

NEBRASKA PUBLIC SERVICE COMMISSION

ANNUAL REPORT TO THE LEGISLATURE ON THE STATUS OF THE IMPLEMENTATION OF LB 629 [2015]



December 27, 2019

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December 27, 2019

Patrick J. O'Donnell
Clerk of the Legislature
State Capitol, Room 2018
P.O. Box 94604
Lincoln, NE 68509-4604

Dear Mr. O'Donnell:

On behalf of the Nebraska Public Service Commission, I am pleased to submit the fifth annual TNC Annual Report to the Legislature on the status of the implementation of the provisions of LB 629 [2015]. The report covers data collected as it pertains to Nebraska's transportation network companies (TNCs) and taxicab companies from January 2019 through December 2019, as well as historical data for both taxicabs and TNCs.

TNCs continue to be a popular transportation option, providing last-mile, medical, and commuter transportation services to name a few. As transportation needs evolve, so should our state's transportation offerings. Technology and outside-the-box thinking can be embraced and used for business development and the public good. The Commission looks forward to continuing to work with all carriers – including taxis and TNCs – to ensure quality transportation for all.

If you have any questions about the report or any other issue, please contact our Commissioners or staff.

Sincerely,

Mary Ridder
Chair

Michael C. Hybl, Executive Director

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Introduction

This report provides information, research, and analysis pursuant to LB 629 (2015), which form basis for the Public Service Commission's (PSC, Commission) recommendations to the Legislature regarding the implementation of statutes related to Transportation Network Companies (TNCs). TNCs use online-enabled applications such as smartphone apps to provide prearranged transportation services in a participating driver's personal vehicle. Drivers and passengers are connected through the TNC's online-application.¹ The data presented herein also reflects impacts to the existing taxicab industry within the state.

The statutory framework in LB 629 includes a list of data that, at a minimum, should be included in each year's report:

- number of TNC permits issued;
- any permit revocation proceedings;
- number of taxicab carriers, as well as the following statistics for each, relative to historical numbers:
 - rides provided,
 - taxicabs in service, and
 - drivers employed or contracted.

The statute also allows the Commission to provide any other information that it believes will assist the Legislature in evaluating the effectiveness of LB 629.² In order to provide the Legislature with sufficient information, the Commission solicited data from taxicab carriers, TNCs, and the Nebraska Department of Health and Human Services. The final section of this report details specific recommendations to the Legislature for its upcoming session, but in summary, the highlights of the 2019 TNC Annual Report are as follows:

- *Fees:* The Commission determined that the 2020 per-vehicle fee for TNCs should remain at \$80 per vehicle.

¹ Neb. Rev. Stat. § 75-323(10) (Neb. Supp. 2015).

² Neb. Rev. Stat. § 75-343 (Neb. Supp. 2015).

- *Impact of TNCs and Other Considerations.* TNC ridership continues to increase statewide, suggesting that TNCs continue to provide transportation services to previously unserved or underserved communities. Although stabilized, Lincoln continues to see a downward trend overall in its taxicab rides in comparison to Omaha and Greater Nebraska. Factors beyond the scope of this report may be contributing to the overall decline in taxi ridership. Additional research would be necessary to explore these factors and the impacts.

Brief History of Transportation and the Commission

The Nebraska Public Service Commission (Commission) is a constitutionally-created body established under Article IV, Section 20 of the Nebraska Constitution. The Commission is comprised of five elected Commissioners serving six-year terms. The Legislature initially created the Commission in 1885 to regulate railroads, but that was not firmly established until the passage of a constitutional amendment in 1906, creating a three member elected Railway Commission. Membership increased to five Commissioners in 1964, at which point the State was divided into five districts, each to elect a commissioner. A general election vote in 1972 changed the Railway Commission's name to the Public Service Commission.

Today, the Commission regulates telecommunications carriers; natural gas jurisdictional utilities; major oil pipelines; railroad safety; household goods movers and passenger carriers; grain warehouses and dealers; construction of manufactured and modular homes and recreational vehicles; high voltage electric transmission lines; and private water company rates. The Commission also oversees and administers several statutorily created funds with specific legislative purposes and goals including the Nebraska Universal Service Fund, the Enhanced Wireless 911 Fund, and the Nebraska Telecommunications Relay System Fund.

The Commission actively contributes on local, state, and national levels to determine policy regarding the future of communications and universal service. Many Commissioners, past and present, have served on boards, committees, and advisory groups to recommend and give insight on policy matters to state and federal agencies and to legislative bodies.

History of Transportation Authority

The Commission's first role was the regulation of transportation – specifically the regulation of railroads – in 1885. Although the Commission's authority over railroads has greatly diminished, the Commission has since gained authority to certificate and regulate passenger transportation companies and household goods movers; to perform

inspections related to intrastate railroad safety; to set the fares charged by passenger carriers and to establish the tariffed rates used by household goods movers; to investigate alleged rate violations and other illegal activities by certificated and non-certificated providers; to regulate insurance requirements; to perform inspections of most passenger transportation vehicles to verify safety; and to investigate complaints involving improper billing, driver misconduct or safety issues.

LB 629

In 2014, a new type of passenger transportation provider began doing business in Nebraska. Transportation network companies, or TNCs, provide point-to-point transportation for passengers in a driver's personal vehicle. Rides are prearranged and compensation is provided through the TNC's smartphone application or online platform.

In 2015, the Legislature passed LB 629, which created a statutory framework for the TNCs and granted authority to the Commission to implement those laws. The new statutes require that TNCs acquire a permit from the Commission to operate as a TNC, and lays out requirements for drivers, vehicles, and insurance. The statutes do not grant the Commission the authority to regulate rates, but each TNC is required to file its rates with the Commission. The Commission may also inspect records on an audit basis no more than once each calendar quarter, or as necessary to investigate a complaint.

