

# HOUSTON CHRONICLE

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## Precedent set by guilty plea in cell phone case

Sugar Land man found in contempt for altering prepaid devices' software

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A Sugar Land man's admission Friday in Houston federal court marks a milestone in the wireless industry's effort to curb prepaid cell phone trafficking.

Muhammad "Mubi" Mubashir pleaded guilty to criminal contempt for his continued participation in a scheme to alter cell phones dedicated to a certain provider, allowing the handsets to work on other wireless networks in the United States and abroad.

This is the first federal criminal conviction related to prepaid cell phone trafficking, industry representatives said.

According to the U.S. Attorney's Office for the Southern District of Texas, federal statutes do not prescribe a prison term or fine for criminal contempt of court, which leaves Mubashir's punishment to the discretion of U.S. District Judge Melinda Harmon.

Mubashir, 27, faces years in prison.

Harmon accepted his plea, finding that he violated her court order to stop dealing in Virgin Mobile phones.

This was the third time in less than two years that Mubashir ended up before the judge.

### Hacking into software

In July 2006, Virgin Mobile sued Mubashir, two other men and their company, alleging they were acquiring Virgin Mobile cell phones in retail stores, then hacking into the software to make the phones work with other wireless carriers.

A month later, Harmon entered an injunction against Mubashir and the others. They agreed not to purchase, offer for purchase, resell, ship or tamper with any Virgin Mobile wireless handset.

The men were held in civil contempt and fined in January 2007 for violating the court's order. The court found that Mubashir's team posted online ads seeking to buy Virgin Mobile phones and later offered to sell some to an undercover investigator.

In May 2007, federal agents intercepted a shipment sent by a Mubashir company from Houston to Hong Kong that included 46 Virgin Mobile phones. Mubashir, who told the judge he earned a college degree in economics in Pakistan, was involved in the shipment.

"I made that invoice myself," Mubashir told Harmon on Friday morning.

"And you knew that I had ordered you not to do that?" the judge asked.

"Yes," he said, "and I am really sorry for that."

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Federal prosecutors intervened in Virgin Mobile's civil case in November by asking Harmon to hold Mubashir in criminal contempt.

The criminal plea fell into such uncharted legal territory that it was unclear to Harmon, Mubashir's lawyer and the federal prosecutor whether they were dealing with a felony or a misdemeanor. The judge also said she was unsure whether she could depend on federal sentencing guidelines.

"I don't think there are any guidelines for this," Harmon said. "But I don't think I will give you a light sentence. And I suppose there would be some restitution for the company for the contempt."

## Client just 'enterprising'

Houston lawyer William Stradley said his client was "just trying to be enterprising," but accepted responsibility.

"It's unfortunate that he exercised his industriousness with something that's become a problem," Stradley said.

Assistant U.S. Attorney Jay Hileman declined to comment after the hearing.

Prepaid phones are typically sold at deep discounts at Wal-Mart, Target and other stores because providers make their money from airtime charges and other services. Rogue companies send "runners" to buy phones cheaply, hack into the software, then sell the handsets for a profit.

Celso Gonzalez-Falla, a Houston lawyer representing Virgin Mobile, said the company loses millions from such schemes.

Wireless industry representatives say traffickers are aggressively pursued because their activity has the potential to drive up costs for consumers.

TracFone, the largest prepaid mobile phone service provider in the United States, also won an injunction in November requiring Mubashir to cease purchasing and tampering with its phones.

The company says Mubashir sold about 9,000 of their units, causing the company \$1 million in losses.

Mubashir is scheduled for sentencing in August.

Because he is not a U.S. citizen, the conviction could result in deportation, Harmon said.

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