The Honorable Bruce F. Vento
Chairman
Subcommittee on National Parks &
Public Lands
Washington, DC 20515

Dear Mr. Chairman:

A serious problem stemming from the Concessions Policy Act of 1965, Public L. 89-249, and the administration of that statute by the National Park Service (NPS), has recently been brought to my attention. I would like to share my views with you and other members of the Subcommittee given your interest in this matter.

The problem concerns the long-term monopoly which the NPS has effectively conferred on one company, Circle Line Statue of Liberty, Inc. (Circle Line), to provide ferry service for visitors to the Statue of Liberty. Circle Line has had this exclusive contract for at least 37 consecutive years. In April 1989, it was awarded the contract again -- this time for a 15-year period ending March 31, 2004. By the end of that contract term, it will have provided this service for over 50 consecutive years.

Interestingly, the NPS initiated this latest contract renewal process in 1988, four full years prior to the expiration of the agreement then in effect. The new contract allows Circle Line the right to provide service not only to the Statue, but also to the nearby Ellis Island monument, due to open in September 1990. Ellis Island can accommodate a greater number of visitors than Liberty Island, and thus the extension provides an immense benefit to Circle Line.

On its face, the grant by the NPS of an exclusive and valuable government concessions contract to one company for so long a period of time raises serious questions of the propriety of the policies under which such contracts are awarded. Our nation's economic fuel, competitive forces and market opportunities, apparently play no role in the award of these contracts or in the service offered to the public. The gross impropriety of this situation is made all the more serious by the fact that there are other ferry operators who are being effectively foreclosed by the current state of affairs from contracting to provide ferry service to the public.
The source of this problem stems from the preference policy incorporated into the Concessions Policy Act and from the manner in which NPS administers that policy. As you know, section 5 of the Concessions Policy Act, 16 U.S.C. 20d, requires the Secretary of the Interior to grant a preferential right, which the statute does not define, to a National Park concessioner which has performed its obligation to the satisfaction of the Secretary. As administered by the NPS, this preference right allows an existing concessioner an opportunity to match any "better" offer submitted to the NPS. As the April 1990 reports of the Department's Office of Inspector General (Report No. 90-62) and of the Secretary's Task Force on NPS Concessions indicate, the NPS's administration of this preference policy confers a virtually automatic right to renewal of their contracts on incumbent concessioner. In the words of the Task Force Report, "this right effectively grants concessioner 'ownership' of the operating rights in a given park in perpetuity." Both of these reports called for the elimination of this automatic preference.

The extraordinary advantage conferred on incumbent concessioner, and the burden imposed on any potential new concessioner, is well illustrated in the 1988 decision of NPS to renew Circle Line's contract. The June 21, 1988 Notice that the contract was available for bid was published only in the Federal Register, which is not widely circulated among business persons who may seek government contracts. The Notice was entitled "Concession Contract Negotiations; Circle Line - Statue of Liberty Ferry, Inc." authorizing it to continue to provide passenger ferry services for the public at Statue of Liberty National Monument, New York, for a period of 15 years."

Obviously, the wording of this Notice and its limited publication was not calculated to advise prospective competitors of their right to submit competing bids, and in fact offers a disincentive to businesses which may be inclined to invest the resources to make an offer to the Park Service. The Notice could readily have been mistaken for a mere announcement that the government intended to renew the Circle Line contract for yet another 15-year period, which, of course, is exactly what happened. Further, bidders were given only 90 days to put their complete bids together, while Circle Line knew well in advance of the publication that the government was in fact "reopening" the contract and thus had much more time to prepare its bid.

Bidders other than Circle Line were also at a distinct disadvantage in that they were not provided with important financial information about the operation of the ferry service or its past profitability, e.g., the number of passengers carried, the gross earnings of the service, capital investment by Circle Line, all of which was known to Circle Line. The NPS bid solicitation advised prospective bidders that services superior to that described in the solicitation were not sought, a particularly anomalous pronouncement by NPS, and that there would be no opportunity for prospective bidders to discuss their proposals with the NPS.
Given these restraints, it is not surprising that the NPS concluded that, of the three bids submitted, the bid of Circle Line was the best and it was accordingly awarded the contract for another 15 years. A proposal by one bidder to provide an instructive audio program on the Statue of Liberty and Ellis Island (Circle Line provides none) and to operate its ferry on a not-for-profit basis was summarily rejected by NPS as inconsistent with the apparent NPS policy against service innovations, regardless of potential benefits.

A government contracting policy which not only encourages long-term incumbency, eliminates an opportunity for effective competitive bidding, and stifles opportunities for improved services does not serve the public or the national interest. Such a policy undermines the very principles symbolized by the Statue of Liberty. Consequently, I fully agree with the report of the Department's Task Force and the recommendation of its Inspector General that the preference policy should be legislatively eliminated. I can assure you that I will wholeheartedly support any effort to accomplish that goal.

In light of Secretary Lujan's recent press conference, I have asked the Secretary, by the enclosed letter, to review the feasibility of seeking bids for a contract with one or more ferry operators to provide service to the Statue of Liberty and Ellis Island additional to that provided by Circle Line. This would ensure that the public receives top-quality services, and would provide the Park Service with a valuable opportunity to examine the advantages of competition. Competitive concession services are not unprecedented in the NPS system and I believe that the Park Service could quickly move forward to establish competitive ferry services to these important and well-visited national monuments. Such services will, in fact, promote wider public access to the monuments and allow an opportunity for service to be provided from points in New York and New Jersey additional to those presently served by Circle Line.

Again, I look forward to working with you on this issue and to fashioning appropriate legislation designed to remedy the inequitable situation which I have described.

Sincerely,

FRANK J. GUARINI
Member of Congress

FJG/mh

cc: Members of the Committee
    The Honorable Manuel Lujan
    James M. Ridenour

Enclosure