Transportation Network Company Regulation Cash Fund

LB 629 authorized the Commission to create the Transportation Network Company Regulation Cash Fund. The Fund is to be used to regulate TNCs and to enforce the applicable statutory sections. The Commission collects annual and initial application fees from TNCs and remits these amounts to the Fund. Pursuant to NEB. REV. STAT. § 75-305(2), every TNC may choose to pay either \$25,000 or not to exceed \$80 per personal vehicle operated by a driver for the TNC. The Commission is tasked with setting the per-vehicle fee. As of December 2, 2019, the balance of the Fund was approximately \$81,326.95.

On September 24, 2019, the Commission held a public hearing and determined that the per-vehicle fee for 2020 should remain set at \$80 per personal vehicle operated by a driver for the TNC. All annual fees are payable to the Commission by January 1 and are considered delinquent March 1.

Transportation Network Companies

NEB. REV. STAT. § 75-324 requires TNCs to apply with the Commission for permits to operate in Nebraska. Each TNC applicant must file its application with appropriate fee, along with a copy of its current rates, insurance certificate, drug and alcohol and anti-discrimination policies, and its Articles of Incorporation, Organization, or Certification to transact business from the Nebraska Secretary of State. Additionally, the TNC must indicate whether it has been duly certified to operate as a TNC in at least one other state. If a TNC has not been duly certified to operate in at least one other state, the TNC must demonstrate that it has sufficient financial and managerial resources and technical competency to provide TNC services in its proposed territory.

Rasier, LLC (Uber) and Lyft, Inc. continue to operate as the only two TNCs in the state. The Commission estimates that there are well over 600 TNC drivers between the two companies, mostly in the Omaha and Lincoln metropolitan areas.

Pursuant to NEB. REV. STAT. § 75-332, participating drivers wishing to use a personal vehicle with a lien must notify their lienholder at least seven days prior to using the vehicle in the course of driving for the TNC. That notification form must then be filed with the Commission and kept on file for at least five years. The Commission has received 27 lienholder notification forms between December 15, 2018 and December 2, 2019.

Additionally, NEB. REV. STAT. § 75-329 authorizes the Commission to inspect TNC records to ensure public safety, including criminal background checks of drivers. Such inspections may be completed no more than once a calendar quarter unless the Commission deems it necessary to do so more frequently, and must be completed on an audit rather than a comprehensive basis. The Commission plans to complete an inspection of TNC driver records in 2020.

Enforcement

The Commission has engaged in enforcement activities since TNCs began to operate in Nebraska prior to the passage of LB 629 and have continued as part of the Commission's overall for-hire transportation enforcement and compliance efforts. During 2019, the Commission received 3 specific tips that led to informal investigations by Commission staff. These have involved reports of TNC drivers either charging cash for trips outside of the TNC operating platform or soliciting for rides without prearranging the rides through the TNC app. Transportation Investigators also engage in monitoring activities proactively or upon receiving information regarding overall TNC driver activity not related to one specific driver. The Commission continues to monitor the activities of TNC drivers and investigate any consumer reports and complaints.

Taxicab Carriers

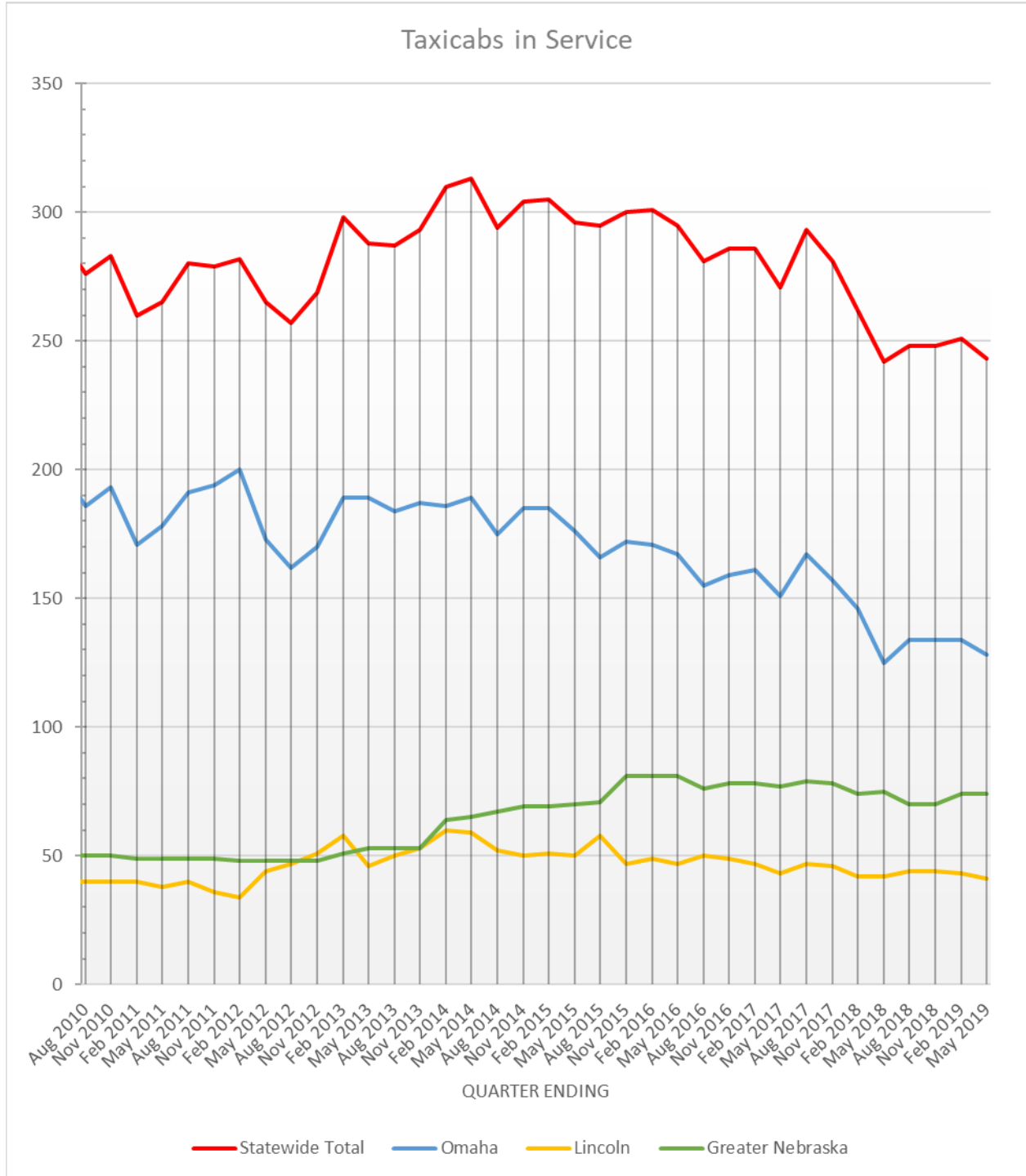
The Commission defines taxi service as the business of carrying passengers for hire by a vehicle along the most direct route between the points of origin and destination or a route under the control of the person who hired the vehicle. Taxi rides are either prearranged or on-demand and conducted within a defined geographic area at a metered, mileage-based or per-trip fare.

