Location E**—<https://youtu.be/PgTYRiyYzho?t=345> Verizon and T-Mobile calls made at wireless call made: No. Lanewood and W. Floating Feather Rd. in Eagle, ID
- **Location F** —<https://youtu.be/PgTYRiyYzho?t=409> Verizon and T-Mobile calls made wireless call made at No. Lanewood and W. Venetian Dr. in Eagle, ID
- **Location G** —<https://youtu.be/PgTYRiyYzho?t=477> Verizon and T-Mobile calls made wireless call made at W. Venetian Dr. and World Cup Way in Eagle, ID
- **Location H** — <https://youtu.be/PgTYRiyYzho?t=540> Verizon and T-Mobile calls made wireless call made at Hope Valley Rd. North of proposed WTF location in Eagle, ID

The Late, Great Yogi Berra Sums It Up:

With One of His Famous Yogi-isms:

"This is déjà vu all over again."



- **AT&T's denied** 202102048-CU WTF application for W. Floating Feather Rd. shares **many similar shortcomings** with **Verizon's proposed** 202102816-CU at WTF application for Beacon Light Rd.
- **Same attorney:** Josh Leonard of Clark Wardle, LLP, representing a speculative site developer.
- **Same story:** applicant has the **burden of proof** to bring substantial written evidence to prove a significant gap in carrier-specific, wireless telecommunications service, but has **failed to do so**.

The Achilles Heal of the Verizon 202102816-CU Application

- Applicant brought no verifiable data for accurate signal strength readings showing the **pre-construction conditions** (with no WTF) and post-construction conditions (with WTF powered on)
- **The key missing element** that renders the applicant-provided signal strength data non-substantive is that **Verizon chose to NOT power off** the current Water Tower antennas in order to enable accurate signal strength readings
- **The applicant's RF consultant**, Mr. Kennedy, is asking the Commissioners to trust him, trust him, trust him, even though he has provided no solid, verifiable data that could be accurately corroborated by third-parties.

The Same Shortcoming Applies to Appellant-Supplied Signal Strength Data

- Appellant could not bring data for signal strength readings reflecting the **pre-construction conditions** because **Verizon chose to NOT power off** the current Water Tower antennas to enable accurate pre-construction signal strength readings.
- The Appellant worked with the signal strength conditions dictated by Verizon: the current water tower antennas remained powered on.
- **Verizon failed step one:** the applicant did not provide sufficient substantial written evidence to establish that a significant gap in Verizon wireless telecommunications coverage exists in the target area – either with or without the current water tower antennas powered on. **That is fatal to 202102816-CU** and **there is no need to proceed to step two:** least intrusive means.
- The Appellant data prove with current conditions, **NO significant gap** in Verizon wireless telecommunications coverage exists.

Refuting statements made by Josh Leonard of Clark Wardle, LLP

- **FCC Order [18-133](#) , Footnote 95:** —“our effective prohibition analysis focuses on the service the provider **wishes** to provide, incorporating the capabilities and performance characteristics it wishes to employ, including facilities deployment to provide existing services more robustly, or at a better level of quality, all to offer a more robust and competitive wireless service for the benefit of the public.”
- **Appellant:** No US Court of Appeals Circuit judge has upheld such an FCC “wish-fulfillment scheme” which would violate the cooperative federalism as defined in the 2005 US Supreme Court ruling [Palos Verdes v. Abrams](#). Such a “wish-fulfillment scheme” is merely a presumption that must face case-by-case adjudication.
- From Ninth Circuit [Case 18-72689](#) City of Portland et al. v FCC. Scott Noveck, FCC Attorney on Feb 10, 2020 said at <https://youtu.be/zoZHNSOibmo?t=38m28s>

“These Orders [FCC 18-111 and FCC 18-133] are **not self-enforcing**.

They contemplate the need, in many circumstances, for **further case-by-case adjudication** and in those instances either someone would have to come back to the Commission or go into court.”

