banks with far-flung offices. There is, however, nothing inherent in the notion of interstate banking that runs counter to antitrust policy. To the contrary, the present system of geographic limitations constitutes a regulatory intrusion upon the free workings of the market. Indeed, the purposes and effects of the restrictions show them to be unjustified.

What were the goals in prohibiting interstate expansion? The first goal, a residue of the Jacksonian legacy, was the prevention of a perceived undue concentration of financial power. There are, however, about 14,000 banks in the United States. Neither market concentration nor aggregate concentration is a serious prospect. As for cartels or mergers, the antitrust laws themselves are sufficient to prevent any anticompetitive market concentration from those sources without artificial regulatory barriers.

Moreover, McFadden's restrictions can sometimes work in ways directly contrary to antitrust concerns -- and even contrary to McFadden's own purpose of preventing undue concentration. For example, when a bank is in precarious condition and can be saved most efficiently by merger with another stronger institution, McFadden will prevent merger with an out-of-state bank. As a result, the only possible merger partner may be one of the bank's competitors. Thus, McFadden's restrictions can cause an increase in banking concentration in the local market, which might otherwise have been avoided.

Indeed, although McFadden may to some degree reduce the aggregate concentration of financial resources on a national scale, it does so by increasing market concentration and lessening competition in local banking markets. And for the ordinary consumer the competitiveness of the local markets -- the institutions to which he can turn for the full range of banking services -- is critical.

The second goal in prohibiting interstate expansion, somewhat related to the first, was the fostering of a market structure where decisions affecting the financial needs of communities would be made at the community level to the extent possible. Some have feared that, with elimination of the McFadden Act, branches of national banks would suddenly mushroom in every city and hamlet, devouring all local competition to the extent that any small businessman who needed a loan would have to win over some unknown banker in a distant financial center. I do not believe this fear to be well founded.

To the extent community banks are best able to serve community needs, they will continue to survive and prosper. If they should lose business, it would likely be because consumers in the community choose to take their deposits elsewhere. From a competitive standpoint, this outcome should not excite alarm.

A third purpose that the continued vitality of the McFadden Act serves is deference to the sovereign power of the states. National banks are unable to open interstate branches because the individual states have not allowed their statechartered institutions to do so. Since the federal legislation defers to the states in this area, federal policy would be changed by a shift in the policies of the states. There is nothing in the concept of interstate branching itself that appears inconsistent with the principles of federalism. Nevertheless, the failure to take federal action to permit interstate operations may in part be explained by the historical fact that policy in this area has traditionally been established at the state level.

How effective has the regulatory scheme been in actually preventing interstate banking from occurring? On this score, there can be no doubt that the Act has not been fully effective and becomes dramatically less so every day. It has been reported, for example, that the Bank of America has offices in more than 40 states, and confronts Citicorp, among others, in most of them. Indeed, the only interstate banking that the McFadden Act effectively prohibits is the taking of retail deposits. Loan production offices, Edge Act corporations, and other carefully crafted structures have long allowed banks to conduct wholesale business on an interstate basis. The movement of bank holding companies into the consumer finance business has permitted banks to engage in retail banking on the credit side on an interstate basis as well. Thus, only in the case of retail deposits have banks been unable to take advantage of whatever economies and efficiencies could be realized by interstate banking.

Recently, Automatic Teller Machine networks have suddenly emerged -- and there is much talk of establishing such systems on a regional and even national scale. As a result, the electronic revolution has subjected even retail deposit taking, the last stronghold of exclusively intrastate banking, to the pressures toward large-scale operations. The rapid development of ATM networks is clearly an important and exciting development. It is a development that the Justice

Department will watch with considerable interest in the years to come.

The McFadden Act, then, has not successfully prevented interstate banking. Its primary effect has been to influence only the structure of the organizations through which banks carry out interstate business.

On the other side of the ledger, what regulatory costs has the McFadden Act imposed? The prohibition on interstate branching has prevented customers from taking advantage of the innovation interstate competition may engender. This clearly is important in an antitrust analysis.

In addition, the less obvious costs to the banking industry have become dramatically more apparent in recent years. The McFadden Act prohibition impairs the ability of banks to take full advantage of new technologies that can most efficiently be applied on an interstate basis. It also imposes unnecessary administrative costs. Banks have been forced to structure their activities not on the basis of efficiency but in order to conduct as much interstate business as possible without running afoul of the statute.

During the last decade foreign firms have greatly increased their presence in U.S. banking markets. Traditionally, foreign banks were not subject to McFadden Act restrictions. A startling anomaly resulted. Foreign banks enjoyed a pronounced advantage over their U.S. rivals in establishing interstate operations. Congress responded in 1978 by passing the International Banking Act. Rather than loosening the regulatory shackles on domestic banks, however, the statute imposed similar restrictions on foreign banks. Nevertheless, forces of competition have erupted from a new source.

In recent years, the competition that nondepository institutions pose to banks has grown beyond all predictions. These nondepository institutions -- such as Merrill, Lynch and Sears -- do not labor under geographic restrictions. They can make full use of economies and efficiencies flowing from interstate operations. They therefore have a significant advantage over their banking competition. This development dramatically highlights the fact that geographic limitations impose substantial costs on the banking industry as a whole. It demonstrates once again that artificial regulations can delay but not stem the tide of competitive forces. They can only channel those forces toward other, usually less efficient, outlets.

Like so many regulations directed against natural competitive forces, the statutory restrictions on interstate expansion impose public costs that outweigh their benefits. The costs of the restrictions are apparent. The benefits, if any, are more difficult to identify. To the extent that we desire to prevent the undue concentration of financial power, I believe that the antitrust laws are fully adequate to achieve that goal. To the extent that the restrictions are seen as a way to preserve a system in which financial decisions are made on the local level, I believe that they are unnecessary. Consumers are best able to choose the size of the financial institutions with which they deal. With this fairly dismal scorecard, an appraisal seems warranted as to whether federal action in this area is appropriate. In any case, it is time to reconsider these geographic restrictions on banking as they operate today. By any objective analysis, they are not in the best interests of financial institutions and consumers. Competition would once again better serve the public interest.