There are currently 24 taxicab carriers that hold a Certificate of Public Convenience and Necessity to provide taxi services in the State of Nebraska. In May 2019, one taxicab company – Thuc Van Ngo d/b/a South Sioux Taxi – suspended its operations until October 1, 2019, and was granted an extension of its suspension until October 1, 2020. Two taxicab authorities transferred to new ownership:

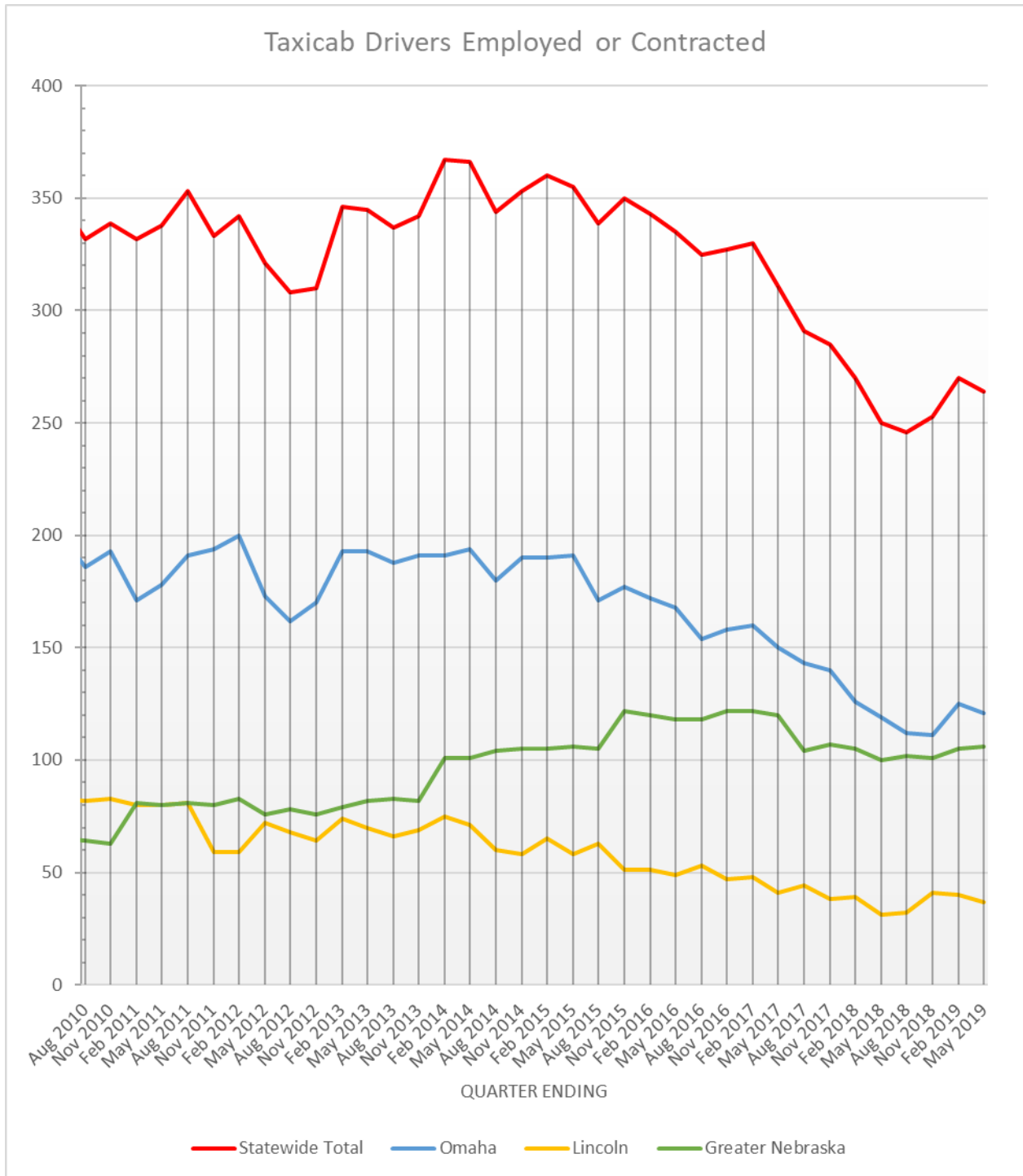
Carrier	Authority Granted
Mike’s Capital Cab, Lincoln- Acquired Servant Cab Company, LLC, d/b/a Yellow Cab Company and Capital Cab Company, Lincoln	10/08/2019
Yellow Cab Beatrice, Beatrice- Acquired Leisure Taxi, LLC, Lincoln	12/3/2019

The purpose of this Annual Report is to provide information to the Legislature that would assist in evaluating the effectiveness of LB 629, and address any need for further legislation. The Report includes data received from the certificated taxicab carriers, the permitted TNCs, as well as the Nebraska Department of Health and Human Services (NDHHS). All data is reported and analyzed in the aggregate, with no discussion about impacts to individual carriers.