Refuting statements made by Josh Leonard of Clark Wardle, LLP

- [3:24:50](#) “The appellant provided no substantive or competent evidence of their own . . . **I have to tell you concerns are not evidence.** The only evidence that you have before you, the only competent evidence. . . the only evidence that is relevant today is the evidence we provided in the applicant’s packet.” (**note:** this is quite a conclusory statement, but it must be disregarded because the opponents entered competent, probative evidence into the record, summarized [here](#) and listed below.
- **Note:** Mr. Leonard appears to be dismissing **evidence accepted and ruled upon by the US Court of Appeals DC Circuit** on Aug 13, 2021 in CHD/EHT v FCC: **11,000+ pages of evidence** that conclude multiple harms from RF microwave radiation exposures at levels that are hundreds of thousands of times lower than that allowed by current FCC RF microwave radiation regulations. **This evidence**, linked to below is in Ada County’s public record and **does NOT amount to mere concerns**, as alleged by Mr. Leonard. **It is competent, probative evidence.**
- **Note:** Wireless radio frequency microwave radiation is bioactive and is currently being insufficiently regulated. Therefore, each state or locality can regulate the maximum power output of microwave radiation from wireless infrastructure antennas that reaches any areas that are accessible to human beings and other living organisms, consistent with the **11,000+ pages of peer-reviewed, scientific evidence** that Environmental Health Trust and Children’s Health Defense and others plaintiffs placed in the FCC’s public record: [Vol-1](#), [Vol-2](#), [Vol-3](#), [Vol-4](#), [Vol-5](#), [Vol-6](#), [Vol-7](#), [Vol-8](#), [Vol-9](#), [Vol-10](#), [Vol-11](#), [Vol-12](#), [Vol-13](#), [Vol-14](#), [Vol-15](#), [Vol-16](#), [Vol-17](#), [Vol-18](#), [Vol-19](#), [Vol-20](#), [Vol-21](#), [Vol-22](#), [Vol-23](#), [Vol-24](#), [Vol-25](#), [Vol-26](#) and [Vol-27](#).

Good Life Farms Marketing Survey

Please click [here](#) for full Study from Good Life Farms

Good Life Farms = Green

Proposed Cell Tower = Red

Ada County Development Services



Good Life Farms Marketing Survey

Please click [here](#) for full Study from Good Life Farms

- Evidence that shows that constructing a Wireless Telecommunications Facilities (WTF) across from the farm at 5600 West Beacon Rd. in Eagle, ID will deter its customer base from purchasing their products and render its business unprofitable.
- This is substantial written evidence (a professional survey of a sufficiently large sample) that proves that the W Beacon Light Road location proposed in 202102816-CU is NOT the least intrusive means to address an unproven gap in telecommunications service (the inability to place an outdoor wireless phone call in the proposed tower's target search ring).

Good Life Farms Marketing Survey

Please click [here](#) for full Study from Good Life Farms

- Evidence that shows that constructing a Wireless Telecommunications Facilities (WTF) across from the farm at 5600 West Beacon Rd. in Eagle, ID will deter its customer base from purchasing their products and render its business unprofitable.
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Substantial written evidence showing 202102816-CU causes unmitigated harms

- [Link to](#) 2019-0102-Valbridge-Advisors-Appraisal-Eagle-ID.pdf
- [Link to](#) 2022-0902-Atova-Broker-Letter.pdf
- [Link to](#) 2022-0301-Letter-from-Bentley-et-al-re-201801311-A 2022.pdf
- [Link to](#) 2022-0322-JP-Mejia-Letter-to-Bentley.pdf
- [Link to](#) Assessing-the-Economic-Impact-of-Project-202102816-CU-on-a-Third-Generation-Family-Farm.pdf
- [Link to](#) 2022-0301-Memorandum-in-Opposition.pdf

Conclusion: Evidence Justifies a Decision for Denial of 202102816-CU

- **Applicant brought no verifiable hard data** that accurately establishes the signal strengths of various frequencies **without** the current Verizon Water Tower antennas operating **because Verizon chose to NOT power off** these antennas for the analysis.
- The substantial written evidence of signal strengths that **could be measured** is clear: **there is no significant gap** in Verizon wireless telecommunications coverage in the target search ring.
- 202102816-CU is **not the least intrusive means** to close an alleged, unproven significant gap in telecommunications coverage because it creates unmitigated harms established by substantial written evidence in Ada County's public record: diminished property values, loss of farm customer interest and less public safety. And, failed to perform proper due diligence in exploring adjacent BLM land.

Appendix

Radio Terms Unpacked

- **RSSI** (Received Signal Strength Indicator) is used when measuring the power of 3G/4G LTE/5G frequencies/modulations
- **RSRP** (Reference Signal Received Power) is also used when measuring the power of 4G LTE/5G frequencies/modulations.
- **RSRQ** (Reference Signal Received Quality). This is a measure of the signal quality of a cellular connection (whether significant interference exists).
- **RSSI** applies to 3G, 4G/LTE and 5G networks, but **RSSI** contains the interference in its number, while **RSRQ/RSRP** break out the interference separately from the power received.

Radio Terms Unpacked

- Think of air flowing through a window screen, where air represents the signal.
- **RSRP** is the power that reaches the window screen, while **RSSI** is the power that has passed through (the interfering) window screen (which represents interference from all other signals in the vicinity).
- **Key RF Engineering practice:** for 4G/LTE signals, assess both RSRP (good, fair or poor) and RSRQ (good, fair or poor). If a point has double snake-eyes (RSRP is poor **and** RSRQ is poor) then that should be addressed. **Otherwise, there is no significant gap in telecommunications service.**