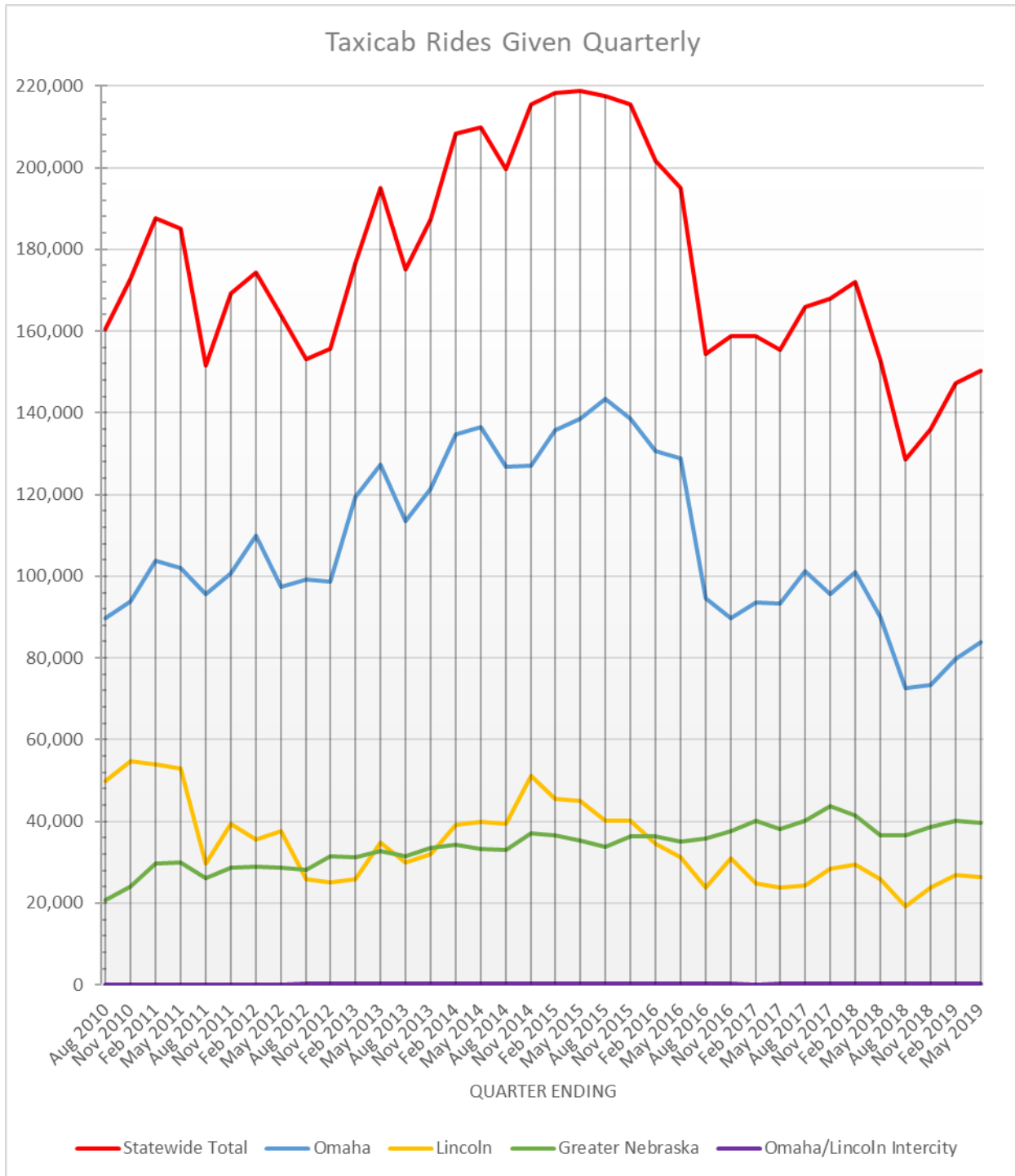
Each taxicab carrier annually reports to the Commission the number of taxicabs in service, number of drivers employed or contracted, and the number of rides completed. Each taxicab carrier self-reports its numbers in quarterly increments. The following chart show the number of taxicabs in service since May 2010:



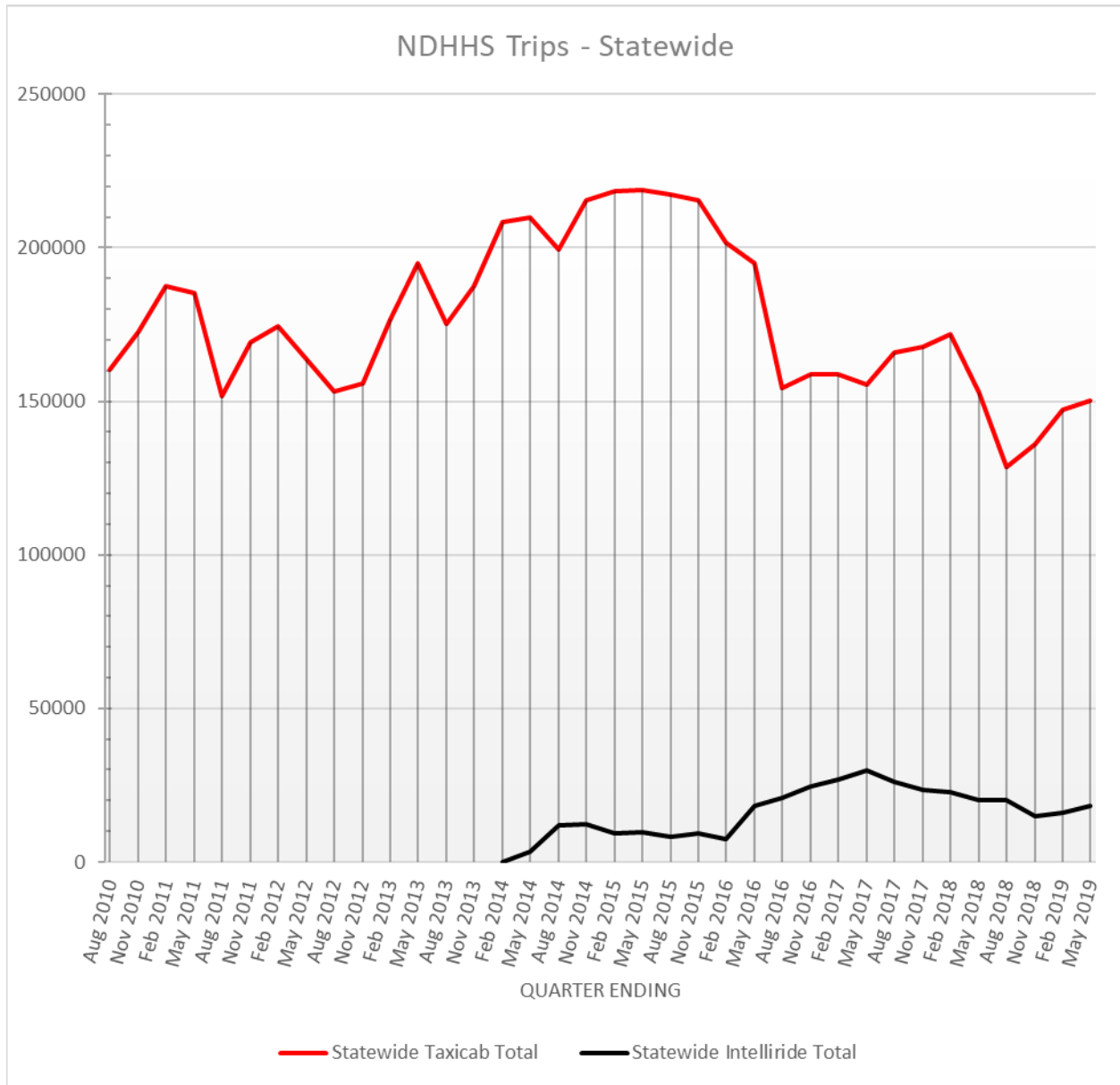
Statewide, the number of taxicab vehicles in service sharply declined in mid-2017 to almost mid-2018, with relatively steady numbers since. The next chart shows the number of drivers either employed or contracted with a certificated taxicab carrier since May 2010. Again, we note the reported decline of drivers during the same 2017-2018 timeframe, with the steadiest numbers reported in Greater Nebraska:



As common carriers, taxicab carriers provide transportation to the general public as well as to those receiving transportation services as part of a contract with various public and private entities. The following chart shows the total rides completed for taxicab companies since May 2010. The data shows Omaha with the most dramatic change in reported number of trips:



About 15 of the 24 taxicab carriers provide non-emergency medical transportation (NEMT) services for clients of the Nebraska Department of Health and Human Services (NDHHS) across the state. NDHHS provided data to the Commission detailing the number of NEMT trips performed by taxicab carriers, reported in quarterly increments. The following chart shows the total NDHHS NEMT trips completed by taxicabs, as compared to all rides completed by taxicab carriers during the same period:

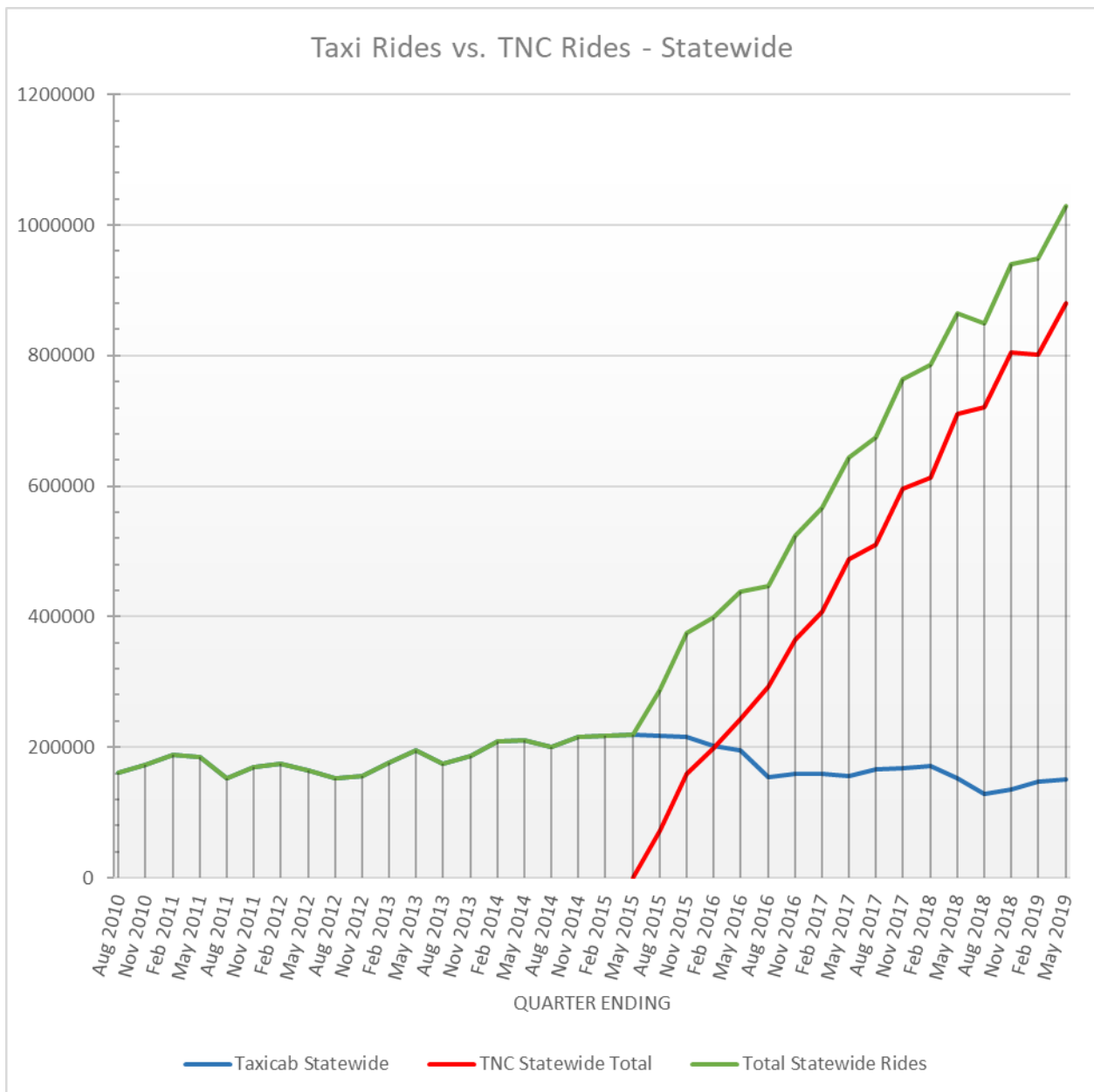


Neb. Rev. Stat. § 75-342 provides that TNCs may apply with the Commission for HHS Designation to provide NEMT services for NDHHS. Any TNC application for HHS Designation would be reviewed using the same standards that the Commission would utilize to review HHS Designation applications for other passenger carriers. No Nebraska permitted TNCs have applied to provide transportation for NDHHS clients.

TNC Impact on Taxicab Industry in Nebraska

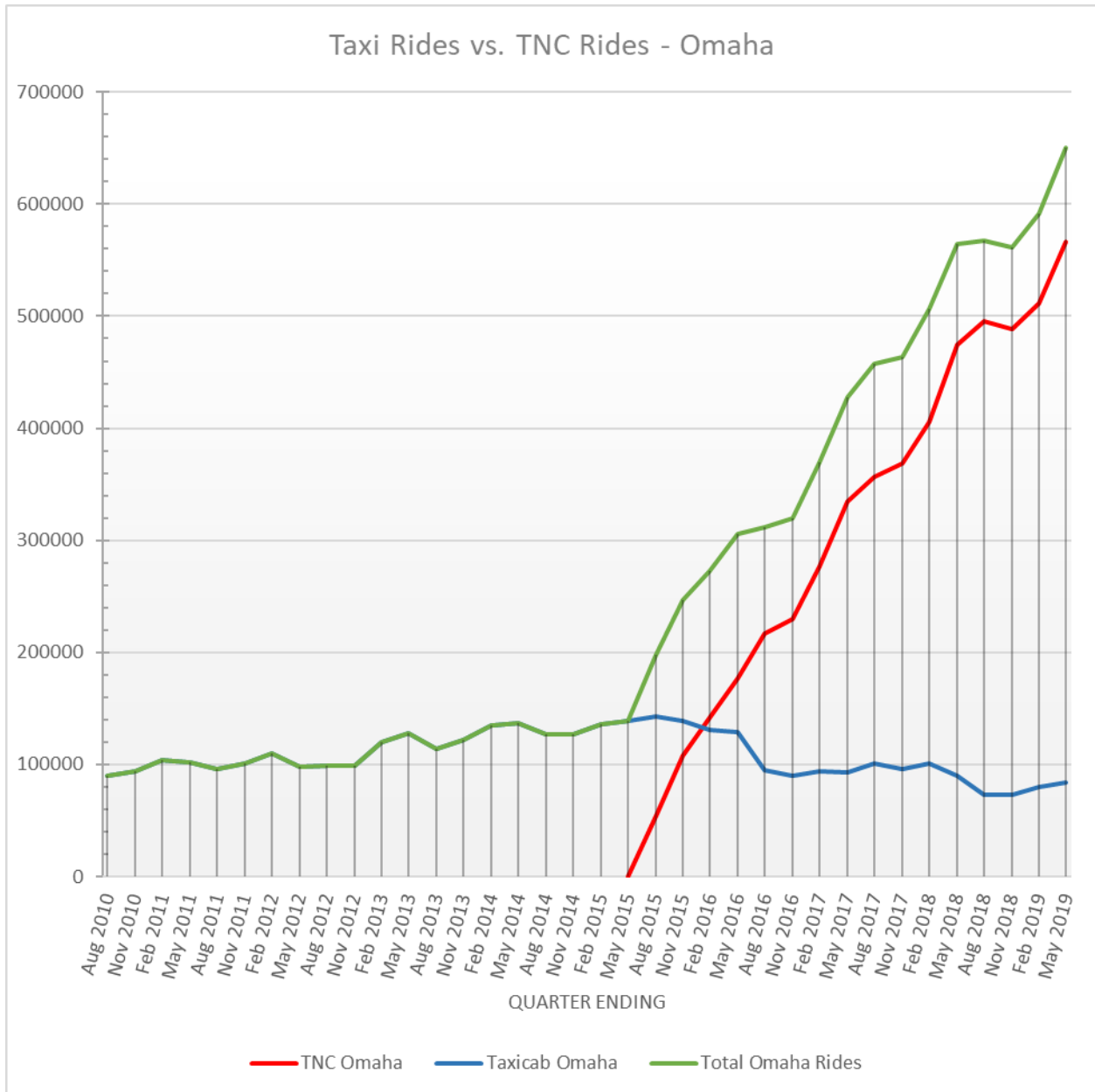
Statewide Impact

The statewide data shows that taxicab ride numbers continue to increase and decrease depending upon seasons and events, with overall decrease and stabilization since 2016. TNC ride totals continue to increase each quarter, not in proportion with any change in taxicab rides during the same period of time. The data suggests that TNCs continue to provide transportation services to previously unserved or underserved communities.



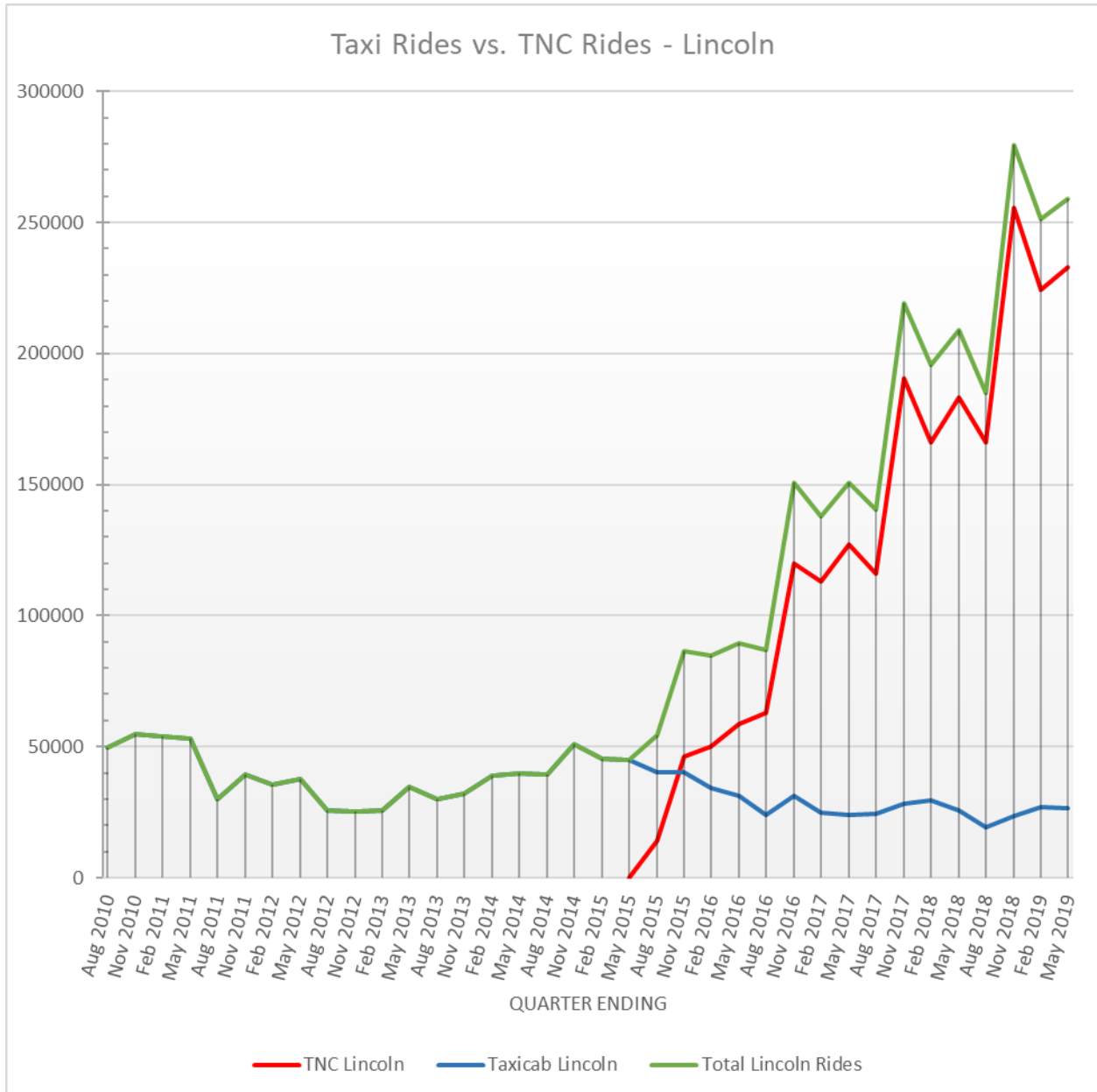
Omaha

Taxicab rides saw a decrease between May and August 2018, then an increase back to almost 2017 ride numbers. TNC rides continue to trend upward. Of the three geographic areas, the Omaha market may be seeing the most impact from TNC activity.



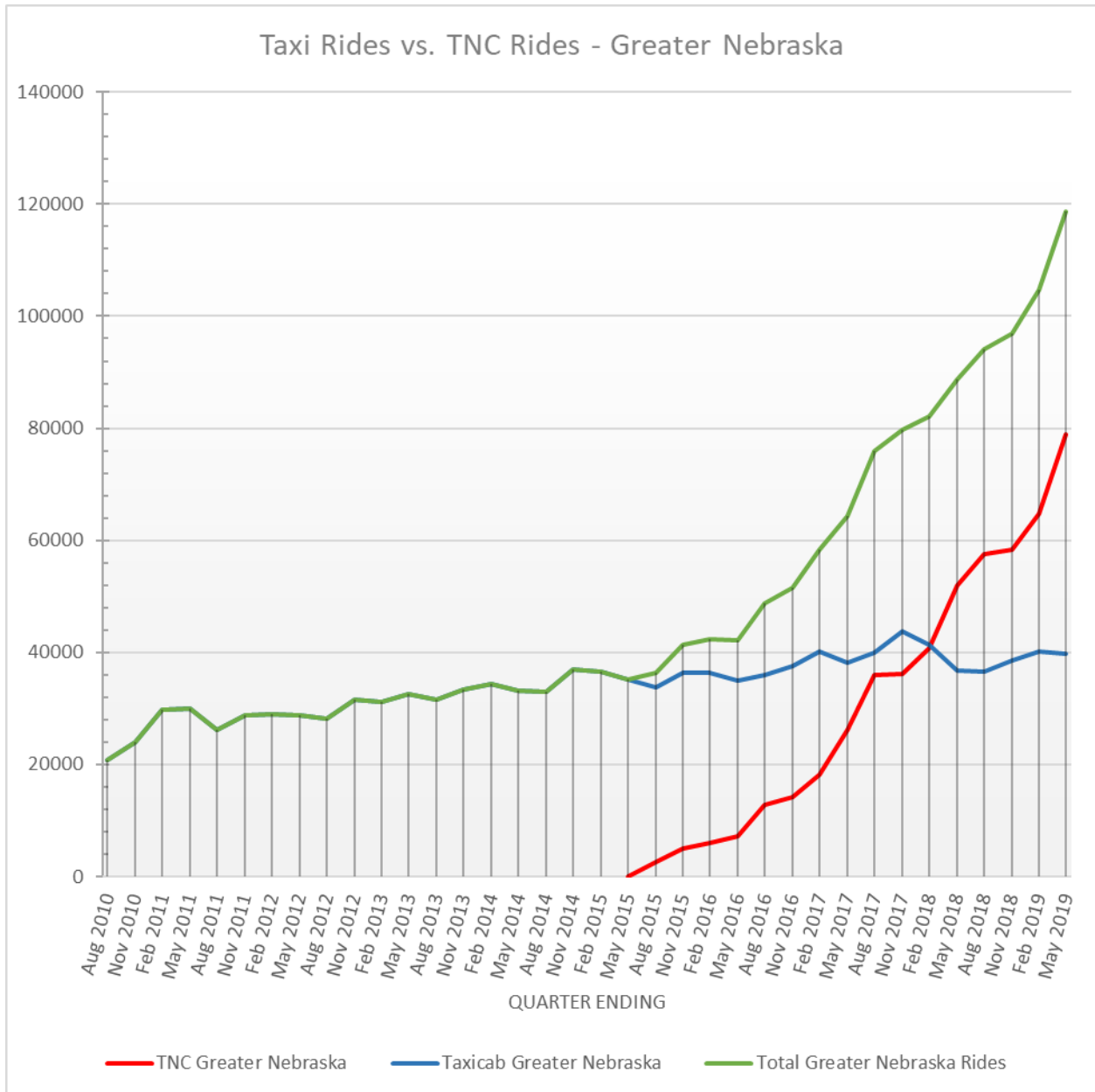
Lincoln

Taxicab ridership in Lincoln has continued a steady decrease since 2016, with its lowest point between May and August 2018. TNC rides in Lincoln show the most volatility in increases and sharp decreases since their appearance in the market. Large spikes in the August-November reporting period may coincide with Lincoln being the home of a handful of college campuses, including Nebraska Wesleyan University and the University of Nebraska. University of Nebraska football home games in particular create a unique traffic increase for the city from August to November every year.



Greater Nebraska

Taxicab ridership outside of Omaha and Lincoln has stabilized after a decrease in rides between November 2017 and August 2018, with the decrease possibly attributable to the loss of two Greater Nebraska taxicab carriers during that period. TNC ridership continues to increase as the companies expand west.



Recommendations for future Legislative Sessions

The Commission has identified the following issues for the Legislature's consideration:

1. Insurance: Insurance coverage and liability continues to be of concern, with the National Association of Insurance Commissioners identifying lack of coverage in a driver's personal auto insurance policy as the largest insurance coverage issue.³ Nebraska TNC drivers may purchase a TNC auto insurance coverage endorsement for their personal auto policy that would be in addition to the insurance coverage required by the TNC to help ensure adequate coverage. Under Neb. Rev. Stat. §§ 75-333 and 75-334, insurance coverage may be satisfied by either insurance maintained by the driver, the TNC, or any combination of the two. The Commission would recommend that the Legislature, the Commission, and other entities continue to monitor insurance issues and ensure that there are no gaps in coverage and that the public is protected.
2. TNC Vehicle Trade Dress: State law does not currently require TNC vehicles be identified in any manner, but more drivers have opted to use some form of trade dress when providing TNC services. TNC vehicles should be required to use trade dress so that passengers can more readily identify vehicles, as opposed to vehicles that may be operating illegally without Commission approval. The trade dress may be a sign or placard located in the lower passenger side of the vehicle's dashboard or some other non-permanent piece.
3. Dynamic Pricing: This spring's flooding triggered Neb. Rev. Stat. § 75-327(i), which states that dynamic pricing is not permitted during any state of emergency declared by the Governor. The statute does not give exception or guidance as to the duration and reinstatement of dynamic pricing should a state of emergency be enacted anywhere in the state for any reason. The Commission would recommend that this provision be examined and parameters be created for clarity.

The Commission will monitor TNC operations and impacts to determine any additional legislative recommendations in the future.

³ "Commercial Ride-Sharing", National Association of Insurance Commissioners Center for Insurance and Policy Research, last updated 9/18/2019 at https://content.naic.org/cipr_topics/topic_commercial_ride_sharing.htm (last visited 12/3/2019).